

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc.

SUPERIOR COURT

CHARTERCARE COMMUNITY )  
BOARD )  
VS. ) PC-2019-3654  
SAMUEL LEE, ET AL )

HEARD BEFORE

THE HONORABLE BRIAN P. STERN

ON JULY 8, 2020

MOTION

(PROCEEDINGS HELD VIA WEBEX)

LINDA M. CORDEIRO  
OFFICIAL COURT REPORTER

**APPEARANCES:**

STEPHEN P. SHEEHAN, ESQUIRE.....FOR THE RECEIVER  
BENJAMIN LEDSHAM, ESQUIRE

PRESTON W. HALPERIN, ESQUIRE....FOR PROSPECT MEDICAL  
HOLDINGS/PROSPECT EAST

W. MARK RUSSO, ESQUIRE.....FOR PROSPECT CHARTERCARE

STEVEN BOYAJIAN, ESQUIRE.....FOR ANGEL PENSION GROUP

THOMAS HEMMENDINGER, ESQUIRE....LIQUIDATING RECEIVER

DAVID GODOFSKY, ESQUIRE .....FOR ANGEL PENSION GROUP

LINDA M. CORDEIRO  
OFFICIAL COURT REPORTER

C E R T I F I C A T I O N

I, **LINDA M. CORDEIRO**, hereby certify that the succeeding pages **1** through **34**, inclusive, are a true and accurate transcript of my stenographic notes taken at the time of WEBEX hearing, to the best of my ability.

*Linda M. Cordeiro*

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LINDA M. CORDEIRO  
Official Court Reporter

1 Wednesday, July 8, 2020

2 AFTERNOON SESSION

3 (The proceedings commenced at 2:02 p.m. via WEBEX  
4 connection)

5 THE COURT: Good afternoon. Why don't we get  
6 started. I would ask if everyone can put  
7 their microphones on mute so we can eliminate the  
8 background noise, and I would ask the clerk to please  
9 turn on the public streaming.

10 THE CLERK: The public streaming is on, your Honor.

11 THE COURT: Very good.

12 Madam Clerk, would you please call the case?

13 THE CLERK: Your Honor, the matter before the Court  
14 is case number PC-2019-3654, CharterCARE Community Board,  
15 et al versus Samuel Lee, et al. This is on for the plan  
16 receiver and liquidating receiver's motion to compel  
17 production of documents. This is a continued hearing.

18 Will counsel for the receiver please identify  
19 themselves for the record?

20 MR. SHEEHAN: Good afternoon, your Honor. It's  
21 Stephen Sheehan, appearing for the plaintiff receiver,  
22 Stephen Del Sesto.

23 MR. LEDSHAM: Also, Benjamin Ledsham appearing.

24 THE COURT: And, Attorney Hemmendinger, why don't we  
25 go to you next?

1 MR. HEMMENDINGER: Thank you, your Honor. Thomas  
2 Hemmendinger, the liquidating receiver for CharterCARE  
3 Community Board, Roger Williams Hospital, and Saint  
4 Joseph's Health Services of Rhode Island.

5 THE COURT: Next, why don't we go to Attorney  
6 Halperin and any of the related entities?

7 MR. HALPERIN: Good afternoon, your Honor. Preston  
8 Halperin, for the Prospect entities: Prospect Medical  
9 Holdings, Prospect East.

10 MR. RUSSO: Good afternoon, your Honor. Mark Russo,  
11 for the Prospect entities: Prospect Chartercare, LLC,  
12 Prospect Chartercare Saint Joe's, and Prospect  
13 Chartercare Roger Williams.

14 THE COURT: And, let's see, let's go next to  
15 Attorney Boyajian.

16 MR. BOYAJIAN: Good afternoon, your Honor. Steve  
17 Boyajian, for the Angel Pension Group.

18 THE COURT: Thank you. And Attorney Godod.

19 MR. GODOFSKY: No. It's me, David Godofsky.

20 THE COURT: I'm sorry.

21 MR. GODOFSKY: For the Angel Pension Group.

22 THE COURT: Thank you very much.

23 Okay. I'm just looking, other than Court staff,  
24 have we missed anyone? If not, if everybody didn't go  
25 back to mute, please do so.

1           The Court had continued this hearing dealing with a  
2 number of issues, including a motion to compel. During  
3 that hearing there was some discussion that there was a  
4 list being circulated among certain of the parties, and  
5 the Court elected to have the parties try to see if they  
6 can resolve some of those issues so the Court can deal  
7 with the balance.

8           I don't know what number we started with initially,  
9 but the Court received a document from the plan  
10 receiver's counsel that had both the receivers' arguments  
11 as well as Prospect's arguments on different of the  
12 issues. The Court will allow the plan receiver, whose  
13 motion it is, to proceed.

14           MR. SHEEHAN: Thank you, your Honor. Very briefly,  
15 before I get into the list, we on the 23rd of June had  
16 asked the Court to extend the time to exercise the put  
17 option, and since then the need of that has become even  
18 more imperative because we have been deprived of  
19 information to which we're entitled based on three  
20 grounds. The LLC agreement provides it. And, your  
21 Honor, this is a point I neglected to make on the 23rd.  
22 The structure of the transaction contemplates it because  
23 the capital contribution was to be made over the first  
24 four years, and the put option would be exercisable in  
25 the fifth year, at which point the capital contribution

1 would be in place. So it was always contemplated by the  
2 parties that the capital contribution would be in place  
3 by the time the put option became exercisable. So  
4 there's a clear connection between the two items.

5 And the third reason why we're entitled to the  
6 information is the conditions of the asset sale that the  
7 Rhode Island Attorney General, the Department of Health  
8 imposed required an annual disclosure by Prospect to the  
9 Rhode Island Attorney General on a form prescribed by the  
10 Attorney General.

11 Now, since that last hearing, your Honor, I have  
12 provided the Court with three additional documents. The  
13 first is a report of the independent monitor that the  
14 Attorney General, the Department of Health have retained  
15 to supervise Prospect's compliance with conditions, which  
16 include making the capital -- the long-term capital  
17 contribution. That report is dated March 20th, 2020, but  
18 in reality it was last amended June 26th, 2020. And you  
19 can see from the last line of it what the monitor is  
20 seeking is the final information it needs so that it can  
21 issue a final report as of sometime in June of 2020.

22 In any case, that report shows an extensive  
23 involvement of the monitor with Prospect to attempt to  
24 confirm that Prospect has met its obligations to make  
25 capital contributions, which the report confirms is not a

1 50 million dollar total, but it's a 60 to 61 million  
2 dollar total. And notwithstanding much back and forth  
3 and the power of the Attorney General behind it, the  
4 monitor has only been able to get documentation of  
5 Prospect of less than 30 million dollars in capital  
6 contributions, and no documentation whatsoever that any  
7 capital contributions were made in accordance with the  
8 requirements of the LLC, which required that CharterCARE  
9 Community Board approve a capital contribution. So  
10 there's no evidence with respect to any capital  
11 contributions with that requirement.

12 So we have this situation where Prospect has failed  
13 to make required disclosures to us, Community Board, and  
14 the Attorney General to the Department of Health.  
15 Meanwhile, Prospect Medical has paid out over 650 million  
16 dollars in dividends that were financed with debt, and  
17 the situation is on the verge of becoming a public  
18 scandal, your Honor. There's noncompliance with state  
19 reporting requirements and apparent stripping of assets  
20 of the corporation, while the receivers are being pushed  
21 into blindly exercising the put option, which would  
22 eliminate their -- or at least limit their ability to  
23 look into what's going on and better conceal what we  
24 contend are financial misdeeds.

25 Finally, your Honor -- well, not finally --



1 secondly, we provided the most up-to-date audited  
2 financials, which confirm what I represented at the  
3 hearing on the last occasion that Prospect Chartercare is  
4 listed as a pledger, and there's a reference to  
5 112 million dollars being loaned based on the value of  
6 the Rhode Island properties.

7 And then, finally, your Honor, we have this  
8 incredible letter from the United States Congress, five  
9 members of Congress. Dated July 6th. *The Wall Street*  
10 *Journal* had written about it on July 6th, and we were  
11 able to obtain a copy last night, and we provided it to  
12 the Court. Our Congressman David Cicilline is one of the  
13 signers, and the letter expressly states that Prospect  
14 has not provided adequate documentation fulfilling the  
15 50 million dollar capital commitment it made as part of  
16 the transaction to acquire its Rhode Island Hospitals.

17 These are enormous red flags, your Honor. Red flags  
18 against forcing the receivers to either exercise or waive  
19 the option. The case cries out for the put option to be  
20 put on hold so that we can get to the bottom of what  
21 Prospect is or is not doing. When I said early it's on  
22 verge of becoming a public scandal, I did not use that  
23 phrase lightly, your Honor. This is a very serious  
24 situation, and there is -- it cries out for a deliberate  
25 approach.

1           And then we get to the list of documents, your  
2 Honor. I provided your Honor with my analysis of the  
3 arguments that we have. In addition to what's in the AMI  
4 report, the most latest financials, and the congressional  
5 letter, I think that this list of documents not only is  
6 within the scope of the documents to which the receivers  
7 are entitled pursuant to the April 25th stipulation and  
8 order, it's actually quite conservative given the  
9 seriousness of the situation.

10           It is a rush to judgment to condemn Prospect at this  
11 point, but there certainly is plenty of smoke and some  
12 fire. And what we're focused on here is information we  
13 absolutely need before we can decide whether to exercise  
14 the put option.

15           Your Honor, we don't know whether the value of our  
16 interest will include money that has been contributed by  
17 Prospect Chartercare because we don't know what money has  
18 been contributed. We know that there has been no  
19 contributions that satisfy the requirements of the LLC,  
20 but we don't even know the amount of dollars that they  
21 contributed. That is a crucial necessity. We don't know  
22 the extent to which the assets of Prospect Chartercare  
23 have been pledged, which is a factor in valuation.  
24 They're identified as a pledgee. Counsel states in his  
25 argument that this will be corrected. So we have a

1 situation where we have audited financials which make a  
2 statement, and then an unsworn statement by counsel, for  
3 whom I have complete respect, but under the circumstances  
4 the audited financials are what they are and say what  
5 they say, and Prospect cannot contradict them through an  
6 unsworn statement of counsel. That's simply just not  
7 satisfactory for purposes of a receiver acting on behalf  
8 of the Court in disclosing of assets of an entity in a  
9 receivership. It just cannot be done that way.

10 The valuation information, your Honor, we are a  
11 minority shareholder in an entity that is contemplating  
12 selling all of its assets as soon as we're bought out of  
13 the transaction. That's what Mr. Halperin acknowledged  
14 at the last hearing. He makes the point there's no  
15 binding agreement yet to do that, but, fine, that may be  
16 the case, but that's what's intended.

17 So, basically, what we have is a corporate  
18 opportunity. We're going to sell the assets of these  
19 underlying subsidiaries, but we're not going to tell the  
20 minority shareholder what the value is until the minority  
21 shareholder is out of the picture, which is an abuse of  
22 the minority shareholder at the very least, and certainly  
23 affects valuation, your Honor. We want to know the value  
24 of the company, and here they have valuations that they  
25 don't want to share with us, even though, A, we're the

1 minority shareholder, B, we have a right to look at the  
2 books and records by the LLC agreement.

3 So under those circumstances, your Honor, I don't  
4 see that any of the requests we made for documents are  
5 unreasonable, and I would just ask that the Court order  
6 them and provide a reasonable period of time for  
7 compliance, extend the period of time to exercise the put  
8 option through some short period of time after the  
9 expiration of that reasonable period of time, which I  
10 would suggest the initial period would be 90 days, or if  
11 they can get them sooner, we would like 90 days from when  
12 they get them to exercise the put option, and proceed  
13 from there.

14 At this point I don't know what's going to happen to  
15 Prospect. With the Congress involved, with the Attorney  
16 General involved, with the monitor dissatisfied, I don't  
17 know what's going to happen with Prospect. But that's a  
18 workable framework, and we can return to the Court if  
19 over that time period we have to ask for more or if we  
20 have to ask for further or different relief.

21 I will just say, your Honor, that the elementary  
22 principle that a party with an option who is induced to  
23 delay exercising that option through the breach of  
24 contract of the other party is entitled to an equitable  
25 extension of time. That's a simple basic equity, and

1 that's what we have here, your Honor. We're basically  
2 being put in a position of either buying a pig in a poke  
3 or waiving the right to buy anything at all, and that's  
4 not equitable.

5 That's all I have, your Honor.

6 THE COURT: Counsel, so we've talked about a lot of  
7 things. Let's talk about what's before the Court today.

8 We have an LLC agreement that CCCB and Prospect  
9 entered into that other than some books and records  
10 provisions and certain rights of board members and a  
11 minority shareholder, it was just left out of the  
12 agreement what type of diligence CCCB can do in terms of  
13 determining whether or not they're going to exercise the  
14 put option. Although, there is a process in place if the  
15 put option is exercised, how that process will work  
16 through, and I just want to understand that.

17 Put aside the Court's order right now. I'm just  
18 looking at what rights do you believe that CCCB has to  
19 this information under the LLC agreement. Is it books  
20 and records? Is it something else? Where is the right  
21 to obtain this implied exercise in the put?

22 MR. SHEEHAN: Thank you, your Honor. I appreciate  
23 putting aside that issue under the April 25th stipulation  
24 and order, because that's not part of my argument. So  
25 putting that aside, your Honor, the right to access books

1 and records is in the LLC agreement itself, number one.  
2 Number two, every contractual undertaking is accompanied  
3 by a duty to exercise good faith and fair dealing to  
4 allow the party to benefit from that right under the  
5 contract, and providing information, financial  
6 information, in order to enable an intelligent decision  
7 as to whether or not to exercise an option is part of  
8 that.

9 Your Honor, we have a situation where one party to  
10 the contract, Prospect Chartercare, and Prospect East,  
11 the majority shareholder, have the information. They  
12 have a -- there's an inequitable relationship with  
13 respect to access to information. They have it. We  
14 don't. We have a right to take certain measures, but we  
15 don't have the information we need to decide whether or  
16 not to do that. So I would say it's twofold. It's in  
17 the books and records provision and it's the implied  
18 obligation of any party to a contract to exercise good  
19 faith and fair dealing and do what is necessary to enable  
20 the other party to intelligently exercise a right under  
21 the contract.

22 THE COURT: So then let's fast forward -- I'm sorry.  
23 Go ahead.

24 MR. SHEEHAN: I'm sorry. I apologize.

25 The third point is the structure of the agreement

1           itself, as I pointed out earlier, contemplated that the  
2           capital contributions would be done and in the entity by  
3           the time the option was exercised. So even the timing  
4           for the exercise of the option was after that event  
5           occurred. It makes no sense for the minority shareholder  
6           to have the right to exercise the option, but not the  
7           right to verify that in fact the contributions have been  
8           made.

9           Indeed, your Honor, there's a fourth point. The  
10          books and records provision is in the contract, but there  
11          is also the requirement that for any capital contribution  
12          to qualify, the minority shareholder has to accept it,  
13          approve it. So we have another level of disclosure of  
14          information that was required under the contract that has  
15          not been binding.

16                 That's it, your Honor.

17          THE COURT: So let's fast forward up to the  
18          stipulation and the order that was entered by the Court.  
19          My recollection is there were a lot of things that  
20          counsel was requesting. We got that down to a number of  
21          things that were agreed to. And there was kind of that  
22          catch-all phrase in there about other documents,  
23          documents that may be required, 15 days, whatever else.

24                 It appears that this request is far broader and gets  
25          into a lot of other things that we dealt with in the

1 stipulation and the order the Court entered. So is it  
2 your position that this is just that the door was opened  
3 to anything else you may decide you need after that  
4 September order was issued?

5 MR. SHEEHAN: It isn't my position, your Honor, that  
6 the expressed language of the stipulation, which Prospect  
7 agreed to and therefore became a binding contract, and  
8 then was entered by the Court, set forth the standard,  
9 any information that the receivers reasonably require in  
10 the evaluation of the put option.

11 If Prospect at the time had felt they didn't want to  
12 leave an opening, then they shouldn't have agreed to that  
13 in the stipulation. I can assure your Honor that we  
14 never would have entered into a stipulation that didn't  
15 give us that right.

16 Your Honor -- when your Honor says that what we're  
17 seeking is broader than what was considered at the time,  
18 that's partly true and partly not correct. The part  
19 that's not correct is that we've always been trying to  
20 get the information on the capital contribution. That's  
21 been throughout. These other issues having to do with  
22 valuations of the entities, that also was part of the  
23 original request that our appraiser had put together in  
24 the index. The point having to do with financial  
25 statements of other Prospect entities, that's new. But



1 we had no idea, your Honor, that there was a pledging of  
2 the local entities to satisfy a 1.3-plus billion dollar  
3 indebtedness under a master lease agreement, to say  
4 nothing of the additional loan of 112 million.

5 So to the extent that it is broader than what was  
6 being considered at the time, it's because it's  
7 subsequent events.

8 Your Honor, since then the scrutiny and, as I say,  
9 the red flags concerning Prospect have become enormously  
10 more significant, and I think -- our impressions, I  
11 should say, in putting in a broad allowance in the  
12 stipulation with such additional information as we may  
13 require, because as events turned out, it is apparent  
14 that Prospect is up to something, and we need to get to  
15 the bottom of it.

16 THE COURT: Okay. So, just again, the reason that  
17 you are looking for the financials of the other entities  
18 is because of the sale-leaseback and some other loans?  
19 Are these the same ones that counsel at least represented  
20 at the last hearing? And I understand you haven't gotten  
21 verification that the local entity is not encumbered on,  
22 or that there's no issue there.

23 MR. SHEEHAN: There are two reasons, your Honor.  
24 One has to do with the liability of the local corporation  
25 and entities on the larger indebtedness, and the other is

1 Prospect Medical Holdings is the guarantor of the  
2 obligation to make the long-term capital contribution.  
3 And the solvency of Prospect Medical Holdings is a  
4 factor. We don't know right now whether if the put  
5 option is exercised and a value of, let's say, 20 million  
6 dollars is placed on CharterCARE Community Board's  
7 interest, then there's the money to pay that, whether  
8 Prospect East has the money to pay that. According to  
9 their current books, they're insolvent, like Prospect  
10 Holdings in the sense that their liabilities greatly  
11 exceed their assets.

12 So we're entitled to decide whether to exercise the  
13 put option to take into account collectability. So it's  
14 both the exposure on the overall indebtedness, and then  
15 collectability through the guarantor, Prospect.

16 THE COURT: Thank you very much, counsel.

17 Attorney Halperin.

18 MR. HALPERIN: Thank you, your Honor.

19 Your Honor, I think this is a massive overreach by  
20 the receiver, and the entire process that we've been  
21 engaged in here relating to the stipulation has been  
22 aimed at getting them preliminary information so they can  
23 decide whether or not to execute -- to exercise the put  
24 option. And all of the financial information that has  
25 ever been discussed and has previously been agreed to,

1 and all the lists that have previously been exchanged,  
2 until this recent round, have properly focused on what an  
3 evaluation expert might want in valuing Prospect  
4 Chartercare LLC, which is the entity in which the  
5 receiver, Mr. Hemmendinger, has the 15 percent  
6 interest.

7 What's happening now is there are allegations that  
8 are being made that are extremely broad, all kinds of  
9 wrongdoing of failure to comply with obligations under  
10 the LLC agreement, as well as a host of other obligations  
11 that aren't even part of the LLC agreement. And this is  
12 an attempt to conduct discovery through this Court using  
13 this very narrow question which is before the Court to  
14 shortcut a proper discovery process in a case that might  
15 actually be ending some place.

16 We do have a case before you, and they can certainly  
17 conduct discovery on those allegations, and the Attorney  
18 General is going to conduct their procedure, and the  
19 monitor is going to conduct their procedure. I do want  
20 to say that I disagree with many things that Mr. Sheehan  
21 has indicated that the monitor report states. The  
22 monitor report, if you read it, actually is asking for  
23 more information. There is not a conclusion here that  
24 the Prospect entities haven't achieved the capital  
25 contribution requirements. There are categories that

1 were submitted that are not confirmed, and they say we  
2 need to confirm them. There's an example, capital  
3 infusion, and if you look at Page 25 of it, you'll see  
4 very clearly there's a chart that shows you submitted  
5 figures on Page 25 versus confirmed figures. And then  
6 after that chart they say they need additional  
7 information. So these are allegations, but this isn't a  
8 forum for us or anyone to determine whether or not  
9 capital contributions have been properly met. It's not  
10 even the forum, this hearing, for whether or not there's  
11 been compliance with other provisions of the LLC  
12 agreement.

13 I believe we should stay focused on what this has  
14 been about. And we've been doing this for a year now.  
15 And this is about, do they have enough preliminary  
16 information to decide to kick off an actual valuation?  
17 If they elect to go forward with the put option, we get  
18 into a formal appraisal process. If on the strength of  
19 actual experts information comes forth that would suggest  
20 that there's some kind of wrongdoing or inadequate  
21 information, that would seem to me to be the time where  
22 we have evidence that would allow you to decide whether  
23 to equitably extend this put option. But, now, this is  
24 about allegations that are being made. They want to  
25 delay -- I'm not even sure that they merely want to delay

1 the process. What they want to do is litigate  
2 allegations while their put option is extended. I  
3 wouldn't even have a problem if they said: Your Honor,  
4 we're going to pursue all these allegations in the  
5 appropriate case in the appropriate forum. We're going  
6 to draft them, and we're going to do discovery, but, in  
7 the meantime, we would like you to exercise your  
8 authority to extend out this put option so we can do this  
9 in a proper forum. But they're saying, Give me all of  
10 this discovery, whether we have asserted claims or not,  
11 whether they belong in this case or not. It's somewhat  
12 reminiscent of an early part of this receivership -- the  
13 other receivership, I should say, the pension  
14 receivership, where there was open-ended discovery  
15 without any claims or allegations that eventually  
16 resulted in claims being brought. But here we're not  
17 dealing with a receivership, we're dealing with an actual  
18 case that's been pending.

19 You know, to touch on the some of the specific  
20 points. We are fine with the valuation information of  
21 Prospect Chartercare LLC. We're fine with  
22 audited/unaudited financial statements. We're fine with  
23 providing if there's any additional information on the  
24 capital contributions. But we said that those have all  
25 been provided, and they have that. The fact that the

1 monitor has questions is a different issue. If they want  
2 to challenge it, that's got to be in a different forum,  
3 because we've given them the information.

4 They're asking for information on Prospect Medical  
5 Holdings, the parent company, the entity that is engaged  
6 in the transactions that are in these congressional  
7 letters and whatnot. Now, it's no secret that the unions  
8 have asked the congressional members to get involved in  
9 this. They clearly have done no independent  
10 investigation. They are putting these things out there  
11 for their constituent groups, and we understand that.  
12 But there will be a process that we'll get to the bottom  
13 of whether there's any fire beneath the alleged smoke,  
14 but, again, can we really do that in this forum where  
15 we're trying to focus on whether they're going to  
16 exercise an option on the 15 percent interest under the  
17 LLC agreement?

18 I would suggest to the Court that if we stay  
19 focused, the order should be that we -- which we've  
20 agreed to -- provide the financial information, updated  
21 financial information, unaudited current financial  
22 information on the entity that a valuation expert would  
23 have to value. And if somewhere down the road they have  
24 actual evidence of wrongdoing, as opposed to allegations,  
25 they should assert that in an appropriate case, seek an

1 appropriate order at that point in time.

2 Now, they're probably concerned right now that their  
3 right to exercise the put option expires based on this  
4 hearing concluding within a 30-day period. That's really  
5 the only matter of any real urgency here. If you  
6 conclude that they're entitled to do something other than  
7 receive the financial information relating to this  
8 entity, I would think that would be the only conceivable  
9 relief that maybe, you know, we go out 60 days so they  
10 can do a proper file, whatever case they want to file,  
11 seek whatever injunction they want to file. But they're  
12 asking for injunctive relief here essentially based upon  
13 allegations that are not before the Court. So I would  
14 ask that the Court simply require us, which we've offered  
15 to do, to provide all the appropriate financial  
16 information that is currently available, that being the  
17 financial statements audited/unaudited, and not order us  
18 to provide financial information on Prospect Medical  
19 Holdings.

20 We have agreed and will clear up the errors in the  
21 financial statements. I agree with Mr. Sheehan that a  
22 statement by counsel should not be considered sufficient.  
23 And I brought back to the client the fact these errors  
24 exist. They have confirmed these are errors. We have  
25 confirmed that -- at least they have told me there's

1 nothing on record, and I'm sure if there was something on  
2 record in the form of a UCC, Mr. Sheehan probably would  
3 have brought it forth like he's brought forth all these  
4 other documents.

5 So I'm confident we're going find out that there's  
6 no lien or encumbrance, and what they did is they took  
7 the note that exists in the PMH financial, they lifted  
8 it, and, you know, in a very unfortunate way took that  
9 language and plopped it into the other entities, and it's  
10 wrong. They told me that they agreed that they were  
11 going to get that cleaned up. But the representation is  
12 made, and I believe it to be true, or I wouldn't be  
13 making it, and I've confirmed with multiple sources that  
14 there is no lien, there is no pledge, the entity is not  
15 responsible for sale-leaseback transaction, which is the  
16 subject of all the complaints relating to dividends. It  
17 goes to the parent entity.

18 The fact that there's a guarantee, I think, again,  
19 now we're going down this rabbit hole, they haven't even  
20 exercised the option, we haven't got the valuation, there  
21 hasn't been a failure to pay, and they want to do  
22 discovery on the financial wherewithal of the guarantor.  
23 I believe that's going far afield, and we should stay  
24 focused on what we're here for.

25 Thank you, your Honor.



1           THE COURT: Counsel, let's talk about the capital  
2 contribution, whatever that number is. I read in the  
3 papers basically saying that they've been provided, and  
4 it somehow has to do with whatever filing with the  
5 Attorney General. Could you explain to me in terms of  
6 what information they've been given about the capital  
7 contribution, which may affect either their percentage  
8 interest or the value?

9           MR. HALPERIN: Sure. So the documents that were  
10 provided to the Attorney General include the spreadsheet  
11 and the back-up for the capital contributions, and those  
12 very same documents were provided to Mr. Sheehan's  
13 office, and those are the same figures that are  
14 identified in this monitor's report.

15           So, as I say, they add up to meeting the capital  
16 contribution requirement of the original 50 million  
17 dollars. There was an additional 10 million as a result  
18 of a sale of some real estate that was added into an  
19 extension of time, and I know from reading the report  
20 that there's some confusion as a result of an attorney  
21 leaving Prospect, Mr. Berman, as to whether or not the  
22 extension was intended to cover the original 50 or  
23 intended to cover the 60. I'm certainly not in a  
24 position to resolve that question. But the long and  
25 short of it is, whatever information that has been

1 provided to the Attorney General's Office has been made  
2 available to the receiver, and that's all the information  
3 that we have.

4 Now, whether or not there's more recent additional  
5 capital contributions, I don't know that. That's been  
6 asked of me, and I told Mr. Sheehan I'd be happy to find  
7 that out, and I don't see any reason why they wouldn't  
8 provide that if it's been since the date of the Attorney  
9 General, as long as it's something that has been compiled  
10 that is readily available.

11 THE COURT: What about the fact -- so, thank you.

12 What about the fact that, it seems like there's  
13 agreement at least -- forget about the wording -- but  
14 that the monitor for the Attorney General has requested  
15 more information to justify or back-up based upon the  
16 numbers? So certainly if they're asking for it, that  
17 wouldn't be something that Attorney Sheehan has at this  
18 time. Is the thought that when that is given to the  
19 monitor, that back-up will also be provided to receiver's  
20 counsel?

21 MR. HALPERIN: Your Honor, I don't see any problem  
22 with it, but I don't know what the monitor had. The  
23 letter is dated March 20. So I honestly know where we  
24 are in July, who has what. This is something that just  
25 came up today, this monitor report from Mr. Sheehan, but

1 I'm happy to provide him with whatever information has  
2 been provided to the AG that is public information. I  
3 have no problem. If anything is confidential, I'll let  
4 him know that, but last time around everything that was  
5 provided was made available. I don't perceive that to be  
6 a problem. But I don't know where they are in responding  
7 to the monitor request.

8 THE COURT: Thank you very much.

9 Anything further, Attorney Sheehan?

10 MR. SHEEHAN: Yes, your Honor. The production  
11 documents that was given to us, of documents that  
12 Prospect provided to the Attorney General, was in January  
13 of 2020. And the report from the monitor indicates that  
14 subsequent to then, for example, on February 18th, the  
15 Attorney General directed Prospect to provide a complete  
16 response, et cetera. On February 21st Prospect submitted  
17 responses. This is all after this production, the  
18 beginning of the January of 2020.

19 The point that Mr. Halperin makes is a little bit --  
20 and there may be a potential resolution in it, or I may  
21 be simply not understanding it. At one point he suggests  
22 that he has no objection to the Court extending the time  
23 for the exercise of the put option and allowing the case  
24 to go forward with normal discovery. This case involves,  
25 your Honor, allegations of fraudulent transfers, very

1 broad allegations that would fully encompass the  
2 658 million dollars that went to Leonard Green.

3 So if that's what is contemplated, our only concern  
4 is timing, your Honor. It appears that there are  
5 transactions underway to divest Prospect Medical of  
6 further funds to Leonard Green, and we're concerned about  
7 starting a new round of discovery and finding out that  
8 the horse is already out of the barn by the time we get  
9 the answers, and then Prospect Medical is further unable  
10 to meet its obligation.

11 But if that's the offer, to postpone the exercise of  
12 the put option indefinitely pending discovery in this  
13 case, that's one thing. On the other hand he says, Go  
14 ahead and exercise the put option and then ask for an  
15 equitable extension. That is like putting your hand in  
16 the trap, and then having it slammed shut on your hand,  
17 and then asking someone to come along and please open up  
18 the trap so you can take your hand out. That, in my  
19 mind, your Honor, makes no sense at all.

20 So I don't know quite where we are, but, in my mind,  
21 it's absolutely clear that there has not been proper  
22 disclosure by Prospect, and that the receivers really  
23 have no way of making a decision.

24 And, by the way, your Honor, the decision not to  
25 exercise the put and allow it to expire is as much a

1 decision as the decision to exercise the put. It's  
2 giving up a right one way or the other.

3 And we filed this motion for an injunction through  
4 Attorney Fine before the receivership in March of 2019.  
5 We have been trying for a long time to get this  
6 documentation, and we've been asking for the same thing  
7 the whole time, an extension of the time to exercise the  
8 put to enable us to get the information.

9 MR. HALPERIN: Your Honor, may I respond to that?

10 THE COURT: Absolutely.

11 MR. HALPERIN: Okay. The motion that was filed back  
12 in March was followed up with those stipulations and  
13 agreements and providing all the documents. To the  
14 extent that we provided everything that was currently  
15 available the last time we had the order, and we were up  
16 to date in January, the fact that additional documents  
17 were submitted to the Attorney General after that doesn't  
18 put us in default, because we complied at that time. If  
19 Mr. Sheehan wants to go to the Attorney General and get  
20 those documents, he's free to do that. If he wanted to  
21 make a request to us for any subsequent documents, he  
22 could have done that. But we're not in default because  
23 additional information was submitted -- requested and  
24 submitted, and, again, no problem providing that, but  
25 this has always been about the financial information.

1 I'd like to clear up what Mr. Sheehan thought I was  
2 proposing. I was not proposing that the Court today  
3 exercise equitable authority to extend out this put  
4 option to some indefinite time period so we can litigate  
5 the case. Absolutely not. What I was suggesting is that  
6 there's only a 30-day window in our agreement currently,  
7 and that currently we're dealing with the financial  
8 information. So to the extent the Court orders us, and  
9 you don't have to order us because we're willing to do  
10 so, to provide the appropriate limited financial  
11 information, and additional time is needed for us to  
12 produce it and for them to review it, and for them to  
13 exercise their option, I'm perfectly fine agreeing to  
14 that limited extension of time to go along with the  
15 documents. But anything else should be based upon a  
16 different set of pleadings and request for injunctive  
17 relief to the extent they're trying to go after  
18 allegations in a LLC agreement where something unrelated  
19 was before you today. And they'll have time to do  
20 that and come back to you if they think they can  
21 establish a right to that more broader injunctive  
22 relief.

23 THE COURT: Thank you for clarifying. I understand  
24 a lot better now.

25 MR. SHEEHAN: May I be heard, Judge?

1 THE COURT: Absolutely.

2 MR. SHEEHAN: My point with respect to the document  
3 production in January of 2020 was I thought -- addressing  
4 the Court's inquiry to Mr. Halperin -- was the subsequent  
5 document production. What we know is that the document  
6 production in January of 2020 was incomplete. The  
7 monitor told us that. So there was not compliance. They  
8 have the records internally. They neither gave them to  
9 the monitor nor gave them to us in January of 2020.

10 And the second point is, the existing stipulation  
11 does not have a 30-day window or extension of time in it.  
12 It has two. It has if the Court were to deny the motion  
13 for injunctive relief, there's 30 days. If the Court is  
14 to grant the motion for injunctive relief, it's what the  
15 Court should determine is the appropriate period of  
16 time.

17 And, your Honor, Mr. Halperin's suggestion that the  
18 injunction was put aside because of the document  
19 production is belied by the language in the stipulation  
20 that said that the injunctive relief is going to be held  
21 in abeyance and can be reinstated, and was reinstated on  
22 a timely basis.

23 Your Honor, so I'll come back to what we asked for  
24 is that they be ordered to produce the documents in our  
25 list, and that they do so -- if Mr. Halperin thinks he

1 can do so in 30 days, fine, and then we have 90 days  
2 thereafter to exercise the put option. That's what I'm  
3 asking for. And if the Court prefers that we simply turn  
4 to the discovery in the actual case, I would ask for an  
5 extension of time to exercise the put indefinitely.

6 It makes no sense, your Honor, for us to continue  
7 with the case as a whole having exercised the put and  
8 essentially been bought out of the entity. I mean, we  
9 may have rights, we may not have rights, but they'll  
10 certainly be different than the rights we have as an  
11 active shareholder. So to force us to essentially be  
12 bought out before we can get into the merits of our  
13 derivative claim is a trap to prevent that claim from  
14 being litigated in a meaningful way.

15 THE COURT: Thank you very much, counsel. I think I  
16 have enough at this point.

17 The Court is going to look through -- look through  
18 the documents, and I'll issue a decision on the motion.  
19 What I'm going to do at this point is we're going to  
20 continue the hearing until the Court can issue a  
21 decision. I think we should be able to get something out  
22 to you on this by the end of next week. And the clerk  
23 will be in touch in terms of rescheduling another hearing  
24 date for this, just so until the Court makes a decision,  
25 we don't have to deal with the expiration that way. I



1 appreciate everybody's candor. I'm focused on what the  
2 issues are before this Court, both the LLC agreement and  
3 the order, and I've got my arms around it at this time.

4 Is there anything else before we the break?

5 First, the court reporter, if you need any  
6 clarifications?

7 THE COURT REPORTER: No, I'm fine. Thank you,  
8 Judge.

9 MR. HALPERIN: No, thank you, Judge.

10 MR. SHEEHAN: No, thank you, Judge.

11 THE COURT: Thank you very much.

12 I would ask the receiver or -- actually, either  
13 Attorney Hemmendinger or Attorney Sheehan to order an  
14 expedited transcript. This way I will have it in front  
15 of me, so I certainly can get this out to everyone by the  
16 end of next week.

17 With that, the Court will be in recess. Thank you  
18 very much.

19 MR. SHEEHAN: Your Honor. It's Steve Sheehan.

20 It occurred to me, may the record include that  
21 submission I gave to the Court by e-mail today?

22 THE COURT: The record will certainly -- the Court  
23 file will certainly include anything you have sent in. I  
24 will deal within the decision what the Court actually can  
25 consider in making the decision, and I haven't looked at

1           them at this point.

2                   MR. SHEEHAN: Thank you, Judge.

3                   THE COURT: Thank you very much. The Court is in  
4 recess.

5                   (The proceedings concluded at 2:46 p.m.)

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