

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 13, 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 THE RECEIVER

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 5, inclusive, are a true and accurate transcript of my stenographic notes.



GINA GIANFRANCESCO GOMES
COURT REPORTER

MONDAY, JANUARY 13, 2020

AFTERNOON SESSION

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3 THE CLERK: Your Honor, the matter before the Court
4 is PC-2019-11756, In Re: CharterCare Community Board.
5 Would counsel please identify yourselves for the record.

6 MR. DEL SESTO: Good afternoon, your Honor. Stephen
7 Del Sesto, the plan Receiver.

8 MR. WISTOW: Max Wistow, counsel for the plan
9 Receiver.

10 MR. SHEEHAN: Stephen Sheehan, counsel for the plan
11 Receiver.

12 MR. LEDSHAM: Benjamin Ledsham, counsel for the plan
13 Receiver.

14 MR. HEMMENDINGER: Thomas Hemmendinger, liquidating
15 Receiver.

16 MR. FRAGOMENI: Chris Fragomeni for the Prospect
17 entities.

18 THE COURT: After the hearing last week, we
19 conferenced in chambers early this afternoon and the
20 parties agreed that we would place some statements on the
21 record. Whichever counsel is going to present you may
22 proceed.

23 MR. DEL SESTO: Good afternoon, your Honor. As you
24 stated at the last hearing, I think I actually am the one
25 who requested this conference regarding -- this all

1 surrounds the exercise of the put as it pertains to the
2 LLC agreement between the Prospect entities and
3 CharterCare Community Board, which is now under the
4 control of the liquidating Receiver but through
5 Settlement A has an ongoing obligation with regard to the
6 plan Receiver and the other defendants in the federal
7 litigation.

8 Essentially, your Honor, the parties, Prospect and
9 the plan Receiver and the liquidating Receiver had been
10 discussing the terms of the exercise of that put option.
11 In particular, we have been talking about the selection
12 of appraisers. As your Honor knows, the LLC agreement
13 sets forth several criteria which require for that
14 appraiser. However, Attorney Halprin and I, I believe it
15 actually predates Attorney Hemmendinger's appointment,
16 started discussing the practicality of those requirements
17 and whether or not the parties could agree to at least
18 eliminate some of them so we could expand the universe of
19 the eligible parties for this valuation.

20 After several discussions and e-mails back and
21 forth, at this point Prospect has indicated an agreement
22 that the appraiser that had been selected by Mr.
23 Hemmendinger's predecessors and Chace Ruttenberg &
24 Freedman when they were counsel to CharterCare Community
25 Board, which is ECG Services out of California - they are

1 based out of California - is an acceptable appraiser for
2 purposes of this exercise. We have to -- ECG that is,
3 has to meet the same criteria that Prospect's ultimate
4 selection will have to meet as well, which is three
5 hospital valuations within the past 24 months. I believe
6 just experience within the field, and I think that might
7 be the last one, but Attorney Fragomeni can correct me if
8 I missed one. Those are really the two main ones and
9 then those parties and Prospect, the liquidating Receiver
10 and the plan Receiver will work to identify a third
11 mutual appraiser for that exercise as well, your Honor,
12 under the same criteria.

13 So at this point, subject to Attorney Fragomeni
14 correcting me, Prospect has agreed that ECG is
15 acceptable, and for my purposes, for the purposes of the
16 liquidating Receiver, that's good news for us. That at
17 least puts that piece aside while we wait for Prospect's
18 selection and then the appraisers can get together and
19 identify the universe of information that they are going
20 to review in order to come to a valuation and we also
21 agreed to certain time frames. As your Honor may recall,
22 the put needs to be exercised, I believe, by February
23 10th. So we're just inside 30 days of that timeframe so
24 we still have a little time, but not much.

25 MR. WISTOW: May I have a moment?

1 THE COURT: Of course.

2 MR. DEL SESTO: Your Honor, I do want to place on
3 the record that while all of these discussions are moving
4 towards whether or not the put will be exercised, it is
5 likely that that will happen but we have not definitively
6 exercised that but I just want to make that clear for the
7 record.

8 MR. FRAGOMENI: Good afternoon, your Honor. Chris
9 Fragomeni for the Prospect entities. I appreciate that
10 clarification by Mr. Del Sesto because I was going to say
11 just for the record I don't believe anything has been
12 formally been initiated yet so I do appreciate that
13 clarification. I can confirm Mr. Del Sesto's
14 representations that ECG is acceptable to Prospect with
15 the caveat as Mr. Del Sesto indicated that ECG satisfies
16 Section 14.6(c) of the agreement which requires they have
17 substantial experience in the area and have conducted
18 three hospital valuations within a 24-month period. So
19 long as those criteria are met, ECG is acceptable to
20 Prospect. Thank you, your Honor.

21 THE COURT: Thank you very much. Just so I'm clear,
22 there is an LLC agreement between, I believe, CCCB and
23 Prospect that requires certain things in terms of an
24 appraisal that is acceptable. What we're talking about
25 here is what has been agreed to here was both parties

1 have agreed to depart from that specific language based
2 on what was on the record.

3 MR. DEL SESTO: That's correct, your Honor.

4 THE COURT: That's fine. And I understand that some
5 of the other things that we talked about on the record in
6 terms of universe of information and time periods, the
7 parties can continue to do best efforts do work through.
8 Certainly, if the put is, in fact, exercised, Prospect
9 will need to identify their appraiser. The parties will
10 continue to work together. Thank you very much.

11 Counsel, if you wish you can reduce that to writing.
12 The Court will enter it. And also I feel comfortable we
13 have a clear transcript in terms of the agreement.
14 Anything else?

15 MR. DEL SESTO: No, your Honor.

16 THE COURT: Thank you all very much. The Court is
17 in recess.

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