

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUG 18 2003

JRS
JAMES R. LARSEN, CLERK
DEPUTY
RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JULIO ROMERO, on behalf of
himself and all other
similarly situated,

Plaintiffs,

v.

NORTHWEST AREA FOUNDATION, a
Minnesota Non-Profit
Corporation,

Defendant.

NO. CY-02-3135-EFS

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

Before the Court is Defendant Northwest Area Foundation's ("the Foundation") Motion to Dismiss, (Ct. Rec. 2). The Foundation argues that Plaintiffs' suit should be dismissed because Plaintiffs lack standing and Plaintiffs fail to state a cognizable cause of action. A hearing was held on this motion on June 18, 2003. Plaintiffs were represented by Matthew Metz; while, David Groesbeck and Tom Kimer appeared on behalf of the Defendant. During the hearing, the Court requested additional briefing on the standing issue. Each party submitted a supplemental memorandum. After considering the submitted material, oral argument, and applicable statutory and case law, the Court is fully informed and grants the motion.

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ORDER ~ 1

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1 **A. Background**

2 Plaintiff Julio Romero, a Yakima resident, filed a class action
3 requesting money damages on behalf of himself and approximately 300
4 other persons in the Yakima Valley (collectively "Plaintiffs") in state
5 court. Plaintiffs allege breach of unilateral contract, promissory
6 estoppel, quantum meruit, and violation of the Washington Consumer
7 Protection Act causes of action. The Defendant Northwest Area
8 Foundation removed this suit based on complete diversity under 28 U.S.C.
9 § 1332.

10 The Foundation is a Minnesota non-profit corporation with its
11 principal place of business and corporate headquarters in St. Paul,
12 Minnesota. The Foundation's aim is to help reduce poverty in selected
13 communities in the eight states served by the Great Northern Railway:
14 Minnesota, Iowa, North Dakota, South Dakota, Montana, Idaho, Oregon, and
15 Washington. Historically, the Foundation granted money for discrete
16 projects through non-profit organizations. In 1998, however, the
17 Foundation created a new model to carry out its philanthropy.

18 One of the programs created by the Foundation to implement its new
19 model is at the heart of Plaintiffs' Complaint: the Community Ventures
20 program. The goal of the Community Ventures program is to work
21 collaboratively with up to sixteen different communities in ten-year
22 engagements. In November and December 2001, the Foundation met with a
23 number of Yakima organizations to begin the planning process.
24 Initially, a coordinating committee and six subcommittees were
25 established to determine if a Community Ventures program could serve the
26 Yakima Valley by reducing or eliminating poverty. A time-line was

1 developed where the final draft plan was to be prepared by Plaintiffs
2 by November 2002. Between December 2001 and April 2002, more than fifty
3 meetings were held, requiring Plaintiffs to travel and bear travel
4 expenses and other related costs. Then, in August of 2002, the
5 Foundation announced that it would not pursue the Yakima Valley program.
6 In response, Plaintiffs brought this action.

7 **B. Legal Analysis**

8 The difficult legal question before the Court is whether Plaintiffs
9 have standing. Plaintiffs allege that the Foundation "induced"
10 Plaintiffs to participate in a comprehensive community planning process
11 and that the Foundation "promised" to provide \$1.25 million in
12 assistance for Plaintiffs' planning efforts without disclosing that the
13 Community Ventures program was "exploratory." Plaintiffs allege they
14 expended thousands of uncompensated hours, approximately 100 hours per
15 plaintiff, and un-reimbursed dollars in the planning effort while
16 attending weekly committee meetings. Plaintiffs believe these alleged
17 facts state causes of action for breach of contract, promissory
18 estoppel, quantum meruit, and violation of the state Consumer Protection
19 Act.

20 The Foundation argues that the Court must look at the essence of
21 the Complaint and characterizes Plaintiffs' allegations as an attempt
22 to enforce a charitable trust for the benefit of the Yakima Valley
23 community. If this suit is an attempt to enforce a charitable trust,
24 the Foundation argues that Plaintiffs do not have standing to do so
25 because the Washington State legislature delegated the power to enforce
26 the purposes of a charitable trust to the Attorney General.

1 Plaintiffs respond that they are not seeking to enforce the
2 purposes of a charitable trust and are not making any allegation that
3 the Foundation acted inconsistently with the trust instrument.
4 Alternatively, Plaintiffs contend that even if the Court finds that the
5 action is an attempt to enforce a charitable trust, Plaintiffs have
6 standing to bring such an action because they have a special interest
7 in the trust.

8 After reviewing the substance of the Complaint, the Court finds
9 that Plaintiffs do in fact seek to enforce a charitable trust, rather
10 than a contract or a promise, against the Foundation. The Restatement
11 (Second) of Trusts § 348 (1959) describes a charitable trust as a
12 fiduciary relationship with respect to property, arising out of a
13 manifested intent to create it, thereby subjecting the person by whom
14 the property is held to equitable duties to ensure the property is used
15 for a charitable purpose. Washington statutes define a charitable trust
16 as "any real or personal property held by an entity or person that is
17 intended to be used for charitable purposes." WASH. ADM. CODE 434-120-
18 025(2); WASH. REV. CODE § 11.110.020.

19 The Foundation's Community Venture program was designed to elicit
20 community support and action. To aid in the development of a program
21 to serve the Yakima Valley community, the Foundation was to provide
22 \$1.25 million. Once the parties' finalized the plan, the parties'
23 understood that the Foundation controlled the ultimate decision of
24 whether to select the Yakima Valley community as a site for a Community
25 Ventures program. The statements allegedly made by the Foundation to
26 Plaintiffs during the planning process are not sufficiently definite to

1 constitute a unilateral offer for contract or promise. See *Shetney v.*
2 *Shetney*, 181 N.W.2d 516 (Wis. 1970); *Barton v. Spinning*, 8 Wash. 458
3 (1894); *Bumpus v. Bumpus*, 19 N.W. 29 (Mich. 1884); RESTATEMENT (SECOND) OF
4 CONTRACTS § 33 (1979). In addition, quantum meruit is unavailable as a
5 remedy because Plaintiffs admit that they volunteered their time and
6 efforts. See *Thomas v. Kearney Little League Baseball Assoc.*, 558 N.W.2d
7 842, 845-46 (Neb. Ct. App. 1997). The parties' efforts were geared
8 towards developing a plan to benefit the entire community, and the
9 Foundation's efforts in the preliminary assessment cannot be construed
10 as an offer or any intent on the part of the Foundation to assume
11 contractual liability with a large, undefined group of individuals. The
12 Court concludes that the relationship between the parties, if it created
13 any legal relationship, created a charitable trust with the \$1.25
14 million for the benefit of the Yakima Valley community, with the
15 Foundation as the trustee and the Yakima Valley community as the
16 beneficiary.

17 When a charitable trust or corporation is involved, the traditional
18 rule is that the Attorney General, or other public official, is the
19 entity with standing to bring a breach of trust action. RESTATEMENT
20 (SECOND) OF TRUSTS § 364 (1959 & Supp. 2002). Washington state
21 legislatively adopted the traditional rule. WASH. REV. CODE §§ 11.110,
22 et seq. Pursuant to R.C.W. § 11.110.100, the state Attorney General is
23 the official representative delegated with responsibility and the
24 authority to ensure, on behalf of the public, that charitable trusts are
25 used for their designated purposes. *Id.* § 11.110.100, 11.110.120; *Wash.*

26

1 v. Taylor, 58 Wash.2d 252, 257 (1961); Samuel & Jessie Kenney
2 Presbyterian Home v. Wash., 174 Wash. 39, 40 (1933).

3 Regardless of the Attorney General's power, some courts have
4 permitted an individual with a "special interest" in a charitable trust,
5 distinct from that of the public at large, to bring an action to enforce
6 the trust. See, e.g., Hooker v. Edes Home, 579 A.2d 608 (D.C. 1990);
7 Gravure v. Knapp Found., 64 N.Y.2d 458, 479 N.E.2d 752 (1985). The
8 general requirements for a special interest are (1) the plaintiff(s),
9 as members of the trust, are sharply defined and limited in number and
10 (2) the challenge to the trustee's action will not undermine the purpose
11 of the traditional common law rule delegating enforcement power to the
12 Attorney General. Hooker, 579 A.2d 608. Washington case law has not
13 expressly created a special interest exception. The Washington statute
14 provides the Attorney General with enforcement authority, yet does not
15 expressly disallow those with special interests from bringing suit as
16 well. The two Washington cases pertaining to charitable trusts and
17 standing were decided prior to the enactment of R.C.W. § 11.110.120.
18 Wash. v. Taylor, 58 Wash. 2d 252, 257 (1961); Samuel & Jessie Kenney
19 Presbyterian Home v. Wash., 174 Wash. 39, 40 (1933).

20 In Washington v. Taylor, 58 Wash. 2d 252, the Washington Supreme
21 Court recognized that the Attorney General has a duty to represent the
22 public interest in securing enforcement of charitable trust. Yet, the
23 court did note,

24 in the case of most charitable trusts, it would be unlikely
25 that any person or group of persons would be directly
26 interested or sufficiently affected to be accorded legal
standing or status, such as in the case of beneficiaries of
a private trust, to investigate and to do something about
mismanagement by the trustees.

1 *Id.* at 259. This statement implies that Washington courts might allow
2 special interest standing if the plaintiff was directly injured or
3 affected.

4 The Court finds that, even if Washington follows the special
5 interest exception, Plaintiffs have not sufficiently alleged a special
6 interest. Plaintiffs are individuals who assisted with the planning
7 process. The ultimate beneficiary of the Community Ventures program was
8 to be the Yakima Valley community. The individuals who helped during
9 the planning process were not part of a definite or limited group of
10 individuals. The Plaintiffs do not have a special interest simply
11 because they possibly would have benefitted from the grant of \$1.25
12 million. See *Cook v. Lloyd Noland Found., Inc.*, 825 So. 2d 83 (Ala.
13 2001) (holding that Attorney General must bring action to enjoin a
14 hospital, a public charitable trust, from being sold); *Kania v. Chatham*,
15 297 N.C. 290, 254 S.E.2d 528 (N.C. 1979) (finding that potential
16 beneficiary of a Morehead Scholarship did not have standing to enforce
17 a charitable trust because he was one of 930 unsuccessful nominees and
18 therefore did not have a definite, special interest); *Clevenger v. Rio*
19 *Farms, Inc.*, 204 S.W.2d 40 (Tex. App. 1947) (concluding that low income
20 farmers or farm families who were beneficiaries of a trust did not have
21 standing because an individual private citizen cannot sue to enforce a
22 charitable trust merely on the ground that he believes he was within the
23 class to be benefitted from the trust).

24 Plaintiffs cite to *Hooker v. Edes Home*, 579 A.2d 608 (D.C. 1990),
25 to support the proposition that they have a special interest. The Court
26 finds this case distinguishable. In *Hooker*, four elderly, unmarried

1 females sought an injunction against the sale and relocation of a home,
2 maintained by a charitable corporation, for elderly indigent widows
3 residing in Georgetown. Because the will, charter, and by-laws of the
4 corporation established specific criteria to be eligible to live in the
5 house, the court found that the plaintiffs, who met this criteria, had
6 a special interest in the trust distinct from the members of the public
7 at large. The court acknowledged that it was veering from the
8 traditional common law rule that only a public officer has standing to
9 bring an action to enforce the terms of a trust. As justification for
10 this departure, the court emphasized that the District of Columbia did
11 not have a statute specifically authorizing the Attorney General to
12 bring actions to enforce the terms of a trust and that the breach of
13 trust involved the extinguishment of the purposes of the trust. This
14 is inapposite from the case at hand because Washington does have a
15 statute specifically providing the Attorney General with this
16 authority. See WASH. REV. CODE § 11.110.120.

17 The Court also finds the analysis in *City of Paterson v. Paterson*
18 *General Hospital*, 97 N.J. Super. 514, 235 A.2d 487 (N.J. 1967),
19 inapplicable. The state court in *City of Paterson* found that city and
20 individual residents and taxpayers who brought suit to prevent a
21 hospital, a charitable trust, from changing its location had standing
22 due to their special interest. The court acknowledged that the
23 Attorney General is to bring suit against charitable trusts but
24 concluded,

25 [t]he manifold duties of this office make readily
26 understandable the fact that such supervision is necessarily
sporadic. . . . While public supervision of the
administration of charities remains inadequate, a liberal

1 rule as to the standing of a plaintiff to complain about the
2 administration of charitable trust or charitable corporation
seems decidedly in the public interest.

3 *Id.* at 528, 495. Although this sentiment may be true in New Jersey,
4 the Washington Supreme Court emphasized that it is the Attorney
5 General's duty to enforce charitable trusts, and this sentiment was
6 enforced by the enactment of R.C.W. § 11.110.120.

7 Furthermore, the Court finds that *Fitzgerald v. Baxter State Park*
8 *Authority*, 385 A.2d 189 (Me. 1978), is not of assistance to Plaintiffs'
9 argument that they have a sufficient special injury. Even though the
10 court held the Maine citizens and users of the Baxter State Park had
11 standing to seek an injunction against a program to clear out timber
12 blow-down, the court,

13 note[d], without deciding, the argument made by all parties
14 before us that these five plaintiffs come within the rule of
15 law that permits specially interested beneficiaries to bring
16 suit to enforce a charitable trust intended for their
17 benefit. We express no opinion whether these plaintiffs
would have standing if the Attorney General [was not a
defendant] and if Baxter State Park were merely a charitable
trust, and not also a public park required to be operated in
accordance with the statute.

18 *Id.* at 196, n.11 (citations omitted). Here, the Attorney General is
19 not a defendant and the parties have not stipulated that Plaintiffs
20 have a special interest.

21 In addition, presenting this lawsuit as a class action does not cure
22 Plaintiffs' lack of standing. In the jurisdictions in which standing has
23 been granted in class actions involving a charitable trust, it has been
24 based on the fact that every member of the class had a special interest.
25 See *Hooker v. Edes Home*, 579 A.2d 608, 613 (D.C. 1990); *Stern v. Lucy Webb*
26 *Hayes Nat'l Training Sch.*, 367 F. Supp. 536, 549 (1973) (finding each

1 class member directly injured). Plaintiffs have not alleged that every
2 class member has a special interest as a potential member of the large
3 and indefinite class of persons stricken with poverty who might have
4 benefitted had a portion of the trust been used to fund a long-term
5 partnership between the Foundation and the Yakima Valley.

6 Accordingly, the Plaintiffs, understandably disappointed, do not
7 have standing to bring this lawsuit. The Court finds that Plaintiffs'
8 suit is designed to enforce a charitable trust. The Attorney General
9 is the proper party to bring this suit as the Plaintiffs are part of
10 a large, undefined group.

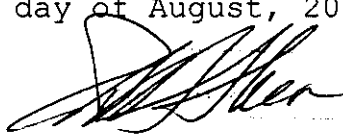
11 **IT IS HEREBY ORDERED:**

12 1. Defendant's Motion to Dismiss, (Ct. Rec. 2), is **GRANTED**.

13 **IT IS SO ORDERED.** The District Court Executive is directed to:

- 14 (1) Enter this Order,
15 (2) Provide copies to counsel,
16 (3) Enter Judgment accordingly,
17 (4) **Deny all pending motions as moot**, and
18 (5) **Close the file**, subject to reopening for good cause.

19 **DATED** this 18th day of August, 2003.

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22 _____
23 EDWARD F. SHEA
24 United States District Judge
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