

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND :
ADMINISTRATOR OF THE ST. JOSEPH :
HEALTH SERVICES OF RHODE ISLAND :
RETIREMENT PLAN et al. :

Plaintiffs :
v. :

C.A. NO.: 1:18-cv-00328

PROSPECT CHARTERCARE, LLC, et al.; :
Defendants. :

**DEFENDANT CHARTERCARE FOUNDATION’S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(6) & (7)**

Defendant CharterCARE Foundation (“CCF”) f/k/a CharterCARE Health Partners

Foundation moves that the Court dismiss all plaintiffs’ claims against CCF pursuant to Fed. R. Civ. P. 12(b)(6) & (7). As grounds, CCF states as follows.

1. CCF joins in the ERISA-based defenses that its co-defendants thoroughly have briefed in their own separately filed motions to dismiss. The ERISA-based defenses that supply grounds for dismissal of all claims against all defendants are as follows:

- a. Plaintiffs’ ERISA claims (Counts I-IV) are barred on ripeness and standing grounds, and therefore should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).
- b. Alternatively, if the ERISA claims are ripe, those claims still should be dismissed pursuant to Fed. R. Civ. P. 12(b)(7) because Plaintiffs failed to join the Pension Benefit Guaranty Corporation (“PBGC”) as an indispensable party. Alternatively, if the Court does not dismiss this action pursuant to Fed. R. Civ. P. 12(b)(7), then it should order joinder of the PBGC pursuant to Fed. R. Civ. P. 19(c).
- c. All plaintiffs’ state law claims (Count V-XXI) are preempted by ERISA, and therefore should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

2. If the Court does not hold that plaintiffs' state law claims are preempted by ERISA, the Court nonetheless should dismiss the state law claims against CCF on several other grounds.

3. Pursuant to Fed. R. Civ. P. 12(b)(7), this Court should dismiss plaintiffs' fraudulent conveyance claims against CCF in Counts V and VI, and the related declaratory judgment claim at Count XXI, because plaintiffs failed to join the Rhode Island Attorney General (the "Attorney General") as a necessary party. Counts V, VI, and XXI seek an order that this Court attach approximately \$8,200,000 in certain restricted charitable assets that originally were donated to St. Joseph's Health Services of Rhode Island ("SJHSRI") and Roger Williams Hospital ("RWH"), and then were transferred to CCF pursuant to an April 20, 2015 Order of the Rhode Island Superior Court allowing a cy pres petition (the "2015 *Cy Pres* Petition") in the matter referred to as the "2015 *Cy Pre* Proceeding," i.e. *In re: CharterCARE Health Partners Foundation et al.*, C.A. No. KM-2015-0035. (Complaint, ¶ 55). SJHSRI and RWH were required to file that 2015 *Cy Pres* Petition as a condition of the Attorney General's 2014 administrative decision approving the sale of certain SJHSRI's and RWH's assets to a for-profit entity under Rhode Island's Hospital Conversions Act ("HCA"). (*Id.* ¶ 369). The Attorney General has the responsibility under the Rhode Island General Laws as well as at common law to ensure that charitable assets are being used in accordance with the terms of the trust. See R.I. Gen. Laws §§ 18-9-9 to 18-9-11; see *Israel v. Nat'l Bd. of Young Men's Christian Ass'n*, 369 A.2d 646, 649 (R.I. 1977). Pursuant to that legal authority, in recent filings in the state court receivership action giving rise to this subsequent federal court action, the Attorney General has indicated that it intends to assert certain claims with respect to the charitable donations held by CCF. Under these circumstances, the Attorney General qualifies as a

necessary party under Rule 19(a)(1). This Court therefore should either dismiss Counts V, VI, and XXI pursuant to Rule 12(b)(7) for failure to join a necessary party, or order the joinder of the Attorney General pursuant to Rule 19(a)(2).

4. This Court should dismiss plaintiffs' claims against CCF for "Fraudulent Scheme" (Count VIII), "Conspiracy" (Count IX), and "Aiding and Abetting Breaches of Fiduciary Duty" (Count XX) pursuant to Rule 12(b)(6). These are fraud-based claims attempting to establish CCF's alleged joint tort liability for other defendants' allegedly fraudulent conduct in relation to funding of the SJHSRI Retirement Plan (the Plan"). Rule 9(b)'s heightened pleading requirements apply to these fraud-based claims. N. Am. Catholic Educ. Programming Found., Inc. v. Cardinale, 567 F.3d 8, 13, 15 (1st Cir. 2009); Hayduk v. Lanna, 775 F.2d 441, 443-44 (1st Cir. 1985). Plaintiffs' fraud-based claims against CCF fail to satisfy those requirements because, among other reasons, the Complaint does not allege that CCF (which never administered the Plan, either directly or indirectly) had knowledge of the Plan's allegedly underfunded status.

5. This Court must dismiss the veil-piercing claims against CCF in Count XII ("Alter Ego") and Count XV ("Successor Liability") pursuant to Rule 12(b)(6). The Complaint does not allege that CCF shares a unity of interest and ownership with any other defendant that is so strong that "their separate identifies and personalities no longer exist." See Nat'l Hotel Assocs. v. O. Ahlborg & Sons, Inc., 827 A.2d 646, 652 (R.I. 2003). Nor does the Complaint allege that CCF continued the hospital operations of SJHSRI, or took some action to assume its pension liabilities. CCF is at least two steps removed from SJHSRI, the Plan administrator. Plaintiffs allege that CCF is a subsidiary of defendant CharterCARE Community Board ("CCCB"), and that CCCB is the sole, controlling member of CCF.¹ That does not provide a

¹ The Complaint alleges that CCCB is the sole, controlling member of CCF. (Complaint, ¶ 25). CCF maintains that it has operated independently of CCCB for the past four years, and that CCCB long ago waived or

basis for “double veil piercing” – i.e. holding CCCB responsible for the liabilities of its subsidiary (SJHSRI), then holding CCF liable for the liabilities of its alleged parent, CCCB.

6. Finally, the Court should dismiss Count XX, seeking to establish that CCF is liable under R.I. Gen. Laws § 9-1-2 for purported criminal violations of the HCA, R.I. Gen. Laws § 23-17.14-13. The Complaint does not allege that CCF was a party to the HCA approval applications submitted by other defendants. Nor does it allege that CCF made any misstatements to anyone in the course of the HCA approval proceeding. Count XX fails to state a cognizable claim, and therefore should be dismissed pursuant to Rule 12(b)(6).

7. In further support of this motion, CCF refers the Court to its contemporaneously filed memorandum of law. As stated in more detail therein, CCF also joins in several other defenses that various co-defendants have raised in response to certain specific claims.

WHEREFORE, CCF respectfully requests that this Court **ALLOW** this motion, and issue an appropriate order dismissing all plaintiffs’ claims against CCF pursuant to Fed. R. Civ. P. 12(b)(6) & (7).

abandoned any purported right to control CCF’s activities as its sole member. Nonetheless, solely for the purposes of developing arguments in support of this motion to dismiss, CCF assumes the truth of plaintiffs’ allegation that CCCB still is CCF’s sole member.

CHARTERCARE FOUNDATION,

By its counsel,

/s/ Russell F. Conn

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Dated: September 17, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September, 2018, I filed and served this document through the ECF filing system. This document is available for viewing and downloading from the ECF system, and the ECF system will automatically generate and send a Notice of Electronic Filing to the following Users of Record:

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