

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re: CHARTERCARE HEALTH PARTNERS :
FOUNDATION; ROGER WILLIAMS :
HOSPITAL; and ST. JOSEPH HEALTH :
SERVICES OF RHODE ISLAND, INC., :
Petitioners :

C.A. NO: KM-2015-0035

v. :

STEPHEN DEL SESTO, AS RECEIVER AND :
ADMINISTRATOR OF THE ST. JOSEPH :
HEALTH SERVICES OF RHODE ISLAND :
RETIREMENT PLAN; GAIL J. MAJOR; :
NANCY ZOMPA; RALPH BRYDEN; :
DOROTHY WILLNER; CAROLL SHORT; :
DONNA BOUTELLE; and EUGENIA :
LEVESQUE, :

Respondents and Third :
Party Petitioners :

v. :

RHODE ISLAND COMMUNITY :
FOUNDATION, d/b/a RHODE ISLAND :
FOUNDATION, :

Third Party Respondent :

**CHARTERCARE FOUNDATION'S ANSWER TO COUNTER PETITION TO VACATE
ORDER GRANTING PETITION AND TO REQUIRE COUNTER RESPONDENT TO
HOLD FUNDS PENDING RESOLUTION OF RELATED PROCEEDINGS AND
FURTHER ORDER OF THE COURT**

AND

**CHARTERCARE FOUNDATION'S RESPONSE TO THIRD PARTY
PETITION TO REQUIRE THIRD PARTY RESPONDENT RHODE ISLAND
FOUNDATION TO HOLD FUNDS PENDING RESOLUTION OF RELATED
PROCEEDINGS AND FURTHER ORDER OF THE COURT**

Counter Respondent CharterCare Foundation (“CCF”) hereby responds to the Counter Petition filed by Respondents and Third Party Petitioners, Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”), Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque (collectively hereinafter “Counter Petitioners”) as follows.

THE PARTIES

1. Admitted.
2. Admitted.
3. CCF is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
4. CCF is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
5. CCF is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
6. CCF is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
7. CCF is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
8. CCF is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
9. CCF is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
10. Admitted.

11. CCF admits the allegations in the first sentence of paragraph 11. CCF is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and therefore denies the same.

12. CCF denies that its “sole member” is CharterCARE Community Board (“CCCB”). CCF likewise denies any allegation that CCCB owns and/or controls CCF, or otherwise is presently affiliated with CCF in any way. CCF admits that it is a Rhode Island non-profit corporation with its principal office in Providence, Rhode Island. CCF also admits that it operated as CharterCARE Health Partners Foundation between August 25, 2011 and September 14, 2015 and subsequently was renamed CharterCARE Foundation. CCF denies the remaining allegations contained in this paragraph.

FACTS

13. CCF admits that RWH, SJHSRI, and CCF jointly filed the 2015 *Cy Pres* Petition on January 13, 2015, the terms of which speak for themselves. CCF denies the remaining allegations contained in this paragraph.

14. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF further admits that the 2015 *Cy Pres* Petition states that the Attorney General Office’s May 16, 2014 decision “approved the concept of (1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals’ wind down to satisfy the Outstanding Pre and Post Closing Liabilities subject to cy pres approval from this Court.” CCF denies the remaining allegations contained in this paragraph.

15. CCF states that the terms of the 2015 *Cy Pres* Petition speak for themselves. CCF otherwise denies that the charitable assets that were transferred to CCF were available, or otherwise required, to pay present and future obligations to Plan participants.

16. CCF states that the terms of the 2015 *Cy Pres* Petition speak for themselves. CCF otherwise denies that it represented to the Court that the assets retained by SJHSRI and RWH “after the transfers to CCHP Foundation would be sufficient to ‘satisfy’ SJHSRI’s and RWH’s liabilities, including SJHSRI’s pension obligations.” Further answering, see CCF’s First Affirmative Defense.

17. CCF states that the terms of the 2015 *Cy Pres* Petition speak for themselves. CCF otherwise denies that it ever represented “that the retained assets would ‘satisfy’ RWH and SJHSRI’s remaining liabilities, and that those liabilities would be ‘paid’ with those assets.” CCF otherwise denies the remaining allegations contained in this paragraph. Further answering, see CCF’s First Affirmative Defense.

18. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF otherwise denies the remaining allegations contained in this paragraph.

19. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF otherwise denies the remaining allegations contained in this paragraph.

20. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF otherwise denies the remaining allegations contained in this paragraph.

21. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF otherwise denies the remaining allegations contained in this paragraph.

22. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF otherwise denies the remaining allegations contained in this paragraph.

23. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF otherwise denies the remaining allegations contained in this paragraph.

24. CCF states that the terms of the 2015 *Cy Pres* Petition speak for themselves. CCF otherwise denies the characterization of the Petition contained in this paragraph. Further answering, see CCF's First Affirmative Defense.

25. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF otherwise denies the characterization of the Petition contained in this paragraph. Further answering, see CCF's First Affirmative Defense.

26. CCF denies this paragraph to the extent that it alleges CCF made representations "to the Court that there either already were more than sufficient assets, or that the existing assets plus expected future income would be more than sufficient to satisfy all of SJHSRI's '[o]utstanding Pre & Post Closing Liabilities (both non-pension and pension).'" CCF otherwise denies the remaining allegations in this paragraph. Further answering, see CCF's First Affirmative Defense.

27. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF otherwise denies the remaining allegations contained in this paragraph. Further answering, see CCF's First Affirmative Defense.

28. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. The remaining allegations contained in this paragraph do not apply to CCF. Accordingly, no response to this paragraph is required. To the extent these allegations are construed to require a response, CCF denies the same.

29. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF otherwise denies the remaining allegations contained in this paragraph. Further answering, see CCF's First Affirmative Defense.

30. CCF is without knowledge or information sufficient to form a belief as to what the Superior Court reviewed or to the subsequent conclusions the Superior Court made and therefore denies the same. CCF admits that the *Cy Pres* Petition disclosed to the Court as follows: "The SJHSRI pension funding obligation will continue after the wind down period concludes." See 2015 *Cy Pres* Petition, ¶ 17. CCF otherwise denies the remaining allegations contained in this paragraph.

31. The *Cy Pres* Petition speaks for itself. CCF otherwise denies the characterization of the Petition contained in this paragraph. Further answering, see CCF's First Affirmative Defense.

32. CCF admits that the 2015 *Cy Pres* Petition includes the quoted language, the terms of which speak for themselves. CCF otherwise denies the remaining allegations contained in this paragraph. Further answering, see CCF's First Affirmative Defense.

33. CCF is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.

34. Denied.

35. Denied.

36. CCF denies that it made any misrepresentations or material omissions in the 2015 *Cy Pres* Petition. CCF admits that the Superior Court approved the 2015 *Cy Pres* Petition on April 20, 2015. CCF otherwise denies the remaining allegations contained in this paragraph.

37. CCF admits that SJHSRI and RWH transferred charitable funds of approximately \$8.3 million to CCF pursuant to the Superior Court's order granting the 2015 *Cy Pres* Petition. CCF denies that CCCB ever transferred any funds to CCF.

38. CCF admits that it has transmitted funds that it received in connection with the 2015 *Cy Pres* Petition to the Rhode Island Foundation ("RIF") for professional management and investment in the amounts referenced.

39. CCF admits that RIF made distributions to CCF as alleged except that the proper date for the payment in the sum of \$174,515 is December 15, 2015.

40. Admitted.

41. CCF admits that the Superior Court's order approving the 2015 *Cy Pres* Petition included language concerning certain third-party trusts, the terms of which speak for themselves.

42. CCF admits that Counter Petitioners have commenced related proceedings that are pending in the United States District Court for the District of Rhode Island and Rhode Island Superior Court, pursuant to the complaints attached to the Counter Petition as Exhibits 1 and 2, the terms of which speak for themselves.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

CCF states that the Petitioners disclosed to the Court, in the *Cy Pres* Petition, that SJHSRI's pension obligations would continue. Specifically, the last sentence of paragraph 17 stated as follows: "The SJHSRI pension funding obligation will continue after the wind-down period concludes." Moreover, the Petition included as Exhibit E an "Estimated Opening Revised Summary Balance Sheet" for SJHSRI (designated as "Fatima") in which the [SJHSRI] "pension liability" in the sum of \$62,410,940 was listed as a "Long Term Liability" of SJHSRI. Per Exhibit D of the Petition, this was after payment of \$14,000,000 towards the "pension liability" of SJHSRI from the \$45,000,000 in proceeds from the sale of certain assets of RWH and SJHSRI to the newly formed entity owned by CCCB (15%) and Prospect Medical Holdings, Inc. (85%) and known as Prospect CharterCARE, LLC. That balance sheet (Exhibit E) differentiated SJHSRI's then long-term pension liability from SJHSRI's then current liabilities of \$6,800,029. Against those liabilities, the balance sheet reflected only \$12,102,083 of assets. Accordingly, the Petitioners fairly disclosed in the *Cy Pres* Petition that a significant pension liability indeed would continue beyond the wind down period and that indeed this liability would not be fully satisfied by existing funds retained by RWH or SJHSRI, either following the closing of the Asset Purchase Sale agreement or as of the time of the *Cy Pres* Petition. CCF otherwise denies it misled the Court about the pension liability issues.

SECOND AFFIRMATIVE DEFENSE

The *Cy Pres* Petition was not an action to address or determine pension liability or SJHSRI's ability to satisfy its pension obligations, but was rather a suit filed by Petitioners pursuant to a final administrative order of the Rhode Island Attorney General dated May 16,

2014 addressing the disposition and transfer to CCF of certain charitable assets. Accordingly, SJHSRI's obligations to the pension fund simply were not at issue in the *Cy Pres* Petition.

THIRD AFFIRMATIVE DEFENSE

For reasons set forth in its papers opposing the Motion to Intervene, CCF respectfully asserts that this Court ought not to have allowed the Motion to Intervene or to permit the claims alleged by intervenors herein.

FOURTH AFFIRMATIVE DEFENSE

The intervenors lack standing.

FIFTH AFFIRMATIVE DEFENSE

The intervenors have no rights to the funds transferred to CCF pursuant to this Court's April, 2015 *Cy Pres* Order.

SIXTH AFFIRMATIVE DEFENSE

The Counter Petition fails to state a claim upon which relief may be granted against CCF.

SEVENTH AFFIRMATIVE DEFENSE

The Counter Petitioners' claims are barred by the doctrine of laches and failure to mitigate damages.

EIGHTH AFFIRMATIVE DEFENSE

The Counter Petitioners' claims are barred by the statute of limitations.

NINTH AFFIRMATIVE DEFENSE

CCF did not receive the funds as a result of a fraudulent transfer and pleads all defenses available under R.I. Gen. Laws § 6-16-8.

TENTH AFFIRMATIVE DEFENSE

The Counter Petitioners' Counter Petition should be dismissed pursuant to R.I. Super. Ct. R. Civ. P. 12(b)(1) for lack of jurisdiction.

ELEVENTH AFFIRMATIVE DEFENSE

The Counter Petitioners' claims are barred by the doctrines of collateral estoppel, issue preclusion, and/or *res judicata*.

TWELFTH AFFIRMATIVE DEFENSE

The Counter Petitioners' claims are barred by the doctrines of waiver or estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

CCF reserves the right to assert any and all additional defenses about which it may become aware during discovery in this matter.

WHEREFORE, CCF requests that this Court enter judgment in its favor, dismissing all of the Counter Petitioners' claims with prejudice, that the Court award CCF its costs and attorneys' fees, and that the Court award such other further relief as the Court deems just and proper.

CHARTERCARE FOUNDATION,

By its attorneys,

/s/ Russell F. Conn

/s/ Andrew R. Dennington
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Dated: October 5, 2018

**CHARTERCARE FOUNDATION'S RESPONSE TO THIRD PARTY
PETITION TO REQUIRE THIRD PARTY RESPONDENT RHODE ISLAND
FOUNDATION TO HOLD FUNDS PENDING RESOLUTION OF RELATED
PROCEEDINGS AND FURTHER ORDER OF THE COURT**

CCF hereby responds to the Third Party Petition filed by Third Party Petitioners as follows.

1-19. The allegations contained in these paragraphs do not apply to CCF. Accordingly, no response to these paragraphs is required. To the extent these allegations are construed to require a response, CCF denies the same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

CCF hereby repeats and incorporates by reference all Affirmative Defenses in its Answer to the Counter Petition.

SECOND AFFIRMATIVE DEFENSE

CCF's handling of the funds received is now governed by the Superior Court's order dated June 29, 2018 and the Instrument of Transfer attached to the order.

THIRD AFFIRMATIVE DEFENSE

CCF reserves the right to assert any and all additional defenses about which it may become aware during discovery in this matter.

WHEREFORE, CCF requests that this Court dissolve its Order dated June 29, 2018, that the Court enter judgment in CCF's favor, dismissing all of the Third Party Petitioners' claims with prejudice, that the Court award CCF its costs and attorneys' fees, and that the Court award such other further relief as the Court deems just and proper.

CHARTERCARE FOUNDATION,

By its attorneys,

/s/ Russell F. Conn

/s/ Andrew R. Dennington
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Dated: October 5, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of October, 2018, I filed and served this document through the electronic filing system on the following:

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

/s/ Christopher K. Sweeney, Esq.