

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD

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VS.

C.A. NO. PC-2019-3654

SAMUEL LEE, ET AL.

**PROSPECT CHARTERCARE, LLC'S OBJECTION TO
CHARTERCARE COMMUNITY BOARD'S EXPEDITED MOTION TO COMPEL**

NOW COMES Prospect Chartercare, LLC ("PCC") and hereby files its objection to CharterCare Community Board's ("CCCB") Expedited Motion to Compel Production. CCCB's request for information is unwarranted and untimely – rather than asking for information in order to evaluate whether to begin put option process, it has jumped forward and is asking for information that it believes it needs in order to conduct the actual evaluation. But under the parties' agreement, this information goes far beyond what CCCB would be allowed at this point in the process – as the requests themselves show they are the requests that CCCB's valuation firm wants in order to establish a valuation. That is far beyond what the LLC Agreement, or the parties' stipulation, provides to CCCB at this point in the process.

As grounds therefor, PCC states as follows:

1. PCC and CCCB are parties to an Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC, dated June 20, 2014 (the "LLC Agreement").
2. Pursuant to Section 14.5 of the LLC Agreement, at certain specified times, CCCB has the option to sell its membership interest in PCC (hereafter, the "Put Option") to Prospect East Holdings, Inc. ("Prospect East"), a subsidiary of Prospect Medical Holdings, Inc. ("PMH").

3. In the event that CCCB wishes to exercise the Put Option it “shall give written notice to the Prospect Member [Prospect East].” Section 14.5(b).
4. Once CCCB gives written notice of its election to exercise the Put Option, the LLC Agreement establishes a procedure by which the parties must initially negotiate in good faith to determine the appraised fair market value of PCC. Section 14.6(b).
5. After CCCB makes its election to exercise the Put Option, both CCCB or Prospect East gain the right to initiate a formal “Appraisal Process” whereby each party engages a “Qualified Appraiser” within twenty (20) days after a party initiates the appraisal process. A third Qualified Appraiser is also engaged as set forth in Section 14.6(c).
6. Only when CCCB has made its election and the Appraisal Process has been initiated does Section 14.6(c) contemplate that “performance information respecting the Facilities that is acceptable to the Prospect Member and CCCB” will be supplied to the appraisers.
7. In other words, there is no provision in the LLC Agreement requiring PCC to supply information to an appraiser hired by CCCB to enable it to decide whether to exercise the Put Option. The LLC Agreement only contemplates information being supplied if and when the Put Option is exercised.
8. During the course of this Receivership, CCCB requested that PCC provide it with financial information. PCC and the other Prospect entities initially refused to provide CCCB with PCC’s nonpublic financial information without an assurance that CCCB would maintain the information in confidence. The request for confidentiality was refused as CCCB intended to share PCC’s financial information with the Receiver.

9. On April 25, 2019, the Court entered the Stipulation and Consent Order pursuant to which PCC agreed to “provide CCCB with financial information in connection with CCCB’s evaluation of the “put option” as requested by CCCB in correspondence dated September 20, 2018, October 2, 2018, October 3, 2018 and November 6, 2018.” All of the financial information requested in those correspondences has in fact been produced pursuant to the Order.
10. Paragraph 1 of the Order permits CCCB to “request such additional information as CCCB **reasonably requires** in connection **with the evaluation of the “put option”**...”and PCC will provide such information within fifteen (15) days ... provided the information is available.” [emphasis added].
11. The Order further provides in Paragraph 1 that “[I]f the parties disagree over whether any information that CCCB requests is relevant for the valuation process the parties may seek a resolution of such dispute on an expedited basis from Judge Stern.
12. On August 1, 2019, after receiving all of the financial information required to be produced pursuant to the express language in the Order, CCCB forwarded a lengthy list of detailed information prepared by an expert hired to value PCC.
13. The information requested by its expert goes well beyond the information sought in the correspondence and e-mails referenced in Paragraph 1 of the Order. CCCB is now seeking the type and quality of information that is necessary in order to conduct a formal appraisal, not merely information to “evaluate the put option” which was the limited purpose of the Order.
14. Much of the information sought by its expert goes beyond that which is necessary to “evaluate the put option” and information that “is available” as required by Paragraph

1 of the Order. The information now being sought includes voluminous and detailed information necessary for a formal appraisal, including a financial budget and forecast; a “discussion” of deferred capital expenditures, repairs or maintenance; description of concerns with current physicians admitting and performing services at the hospital; projected clinical hires and departures.

15. The information supplied to date by PCC includes all of the financial information requested by CCCB in correspondence and e-mails sent prior to the Order. In stipulating to the order, PCC did not contemplate that its language would encompass information being provided to conduct a formal appraisal.

For all of the foregoing reasons, PCC urges the Court to deny CCCB’s Expedited Motion to Compel. PCC has fully complied with the language and the spirit of the Order. Should CCCB elect to proceed with the Put Option, PCC will comply with its obligations to supply information for purposes of formal appraisals.

Respectfully Submitted,

PROSPECT CHARTERCARE, LLC,

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Dated: August 23, 2019

Certificate of Service

I certify that on the 23rd day of August, 2019, the within document was electronically filed and electronically served through the Rhode Island Judiciary Electronic Filing System, on all parties registered to receive electronic service in this matter. The document is available for viewing and/or downloading from the Rhode Island Judiciary’s Electronic Filing System.

/s/W. Mark Russo