

**STATE OF RHODE ISLAND
PROVIDENCE, SC**

SUPERIOR COURT

**CHARTERCARE COMMUNITY BOARD :
(through Thomas S. Hemmendinger, as Permanent :
Liquidating Receiver), individually and derivatively, as :
Member of PROSPECT CHARTERCARE, LLC and :
As trustee of the beneficial interest of its membership :
Interest in PROSPECT CHARTERCARE, LLC; and :
STEPHEN DEL SESTO, as receiver and administrator :
Of St. Joseph’s Health Services of Rhode Island :
Retirement Plan and as holder of the beneficial interest :
Of CHARTERCARE COMMUNITY BOARD’s :
Membership interest in PROSPECT :
CHARTERCARE, LLC , :
Plaintiffs, :**

C.A. No.: PC-2019-3654

v. :

**SAMUEL LEE; :
DAVID TOPPER; :
THOMAS REARDON; :
VON CROCKETT; :
EDWIN SANTOS; :
EDWARD QUINLAN; :
JOSEPH DISTEFANO; :
ANDREA DOYLE; :
PROSPECT EAST HOSPITAL ADVISORY :
SERVICES, LLC; :
PROSPECT CHARTERCARE, LLC :
PROSPECT EAST HOLDINGS, INC.; :
PROSPECT MEDICAL HOLDINGS, INC.; :
IVY HOLDINGS INC.; :
IVY INTERMEDIATE HOLDINGS INC.; :
DAVID & ALEXA TOPPER FAMILY TRUST; :
GREEN EQUITY INVESTORS V, LP; :
GREEN EQUITY INVESTORS SIDE V, LP: :
JP MORGAN CHASE BANK, N.A. as administrative :
Agent and collateral agent for certain lenders; :
ABC CORPS 1-10; JOHN DOE 1-10; and :
JANE DOE 1-10, :
Defendants. :**

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS BY
DEFENDANTS GREEN EQUITY INVESTORS V, LP AND GREEN EQUITY
INVESTORS SIDE V, LP

NOW COME, the Defendants, Green Equity Investors V, LP and Green Equity Investors Side V, LP (hereinafter collectively referred to as the “Investors”), and hereby move to dismiss the Plaintiff, THOMAS S. HEMMENDINGER as Permanent Liquidating Receiver of CharterCARE Community Board’s (hereinafter referred to as “Plaintiff”) Verified First Amended and Supplemental Complaint (hereinafter referred to as “Complaint”) pursuant to Rule 12(b)(2) of the Superior Court Rules of Civil Procedure. For the reasons set forth below in the Memorandum of Law submitted in support of this Motion, Defendants respectfully request that this Court dismiss this Petition.

I. Facts

The Investors are both Delaware limited partnerships, with principal offices and principal places of business in Los Angeles, California. (See Complaint, ¶¶ 23-24.). The Investors are private equity funds that invest money in a variety of private and public companies. In this case, the Investors acquired equity interest in Prospect Medical Holdings, Inc. in or about 2010. The Investors acquired this interest in Prospect Medical Holdings, Inc., before CharterCARE Community Board purchased the Prospect entities in 2014. The Investors single transaction with Prospect Medical Holdings, Inc., does not subject them to personal jurisdiction in Rhode Island. The Investors do not conduct business or operate any business from or in Rhode Island. Nor do they have any contact within the state, which would reasonably lead them to believe they would be hailed into the state for any litigation purpose.

The factual allegations presented in the Complaint, regarding the personal jurisdiction of the Investors and their relationship to Rhode Island are scarce to none. The Plaintiff, in its Complaint, makes the broad allegation that “All Defendants have sufficient minimum contacts

with Rhode Island and are subject to the personal jurisdiction of this Court. (See Complaint ¶ 29). In fact, the Plaintiff fails to allege any substantive facts that would demonstrate the Investors are subjected to the jurisdiction of the Rhode Island Courts. The only facts regarding the Investors are found in paragraphs 89, 93, 94, and 102. None of which reach the threshold of satisfying the requirements of the Rhode Island long-arm statute § 9-5- 33(a), which is necessary to establish jurisdiction over a nonresident defendant.

The Plaintiff, in its Complaint, states that the Investors, at the expense and substantial indebtedness of the Plaintiff, received dividends in 2018. (See Complaint ¶ 89). The Plaintiff further alleges that Investor Green Equity Investors V, LP received dividends or distributions in the amount of \$203.27 million, and that Investor Green Equity Investors Side V, LP received dividends or distributions in the amount of \$60.96 million. (See Complaint ¶¶ 93-94). The Plaintiff then asserts that the Investors filed four Change in Effective Control applications with the Rhode Island Department of Health in an effort to sell its equity interest. (See Complaint ¶ 102). The above stated facts are the only facts presented regarding the Investors. Based upon these minimal facts in the Complaint, the Plaintiff asserts Counts VII, VIII, IX, and X seeking relief for alleged aiding and abetting breaches of fiduciary duty against the Plaintiff, and fraudulent transfers of said dividends or distributions. (See Complaint ¶¶ 145-165). These claims, however, are beyond this Court's jurisdiction to consider, as the Plaintiff is unable to establish that the Rhode Island courts have personal jurisdiction over the Investors.

The Investors operate entirely in California. They have virtually no business contact with the state of Rhode Island, and none of the claims against the Investors nor the facts as presented in the Complaint, demonstrates personal jurisdiction. For the reasons set forth in detail below, the Plaintiff's Complaint should be dismissed for lack of personal jurisdiction over the Investors.

II. Standard of Review

In Rhode Island, the function of a motion to dismiss is to test the sufficiency of the complaint. *Narragansett Elec. Co. v. Minardi*, 21 A.3d 274, 277 (R.I. 2011). The Court must "assume the allegations contained in the complaint are true, and examine the facts in the light most favorable to the nonmoving party." A court must "assume the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs." *A.F. Lusi Constr., Inc. v. Rhode Island Convention Ctr. Auth.*, 934 A.2d 791, 795 (R.I. 2007). However, allegations that are more in the nature of legal conclusions rather than factual assertions are not necessarily assumed to be true. *DiLibero v. Mortgage Elec. Reg. Sys., Inc.*, 108 A.3d 1013, 1016 (R.I. 2015). "If a complaint does not contain 'specific statements' from which the necessary elements of the claim may be inferred, the Court is not 'at liberty to presume' that Plaintiff has a claim." *Id.* (quoting *Berberian v. Solomon*, 122 R.I. 259, 262 (1979)).

A plaintiff must allege "sufficient facts to make out a prima facie case of jurisdiction" to overcome a defendant's Rule 12(b)(2) motion to dismiss for lack of in personam jurisdiction as well as satisfy the requirements of Rhode Island's long-arm statute § 9-5-33(a). *Cassidy v. Lonquist Management Co., LLC*, 920 A.2d 228, 232 (R.I. 2007); see *Cerberus Partners, L.P.*, 836 A.2d 1113, 1118 (R.I. 2003). "The question of personal jurisdiction is a mixed question of law and fact, in which the trial justice must first make 'a determination as to the minimum contacts that will satisfy the requirements of due process'—a finding that depends on the facts of each case." *Cassidy*, 920 A.2d at 232 (quoting *Ben's Marine Sales v. Sleek Craft Boats*, 502 A.2d 808, 810 (R.I. 1985)).

III. Legal Analysis

A. This Court Does Not Possess General Jurisdiction Over the Investors.

This Court does not possess general or specific jurisdiction over the Investors. The Investors are both Delaware Limited Partnerships with principal places of business located in Los

Angeles, California that do not engage in any business in Rhode Island. The Court can take judicial notice of the fact that the Investors are not registered to do business in Rhode Island, with the Rhode Island Secretary of State and can further infer that they are not registered because they do not do business in Rhode Island.

A plaintiff must show that a defendant foreign company has "the necessary minimum contacts with the state of Rhode Island" to warrant this state's exercise of jurisdiction over it. R.I.G.L. § 9-5-33(a). More specifically, the long-arm statute provides that "[e]very foreign corporation...that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of the state of Rhode Island." *Id.* The Rhode Island Courts interpret § 9-5-33(a) to permit jurisdiction over nonresident defendants to the fullest extent allowed by the United States Constitution. *Cerberus Partners, L.P. v. Gadsby & Hannah, LLP*, 836 A.2d 1113, 1118 (R.I. 2003); (quoting *Rose v. Firststar Bank*, 819 A.2d 1247, 1250 (R.I. 2003)). "To ensure constitutional due process to a nonresident defendant, certain minimum contacts with the forum state are required 'such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice.'"" *Cerberus*, 836 A.2d at 1118. (internal citation omitted). The purpose of the minimum contacts requirement is to "protect a defendant from the burden of litigating in an inconvenient forum." *Cerberus*, 836 A.2d at 1118. This concept has been otherwise stated that a defendant has minimum contacts with a state when it should reasonably anticipate being haled into court based upon its conduct and connection with the forum state. *Cassidy*, 920 A.2d at 233.

In order for a court to exercise personal jurisdiction over a nonresident defendant, the Plaintiff bears the burden of proving that if the defendant's "...contacts with a state are continuous, purposeful, and systematic, a nonresident defendant will subject itself to the general jurisdiction of that forum's courts with respect to all claims, regardless of whether they relate to or arise out of

the nonresident's contacts with the forum," thus invoking the benefits and protections of its laws. *Cassidy*, 920 A.2d at 233 (quoting *Rose*, 819 A.2d at 1250) (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)). "...if a nonresident's contacts with a forum are sufficient for general personal jurisdiction to exist, then such a party may be sued in that forum for 'causes of action arising from dealings entirely distinct from those activities.'" *Rose*, 819 A.2d at 1251 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945); see also *Casey v. Treasure Island at Mirage*, 745 A.2d 743, 744 (R.I.2000)).

In this case, general jurisdiction over the Investors does not exist. The Investors are located in California and do not conduct any business in Rhode Island. The Investors do not have any direct contact with Rhode Island, and if they have had incidental contact with Rhode Island, this contact in no way amounts to "continuous, purposeful, and systematic" contact, as required to assert jurisdiction over a nonresident defendant. Further, the Plaintiff, in its Complaint has not demonstrated that the Investors have engaged in "continuous and systematic" contacts with Rhode Island. The Investors merely made an investment in Prospect Medical Holdings, Inc. back in 2010. This single investment does not amount to "continuous and systematic" contacts in Rhode Island.

B. The Plaintiff Has Failed to Demonstrate That There is Specific Personal Jurisdiction Over the Investors.

In the absence of sufficient minimum contacts to warrant general jurisdiction, a party can make a prima facie showing of specific personal jurisdiction over a defendant "if the claim sufficiently relates to or arises from any of a defendant's purposeful contacts with the forum." *Rose*, 819 A.2d at 1251. Specific personal jurisdiction is demonstrated when a Plaintiff presents facts convincing a court that there is "relationship among the defendant, the forum, and the litigation." *Ben's Marine Sales v. Sleek Craft Boats*, 502 A.2d 808, 812 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). It is the obligation of a Plaintiff to present compelling facts and evidence to the court when it is asserting specific personal jurisdiction, that

the defendant performed "some act by which [it] purposefully avail[ed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Rose*, 819 A.2d at 1251.

In this matter, there are no facts alleged or in existence which could demonstrate that the Investors purposefully availed themselves to the state of Rhode Island. The Investors have done nothing that would invoke upon them the benefits and protections offered under Rhode Island law for any purpose whatsoever. Besides the fact that the Investors do not have any purposeful contact in or with Rhode Island, the causes of action asserted in the Complaint do not arise out of any conduct or contact in or with Rhode Island. Examining the Complaint in a light most favorable to the Plaintiff, it merely recites a boiler plate conclusory statement that "[a]ll the Defendants have sufficient minimum contacts with Rhode Island." This allegation fails to provide the necessary substantive evidence to establish personal jurisdiction over the Investors. (See Complaint, ¶¶ 29). Further, nothing in the Complaint establishes that the Defendants purposefully and voluntarily engaged in conduct in the State of Rhode Island related to the Plaintiff's claims. In fact, it is clear the Investors never intended nor believed they would be involved in a lawsuit in the state of Rhode Island. The Plaintiff cannot rely on their conclusory statements to hale California investors into Rhode Island because an equity fund in which they invested in 2010, subsequently made an investment in a Rhode Island hospital; an investment which was a minor portion of an overall portfolio.

This Court should look to the analysis in *Cerberus, supra*. In *Cerberus*, the plaintiffs asserted that an out of state law firm who represented a client located in Rhode Island, is subjected to personal jurisdiction based upon the law firm advising the client about a Rhode Island loan agreement. 836 A.2d at 1119. The Rhode Island Supreme Court held that the advice from the out of state lawyers gave their client in Rhode Island, did not amount to purposefully availing

themselves to the “privilege of conducting activities” within Rhode Island because the lawyer defendants “performed no activity within Rhode Island.” The court determined that at best the lawyers merely provided legal services in connection with a proceeding in another state, and sending numerous invoices into the Rhode Island for the same did not amount to minimum contacts sufficient to invoke personal jurisdiction. *Id.* at 1121.

Here, the Investors have even less contact with Rhode Island than the defendants in *Cerberus*. The Investors are a private equity fund. In the course of acquiring assets for their fund, they bought some stock in Prospect Medical Holdings, Inc., which is a Delaware corporation with its principal place of business located in Los Angeles, California. When they bought the stock in Prospect Medical Holdings, Inc., Prospect Medical Holdings, Inc. owned no assets in Rhode Island. In fact, there was no indication that six (6) years later, Prospect Medical Holdings, Inc. was going to acquire any assets in Rhode Island. This investment does not amount to a purposeful availment to jurisdiction over the Investors in Rhode Island. The claims alleged in the Complaint, against the Investors, do not relate or arise from any purposeful contacts with Rhode Island. Further, the Investors did not knowingly, voluntarily or purposely avail themselves in the state of Rhode Island, nor did they “reasonably anticipate” being made to defend a suit in Rhode Island. The Investors cannot be subjected to personal jurisdiction based upon equity acquired from a Delaware corporation which then incidentally and subsequently was purchased by a Rhode Island corporation. *Cerberus*, 836 A.2d at 1121.

The Plaintiff alleges that on or about 2018, the Investors received dividends and disbursements from Prospect Medical Holdings, Inc. Apparently this dividend payment is the pushpin to assert personal jurisdiction. In *Cerberus*, the Court held that invoices and bills sent from the defendant lawyers to their client in Rhode Island was not substantial enough to vest personal jurisdiction. 836 A.2d at 1121. These invoices, in *Cerberus*, are analogous to said

dividends and disbursements in the case are even more remote in fact because it was money received by the Investors in California not here in Rhode Island. If the Courts held that a defendant sending invoices in Rhode Island is not sufficient enough to make a finding of specific jurisdiction, then certainly dividends received by the Investors, in California, can in no way establish purposeful contacts with Rhode Island. *Id.* The Investors cannot be subjected to personal jurisdiction based upon stock it purchased in California from a Delaware corporation which then incidentally and subsequently purchased stock in a Rhode Island corporation. *Cerberus*, 836 A.2d at 1121.

Although, the Rhode Island courts have found that “a single act having impact in and connection with the forum state can satisfy the minimum-contact test,” nothing the Plaintiff has presented through its Complaint in this case has provided any substantive proof that the Investors made a purposeful and voluntary act within Rhode Island. Therefore, there is no basis for specific jurisdiction over the Investors.

IV. Conclusion

Wherefore, for the reasons stated above, the Defendants Green Equity Investors V, LP and Green Equity Investors Side V, LP prays that this Court grant their Motion to Dismiss as to Counts VII, VIII, IX, and X of the Plaintiff’s Verified First Amended and Supplemental Complaint.

Green Equity Investors V, LP and
Green Equity Investors Side V, LP,
By their Attorneys,

/s/ Vincent A. Indeglia, Esq.
Vincent A. Indeglia, Esq. (#4140)
Jaclyn A. Cotter, Esq. (#9536)
INDEGLIA & ASSOCIATES
Attorneys at Law
300 Centerville Road, Suite 320E
Warwick, RI 02886
(401) 886-9240
vincent@indegliaw.com
jaclyn.cotter@indegliaw.com

CERTIFICATE OF SERVICE

I hereby certify that, on the 14th day of July, 2020:

[X] I filed and served this document through the electronic filing system on the following parties:

Andre S. Digou
Chace, Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
adigou@crflfp.com

Robert D. Fine
Chace, Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
RFine@crflfp.com

Christopher J. Fragomeni
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860
cfragomeni@shslawfirm.com

Dean J. Wagner
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860
dwagner@shslawfirm.com

Preston W. Halperin
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860
phalperin@shslawfirm.com

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

Ronald F. Cascione
Brennan, Recupero, Cascione, Scungio &
McAllister, LLP
362 Broadway
Providence, RI 02909
rcascione@brscsm.com

Sean J. Clough
Brennan, Recupero, Cascione, Scungio &
McAllister, LLP
362 Broadway
Providence, RI 02909
sclough@brscsm.com

Thomas S. Hemmendinger
Brennan, Recupero, Cascione, Scungio &
McAllister, LLP
362 Broadway
Providence, RI 02909
themmendinger@brscsm.com

Lisa M. Kresge
Brennan, Recupero, Cascione, Scungio &
McAllister, LLP
362 Broadway
Providence, RI 02909
lkresge@brscsm.com

Stephen F. Del Sesto
Pierce Atwood LLP
One Financial Plaza, Floor 26
Providence, RI 02903
sdelsesto@pierceatwood.com

Benjamin G. Ledsham
Wistow Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
bledsham@wistbar.com

Stephen P. Sheehan
Wistow Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
sps@wistbar.com

Max Wistow
Wistow Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
mw@wistbar.com

/s/ Megan Murra Roche

