

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

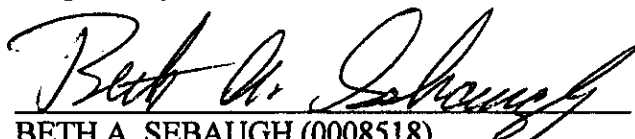
ROSIE ANDUJAR, <i>et al.</i>	:	CASE NO.: 565095
	:	
Plaintiffs,	:	JUDGE : STUART FRIEDMAN
	:	
vs.	:	
	:	<u>MOTION OF DEFENDANT</u>
ANTHONY M. PILLA, TRUSTEE, <i>et al.</i>	:	<u>THOMAS L KELLEY TO DISMISS</u>
	:	<u>COMPLAINT</u>
Defendants.	:	
	:	

Now comes Defendant Thomas J. Kelley, by and through his counsel of record, and hereby moves this Honorable Court, pursuant to Ohio Civil Rules 12(B)(1) and 12(B)(6) for an order dismissing the complaint against him on the grounds that Plaintiffs, who claim the status of beneficiaries of a charitable trust, do not have standing to bring the claims advanced.

For the reasons more fully set forth in the accompanying memorandum, the motion should be granted and the complaint dismissed against moving defendant Kelley. In an effort to avoid duplication and in conservation of judicial resources, this moving defendant incorporates by reference, as if fully rewritten herein, pertinent portions of the Memorandum accompanying the

Motion of Defendant Bishop Anthony M. Pilla to dismiss the complaint, as well as all pertinent citations referenced in the Memorandum accompanying Bishop Pilla's Motion to Dismiss.

Respectfully submitted,

A handwritten signature in cursive script, reading "Beth A. Sebaugh", written over a horizontal line.

BETH A. SEBAUGH (0008518)

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Counsel for Defendant

Thomas J. Kelley, Director of the

Catholic Cemeteries Association

CERTIFICATE OF SERVICE

A copy of the foregoing Motion of Defendant Thomas J. Kelley has been sent by ordinary United States mail, postage prepaid, this 1st day of August 2005, to:

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Defendant

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Defendant

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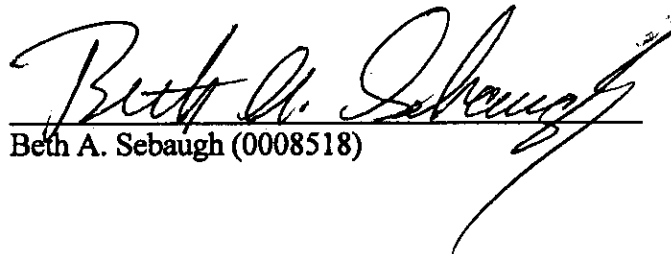
Defendant

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Defendant

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Defendant



Beth A. Sebaugh (0008518)

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ANTHONY M. PILLA, TRUSTEE, <i>et al.</i>	:	
	:	
Defendants.	:	
	:	

**MEMORANDUM OF DEFENDANT THOMAS J. KELLEY
IN SUPPORT OF MOTION TO DISMISS**

I. INTRODUCTION

This is an action for administration and enforcement of a charitable trust -- the Roman Catholic Diocese of Cleveland ("Diocese") -- brought by claimed beneficiaries of that trust. Plaintiffs say they are members of various parishes within the Diocese. Defendants include Thomas J. Kelley, a director of Catholic Cemeteries Association, as well as others.

Proposing to act for the benefit of the trust in its administration and enforcement, and citing Church law in support, plaintiffs assert that core Diocesan assets have been inappropriately distributed and related Diocesan affairs mishandled. Their complaint seeks, in summary: recovery of the supposedly misdistributed funds; unquantified monetary recovery for unspecified "damages" to the members of the Diocese; an accounting by the Bishop for all the

assets and liabilities of the Diocese; an inspection of Diocesan books and records; and an investigation and legal action by the Attorney General respecting the trust. The six counts of the complaint characterize themselves as advancing theories of conversion, entitlement to an accounting, breach of duties of loyalty and care, negligent supervision, and so called "charitable trust" (seeking Attorney General action).

Plaintiffs are not entitled to proceed on any of their claims against moving defendant Kelley on the basis that plaintiffs lack standing to bring any of the claims at all.

II. ARGUMENT

Plaintiffs Lack Standing to Bring Any of the Claims Against Any of the Defendants, Including Defendant Kelley.

The Diocese is a charitable trust. In Ohio, as in most jurisdictions, beneficiaries of a charitable trust, such as these plaintiffs claim to be,¹ do not have the authority to bring legal actions of the type advanced here – that is, actions regarding the administration or enforcement of the trust. That legal deficiency requires dismissal of the matter in its entirety at the outset as to all defendants, including Defendant Kelley.

In an effort to avoid duplication and to conserve judicial resources, this moving Defendant incorporates by reference, as if fully rewritten herein, all of the arguments and case law set forth in the Memorandum in Support of Motion of Defendant Bishop Anthony M. Pilla to Dismiss the Complaint, with regard to the lack of standing as a basis for the requested dismissal.


¹ It is at least arguable that they are not actual beneficiaries of the Diocesan trust in any recognizable sense, but perhaps at most are potential beneficiaries, or may not even be that as regards the matters at issue in this case. But the actual status does not matter because even if they were to qualify in some sense as "beneficiaries," that status alone would not give them standing in any event.

Said arguments and legal citations are set forth on page 5 through 9 of the Diocese's Memorandum.

III. CONCLUSION

For the foregoing reasons, the Plaintiffs' Complaint should be dismissed against Defendant Thomas J. Kelley, forthwith.

Respectfully submitted,



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