

**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 TO PLAINTIFFS' RESPONSE TO
PROSPECT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

On November 23, 2020, the Plaintiffs filed a supplemental response to Prospect's¹ statement of facts and a memorandum of law. These filings raise new arguments and allegations not previously raised in the summary judgment record aimed at the Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (collectively "the Diocesan Defendants"). These new arguments and allegations necessitate a response.²

The "Corrupt Bargain" Conspiracy. Plaintiffs raise for the first time in the summary judgment context the contention from their amended complaint that the listing of St. Joseph Health Services of Rhode Island, Inc. ("SJHSRI") in the Official Catholic Directory ("OCD") following the sale of SJHSRI's assets to Prospect reflects a "corrupt bargain" against

¹ The Diocesan Defendants use "Prospect" to collectively refer to Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC.

² The Diocesan Defendants agree with Plaintiffs that, if the Court grants Plaintiffs' motion for summary judgment or determines that there are genuine issues of material fact on the principal purpose organization issue, then there is no need for the Court to consider any other issues. ECF No. 202 (Pls.' Opp'n Mem.) at 2.

the interests of the participants in the SJHSRI Retirement Plan. ECF No. 201 (Pls.' Suppl. Resp. to Prospect's SOF) at 6-20; ECF No. 202 (Pls.' Opp'n Mem.) at 24, 48. In an earlier context, the Diocesan Defendants laid out in specific detail how this conspiracy theory was utterly implausible. In response to the resurrection of this flawed claim late in the summary judgment briefing, the Diocesan Defendants incorporate herein the papers filed in support of their motion to dismiss, which previously detailed how Plaintiffs' allegations (and evidence) of a "corrupt bargain" are based on facts known to the regulators and/or made public, and far more consistent with lawful activities.³ ECF No. 67-1 (Dioc. Defs.' Mem. in Supp. of Mot. to Dismiss) at 23-38, 41-56; ECF No. 114 (Dioc. Defs.' Reply Br.) at 34-37, 42-54.

Knowledge and Actions. Plaintiffs' opposition is rife with conclusions about the actions and knowledge of the Diocesan Defendants. *See, e.g.*, ECF No. 201 (Pls.' Suppl. Resp. to Prospect's SOF) at 7-8, 12. Plaintiffs, repeating a fundamental and dispositive flaw from their amended complaint, offer naked assertions, not evidence, to back their allegations that the entities named as defendants had any knowledge of a "corrupt bargain" or that the clergy referenced in Plaintiffs' opposition papers acted on the named and/or individual Diocesan Defendants' behalf. This is especially so as it concerns the listing of SJHSRI in the OCD.

SJHSRI's Association with a Church. Plaintiffs' own motion for summary judgment stated flatly that they were not challenging SJHSRI's association with a church for the purposes of their motion. ECF No. 173 (Pls.' Mot. for Summ. J.) at 24 n.57. Plaintiffs' latest filings do contest this issue. ECF No. 202 (Pls.' Opp'n Mem.) at 22-24, 47-49. Again, the

³ In their motion to dismiss, the Diocesan Defendants explained why Rev. Timothy Reilly's email to Otis Brown, (Pls.' Ex. 72, ECF No. 201-26) and an essentially identical version of the August 15, 2013 presentation to the CCHP Board of Trustees (Pls.' Ex. 66, ECF No. 201-20, and Ex. 71, ECF No. 201-25) did not support Plaintiffs' conspiracy theory. ECF No. 67-1 (Dioc. Defs.' Mem. in Supp. of Mot. to Dismiss) at 49-52; ECF No. 114 (Dioc. Defs.' Reply Br.) at 50-54. The same is true of Plaintiffs' other exhibits when read in full and in light of the discussion in the Diocesan Defendants' motion to dismiss papers.

Diocesan Defendants have already addressed in detail the substantive and dispositive flaws in Plaintiffs' association arguments and incorporate that prior briefing here. ECF No. 200 (Dioc. Defs.' Resp. to Prospect's Mot. for Summ. J.) at 13-14; ECF No. 67-1 (Dioc. Defs.' Mem. in Supp. of Mot. to Dismiss) at 41-47; ECF No. 114 (Dioc. Defs.' Reply Br.) at 42-46.

SJHSRI's Tax Exempt Status. Finally, Plaintiffs' latest filing raises an unprecedented and extreme legal contention concerning the propriety of SJHSRI's claim to a tax exemption under the group ruling issued to the United States Conference of Catholic Bishops ("USCCB") by the IRS and invites the Court to declare wrongful nearly *seventy-five years'* worth of tax practice by the USCCB and thousands of subordinate Catholic organizations. ECF No. 202 (Pls.' Opp'n Mem.) at 25, 49-56. As a threshold matter, Plaintiffs cite no law to support their argument that the validity of a claim under an IRS group ruling can be litigated in this context, especially by third-parties. *See* ECF No. 201 (Pls.' Suppl. Resp. to Prospect's SOF) at 2-4 (failing to cite such legal authority). The Diocesan Defendants are reticent to further address the merits of this far-reaching and newly raised tax law issue, which the Court very likely will not need to reach in ruling on the pending motions. The Court should also be reticent to do so on this record and without complete briefing.

Respectfully Submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December 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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