

**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.

PROSPECT CHARTERCARE, LLC; ET AL.,

Defendants.

C.A. No. 1:18-CV-00328-S-LDA

**DIOCESAN DEFENDANTS' RESPONSE AND RESERVATION OF RIGHTS
CONCERNING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (collectively “the Diocesan Defendants”) submit this response to and reservation of rights concerning Plaintiffs’ Motion for Summary Judgment, ECF No. 173 (the “Motion”), in order to make two brief points.

First, the Diocesan Defendants state that they take no position concerning the only question posed in Plaintiffs’ pending Motion: Whether the St. Joseph Health Services of Rhode Island Retirement Plan (“the Plan”) became subject to ERISA by April 29, 2013 because of an alleged failure to meet any principal purpose organization requirement. The Diocesan Defendants strongly believe that a prompt resolution of this legal question will benefit the Court and the Parties.

At a hearing last fall, the Court asked whether the Diocesan Defendants had a position on whether the Plan qualified as a “church plan.” Sept. 10, 2019 Hr’g Tr. 44:9-23, ECF No. 168. The Diocesan Defendants responded that a “church plan” is not the same as “the [C]hurch’s plan.” *Id.* The Plan here is St. Joseph Health Services of Rhode Island’s (“SJHSRI”)

plan. A “church plan” is a legal term of art. *Id.* Whether a pension plan is a church plan is a determination that the plan’s sponsor and administrator make, which is then subject to review by either the IRS or a court. *See id.* There is no dispute that the Plan at issue here is not the Diocesan Defendants’ plan. The Diocesan Defendants were neither the Plan’s sponsor, nor the Plan’s administrator. *Id.* The Motion before the Court addresses only the limited issue of whether ERISA applied to the Plan by April 29, 2013 due to some principal purpose organization shortcoming as of April 29, 2013. Accordingly, now is not the time to adjudicate the true roles, or the exoneration, of the Diocesan Defendants, or whether the Plaintiffs even state a claim against the Diocesan Defendants for which relief can be granted.

Second, mindful of the maxim that “silence gives consent,” the Motion contains an irrelevant, false, and potentially prejudicial assertion regarding the Diocesan Defendants which requires a response. Plaintiffs asserted:

SJHSRI and the *Diocesan Defendants* were acutely aware of the requirement for a principal purpose organization, and what needed to be done to comply Although subjective intent is irrelevant to qualification for the church plan exemption, here we have a clear case of deliberate non-compliance with this statutory requirement.

Motion at 3 (emphasis added). Why Plaintiffs included this over-reaching assertion is a mystery.¹ It is not necessary for adjudicating the Motion and Plaintiffs admit as much when they say “subjective intent is irrelevant.” *Id.*

Because Plaintiffs allege fraud claims which could be implicated by any explicit or implicit finding regarding this *admittedly* irrelevant statement, the Diocesan Defendants respectfully request that the Court disregard this assertion and preserve everyone’s rights to

¹ This is particularly so, given that Attorney Reid’s letter was sought by and addressed to SJHSRI, not the Diocesan Defendants. Ex. 13 to Pls.’ Rule 56 Statement, ECF No. 174-13.

dispute it at the appropriate time – which is not now. At the proper time, the Diocesan Defendants intend to contest this inaccurate characterization of their state of mind and argue – in the context of Plaintiffs’ fraud claims – that “the requirement for a principal purpose organization” or “what needed to be done to comply” was not only a legal opinion, it was not knowable at any time relevant to this lawsuit for the purposes of claims that rest in fraud.² *Id.*

Respectfully Submitted,

ROMAN CATHOLIC BISHOP OF
PROVIDENCE, A CORPORATION SOLE,
DIOCESAN ADMINISTRATION
CORPORATION and DIOCESAN SERVICE
CORPORATION

By Their Attorneys,

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² The absurdity of any argument to the contrary should become clear as the Court familiarizes itself with the evolving judicial interpretation of the church plan exemption when deciding the Motion. In 2019, the U.S. Court of Appeals for the Seventh Circuit explained that the proper construction of the principal purpose organization requirement—what matters in assessing the principal purpose organization, what can/must it do, how frequent/long should it meet, how much of its authority can it delegate, are corporate formalities enough, *etc.*—presented “genuine issues of material law.” *Smith v. OSF Healthcare Sys.*, 933 F.3d 859, 868-70 (7th Cir. 2019) (emphasis in original). Likewise, the legal opinion from Attorney Reid that Plaintiffs treat as fact—which it cannot be—was both preceded and followed by decisions from courts across the country (including district courts in the First Circuit), holding that church affiliated entities (like hospitals) could have church plans *without* a principal purpose organization. *See, e.g., Torres v. Bella Vista Hosp., Inc.*, CIVIL 06-2158 (JAG), 2009 WL 10717769, at *4-5 (D.P.R. Apr. 13, 2009), *adopting recommendation*, 639 F. Supp. 2d 188, 193 (D.P.R. 2009); *Catholic Charities of Me., Inc. v. City of Portland*, 304 F. Supp. 2d 77, 84-86 & n.4 (D. Me. 2004).

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June 2020, the foregoing document has been filed electronically through the Rhode Island ECF system, is available for viewing and downloading, and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing.

/s/ Howard Merten _____

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