

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

IN RE:)
CHARTERCARE COMMUNITY BOARD;) PC-2019-11756
ST. JOSEPH HEALTH SERVICES OF RI;))
and ROGER WILLIAMS HOSPITAL)

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON JANUARY 09, 2020

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....RECEIVER
MAX WISTOW, ESQUIRE.....FOR THE RECEIVER
STEPHEN SHEEHAN, ESQUIRE.....FOR THE RECEIVER
BENJAMIN LEDSHAM, ESQUIRE.....FOR THE RECEIVER
THOMAS HEMMENDINGER, ESQUIRE.....RECEIVER
CHRISTOPHER FRAGOMENI, ESQUIRE.....FOR PROSEPECT

GINA GIANFRANCESCO GOMES
COURT REPORTER

C E R T I F I C A T I O N

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 15, inclusive, are a true and accurate transcript of my stenographic notes.


GINA GIANFRANCESCO GOMES
COURT REPORTER

1 THURSDAY, JANUARY 9, 2020

2 MORNING SESSION

3 THE CLERK: Your Honor, the matter before the Court
4 is PC-2017-3856, St. Joseph Health Services of Rhode
5 Island v. St. Joseph's Health Services of Rhode Island
6 Retirement Plan. This is on for the Receiver's motion
7 for clarification of the November 16, 2018, order. Would
8 counsel please identify themselves.

9 MR. WISTOW: Max Wistow for the Plan Receiver.

10 MR. SHEEHAN: Stephen Sheehan for the Plan Receiver.

11 MR. DEL SESTO: Steven Del Sesto for the Plan
12 Receiver, your Honor.

13 MR. HEMMENDINGER: Your Honor, Thomas Hemmendinger
14 as the temporary liquidating Receiver for the CharterCare
15 Community Board, Roger William's Hospital, and St.
16 Joseph's Hospitals of Rhode Island.

17 MR. LEDSHAM: Benjamin Ledsham for the Plan
18 Receiver.

19 THE COURT: The Receiver may proceed.

20 MR. WISTOW: Good morning, your Honor. The last
21 time I appeared before you regarding Settlement B, I
22 spoke interminably and found out after I was all finished
23 that there was no objection to what I was asking for, so
24 I'm potentially giving up the pleasure of hearing my own
25 voice. I can advise the Court that the objectors that

1 appeared before your Honor previously and caused the
2 inclusion of the language that we have indicated needs
3 clarification were three. One was CharterCare
4 Foundation. They have indicated they have no problem
5 whatever with what we're asking for. The new liquidating
6 Receiver has joined in our request. There is a
7 representative from the AG's office here this morning who
8 indicates that there is no objection, and the Prospect
9 entities have their counsel here and they have no
10 objection to what we're requesting. So at the risk of
11 offending your Honor and depriving you of the pleasure of
12 hearing me go on, I'm going to sit down and hope that you
13 grant our request.

14 THE COURT: Thank you very much, counsel. Is there
15 any other party who wishes to be heard before the Court
16 rules on the motion? Nothing being heard, the motion to
17 clarify is granted. If counsel can submit the
18 appropriate order.

19 MR. WISTOW: Thank you, your Honor.

20 THE COURT: Thank you very much. We also have on
21 before us a motion in the CharterCare Community Board
22 matter that the Court allowed to be heard on short notice
23 based on the fact we were also hearing this case. Madam
24 Clerk, if you would call that case.

25 THE CLERK: Your Honor, that is Case Number

1 PC-2019-11756, In Re: CharterCare Community Board. This
2 is on for a petition to engage special counsel.

3 MR. HEMMENDINGER: Good morning, your Honor. Thomas
4 Hemmendinger, the temporary liquidating Receiver. If I
5 could just give a brief summary of what has happened
6 since my appointment. So I posted the surety bond
7 required by the Court given by mail to creditors and the
8 clerk's office has published the notice in the Providence
9 Journal. I had extensive briefings with not only counsel
10 for the liquidating entities, Chace Ruttenberg &
11 Freedman, but also with the plan Receiver and his counsel
12 who are here today. They all have been very helpful in
13 taking me from zero knowledge of this case to enough
14 knowledge to be dangerous.

15 And the main assets of these receiverships are
16 they're all intangibles. There's cash which has been
17 transferred to me from the entities and it's at Citizen's
18 Bank, a Medicare appeal where we settled -- well, the
19 entities settled for \$580,000 before the receivership.
20 It's due to be paid late next month and the entities had
21 hired Daryl Dayian, LLP, as counsel. They're specialists
22 in handling these types of Medicare appeals. As far as I
23 can tell they have done an excellent job in achieving
24 these results and they have very little work left to do
25 but they know how to get it done and get the money into

1 my hands. I would like to hire them as special counsel
2 just to finish up the work that they were engaged to do.
3 It also turns out that their last invoice of just under
4 \$8,100 was paid but the check did not clear until after
5 the receivership entities transferred their funds to my
6 receivership account. So the pre-receivership account is
7 overdrawn by that amount plus some minor bank fees. I
8 would also like permission to make good on that overdraft
9 and just zero out that account from money that is in
10 these liquidating estates.

11 The two settlements with the plan Receiver I guess
12 are commonly called Settlement A and Settlement B. A
13 being on the planned Receiver's claims against the
14 receivership entities for damage to the pension plan is
15 over generalized. That settlement is largely complete.
16 I have some ongoing obligations mainly to continue to
17 cooperate and to turn over other assets as they come in
18 subject to the approval of the planned receiver's proof
19 of claim in the ordinary course here. Settlement B with
20 the CharterCare Community Foundation, I believe I have
21 completed the work of the liquidating Receiver on that
22 settlement, although there may be some small loose ends
23 and the plan Receiver expects to receive the \$4.5 million
24 case settlement within the next four to six weeks I
25 think.

1 MR. WISTOW: I think the deadline is February 5th.

2 THE COURT: Okay.

3 MR. HEMMENDINGER: I do have some more to say to the
4 Court on the pending litigation with Prospect and the put
5 option but I would like to, if I could, defer that until
6 after Mr. Wistow and Mr. Del Sesto have a chance to
7 address the Court on their prospective on that. There
8 have been a number of discussions with Prospect and we're
9 trying to figure out how to move that process forward.

10 The other part of my request, your Honor, is to
11 engage Chace Ruttenberg & Freedman as special counsel
12 mainly to help continue to help me in the transition in
13 getting me up to speed on what I need to do know in order
14 to do my job here. They have done most of that work
15 already but there is still some additional information,
16 documents, that I need. They are assembling them and
17 rather than engage them as custodians or their witnesses
18 for the liquidating Receiver, I would also like the
19 benefit of their legal judgment on what they have been
20 handling and what they have been witnessing in the other
21 liquidation related to this receivership, and I may or
22 may not follow that advice but I would like to know what
23 they think and from past experience I have good reason to
24 trust their judgment on these things.

25 I was going to ask the Court this morning for

1 permission to pay the small net balance that is owed to
2 Chace Ruttenberg & Freedman. It's about 1,135. In
3 discussions with Mr. Wistow, we agreed that I would defer
4 the request on that. They do have a \$5,000 retainer. I
5 would like them to continue to hold that and then I would
6 pay both firms in the ordinary course as they issue
7 invoices subject to the Court reviewing all the accounts
8 at the end of the case or at any earlier time the Court
9 wants to do that.

10 THE COURT: So all that is before the Court this
11 morning is for the liquidating Receiver to retain the two
12 firms as special counsel. The Court did not receive any
13 objections. Is there anyone who wishes to be heard?

14 Hearing none, the Court grants the request of the
15 liquidating Receiver which is to retain as special
16 counsel Daryl Dayian. Is it a Medicaid issue?

17 MR. HEMMENDINGER: Medicare issue.

18 THE COURT: And Chace Ruttenberg & Freedman for the
19 other issues as stated on the record.

20 MR. HEMMENDINGER: Thank you. Your Honor, I filed a
21 proposed order and I've got a paper copy.

22 THE COURT: If you don't mind handing up the paper
23 copy.

24 (Document handed to the Court.)

25 THE COURT: Thank you very much, counsel. The Court

1 will be in recess.

2 (R E C E S S.)

3 THE COURT: Attorney Hemmendinger, my apologies. I
4 know there was something else you wanted to address.

5 MR. HEMMENDINGER: No worries, your Honor. I would
6 like to defer to Mr. Wistow or Mr. Del Sesto. I think
7 they both want to address the Court. I'm not sure who
8 first.

9 THE COURT: Very good.

10 MR. WISTOW: All I'm going to say is that this
11 involves discussions that Mr. Del Sesto has been having
12 with Mr. Halperin and Mr. Hemmendinger has lately been
13 involved. I have not been directly involved in this
14 aspect at all so I will defer to the plan Receiver.

15 THE COURT: Very good.

16 MR. DEL SESTO: Good morning, your Honor.

17 THE COURT: Good morning.

18 MR. DEL SESTO: As your Honor knows, the LLC
19 agreement of which CCCB of which Attorney Hemmendinger is
20 the liquidating Receiver of one of the entities,
21 according to the settlement as well as the LLC agreement,
22 there is a Put option and that is something that needs to
23 be exercised by either CCCB who is holding that interest
24 in trust for the Receiver. As your Honor also knows,
25 there have been many hearings before this Court regarding

1 extension of that timeframe. I believe right now the
2 timeframe is mid February, about February 20th.

3 MR. WISTOW: February 10th.

4 MR. DEL SESTO: I'm sorry, February 10th. I have
5 been having discussions with Attorney Halperin who
6 represents, I believe it's Prospect Holdings East, and
7 speaks often on behalf of all of the Prospect entities
8 regarding the exercise of that put option.

9 Without exhausting the Court's time here, I'll give
10 as much of a short synopsis, hopefully I will be more
11 brief than Attorney Wistow was. There is an appraiser
12 selection process I'll call it. As your Honor knows from
13 discussions, the criteria in the LLC agreement for who
14 that appraiser is, is I will say at best unclear and
15 seems to indicate an individual who would not be really
16 appropriate to value this hospital or who there is nobody
17 in the country that has those qualifications.

18 As your Honor knows, CCCB with prior counsel, Chace
19 Ruttenberg & Freedman, retained a company called ECG out
20 of California. That engagement letter allowed me to
21 interact with that party once the settlement was approved
22 by the Federal Court and they have been in place. To put
23 it very very shortly, they don't qualify under the LLC
24 agreement. I had a discussion with Attorney Halperin,
25 I've had many discussions with Attorney Halperin,

1 regarding that and he agrees with me that the need to
2 identify an appropriate appraiser, rather than one that
3 fits within the four corners of the LLC agreement, is
4 more appropriate.

5 We had a discussion last night and Attorney Halperin
6 indicated to me that his client, Prospect, is agreeable
7 to ECG and that they are identifying a party now who
8 would be their choice for an appraiser. There would be a
9 third neutral as well but at least to have the two
10 parties have an appraiser, but yet he has not had an
11 opportunity to talk with the group that his client has
12 identified and identified whether or not he has questions
13 regarding the qualifications.

14 He has asked me to confirm, and, of course, this is
15 going to be a very vague comment but to confirm that the
16 criteria used to approve ECG would be the same criteria
17 that we used to approve whoever Prospect selects, meaning
18 we don't stick to the four corners of the agreement, but
19 look to rather their qualifications, their ability, or
20 their history of evaluating hospitals within the past two
21 years, I believe the number is three, and just having an
22 overall understanding that they are an appropriate party
23 to conduct evaluations and that those two appraisers will
24 either assist us in identifying if they are neutral or we
25 will collectively identify if they're neutral and then

1 those appraisers will collectively identify the universe
2 of materials that they need to look at in order to value
3 so everybody is looking at apples to apples. That
4 discussion happened last night.

5 I did have a discussion with Attorney Halperin last
6 night, which I will say was left open, on the exercise of
7 the put. The result of that discussion or the last
8 communication I had back from Attorney Halperin was that
9 he stated his - I'm not sure sure if it was his
10 preference. I'll take it as that it was his preference -
11 that the plan Receiver, me, along with Attorney
12 Hemmendinger, as the liquidating Receiver, whoever has to
13 do it or both of us, exercise the put option and then the
14 parties will stipulate that the formal appraisal period
15 will not begin to run until we have the appraisers that
16 we all agree to and we have identified the universe of
17 information that those appraisers will look at to do the
18 valuation. That is subject to him actually engaging in a
19 discussion with the appraiser that his client has
20 recently told him to engage in discussion. He has not
21 been able to do so yet.

22 So I'm letting your Honor know this because we are
23 running up to the February 10th timeframe. I am not
24 adverse to Attorney Halperin's suggestion because as long
25 as we do have that time where the parties can

1 deliberately identify these appraisers and that
2 information. I, obviously, do have concerns about what
3 happens if we can't agree or how much time goes by. I
4 guess I'm asking the Court to schedule a status
5 conference maybe as soon as Monday or subject to your
6 Honor's schedule as soon as your Honor can do it and
7 thinks it's reasonable so Attorney Halperin can report
8 back either to me or to the Court for status of their
9 search for an appraiser so we can identify where we are
10 in that process and maybe formalize a stipulation in line
11 with what he communicated with me last night. Of course,
12 I'm not sure if his client has given him authorization
13 for that. That was text messages between he and I and
14 phone calls. I believe it's appropriate because we are
15 running very close. We're on the 9th day of January now.
16 So we're just outside of 30 days where the put would have
17 to be exercised.

18 THE COURT: Anything else?

19 MR. HEMMENDINGER: Your Honor, if I may. I agree
20 with everything that Mr. Del Sesto has said to the Court
21 and his approach makes good sense to me as well. I just
22 want to express a concern that we all share that in
23 addition to us being just over a month from the deadline
24 for exercising the put or losing the put that, you know,
25 I'm new to this case so maybe it's easy see for me to

1 say, but a lot of these issues with Prospect have hung
2 fire for way too long. It's like pushing a string trying
3 to get Prospect to do even the simplest things. I just
4 want the Court to know and Prospect's counsel to know
5 that my hope for that status conference is to report back
6 an agreement along the lines of what Mr. Del Sesto has
7 conveyed to the Court rather than just when they're going
8 to make another decision on another step towards making
9 an agreement.

10 THE COURT: Thank you.

11 MR. WISTOW: I would like to add one thing. The
12 issue of exercising or not exercising now two receivers,
13 in stipulations that have been filed with the Court the
14 time to exercise the option can be extended if the
15 Receiver or Receivers, I have to look again, I'm not sure
16 which, files a motion for an injunction that was pending
17 as of March 18th. I would like to spare all of us
18 another hearing on a motion for injunction against
19 Prospect, which also includes a request for an extension
20 of the period to exercise the option because of the
21 noncompliance by Prospect.

22 So one thing I'm delighted to hear Mr. Hemmendinger
23 say, this issue with Prospect has been dragging on now
24 interminably about what are we doing here. I just want
25 to tell the Court that if we can't work something out, we

1 may have no choice but to file further motions and
2 perhaps we could request a hearing date for that motion
3 sometime in early February or late January so that if we
4 can't work this out there is some trigger here that is
5 going to be pulled because this has just been dragging
6 on and dragging on. So I am going to ask the Court in
7 fairness to Mr. Halperin, who is not here, I'm going to
8 ask the Court to instruct counsel, if you would, to pick
9 a date to have a hearing on the affirmative injunction
10 that is agreeable to counsel for late January or early
11 February if the Court is available.

12 MR. DEL SESTO: If it assists the Court, your Honor,
13 there is a report scheduled for -- if your clerk could
14 remind me, because we just moved the date because of a
15 conflict.

16 THE CLERK: It's January 27th at 9:30.

17 MR. DEL SESTO: January 27th we have an interim
18 report set down. So if that's a time that is convenient,
19 the parties will already be before your Honor on that
20 date.

21 THE COURT: I want to be very clear. On before the
22 Court today we had a motion in terms of retention of
23 counsel. We had a motion for clarification of the order.
24 I understand the attorneys for Prospect are here in the
25 courtroom. I want to be very clear what the request is,

1 putting the other pieces aside, is for the Court to
2 schedule a conference for the very early part of next
3 week so there can be an agreement either put on the
4 record or an agreement that comes to the Court in writing
5 on this issue to alleviate uncertainty on all sides so
6 everyone can proceed forward.

7 While the Court understands the statements that were
8 made on the record, I want to be very clear. The Court
9 is going to schedule a conference for the early part of
10 the week. You can coordinate with Carin in terms of
11 whether it's Monday or Tuesday. But I am going to ask
12 Attorney Fragomeni to also coordinate with Attorney
13 Halperin's client, and, quite frankly, if Tuesday works
14 better because it may take time to get an answer from
15 their co-counsel, I really do want it to be a conference
16 where out of that comes a result either on the record or
17 by something in writing from the parties.

18 The Court certainly understands that if that is not
19 done we have some urgency here where a hearing may need
20 to be scheduled. The Court is not going to set down a
21 hearing date until after that conference next Monday or
22 Tuesday. I would like to keep the hope because based on
23 at least what has been represented on the record, it
24 seems that it may be in everyone's interest to retain
25 appraisers that do not necessarily strictly comply with

1 the terms of the LLC agreement between the parties
2 themselves and then they can deal with the issues, those
3 other issues that were raised, in terms of when certain
4 things will happen, agreements in terms of documents, the
5 formal appraisal happens. I am happy to hear that if
6 there is a put, the parties are already talking about how
7 that process will proceed forward.

8 I do want to conference the early part of next week.
9 If I need to move things around, I certainly will. I
10 want to make sure that Attorney Fragomeni has the
11 opportunity to coordinate with Attorney Halperin's
12 schedule, but I do want a date on the calendar for the
13 conference by the end of today. Is there anything else?
14 Okay. Thank you all very much.

15 (A D J O U R N E D.)
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