

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-C9-61-315222

In the Matter of the OTTO
BREMER TRUST (formerly known
as the Otto Bremer Foundation)

**STATE’S PETITION TO ENFORCE
SUPERVISION OF CHARITABLE
TRUSTS AND TRUSTEES ACT;
REMOVE TRUSTEES; REPLACE
TRUSTEES; AND FOR OTHER RELIEF**

TO: THE HONORABLE JUDGE OF THE DISTRICT COURT ABOVE NAMED

Petitioner, the State of Minnesota, by its Attorney General Keith Ellison, respectfully represents to and petitions the Court (the “Petition”) as follows:

INTRODUCTION

1. Petitioner State of Minnesota, by its Attorney General Keith Ellison (“Attorney General”) is authorized under the Supervision of Charitable Trusts and Trustees Act (“Act”), Minn. Stat. §§ 501B.33 to 501B.45, the Minnesota Trust Code (“Code”), Minn. Stat. § 501C.0110, and common law authority, including the doctrine of *parens patriae*, to bring this Petition to secure compliance with the provisions of the Act, the Code, and Minnesota common law governing charitable trusts.

2. Contemporaneous with the filing of this Petition, Petitioner has also filed:
- a. State’s Petition for Interim Relief under Minn. Stat. § 501C.0706(c) (“Emergency Petition”),
 - b. State’s Memorandum of Law (“Memorandum”) in Support of Petition to Enforce Supervision of Charitable Trusts and Trustees Act, Remove Trustees, and Replace Trustees; and Petition For Interim Relief, and
 - c. Supporting affidavits and attachments thereto.

JURISDICTION AND VENUE

3. This is an *in rem* proceeding authorized by Minn. Stat. §§ 501B.41, 501C.0202(9), (10), (11), (16), and 501C.0706, to secure compliance with the provisions of the Act by removing the trustees, appointing successor trustees, and obtaining other relief.

4. The Trust is under the ongoing supervision and jurisdiction of the Ramsey County Probate Court, File No. 62-C9-61-315222 (the “Supervising Court”).

5. The principal place of administration of the Trust is in Saint Paul, Minnesota.

6. Venue is appropriate pursuant to Minn. Stat. § 501C.0207(a) and (b).

ENFORCEMENT AUTHORITY

7. Under the Act, the “attorney general may institute appropriate proceedings to obtain compliance with sections 501B.33 to 501B.45 and the proper administration of a charitable trust.” Minn. Stat. § 501B.41.

8. The Act codifies and supplements longstanding common law recognizing the Attorney General’s broad authority over the “supervision, administration, and enforcement of charitable trusts.” Minn. Stat. § 501B.34.

9. Unlike express trusts benefitting specific individuals, charitable trust beneficiaries “are usually some or all of the members of a large shifting class of the public.” *Longcor v. City of Red Wing*, 289 N.W. 570, 574 (Minn. 1940).

10. The Attorney General, as “a responsible state officer who will act in the public interest rather than for personal motives,” *id.* at 574, “is entrusted with the duty of representing the beneficiaries of a charitable trust,” *Schaeffer v. Newberry*, 35 N.W.2d 287, 288 (Minn. 1948).

11. In this capacity, the Attorney General acts “as representative of the sovereign, rooted in the common law power of *parens patriae*.” George T. Bogert et al., *The Law of Trusts*

and Trustees § 411 (June 2020). As such, “the attorney general has not only the right but the duty to enforce charitable trusts by proper court proceedings.” *In re Quinlan’s Estate*, 45 N.W.2d 807, 812 (Minn. 1951).

12. The Code “applies to express trusts, charitable or noncharitable.” Minn. Stat. § 501C.0102(a). Under the Code, an “interested person may petition the district court” and invoke its *in rem* or *in personam* jurisdiction for specified matters. Minn. Stat. § 501C.0201(a), (c).

13. In the event that “the district court assumes court supervision of the trust, all further court proceedings with respect to the trust shall be maintained under the district court’s *in rem* jurisdiction.” Minn. Stat. § 501C.0201(d).

INTERESTED PERSONS

14. An “interested person” under the Code includes a beneficiary. Minn. Stat. § 501C.0201(a).

15. There are no named beneficiaries of the Trust. The sole beneficial interests are its general charitable purposes set forth therein.

16. Because the Attorney General has all rights of a qualified beneficiary with respect to a charitable trust principally administered in Minnesota, he is an interested party under the Trust Code. *See* Minn. Stat. § 501C.0110(d); *see also* Minn. Stat. § 501B.31, subd. 5.

17. Prior proceedings have determined the interested persons to be limited to the acting trustees of the Trust and the Attorney General. In addition to those interested persons, Petitioner has provided proper notice of this proceeding to the special fiduciaries and successor trustees nominated herein.

TRUST BACKGROUND

18. Considerable factual background is provided in the accompanying Memorandum.

19. The subject trust is an express trust under the Code, held and administered according to the trust instrument on file herein. The Otto Bremer Trust (previously called the Otto Bremer Foundation and herein referred to as “Trust” or “OBT”) was established by Otto Bremer (“Settlor” or “Bremer”) in 1944.

20. Settlor was a German immigrant who lived his entire adult life in Saint Paul, Minnesota. Settlor took a job in banking shortly after his arrival in Minnesota and built community banks in the Upper Midwest. A few years before his death in 1951, Settlor created the Trust and Bremer Financial Corporation (then called the Otto Bremer Company and herein referred to as “BFC”).

21. The Trust is a private foundation generally exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

22. The Trust is registered as Minnesota Charitable Trust with the AGO under the Act and files annual Information Filings with the AGO under Minn. Stat. § 501B.38.

23. The Trust qualifies as a bank holding company under the Bank Holding Company Act of 1956, 12 U.S.C. § 1841 et. seq.

24. The current trustees of the Trust are Charlotte S. Johnson (“Johnson”), Daniel C. Reardon (“Reardon”), and S. Brian Lipschultz (“Lipschultz”) (collectively “Trustees”). Each of the Trustees were appointed as successors by their respective fathers: Johnson in 1991; Reardon in 1992; and Lipschultz in 2012.

RELIEF NECESSARY TO PROTECT THE TRUST

25. As set forth more fully in the supporting Memorandum, the current Trustees of the Trust have engaged in a longstanding and presently ongoing pattern of imprudent, self-interested, and otherwise unlawful behavior that is injurious to the Trust and its purposes,

including but not limited to violations of their fiduciary duties, the Settlor's intent, the Trust instrument, and Minnesota Statutes and common law governing trusts, through the following conduct:

- (a) failing to maintain adequate human resources staff, procedures, and structures, fostering a toxic workplace and exposing the Trust to unnecessary liability;
- (b) expending Trust assets on unreasonably lavish, expensive overhead costs;
- (c) placing their own self-interests above the Trust's purposes in selecting grant recipients;
- (d) persistently failing to ensure that their compensation is reasonable and in the best interests of the Trust;
- (e) misappropriating Trust assets and failing to appropriately prevent, investigate, and remedy the misuse;
- (f) making substantial investments with Trust assets that are prohibited by law and the Trust's investment policies;
- (g) diverting the Trust's focus from charitable to financial purposes;
- (h) selling the Trust's primary asset in a reckless manner, without due respect to the Settlor's intent, and in furtherance of their personal interests, while
 - i. failing to apply appropriate consideration to the Trust instrument in determining whether the sale was prudent;
 - ii. selling Trust property despite their personal interests in the outcome of the transaction;
 - iii. acting recklessly in the manner that they sold the Trust assets;
 - iv. failing to disclose material facts to the AGO necessary to protect the public's interest;
- (i) intending to continue to "divest" the Trust's BFC assets in the short term, without any assurances that the AGO will have an opportunity to protect its interests beforehand;

- (j) making additional pending commitments to transfer millions of additional dollars in Trust assets to private investments that are prohibited by law and Trust policy in the midst of the AGO's investigation;
- (k) making structural changes to the Trust, including creating a subsidiary intended to shield Trustees from liability and Trust assets from scrutiny of the Supervising Court, even though substantial questions regarding the propriety of this change exist;
- (l) continuing lack of independent oversight and investigation by Trustees Reardon and Johnson of the admitted self-dealing by Trustee Lipschultz; and
- (m) continued failure to take steps to protect the Trust from potentially avoidable attorneys' fees and disruptive litigation because of the Trustees personal self-protective interests.

26. Based on the above conduct of the Trustees, as described in the Memorandum supporting this Petition, Petitioner brings this Petition to secure compliance with the Act, and requests the Court to provide the following relief pursuant to Minn. Stat. §§ 501C.0706(c) and 501C.1001(b):

- (a) remove the trustees of the above-named trust with or without cause in accordance with Minn. Stat. §§ 501C.0202(9) and 501C.0706;
- (b) appoint successor trustees pursuant to Minn. Stat. § 501C.0202(10);
- (c) if not already provided by the Court when deciding Petitioner's Emergency Petition, provide interim relief under Minn. Stat. §§ 501C.0706(c) and 501C.1001(b) until this matter can be fully adjudicated on the merits, including
 - i. enjoin the Trustees from committing a breach of trust, Minn. Stat. § 501C.1001(b)(2);
 - ii. require the Trustees to account, Minn. Stat. § 501C.1001(b)(4);
 - iii. appoint a special fiduciary or special fiduciaries to take possession of the trust property and administer the Trust, Minn. Stat. § 501C.1001(b)(5);
 - iv. suspend the Trustees, including their authority to nominate a successor trustee, Minn. Stat. §§ 501C.1001(b)(6) and

501C.1001(b)(10), or alternatively, removing the Trustees pursuant to Minn. Stat. § 501C.1001(b)(7); and

- v. order other appropriate relief; Minn. Stat. § 501C.1001(b)(10), including but not limited to:
 - a. Court denial or pre-approval of all payments of attorneys' fees out of the trust property,
 - b. Trustee cooperation with special fiduciaries and/or successor trustees,
 - c. Suspension of Trustees Johnson, Reardon, and Lipschultz's to appoint successors; and
 - d. Court review, or order requiring the special fiduciaries and/or successor trustees to review, Trustees' Johnson, Reardon, and Lipschultz attorney conflicts and to seek appropriate redress concerning the same.

27. The Attorney General further expressly seeks to defer and preserve for potential separate actions the determination on the availability and amount of restitution from Trustees and third parties, and at this time solely seeks findings and an order sufficient to effectuate the narrow equitable remedies of removal, replacement, and other requested relief.

28. To serve as special fiduciaries or successor trustees, Petitioner nominates Judge Pamela Alexander (ret.), Marcia Avner, and Carleen Rhodes (collectively "Proposed Fiduciaries")—whose Affidavits and Acceptances, along with their curricula vitae, have been filed with the Court contemporaneously with this Petition.

29. Proposed Fiduciaries are not excluded from appointment; are among the most suitable and best qualified to serve as special fiduciaries and/or successor trustees of the Trust; and are willing and able to take possession of the Trust property and administer the Trust in accordance with its applicable terms and be bound by applicable law relating to the office.

PRAYER FOR RELIEF

WHEREFORE, Petitioner asks the Court for an Order fixing the time and place of hearing on this Petition and directing the manner in which the persons to whom notice of the hearing shall be given and that, at such hearing, the Court make its Order as follows:

1. Confirming that a copy of this Petition has been served on all interested parties;

2. Removing the trustees of the above-named Trust with or without cause in accordance with Minn. Stat. §§ 501C.0202(9) and 501C.0706;

3. Appointing Proposed Fiduciaries as successor trustees pursuant to Minn. Stat. § 501C.0202(10);

4. If not already provided by the Court when deciding Petitioner's contemporaneously filed Emergency Petition, granting interim relief under Minn. Stat. §§ 501C.0706(c) and 501C.1001(b) until this matter can be fully adjudicated on the merits, including:

- i. enjoining the Trustees from committing a breach of trust, Minn. Stat. § 501C.1001(b)(2);
- ii. requiring the Trustees to account, Minn. Stat. § 501C.1001(b)(4);
- iii. appointing Proposed Fiduciaries as special fiduciaries to take possession of the trust property and administer the Trust, Minn. Stat. § 501C.1001(b)(5);
- iv. suspending the Trustees, Minn. Stat. § 501C.1001(b)(6), or alternatively, removing the Trustees, Minn. Stat. § 501C.1001(b)(7);
- v. and ordering any other appropriate relief, including but not limited to:
 - a. Court denial or pre-approval of all payments of attorneys' fees out of the trust property,
 - b. Requiring cooperation with special fiduciaries and/or successor trustees,
 - c. Suspending Trustees Johnson, Reardon, and

Lipschultz's to appoint successors; and

- d. Either the Court reviewing or the Court requiring the special fiduciaries and/or successor trustees to review Trustees Johnson, Reardon, and Lipschultz attorney conflicts and to seek appropriate redress concerning the same.
5. Granting such other and further relief as may be just and equitable.

Under penalties of perjury, I declare and affirm that the representations in this petition are true and accurate to the best of my information and belief.

Dated: August 12, 2020

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed for violation of Minn. Stat. §§ 549.211 and Minn. R. Civ. P 11.

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