

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND, INC.

v.

C.A. No.: PC-2017-3856

ST. JOSEPH'S HEALTH SERVICES OF  
RHODE ISLAND RETIREMENT PLAN,  
AS AMENDED

**AFFIDAVIT OF STEPHEN P. SHEEHAN IN OPPOSITION TO THE PROSPECT  
ENTITIES' MOTION TO ADJUDGE STEPHEN DEL SESTO IN CONTEMPT  
AND FOR AN AWARD OF ATTORNEYS FEES**

Stephen P. Sheehan, Esq. being duly sworn, hereby deposes and says:

1. Max Wistow, Benjamin Ledsham, and I are Special Counsel to Stephen Del Sesto in his capacity as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan. I am making this affidavit in support of the Plan Receiver's objection to the Prospect Entities' Motion to Adjudge the Plan Receiver in Contempt and for an Award of Attorneys' Fees.

2. The Prospect Entities produced documents in the case of CCCB v. Lee, PC-2019-3654, on September 18, 2020. However, the Prospect Entities produced:

- no documents showing a return on investment analysis for any of the alleged long-term capital contributions;
- no documents showing a capital needs assessment for any of the alleged long-term capital contributions;
- no documents showing notice to CharterCARE Community Board ("CCCB") of any long-term capital contributions, return-on-investment analyses, or capital needs assessments, for any of the alleged long-term capital contributions; and
- no documents showing that any of the alleged long-term capital contributions, return-on-investment analyses, or capital needs assessments were acceptable to CCCB.

The Prospect Entities did not seek to excuse their failure to produce such documents; they simply failed to do so.

3. The Asset Purchase Agreement (without exhibits) is attached hereto as Exhibit 1.

4. The LLC Agreement (without exhibits) is attached hereto as Exhibit 2.

5. The Rhode Island Attorney General (“RIAG”) attached certain conditions to his approval of the 2014 Asset Sale. His approval is attached hereto as Exhibit 3.

6. The RIAG engaged Affiliated Monitors Inc. (“AMI”) to monitor the Prospect Entities’ compliance with the conditions to the Attorney General’s approval of the 2014 Asset Sale. The undertaking between the RIAG and AMI is attached hereto as Exhibit 4.

7. AMI submitted its first report dated as of December 20, 2018. That report is attached hereto as Exhibit 5.

8. Sometime in May or June of 2020, AMI submitted its “Second Interim Report.” That report is attached hereto as Exhibit 6.

9. The RIAG did not provide the Plan Receiver with this report until July 2, 2020.

10. On March 24, 2020, counsel for the Plan Receiver learned from a third party that the Prospect Entities had filed CEC Applications. One such application is attached hereto as Exhibit 7, although the exhibits thereto are not attached because they are so voluminous and are not relevant to the motion to adjudge in contempt.

11. Counsel for the Plan Receiver reviewed the submissions and learned that Prospect Medical was seeking leave to pay approximately \$12 million or more of its

cash to a private equity fund to buy shares in Prospect Medical's parent company and transfer those shares to other shareholders in the parent company, with no benefit whatsoever to Prospect Medical.

12. Counsel for the Plan Receiver concluded that the proposed transaction for which approval was being sought would prejudice the ability of the Plan Receiver and the Plan participants to collect on any judgment they might obtain against Prospect Medical.

13. Counsel for the Plan Receiver concluded that the proposed transaction itself was a fraudulent transfer, and that the applications contain numerous material misrepresentations and omissions.

14. Counsel for the Plan Receiver was aware that the approval process included the review of the compliance (or non-compliance) of Prospect East Holdings, Inc. ("Prospect East") with the obligation to make the long-term capital contributions called for in the APA and the Attorney Generals' approval of the 2014 Asset Sale, in a proceeding in which none of the Transacting Parties represented the Plan Receiver's interests, and, indeed, their interests were adverse to the interests of the Plan Receiver.

15. On April 9, 2020, counsel for the Plan Receiver filed with the Department of Health an objection to the CEC Applications on behalf of both the Plan Receiver and the Liquidating Receiver. This objection is attached hereto as Exhibit 8, without exhibits.

16. The Prospect Entities promptly received the Plan Receiver's objection, as demonstrated by the fact that their counsel wrote to counsel for the Plan Receiver on April 28, 2020 acknowledging that objection. The email from Attorney Patricia Rocha of

Adler Pollock & Sheehan PC (“APS”) to Counsel for the Plan Receiver and to the Liquidating Receiver is attached hereto as Exhibit 9. However, the Prospect Entities did not at that time assert that the Plan Receiver’s conduct violated the order dated November 16, 2018.

17. On July 21, 2020, counsel for the Plan Receiver participated in the informational meeting for these CEC Applications, conducted remotely over ZOOM, by the Health Services Council of the Rhode Island Department of Health. The transcript of this hearing is Exhibit C to the Prospect Entities’ Motion to Adjudge Stephen Del Sesto in Contempt.

18. DOH has tentatively scheduled the next informational meeting concerning the CEC Applications filed by the Prospect Entities for October 13, 2020. Shortly after filing their motion to adjudge the Plan Receiver in contempt, the Prospect Entities filed their motion papers with the Department of Health in connection with their CEC Applications. Counsel for the Plan Receiver and the Liquidating Receiver are concerned about attending the meeting on October 13, 2020 while the instant motion remains pending. However, the Head of the Office of Medical Systems Development has assured counsel for the Plan Receiver that there will be later opportunities to participate, prior to DOH’s decision on the CEC Applications filed by the Prospect Entities. The email of Fernanda Lopes dated October 5, 2020 is attached hereto as Exhibit 10.

19. Attached hereto as Exhibit 11 is a copy of one of the applications that the Prospect Entities filed with of the Office of the Health Care Advocate Section of the Office of the Attorney General under the Hospital Conversion Act (“HCA”), seeking the

Attorney General's approval under the Hospital Conversion Act for the same transaction that was the subject of the CEC Applications. As noted thereon, the Prospect Entities resubmitted these applications on February 4, 2020 and March 18, 2020.

20. No notice of these applications was given to the Plan Receiver, to the Liquidating Receiver, or anyone else representing CCCB (or its subsidiaries).

21. The Plan Receiver later learned of the HCA applications through a third party, at which point counsel were informed that objections to the applications were due by July 27, 2020.

22. The deadline for members of the public to submit objections has since been extended to October 22, 2020.

23. On September 15, 2020, Thomas Hemmendinger in his capacity as the Liquidating Receiver for CCCB, sent a letter to Attorney General Peter Neronha. That letter is attached hereto as Exhibit 12.

24. On September 21, 2020, Special Assistant Attorney General Jessica Rider responded to Mr. Hemmendinger's letter. Her letter is attached hereto as Exhibit 13.

25. On March 11, 2019, CCCB filed its verified complaint in the derivative suit CharterCARE Community Board v. Lee, et al., PC-2019-3654, by and against Prospect Chartercare, LLC, as well as against Prospect East Hospital Advisory Services, LLC, Prospect East, Prospect Medical, and all of the then-members of the Board of Directors of Prospect Chartercare. A copy of that complaint, without exhibits, is attached hereto as Exhibit 14.

26. On March 18, 2019, CCCB filed a Motion for Temporary and Permanent Injunctive and Equitable Relief, which is attached hereto (without exhibits) as Exhibit 15.

27. Counsel for the Prospect Entities thereafter signed the Stipulation and Consent Order, which the Court signed and entered on April 25, 2019, a copy of which is attached hereto as Exhibit 16.

28. When Prospect Chartercare failed to produce the necessary documents within the agreed upon time, Prospect Chartercare, CCCB, and the Plan Receiver on October 3, 2019 signed and filed with the Court another Stipulation and Consent Orders, which is attached hereto as Exhibit 17.

29. When Prospect Chartercare again failed to produce the necessary documents within the agreed upon time, Prospect Chartercare, CCCB, and the Plan Receiver on November 21, 2020 signed and filed with the Court another Stipulation and Consent Orders, which is attached hereto as Exhibit 18.

30. On February 7, 2020, the Plan Receiver, together with Thomas Hemmendinger as Liquidating Receiver for CCCB, filed in CCCB v. Lee their memorandum in support of CCCB's original Motion for Injunctive and Equitable Relief. That memorandum is attached hereto as Exhibit 19.

31. At the same time the Plan Receiver and the Liquidating Receiver filed a separate motion (with supporting memorandum) to compel production of documents pursuant to the April 25, 2019 stipulation. That motion and memorandum are attached hereto as Exhibits 20 and 21, respectively.

32. Prospect filed its objection and memorandum on March 3, 2020. That objection and memorandum are attached hereto as Exhibits 22 and 23, respectively.

33. On April 21, 2020, and without any prior notice to the Prospect Entities, the Plan Receiver, together with Thomas Hemmendinger as Liquidating Receiver for

CCCB, filed their Verified First Amended and Supplemental Complaint, which is attached hereto as Exhibit 24.

34. The Prospect Entities filed their Answer on June 15, 2020, which is attached hereto as Exhibit 25.

35. There have been numerous motions and hearings since then in the case of CCCB v. Lee, PC-2019-3654, and at no time have the Prospect Entities even argued in that case that the Plan Receiver's assertion in that case of rights derived from CCCB violated the notice provisions of the Order dated November 16, 2018.

36. Thomas Hemmendinger was appointed Permanent Liquidating Receiver by Order dated January 17, 2020. That Order is attached hereto as Exhibit 26.

37. On July 10, 2020, the Plan Receiver and the Liquidating Receiver filed their motion in the liquidation receivership, which jointly asked the Court to enjoin APS from representing the Prospect Entities in connection with the pending regulatory proceedings, and from sharing its knowledge or work product with the Prospect Entities or successor counsel. That motion and memorandum are attached hereto as Exhibits 27 and 28, respectively.

38. APS and the Prospect Entities submitted a thirty-four joint opposition memorandum on July 27, 2020 (attached hereto as Exhibit 29, without exhibits), a nine-page joint supplemental memorandum on August 14, 2020 ((attached hereto as Exhibit 30, without exhibits), and a thirty-two page joint Second Supplemental memorandum on September 23, 2020 (attached hereto as Exhibit 31, without exhibits).

39. The Plan Receiver's Twelfth Interim Report is attached hereto as Exhibit 32.

40. The Plan Receiver's Thirteenth Interim Report is attached hereto as Exhibit 33.

41. The Plan Receiver's Fourteenth Interim Report is attached hereto as Exhibit 34.

42. On August 25, 2020, with notice to the Prospect Entities, the Court conducted a hearing on the Plan Receiver's Fourteenth Interim Report. A copy of that transcript is attached hereto as Exhibit 35.

43. Attached hereto as Exhibit 36 is the Order of the Court dated July 21, 2020, in the case of CCCB v. Lee, PC-2019-3654.


44. On September 17, 2020, at the very end of a lengthy hearing in In re Chartercare Community Board on the Liquidating Receiver and Plan Receiver's motion of the Liquidating Receiver to enjoin APS from representing the Prospect Entities, counsel for the Prospect Entities contended for the first time that the Plan Receiver's opposition to the CEC Applications and HCA Applications filed by the Prospect Entities with the Department of Health and the Attorney General were a violation of the notice provisions of the Order dated November 16, 2018. Those pages from the transcript of this hearing are attached hereto as Exhibit 37.



  
\_\_\_\_\_  
Stephen P. Sheehan

SUBSCRIBED AND SWORN to before me this 6<sup>th</sup> day of October, 2020.



  
\_\_\_\_\_  
NOTARY PUBLIC Benjamin Ledsham  
My Commission Expires: 11/9/2023  
RI Notary # 753498

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 6th day of October, 2020, I filed and served the foregoing document through the electronic filing system on the following users of record:

Stephen F. Del Sesto, Esq.  
Pierce Atwood LLP  
One Financial Plaza, 26<sup>th</sup> Floor  
Providence, RI 02903  
[sdelsesto@pierceatwood.com](mailto:sdelsesto@pierceatwood.com)

Jessica D. Rider, Esq.  
Neil F.X. Kelly, Esq.  
Maria R. Lenz, Esq..  
Office of the Attorney General  
150 South Main Street  
Providence, RI 02903  
[jrider@riag.ri.gov](mailto:jrider@riag.ri.gov)  
[nkelly@riag.ri.gov](mailto:nkelly@riag.ri.gov)  
[mlenz@riag.ri.gov](mailto:mlenz@riag.ri.gov)

Richard J. Land, Esq.  
Robert D. Fine, Esq.  
Chace Ruttenberg & Freedman, LLP  
One Park Row, Suite 300  
Providence, RI 02903  
[rland@crflp.com](mailto:rland@crflp.com)  
[rfine@crflp.com](mailto:rfine@crflp.com)

Christopher Callaci, Esq.  
United Nurses & Allied Professionals  
375 Branch Avenue  
Providence, RI 02903  
[ccallaci@unap.org](mailto:ccallaci@unap.org)

Arlene Violet, Esq.  
499 County Road  
Barrington, RI 02806  
[genvio@aol.com](mailto:genvio@aol.com)

W. Mark Russo, Esq.  
Ferrucci Russo P.C.  
55 Pine Street, 4<sup>th</sup> Floor  
Providence, RI 02903  
[mrusso@frlawri.com](mailto:mrusso@frlawri.com)

Elizabeth Wiens, Esq.  
Gursky Wiens Attorneys at Law  
1130 Ten Rod Road, Suite C207  
North Kingstown, RI 02852  
[ewiens@rilaborlaw.com](mailto:ewiens@rilaborlaw.com)

Jeffrey W. Kastle, Esq.  
Olenn & Penza  
530 Greenwich Avenue  
Warwick, RI 02886  
[jwk@olenn-penza.com](mailto:jwk@olenn-penza.com)

George E. Lieberman, Esq.  
Gianfrancesco & Friedemann LLP  
214 Broadway  
Providence, RI 02903  
[george@gianfrancescolaw.com](mailto:george@gianfrancescolaw.com)

Howard Merten, Esq.  
Partridge Snow & Hahn LLP  
40 Westminster Street, Suite 1100  
Providence, RI 02903  
[hm@psh.com](mailto:hm@psh.com)

Joseph V. Cavanagh, III, Esq.  
Blish & Cavanagh, LLP  
30 Exchange Terrace  
Providence, RI 02903  
[jvc3@blishcavlaw.com](mailto:jvc3@blishcavlaw.com)

William M. Dolan, III, Esq.  
Adler Pollock & Sheehan P.C.  
One Citizens Plaza, 8<sup>th</sup> Floor  
Providence, RI 02903-1345  
[wdolan@apslaw.com](mailto:wdolan@apslaw.com)

David A. Wollin, Esq.  
Christine E. Dieter, Esq.  
Hinckley Allen & Snyder, LLP  
100 Westminster Street, Suite 1500  
Providence, RI 02903-2319  
[dvollin@hinckleyallen.com](mailto:dvollin@hinckleyallen.com)  
[cdieter@hinckleyallen.com](mailto:cdieter@hinckleyallen.com)

Stephen Morris, Esq.  
Rhode Island Department of Health  
3 Capitol Hill  
Providence, RI 02908  
[stephen.morris@ohhs.ri.gov](mailto:stephen.morris@ohhs.ri.gov)

Scott F. Bielecki, Esq.  
Cameron & Mittleman, LLP  
301 Promenade Street  
Providence, RI 02908  
[sbielecki@cm-law.com](mailto:sbielecki@cm-law.com)

Ekwan Rhow, Esq.  
Bird, Marella, Boxer, Wolpert Nessim,  
Drooks, Licenberg & Rhow, P.C.  
1875 Century Park East, 23<sup>rd</sup> Floor  
Los Angeles, CA 90067-2561  
[erhow@birdmarella.com](mailto:erhow@birdmarella.com)

Thomas S. Hemmendinger, Esq.  
Sean J. Clough, Esq.  
Lisa M. Kresge, Esq.  
Ronald F. Cascione, Esq.  
Brennan Recupero Cascione Scungio  
McAllister LLP  
362 Broadway  
Providence, RI 02909  
[themmendinger@brcsm.com](mailto:themmendinger@brcsm.com)  
[sclough@brcsm.com](mailto:sclough@brcsm.com)  
[lkresge@brcsm.com](mailto:lkresge@brcsm.com)  
[rcascione@brcsm.com](mailto:rcascione@brcsm.com)

Preston W. Halperin, Esq.  
Christopher J. Fragomeni, Esq.  
Dean J. Wagner, Esq.  
Shechtman Halperin Savage, LLP  
1080 Main Street  
Pawtucket, RI 02860  
[phalperin@shslawfirm.com](mailto:phalperin@shslawfirm.com)  
[jfragomeni@shslawfirm.com](mailto:jfragomeni@shslawfirm.com)  
[dwagner@shslawfirm.com](mailto:dwagner@shslawfirm.com)

Andrew R. Dennington, Esq.  
Conn Kavanagh Rosenthal Peisch & Ford  
One Federal Street, 15<sup>th</sup> Floor  
Boston, MA 02110  
[adennington@connkavanagh.com](mailto:adennington@connkavanagh.com)

Steven J. Boyajian, Esq.  
Robinson & Cole LLP  
One Financial Plaza, Suite 1430  
Providence, RI 02903  
[sboyajian@rc.com](mailto:sboyajian@rc.com)

W. Mark Russo, Esq.  
Ferrucci Russo P.C.  
55 Pine Street, 4<sup>th</sup> Floor  
Providence, RI 02903  
[mrusso@frlawri.com](mailto:mrusso@frlawri.com)

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Benjamin Ledsham