UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, ET AL.	:	
Plaintiffs	:	
v.	:	
	:	C.A. No:1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF THE COMPLAINT

Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

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Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) ("the Receiver"), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, individually as named plaintiffs and on behalf of all putative class members as defined herein (collectively "Plaintiffs"), submit this Motion for Summary Judgment on Count IV of the First Amended Complaint ("FAC"). They do so pursuant to Fed. R. Civ. P. 56(a) and the Stipulation (ECF# 170) and Text Order approving the Stipulation entered on the docket on October 29, 2019.

Plaintiffs also file herewith their Rule 56 Statement of Undisputed Material Facts ("Rule 56 Statement").

INTRODUCTION

This case involves a defined benefit pension plan. Under federal law, such a plan must comply with the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") unless it meets one of the specific exemptions in the statute. The only potential exemption possible in this case is the so-called church plan exemption. At issue here is when the plan ceased to be a "church plan" exempt from ERISA.

As discussed below, qualification for the church plan exemption depends upon satisfaction of all the several elements. Plaintiffs acknowledge that factual disputes likely preclude the determination (at this stage) of whether there was compliance with certain of those elements.[1] Plaintiffs assert, however, that there is no genuine dispute as to any fact material to compliance with especially one of those elements, and

[1] Most notably, the issue of whether St. Joseph Health Services of Rhode Island remained "associated with" the Catholic Church after a reorganization in 2009.

Plaintiffs are entitled to summary judgment as a matter of law that such element was not satisfied and that the Plan was not exempt from ERISA.

The hospital workers originally participated in a pension plan that also included Diocesan employees.[2] In 1995, the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") was established as a stand-alone plan covering the hospital workers.[3] Initially, the Plan was administered by a "principal purpose" organization, which was "controlled by or associated with" a church such that it met the definition of "church plan" added to ERISA in 1980 for retirement plans established and maintained by organizations that were associated with a church but were not themselves a church.[4]

However, as a result of a series of transactions beginning in 2009, the employer of the hospital workers and the administration of the Plan became increasingly secularized.[5] As demonstrated below, prior to the Prospect Entities' acquisition of the assets of Defendant St. Joseph Health Services of Rhode Island ("SJHSRI") on June 20, 2014 (the "2014 Asset Sale"), the Plan was no longer being administered by a "principal purpose" organization, and therefore no longer met that requirement for the "church plan" exemption.[6] As a result, the Plan became subject to ERISA, like all other private sector defined benefit plans that do not meet any of the specific exemptions from ERISA regulation.

[2] Rule 56 Statement ¶ 7, Ex. 7 (Diocesan Plan effective July 1, 1965).

[3] Rule 56 Statement ¶ 8, Ex. 8.

[4] Rule 56 Statement ¶¶ 12-13.

[5] Rule 56 Statement ¶¶ 14-19, 29-36.

[6] Rule 56 Statement ¶¶ 29-36.

SJHSRI and the Diocesan Defendants[7] were acutely aware of the requirement for a principal purpose organization, and what needed to be done to comply. As will be seen, in 2008 SJHSRI secured a formal legal opinion that expressly advised SJHSRI of this requirement and affirmed that the Plan satisfied this requirement, under the Plan provisions and administration that existed at that time.[8] SJHSRI nevertheless went ahead in 2011 and, in connection with a corporate reorganization of SJHSRI in which the Bishop participated and which he approved, amended the Plan to eliminate those Plan provisions and modified the Plan administration so that it no longer complied with the requirement for a principal purpose organization.[9] Although subjective intent is irrelevant to qualification for the church plan exemption,[10] here we have a clear case of deliberate non-compliance with this statutory requirement.[11]

[7] I.e. Defendants Roman Catholic Bishop of Providence (a Corporation Sole), Diocesan Administration Corporation, and Diocesan Service Corporation.

[8] Rule 56 Statement ¶¶ 19-24, Ex. 13.

[9] Rule 56 Statement ¶¶ 32-36.

[10] See discussion *infra* at 19-20, and cases cited.

[11] Although not the subject of this motion, it is highly relevant for purposes of successor liability that more than a year prior to the 2014 Asset Sale, the Prospect Defendants and their ERISA counsel specifically requested and obtained and reviewed both this legal opinion and the Plan documents that unequivocally demonstrate that the requirement for a principal purpose organization was not adhered to, such that when the Prospect Defendants purchased the assets of SJHSRI they knew, or, at the very least, certainly should have known that the Plan did not qualify as a church plan, and, therefore, they were purchasing the assets of an entity (SJHSRI) that operated an ERISA Plan and that such entity was subject to (and in violation of) the minimum contribution requirements of ERISA.

THE DECLARATORY RELIEF SOUGHT

Count IV states as follows:

> Plaintiffs demand a declaratory judgment declaring that the Plan is not a Church Plan within the meaning of 29 U.S.C. § 1002(33), and is thus subject to the provisions of Title I and Title IV of ERISA.

First Amended Complaint (ECF # 60) at 144. The Stipulation (approved by Text Order) states as follows:

> At any time between thirty (30) and sixty (60) days after the Court's approval of this stipulation, the Receiver may file a motion for summary judgment concerning when, if at any time, the Plan ceased to be a church plan exempt from ERISA.

ECF # 170, § 3(f).[12]

Plaintiffs seek a declaratory judgment declaring that by April 29, 2013[13] at the latest, the Plan was not an ERISA-exempt church plan within the meaning of 29 U.S.C. § 1002(33).

[12] The Text Order states that, "in accordance with the schedule set forth by the parties, Plaintiffs' Motion for Summary Judgment as to Count IV shall be filed no earlier than November 29, 2019, and no later than December 29, 2019."

[13] As noted herein, the Plan ceased to qualify for the church plan exemption on July 1, 2011, based upon Plan amendments and administration effective that date. The Bishop ratified those amendments April 29, 2013, but that ratification was not necessary for the amendments to take effect and, therefore, the date of the Bishop's ratification is irrelevant. That is a moot point, however, because for purposes of Plaintiffs' claims, it does not matter whether the exemption was lost on July 1, 2011 or not until April 29, 2013. Accordingly, Plaintiffs seek summary judgment that the church plan exemption was lost by April 29, 2013 at the latest.

FACTS

I. Facts concerning standing

A. Standing of the Receiver

On August 18, 2017, Defendant SJHSRI filed a Petition for Appointment of Temporary Receiver ("Petition") in the Rhode Island Superior Court, in the case captioned St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended, PC-2017-3856 (the "Receivership Proceeding").[14]

On August 18, 2017, the Rhode Island Superior Court appointed Stephen Del Sesto as Temporary Receiver of the Plan.[15]

The Plan as in effect on August 18, 2017 provided that "[t]he Employer shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Trustees, shall designate a person or committee of persons to be the Administrator and named fiduciary."[16] On October 20, 2017, the Board of Trustees of SJHSRI irrevocably designated the Receiver as administrator of the Plan.[17]

On October 27, 2017, the Rhode Island Superior Court appointed Stephen Del Sesto as Permanent Receiver of the Plan, with "all powers, authorities, rights and privileges heretofore possessed by the Respondent's [SJHSRI's] plan administrator, officers, directors and managers under applicable state and federal law, the Plan, as

[14] Rule 56 Statement ¶ 1 (Ex. 1).

[15] Rule 56 Statement ¶ 2 (Ex. 2).

[16] Rule 56 Statement ¶ 3 (Ex. 3).

[17] Rule 56 Statement ¶ 4 (Ex. 4).

amended, the Trust Agreement, as may have been amended and/or other agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of RI Rules of Civil Procedure, Rule 66."[18]

B. Standing of the Individual Named Plaintiffs

The individual named plaintiffs are all participants in the Plan.[19]

II. Facts Concerning Church Plan Status

A. Key Dates

The key dates and events for purposes of this motion for summary judgment are:

- July 1, 2011, the effective date of the amended and restated Plan that eliminated the retirement board and vested the administration of the Plan in SJHSRI itself; and
- April 29, 2013, when the Bishop by resolution purported to ratify the Plan which had been amended and made effective July 1, 2011 and declared that the Board of Trustees of SJHSRI shall be the retirement board, and further declared that the Board of Trustees of SJHSRI had appointed the Finance Committee of CCCB to act on its behalf with respect to administrative matters relating to the Plan.

B. Facts

During the period from 1965 through June 30, 1995, the employees of SJHSRI participated in a defined-benefit retirement plan known as the Diocese of Providence Retirement Plan (the "Diocesan Plan").[20] Effective July 1, 1995, SJHSRI established

[18] Rule 56 Statement ¶ 5 (Ex. 5).

[19] Rule 56 Statement ¶ 6, Ex. 6 (Declaration of Stephen Del Sesto).

[20] Rule 56 Statement ¶ 7, Ex. 7 (Diocesan Plan effective July 1, 1965).

the Plan. The Plan by its own terms claimed to be a church plan purportedly exempt from the requirements of ERISA.[21]

During the period from its inception effective July 1, 1995 until the restatement of the Plan effective July 1, 2011, the Plan documents designated a retirement board to administer the Plan (the retirement board during this period being herein referred to as the "Initial SJHSRI Plan Retirement Board").[22] Pursuant to the terms of those Plan documents, the Initial SJHSRI Plan Retirement Board consisted of the Bishop, at least three members of SJHSRI's Board of Trustees, and up to six others (who may or may not have been members of SJHSRI's Board of Trustees), all appointed by the Bishop to serve at the pleasure of the Bishop.[23]

Beginning in 2008, executives of Defendants SJHSRI and Roger Williams Hospital ("RWH") conducted negotiations to effectuate a reorganization of those companies under the control of a (secular) common parent entity, which came to be known as Defendant CharterCARE Community Board ("CCCB").[24] One issue of concern was whether the Plan would remain a church plan after the reorganization.[25] To address that concern, SJHSRI secured a formal legal opinion from John H. Reid, III, of (then) Edwards Angell Palmer & Dodge LLP dated November 12, 2008 ("Attorney Reid's Opinion"), concerning whether SJHSRI's participation with RWH in a new health

[21] Rule 56 Statement ¶ 11; Ex 8 at 1; Ex. 9 at 1; Ex. 10 at 1; Ex. 3 at 1.

[22] Rule 56 Statement ¶ 12; Ex. 8 at 31; Ex. 9 at 30.

[23] Rule 56 Statement ¶ 13; Ex. 8 at 31; Ex. 9 at 30.

[24] Rule 56 Statement ¶ 14; Ex. 11. Prior to June 20, 2014, Defendant CCCB was named ChartereCARE Health Partners ("CCHP"). Rule 56 Statement ¶ 45; Ex. 24.

[25] Rule 56 Statement ¶¶ 14-24.

care system "would allow SJHSRI to preserve the status of the Plan as a non-electing church plan . . . ."[26]

Attorney Reid's Opinion stated:

> Section 414(e) of the [Internal Revenue] Code [26 U.S.C. §414(e)] and ERISA Section 3(33)(C)(i) [29 U.S.C. §1002(33)(C)(i)] includes in the definition of church plan a plan maintained by an organization, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church, if such organization is controlled by or associated with a church.[27]

Attorney Reid's Opinion noted that the Plan was "administered by a Retirement Board appointed by the Bishop."[28] It also noted:

> The Retirement Board is an organization controlled by a church by virtue of the fact that its members include the Bishop and at least nine other members appointed by the Bishop to serve at his pleasure. **The Retirement Board has no other function than the administration of the Plan**.[29]
>
> [Emphasis added]

Attorney Reid's Opinion's formal conclusion was that, among the requirements necessary "[i]n order to maintain the status of the Plan as a church plan in accordance with the Code, ERISA and the interpretations of IRS and DOL", was that "**the Retirement Board must continue to be appointed by the Bishop or some other**

[26] Rule 56 Statement ¶ 20, Ex. 13.

[27] Rule 56 Statement ¶ 21, Ex. 13. The opinion went on to point out that the statutory phrase "employees of a church" is defined by Section 414(e)(3)(D) of the Internal Revenue Code to include "employees of an organization, whether a civil law corporation or otherwise, which is exempt from tax under Section 501 and which is controlled by or associated with a church or a convention or association of churches." Rule 56 Statement ¶ 22, Ex. 13.

[28] Rule 56 Statement ¶ 23, Ex. 13.

[29] Rule 56 Statement ¶ 23, Ex. 13.

representative of the Roman Catholic Church and must continue to administer the Plan...." (emphasis added).[30]

In 2009, SJHSRI, RWH, and the Bishop entered into a Health System Affiliation and Development Agreement regarding the reorganization of SJHSRI and RWH (and its affiliates) under the umbrella of CCCB.[31] The reorganization greatly reduced the power and control of the Bishop over SJHSRI. In connection with the 2010 reorganization, the membership of SJHSRI was divided between a Class A member and a Class B member, with Defendant CCCB being the Class A member, and the Bishop being Class B member.[32] The Bylaws of SJHSRI were amended to reflect this structure, with each member class having different voting rights.[33] In general, Defendant CCCB as the Class A Member was given the power to appoint the majority of the Board of Trustees, and control over all major (non-religious) decisions, and the consent of the Bishop as Class B Member was required for religious matters, including any matters affecting SJHSRI's compliance with Catholic ethical directives.[34]

As noted, the Plan was amended and restated effective July 1, 2011 (the "2011 Plan").[35] The 2011 Plan reflected the increased secularization of SJHSRI and the Bishop's diminished control and did not refer to, much less confer any authority on the

[30] Rule 56 Statement ¶ 24, Ex. 13.

[31] Rule 56 Statement ¶ 25, Ex. 14.

[32] Rule 56 Statement ¶ 27, Ex. 7.

[33] Rule 56 Statement ¶ 27.

[34] Rule 56 Statement ¶ 27.

[35] Rule 56 Statement ¶ 28, Ex. 10.

Bishop, and did not provide for a retirement board, much less a retirement board controlled by the Bishop.[36]

Instead, the 2011 Plan provided that "[t]he Employer [SJHSRI] shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Directors[37] [sic], shall designate a person or committee of persons to be the Administrator and named fiduciary."[38] SJHSRI did not designate an Administrator or named fiduciary, and, thus, SJHSRI remained the Administrator and named fiduciary of the Plan until October 20, 2017, when the Board of Trustees of SJHSRI irrevocably designated the Receiver as administrator of the Plan pursuant to the terms of the 2016 Plan.[39]

The 2011 Plan also stated:

> The administration of the Plan, as provided herein, including the determination of the payment of benefits to Participants and their Beneficiaries, shall be the responsibility of the Administrator. The Administrator shall conduct its business and may hold meetings, as determined by it, from time to time. The Administrator shall have the right to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any distributions under the Plan to the fullest extent provided by law and in its sole discretion; and interpretations or decisions made by the Administrator will be conclusive and binding on all persons having an interest in the Plan. In the event more than one party shall act as Administrator, all actions shall be made by majority decisions. In the administration of the Plan, the Administrator may (1) employ agents to carry out nonfiduciary responsibilities (other than Trustee

[36] Rule 56 Statement ¶ 29, Ex. 10.

[37] As noted previously, SJHSRI was actually governed by a Board of Trustees, not a Board of Directors.

[38] Rule 56 Statement ¶ 33, Ex. 10 at 38.

[39] Rule 56 Statement ¶ 36, Ex. 4.

> responsibilities), (2) consult with counsel who may be counsel to the Employer, and (3) provide for the allocation of fiduciary responsibilities (other than Trustee responsibilities) among its members. Actions dealing with fiduciary responsibilities shall be taken in writing and the performance of agents, counsel and fiduciaries to whom fiduciary responsibilities have been delegated shall be reviewed periodically.[40]

The Plan was again amended and restated January 30, 2017, effective July 1, 2016 (the "2016 Plan").[41] The 2016 Plan also provided that "[t]he Employer shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Trustees, shall designate a person or committee of persons to be the Administrator and named fiduciary."[42]

In other words, the provisions of the 2011 Plan and the 2016 Plan are identical with respect to the fact that the organization that administered the Plan was SJHSRI.

Between 2008 and the filing of this lawsuit, only two payments were made to the Plan.[43] SJHSRI paid $1,500,000 in September 2008.[44] The only subsequent funding of the Plan was the transfer of $14 million to the Plan by an escrow agent (First American Title Insurance Company) on behalf of the transacting parties on June 20, 2014 in connection with the 2014 Asset Sale.[45] The escrow agent received those funds by wire transfer from Prospect Medical Holdings, Inc. ("Prospect Medical").[46]

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[40] Rule 56 Statement ¶ 35, Ex. 10 at 38.

[41] Rule 56 Statement ¶ 3, Ex. 3.

[42] Rule 56 Statement ¶ 3, Ex. 3 at 41.

[43] Rule 56 Statement ¶ 37.

[44] Rule 56 Statement ¶ 38, Ex. 17

[45] Rule 56 Statement ¶ 39, Exs. 20 & 21.

[46] Rule 56 Statement ¶ 39, Ex. 20 & 21.

To eliminate any question concerning the Bishop's agreement to the restatement of the 2011 Plan, on April 29, 2013, Bishop Thomas Tobin passed a resolution ("the April 29th Resolution") which purported to ratify and confirm the 2011 Plan as follows:

> RESOLVED That the adoption of the amendment and restatement of the Plan, effective as of July 1, 2011, a copy of which is attached, as adopted by the Board of Trustees of St. Joseph Health Services of Rhode Island on July 21, 2011, be ratified and confirmed.[47]

The April 29th Resolution also stated as follows:

> RESOLVED That the Board of Trustees of St. Joseph Health Services of Rhode Island is the Retirement Board with respect to the Plan and acts on behalf of St. Joseph Health Services of Rhode Island as the Plan Administrator of the Plan;
>
> RESOLVED That the Board of Trustees of St. Joseph Health Services of Rhode Island has the authority, pursuant to the terms of the Plan, to appoint a committee to act on its behalf with respect to administrative matters related to the Plan; and
>
> RESOLVED That the Board of Trustees of St. Joseph Health Services of Rhode Island has appointed the Finance Committee of CharterCARE Health Partners[48] to act on its behalf with respect to administrative matters relating to the Plan.
>
> RESOLVED That the Plan is intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") as a non-electing church plan within the meaning of Section 414(e) of the Code and Section 3(33) of the Employee Retirement Income Security Act of 1974, as amended.[49]

[47] Rule 56 Statement ¶¶ 40 & 41, Ex. 22.

[48] Subsequently renamed (and herein referred to as) CharterCARE Community Board (or "CCCB"). See Rule 56 Statement ¶ 45.

[49] Rule 56 Statement ¶ 42, Ex. 22.

SJHSRI's Board of Trustees did not hold separate meetings as a "retirement board," devote any specific part of their regular meetings to their function as a "retirement board," or proceed by an agenda specific to their function as a "retirement board."[50] Instead, SJHSRI's Board of Trustees considered and decided matters concerning the Plan as part of the Board of Trustees' regular meetings and pursuant to the agenda of the meetings of the Board of Trustees; nor did the board keep separate minutes concerning its actions as a putative "retirement board."[51] For example, at a meeting of SJHSRI's Board of Trustees on March 14, 2014 the Board considered and addressed a broad range of corporate issues both relevant and irrelevant to the Plan, and the Board officially voted to approve a series of resolutions concerning the Plan.[52]

The CCCB Finance Committee was a sub-committee of CCCB's Board of Trustees, responsible for managing or advising CCCB's Board of Trustees concerning financial matters for CCCB.[53] The financial matters that the CCCB Finance Committee advised CCCB's Board of Trustees included financial management of the operations of both Fatima Hospital and Roger Williams Hospital.[54]

[50] Rule 56 Statement ¶ 43.

[51] Rule 56 Statement ¶ 43.

[52] Rule 56 Statement ¶ 43, Ex. 23.

[53] Rule 56 Statement ¶ 44, Ex. 24.

[54] Rule 56 Statement ¶ 44, Ex. 24.

ARGUMENT

I. Subject Matter Jurisdiction

The Court's subject matter jurisdiction to decide Plaintiffs' motion for summary judgment is undisputed and undisputable. Indeed, the parties have stipulated that the issues raised by this motion can and should be addressed by this motion for summary judgment.[55] In any event, the Court's subject matter jurisdiction to adjudicate Plaintiffs' motion for summary judgment is clear. ERISA § 502(a)(3) [29 U.S.C. § 1132(a)(3)] permits Plaintiffs to seek a declaration that the Plan is subject to ERISA, because a "declaratory judgment action is an equitable claim seeking remedies typically available in equity and therefore available under § 502(a)(3)." Dakotas & W. Minnesota Elec. Indus. Health & Welfare Fund by Stainbrook & Christian v. First Agency, Inc., 865 F.3d 1098, 1103 (8th Cir. 2017) (district court had federal question subject matter jurisdiction over declaratory judgment action brought by trustees of employee welfare to construe and enforce coordination of benefits provision in ERISA plan) ("[T]he district court correctly held that [the plan fiduciaries'] declaratory judgment action is an equitable claim seeking remedies typically available in equity and therefore available under [ERISA] § 502(a)(3).").

Alternatively, even if it is assumed, *arguendo*, that a declaratory judgment claim is not "an equitable claim seeking remedies typically available in equity and therefore available under [ERISA] § 502(a)(3)," the Court has federal question subject matter jurisdiction under ERISA § 502(e) [29 U.S.C. § 1132(e)], which confers jurisdiction on the federal courts to decide disputes arising under ERISA, regardless of whether the

[55] See ECF # 170 and Text Order entered on October 29, 2019 approving the Stipulation.

specific relief sought is expressly identified as being available under ERISA. NewPage Wisconsin Sys. Inc. v. United Steel, Paper & Forestry, Rubber, Mfg., Energy Allied Indus. & Serv. Workers Int'l Union, AFL-CIO/CLC, 651 F.3d 775, 777 (7th Cir. 2011) (district court has subject matter jurisdiction over an action for a declaratory judgment concerning the meaning of ERISA, even if a declaratory judgment was not equitable relief specifically identified by ERISA § 502(a)(3)).

Stated simply, the Declaratory Judgment Act authorizes the Court to grant declaratory relief in a case that concerns rights under ERISA even if that is not a remedy expressly specified by ERISA:

> (a) **In a case of actual controversy within its jurisdiction… any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.** Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
>
> [Emphasis supplied]

28 U.S.C. § 2201(a). For example, in NewPage Wisconsin Sys. Inc. v. United Steel, supra, the Seventh Circuit held that a district court has subject matter jurisdiction over an action for a declaratory judgment concerning the meaning of ERISA, even if a declaratory judgment were not equitable relief authorized by § 502(a)(3), stating that the question of subject matter jurisdiction was "a matter of adjudicatory competence," and that "[a] federal district court is the right forum for a dispute about the meaning of ERISA." Id., 651 F.3d at 777.

In so doing, the court rejected the contrary position taken by the trial court:

> The district judge assumed that, if a complaint does not seek relief authorized by § 502(a)(3), there cannot be subject-

> matter jurisdiction. Yet jurisdiction depends on a claim arising under federal law, not on whether a particular remedy is available or whether a claim is sound on the merits. Section 502(a) concerns remedies, not jurisdiction. We know from *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing,* 545 U.S. 308, 316-20, 125 S.Ct. 2363, 162 L.Ed.2d 257 (2005), that **statutory authority to supply a remedy is a sufficient but not a necessary component of federal jurisdiction**. Although § 502(a)(3) does not authorize equitable relief for an employer, there remains [28 U.S.C.] § 2201, which authorizes declaratory judgments.
>
> The jurisdictional counterpart to § 502(a) is § 502(e), which says that district courts have jurisdiction of actions "under this subchapter". NewPage Wisconsin made a claim for a declaratory judgment "under this subchapter"—that is, under ERISA. Whether a claim is good differs from the question whether a district court possesses jurisdiction, a matter of adjudicatory competence. A federal district court is the right forum for a dispute about the meaning of ERISA and the validity of changes to a welfare-benefit plan.
>
> [Emphasis supplied]

NewPage Wisconsin Sys. Inc. v. United Steel, supra, 651 F.3d at 777 (other citations omitted). Additionally, the Seventh Circuit noted that 28 U.S.C. § 1331 independently supplied subject-matter jurisdiction, because "ERISA claims 'are necessarily federal in character by virtue of the clearly manifested intent of Congress.'" Id., 651 F.3d at 778.

II. Summary Judgment Standard

A party is entitled to summary judgment if "the record, construed in the light most flattering to the nonmovant, 'presents no genuine issue as to any material fact and reflects the movant's entitlement to judgment as a matter of law.'" Lawless v. Steward Health Care Sys., LLC, 894 F.3d 9, 20-21 (1st Cir. 2018) (quoting McKenney v. Mangino, 873 F.3d 75, 80 (1st Cir. 2017)). "For this purpose, an issue is 'genuine' if it

'may reasonably be resolved in favor of either party.'" Vineberg v. Bissonnette, 548 F.3d 50, 56 (1st Cir. 2008) (quoting Garside v. Osco Drug, Inc., 895 F.2d 46, 48 (1st Cir. 1990)). "A fact is 'material' only if it 'possesses the capacity to sway the outcome of the litigation under the applicable law.'" Vineberg, 548 F.3d at 56 (quoting Cadle Co. v. Hayes, 116 F.3d 957, 960 (1st Cir. 1997)).

III. The Plan was not maintained by a principal-purpose organization and, therefore, the Plan was fully subject to ERISA by April 29, 2013 at the very latest

A. Statutory Construction

The principal purpose of ERISA is to protect participants and beneficiaries. Boggs v. Boggs, 520 U.S. 833, 845 (1997) ("The principal object of the statute is to protect plan participants and beneficiaries."). ERISA's purposes are "broadly protective." John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 510 U.S. 86, 96 (1993). "The statute's statement of purpose observes that 'the continued well-being and security of millions of employees and their dependents are directly affected by [employee benefit plans]" and declares it "desirable ... that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans....'" Id. (quoting 29 U.S.C. § 1001(a)).

ERISA's provisions should be liberally construed in favor of protecting the participants in employee benefit plans. See IUE AFL-CIO Pension Fund v. Barker & Williamson, Inc., 788 F.2d 118, 127 (3rd Cir. 1986) ("Courts have indicated that because ERISA (and the MPPAA[56]) are remedial statutes, they should be liberally

[56] Referring to the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. § 1381 *et seq*.

construed in favor of protecting the participants in employee benefit plans."); Smith v. CMTA–IAM Pension Trust, 746 F.2d 587, 589 (9th Cir. 1984) ("ERISA, like the Civil Rights Acts of 1871 and 1964, and the Labor-Management Reporting and Disclosure Act, is remedial legislation which should be liberally construed in favor of protecting participants in employee benefits plans."); Jervis v. United Ass'n of Plumbers & Pipefitters Local Union No. 51 Pension Fund, No. CA 12-478 ML, 2013 WL 5704653, at *9 (D.R.I. Oct. 17, 2013) ("'Because ERISA is a remedial statute, [the Court] construe[s] it liberally to effectuate its purpose to protect employee benefit fund participants.'") (quoting Toledo v. Ayerst–Wyeth Pharmaceutical, Inc., 852 F. Supp. 91, 98 (D.P.R. 1993)).

"The Supreme Court has stressed strict adherence to ERISA's text in interpreting its provisions, explaining its inclination toward a '**tight reading of exemptions from comprehensive schemes of this kind**.'" Trustees of Southern California Bakery Drivers Security Fund v. Middleton, 474 F.3d 642, 645-46 (9th Cir. 2007) (emphasis supplied) (quoting John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 510 U.S. 86, 97 (1993)). When ERISA's general policy is qualified by an exception, the Court should read the exception narrowly to preserve the primary operation of the general policy. John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, supra, 510 U.S. at 97 (1993) (requiring strict compliance with ERISA exemption for certain group annuity contracts) ("[W]hen a general policy is qualified by an exception, the Court 'usually read[s] the exception narrowly in order to preserve the primary operation of the [policy]'") (quoting A.H. Phillips, Inc. v. Walling, 324 U.S. 490, 493 (1945) (which the Court in John Hancock characterized as "cautioning against extending exemptions 'to other than those plainly and unmistakably within its terms'")).

In other words, exemptions from comprehensive and remedial legislation (such as ERISA) are strictly and narrowly construed. See A.H. Phillips, Inc. v. Walling, 324 U.S. 490, 493 (1945) ("Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed, giving due regard to the plain meaning of statutory language and the intent of Congress. To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people.") (construing Fair Labor Standards Act, 29 U.S.C. § 213(a)(2)). Thus, ERISA's exceptions are not subject to judicial expansion. Boggs v. Boggs, supra, 520 U.S. at 851 ("ERISA's pension plan anti-alienation provision is mandatory and contains only two explicit exceptions, *see* §§ 1056(d)(2), (d)(3)(A), which are not subject to judicial expansion.").

Thus, SJHSRI's ostensible intent to exclude the Plan from ERISA is irrelevant: either the Plan met the statutory requirements for the church plan exemption from ERISA or it did not. See Anderson v. UNUM Provident Corp., 369 F.3d 1257, 1264 (11th Cir. 2004) ("If the UNUM Plan satisfies the statutory definition of an employee welfare benefit plan, then ERISA applies regardless of the intent of the plan administrators and fiduciaries."); Meredith v. Time Ins. Co., 980 F.2d 352, 354 (5th Cir. 1993) ("We are not here concerned with whether the entity that established and maintained the plan intended ERISA to govern the MEWA. For our guidon we note that ERISA protection and coverage turns on whether the plan satisfies the statutory definition.") (internal quotation marks omitted); Peckham v. Gem State Mut. of Utah, 964 F.2d 1043, 1049 n.11 (10th Cir. 1992) ("If a plan meets the five criteria outlined in *Donovan* it is governed by ERISA whether or not the parties wish to be subject to ERISA.") (referring to Donovan v. Dillingham, 688 F.2d 1367 (11th Cir. 1982)); Zanaty v.

Harris, 2:07-CV-1089-RDP, 2008 WL 11423847, at *2 (N.D. Ala. Aug. 29, 2008) ("Plaintiff argues that the court should have found Charles Zanaty's subjective intent controlling on the issue of whether ERISA applies to this insurance arrangement involving himself, his company, and his children. This is a legal argument, not a factual dispute. As discussed in the court's opinion, the employer's subjective intent is not controlling in determining the application of ERISA.") (citation to docket omitted).

B. The Principal Purpose Requirement

"The statutory definition of 'church plan' came in two distinct phases." Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652, 1656 (2017).

> From the beginning, ERISA provided that "[t]he term 'church plan' means a plan established and maintained ... for its employees ... by a church or by a convention or association of churches." [29 U.S.C.] § 1002(33)(A). Then, in 1980, Congress amended the statute to expand that definition by deeming additional plans to fall within it. The amendment specified that for purposes of the church-plan definition, an "employee of a church" would include an employee of a church-affiliated organization (like the hospitals here). [29 U.S.C.] § 1002(33)(C)(ii)(II). And it added the provision whose effect is at issue in these cases:
>
> > "A plan established and maintained for its employees ... by a church or by a convention or association of churches includes a plan maintained by an organization ... the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches." [29 U.S.C.] § 1002(33)(C)(i).

> That is a mouthful, for lawyers and non-lawyers alike; to digest it more easily, note that everything after the word "organization" in the third line is just a (long-winded) description of a particular kind of church-associated entity—which this opinion will call a "principal-purpose organization." The main job of such an entity, as the statute explains, is to fund or manage a benefit plan for the employees of churches or (per the 1980 amendment's other part) of church affiliates.

Advocate Health Care Network v. Stapleton, 137 S. Ct. at 1656-57 (ellipses in the original).

"As *Advocate* makes clear, two types of organization qualify for the church-plan exemption: churches and so-called principal-purpose organizations." Medina v. Catholic Health Initiatives, 877 F.3d 1213, 1220 (10th Cir. 2017) (referring to Advocate Health Care Network v. Stapleton, supra). As quoted above, a principal purpose organization is an organization "the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches." 29 U.S.C. § 1002(33)(C)(i).

One obvious benefit of requiring the organization maintaining the Plan to do so as its "main job" would be to help insulate that organization from competing corporate pressures to which the board of directors is normally subject. That singular focus would tend to protect the interests of plan participants, as well as alleviate some of the risks to which they were subject as a result of the exemption from ERISA for church plans. See, e.g., Lavery v. Restoration Hardware Long Term Disability Benefits Plan, 937 F.3d 71, 79 (1st Cir. 2019) ("We have held that 'a conflict exists whenever a plan administrator, whether an employer or an insurer, is in the position of both adjudicating

claims and paying awarded benefits.'") (quoting Denmark v. Liberty Life Assur. Co. of Bos., 566 F.3d 1, 7 (1st Cir. 2009) (citing Metro. Life Ins. Co. v. Glenn, 554 U.S. 105, 112-15 (2008)).

It is undisputed that SJHSRI was the Plan sponsor since 1995 and is not and never was a church. Accordingly, for the Plan to qualify as a church plan since 1995, it needed to be funded or managed by a principal purpose organization. See Smith v. OSF HealthCare Sys., 933 F.3d 859, 863 (7th Cir. 2019) ("The language in § 1002(33)(A) and (C)(i) thus makes the church plan exemption available to pension plans and other employee benefit plans established by church-associated entities, such as church-associated hospitals, where the plans are maintained by principal-purpose organizations.").

Whether the principal purpose organization requirement is satisfied depends upon compliance with *all* parts of a three-part test, as noted in Medina v. Catholic Health Initiatives, supra:

> The statute imposes a three-step inquiry for entities seeking to use the church-plan exemption for plans maintained by principal-purpose organizations:
>
> 1. Is the entity a tax-exempt nonprofit organization associated with a church?
>
> 2. If so, is the entity's retirement plan maintained by a principal-purpose organization? That is, is the plan maintained by an organization whose principal purpose is administering or funding a retirement plan for entity employees?
>
> 3. If so, is that principal-purpose organization itself associated with a church?

> **Under this framework, to qualify for the church-plan exemption,** CHI **[the plan sponsor] must receive an affirmative answer to all three inquiries**.

Medina v. Catholic Health Initiatives, supra, 877 F.3d at 1222 (emphasis added). See also Boden v. St. Elizabeth Med. Ctr., Inc., No. CV 16-49-DLB-CJS, 2019 WL 3338850, at *3 (E.D. Ky. July 25, 2019), in which the court stated:

> This principal-purpose organization statutory language has been distilled into a three-part test, which other courts have used to determine whether a plan maintained by a principal-purpose organization falls within the church-plan exemption:
>
> 1. Is the entity a tax-exempt nonprofit organization associated with a church?
>
> 2. If so, is the entity's retirement plan maintained by a principal-purpose organization? That is, is the plan maintained by an organization whose principal purpose is administering or funding a retirement plan for entity employees?
>
> 3. If so, is that principal-purpose organization itself associated with a church?
>
> A plan that satisfies **each prong** falls within the church-plan exemption.

Boden, 2019 WL 3338850, at *3 (emphasis supplied) (citing Medina v. Catholic Health Initiatives, supra)). See also Cappello v. Franciscan All., Inc., No. 3:16-CV-290 RLM-MGG, 2019 WL 1382909, at *3 (N.D. Ind. Mar. 27, 2019) ("An organization can qualify for the exemption, if: (1) it is a 'tax-exempt nonprofit organization associated with a church'; (2) its retirement plan is 'maintained by an organization ... the principal purpose or function of which is the administration or funding of [the retirement] plan' for the benefit of its employees; **and** (3) the principal purpose organization is also controlled by or associated with a church.") (quoting 29 U.S.C. § 1002(33)) (emphasis supplied).

ERISA does not define the statutory term "maintained", but the courts have construed it as simply meaning that the principal-purpose organization cares for the plan for purposes of operational productivity. See Medina v. Catholic Health Initiatives, supra, 877 F.3d at 1226 (10th Cir. 2017) ("In our view, then, when ERISA says that a church plan includes a plan "maintained" by a principal-purpose organization, 29 U.S.C. § 1002(33)(C), it simply means the principal-purpose organization, as *Black's* says, 'cares for the plan for purposes of operational productivity.'") (citing Black's Law Dictionary 1039 (9th ed. 2009)); Boden v. St. Elizabeth Med. Ctr., Inc., supra, 2019 WL 3338850, at *7 ("[A]n organization said to 'maintain' a plan must merely 'care[ ] for the plan for the purposes of operational productivity.'") (citing Medina and Black's Law Dictionary). For purposes of this motion, however, the precise meaning of the statutory term "maintained" is irrelevant. Rather, the focus here is on whether the entity maintaining the Plan had that as its main job.

C. At least since April 29, 2013, the Plan has not been funded, administered, maintained, or managed by an organization whose principal purpose was to maintain the Plan

The second prong[57] of the principal purpose test requires that SJHSRI's retirement plan be maintained by an organization whose principal purpose was administering or funding the Plan for SJHSRI's employees. See Medina v. Catholic Health Initiatives, supra, 877 F.3d at 1222; Boden v. St. Elizabeth Medical Center, Inc., supra, 2019 WL 3338850, at *3; Cappello v. Franciscan Alliance, Inc., supra, 2019 WL

[57] The law is clear that each prong or step of the three-part test must be satisfied. The failure to satisfy the second prong is indisputable. Consequently, rather than unnecessarily complicating this motion for summary judgment, Plaintiffs, for purposes of this motion only, assume (*arguendo*) that the first and third prongs were satisfied.

1382909, at *3. Thus, for the Plan to qualify as a church plan, it must have been maintained by an entity whose "main job" was to fund or manage the Plan. Advocate Health Care Network v. Stapleton, supra, 137 S. Ct. at 1657 ("The main job of such an entity, as the statute explains, is to fund or manage a benefit plan…").

Although it may be somewhat unclear[58] which of the three possible entities it was, it cannot be disputed that since July 1, 2011 the Plan was maintained by either SJHSRI itself, SJHSRI's Board of Trustees, or the Finance Committee of CCCB's Board of Trustees. It is also indisputable that neither SJHSRI itself, nor SJHSRI's Board of Trustees, nor the Finance Committee of CCCB's Board of Trustees, was maintaining the Plan since July 1, 2011 as its "main job." Clearly, maintaining the Plan was not the "main job" of SJHSRI itself, which was operating hospital facilities. Similarly, maintaining the Plan was not the "main job" of SJHSRI's Board of Trustees, which was overseeing the operation of those hospital facilities. It is also clear that maintaining the Plan was not the "main job" of CCCB's Finance Committee, which was overseeing the financial operations of CCCB and its subsidiaries (RWH and SJHSRI).

As noted, between 2008 and the filing of this lawsuit, only two payments were made to the Plan: SJHSRI paid $1,500,000 in September 2008 and SJHSRI (or, arguably, the Prospect Defendants indirectly) paid $14,000,000 in June 2014.[59] SJHSRI's "principal purpose' was never funding the Plan. Prospect Medical certainly was not devoted principally to funding the Plan at any time. Thus, neither of these payments came from an entity whose "main job" was funding the Plan.

[58] The fault for this lack of clarity lies with the Defendants and their mistreatment of the Plan and financial wellbeing of its 2,700 participants.

[59] Rule 56 Statement ¶¶ 38 & 39.

Thus, the Plan failed the second prong of the three-step test for exempt church plan status.

The April 29th Resolution has no effect on the 2011 Plan, since the Plan itself contains no requirement or allowance for the Bishop's ratification of Plan amendments.[60] However, even if it were assumed, *arguendo*, that such ratification was necessary for the 2011 Plan to become effective, the April 29th Resolution itself long preceded the 2014 Asset Sale. Either way, the 2011 Plan was in effect when the 2014 Asset Sale took place, and the Plan lacked a principal purpose organization at that time. In other words, Plaintiffs are entitled to judgment whether or not the Bishop's ratification was necessary for the 2011 Plan to become effective.

Accordingly, Plaintiffs are entitled to summary judgment declaring that as of April 29, 2013 at the very latest, the Plan was not "maintained by an organization, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits" as required by I.R.C. § 414(e) (26 U.S.C. § 414(e)) and ERISA § 3(33)(C)(i) (29 U.S.C. § 1002(33)(C)(i)).

Accordingly, Plaintiffs are entitled to summary judgment declaring that as of April 29, 2013 at the latest, the Plan did not qualify as a non-electing church plan.

As a result, Plaintiffs are entitled to summary judgment declaring that by April 29, 2013 at the latest, the Plan was not exempt from, and therefore was covered by, ERISA.

[60] Rule 56 Statement ¶ 9, Ex. 10.

CONCLUSION

Plaintiffs' motion for summary judgment on Count IV of the First Amended Complaint should be granted, and the Court should enter an order declaring that by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA.

Respectfully submitted,

Plaintiffs,
By their Attorneys,

/s/ Max Wistow
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
WISTOW, SHEEHAN & LOVELEY, PC
61 Weybosset Street
Providence, RI 02903
401-831-2700 (tel.)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

Dated: December 17, 2019

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the within document was electronically filed on the 17th day of December, 2019 using the Electronic Case Filing system of the United States District Court and is available for viewing and downloading from the Electronic Case Filing system. The Electronic Case Filing system will automatically generate and send a Notice of Electronic Filing to the following Filing Users or registered users of record:

Andrew R. Dennington, Esq.
Christopher K. Sweeney, Esq.
Russell V. Conn, Esq.
Conn Kavanaugh Rosenthal
Peisch and Ford, LLP
One Federal Street, 15th Floor
Boston, MA 02110
adennington@connkavanaugh.com
csweeney@connkavanaugh.com
rconn@connkavanaugh.com

David A. Wollin, Esq.
Christine E. Dieter, Esq.
Hinckley Allen & Snyder LLP
100 Westminster Street, Suite 1500
Providence, RI 02903-2319
dwollin@hinckleyallen.com
cdieter@hinckleyallen.com

Preston Halperin, Esq.
James G. Atchison, Esq.
Christopher J. Fragomeni, Esq.
Dean J. Wagner, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860
phalperin@shslawfirm.com
jatchison@shslawfirm.com
cfragomeni@shslawfirm.com
dwagner@shslawfirm.com

Howard Merten, Esq.
Paul M. Kessimian, Esq.
Christopher M. Wildenhain, Esq.
Eugene G. Bernardo, II, Esq.
Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100
Providence, RI 02903
hm@psh.com
pk@psh.com
cmw@psh.com
egb@psh.com

Steven J. Boyajian, Esq.
Daniel F. Sullivan, Esq.
Robinson & Cole LLP
One Financial Plaza, Suite 1430
Providence, RI 02903
sboyajian@rc.com
dsullivan@rc.com

Robert D. Fine, Esq.
Richard J. Land, Esq.
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
rfine@crfllp.com
rland@crfllp.com

Joseph V. Cavanagh, III, Esq.
Joseph V. Cavanagh, Jr., Esq.
Blish & Cavanagh LLP
30 Exchange Terrace
Providence, RI 02903
Jvc3@blishcavlaw.com
jvc@blishcavlaw.com
lbd@blishcavlaw.com

David R. Godofsky, Esq.
Emily S. Costin, Esq.
Alston & Bird LLP
950 F. Street NW
Washington, D.C. 20004-1404
david.godofsky@alston.com
emily.costin@alston.com

Ekwan R. Rhow, Esq.
Thomas V. Reichert, Esq.
Bird, Marella, Boxer, Wolpert, Nessim, Drooks,
Licenberg & Rhow, P.C.
1875 Century Park East, 23rd Floor
Los Angeles, CA 90067
erhow@birdmarella.com
treichert@birdmarella.com

W. Mark Russo, Esq.
Ferrucci Russo P.C.
55 Pine Street, 4th Floor
Providence, RI 02903
mrusso@frlawri.com

John McGowan, Jr., Esq.
Baker & Hostetler LLP
Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114-1214
jmcgowan@bakerlaw.com

/s/ Benjamin Ledsham