

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PROVIDENCE, SC. SUPERIOR COURT

ST. JOSEPH'S HEALTH SERVICES OF )  
RHODE ISLAND )  
)  
)  
)  
VS. ) C.A. NO. PC-2017-3856  
)  
)  
)  
ST. JOSEPH'S HEALTH SERVICES OF )  
RHODE ISLAND RETIREMENT PLAN )

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON SEPTEMBER 6, 2018

**APPEARANCES:**

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER  
MAX WISTOW, ESQUIRE.....SPECIAL COUNSEL  
STEPHEN SHEEHAN, ESQUIRE.....FOR THE RECEIVER  
ANDREW DENNINGTON, ESQUIRE.....FOR CHARTERCARE  
RUSSELL CONN, ESQUIRE.....FOR CHARTERCARE  
SEAN LYNESS, ESQUIRE.....FOR THE ATTORNEY GENERAL

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



GINA GIANFRANCESCO GOMES  
COURT REPORTER

1 THURSDAY, SEPTEMBER 6, 2018

2 MORNING SESSION

3 THE COURT: Good morning. Madam Clerk, if you would  
4 please call the case.

5 THE CLERK: Your Honor, the matter before the Court  
6 is PC-2017-3856, St. Joseph's Health of R.I. v. St.  
7 Joseph's Health Services of R.I. Retirement Plan. This  
8 matter is on for CharterCARE's petition of admission pro  
9 hac vice as well as the Receiver's motion to lift the  
10 confidentiality. Would counsel please identify  
11 themselves for the record.

12 MR. DENNINGTON: Your Honor, Andrew Dennington for  
13 Charter Care Foundation.

14 MR. CONN: Russell Conn for CharterCARE Foundation.

15 MR. LYNESS: Sean Lyness, Special Assistant Attorney  
16 General on behalf of the Department of Attorney General.

17 MR. DEL SESTO: Stephen Del Sesto, the  
18 Court-appointed Receiver, your Honor.

19 MR. WISTOW: Max Wistow, counsel to the Receiver.

20 MR. SHEEHAN: Stephen Sheehan, also counsel to the  
21 Receiver.

22 THE COURT: Very good. Counsel, I want to begin, I  
23 know it was recently filed as well as the motion for pro  
24 hac vice. I don't know if the parties had the  
25 opportunity to consider whether there is objection.

1 MR. SHEEHAN: We told Mr. Conn there is no  
2 objection.

3 MR. CONN: Your Honor, Mr. Bielecki is the  
4 sponsoring counsel. He is across the hall in another  
5 courtroom. He said he could be here to sponsor it. It  
6 has been allowed in cy pres.

7 THE COURT: Right. And based on that and  
8 understanding that Attorney Bielecki is in the building  
9 as I went through on the cy pres petition, he certainly  
10 understands his responsibilities with respect to the  
11 case. The Court has reviewed the papers and does approve  
12 your pro hac vice admission. You are admitted to this  
13 case.

14 MR. CONN: Thank you very much.

15 THE COURT: And I just ask if you would let Mr.  
16 Bielecki know if you would submit the appropriate order.

17 MR. CONN: Thank you.

18 THE COURT: The motion on for today is a motion to  
19 lift the confidentiality as to certain documents. The  
20 Court has had of the opportunity to review the Receiver's  
21 Special Counsel's papers in this case. The Court also  
22 received a response from the Rhode Island Attorney  
23 General's Office; Prospect CharterCARE, LLC; Prospect  
24 Medical Holdings, Inc.; Prospect East Holdings, Inc.; and  
25 received also a filing from the CharterCARE Foundation as

1 well as a corrected response that was filed last evening.  
2 So the Court has those papers. I would ask the Special  
3 Counsel and the Receiver to be heard with respect to  
4 that.

5 MR. WISTOW: Very briefly, your Honor. As your  
6 Honor is aware, we requested that the Court lift the  
7 provisional confidentiality order with regard to some  
8 specific submissions that were made jointly by the  
9 applicants who were seeking the approval of the Office of  
10 the Attorney General of the hospital conversion of 2014.  
11 And specifically we're asking for the declassification,  
12 if I may call it that, for a specific use in the motion  
13 to intervene in the proceedings relating to the 2015 cy  
14 pres petition, not to say that you don't want to use this  
15 generally, but we do have the motion to intervene on the  
16 13th of this month. We believe these documents are  
17 relevant, the specific document is what was identified as  
18 attorney general 14-135384 through 14-135425. I believe  
19 that's 42 pages. And what we have in response here, we  
20 have the A.G. specifically says and I quote, "Indeed the  
21 attorney general concurs with the importance of  
22 unearthing the misrepresentations to the attorney general  
23 as alleged by the Receiver in his motion." Accordingly,  
24 the attorney general asked the Court to make a  
25 determination as to whether the document in whole or in

1 part may be disclosed, but underscores that altering the  
2 confidential status of submitted documents under the  
3 Hospital Conversion Act is not done in the ordinary  
4 course, which I submit is self-evident. This kind of  
5 case is not in the ordinary course.

6 So the bottom line is the A.G. is asking this Court  
7 to make a decision. Prospect CharterCARE has  
8 specifically joined the A.G.'s petition. The CharterCARE  
9 Foundation is represented by newly admitted counsel here  
10 has joined with the Receiver's motion which is just to  
11 free it up.

12 Just to give a very brief background, on November  
13 29, 2017, when we were still trying to get the relevant  
14 documents to try to figure out what the case was all  
15 about, the Court issued an order, and as part of the  
16 transcript the Court said at the time the Court will also  
17 then take up, at the request of Special Counsel, whether  
18 or not these records should at some point become part of  
19 the public record. Rather than going through a process  
20 that may require briefing and other issues, the Court  
21 will issue a protective order to allow for immediate  
22 disclosure to the Special Master and Special Counsel of  
23 those documents that are deemed confidential by the  
24 Attorney General's Office and as a result we obtained  
25 these particular documents. Now, the request has been

1 made to your Honor by the A.G. to decide whether or not  
2 to release these, and your Honor we have submitted the  
3 documents under seal to the Court.

4 THE COURT: And I had the opportunity to review  
5 them.

6 MR. WISTOW: To me, it's absolutely self-evident.  
7 We feel it's highly material the question of who knew  
8 what about the pension and what did they know. And there  
9 is nothing remotely confidential in the sense of this is  
10 going to be of use to competitors or involved trade  
11 secrets or any other recognized level of confidentiality  
12 that any Court that I'm familiar with that has ever said  
13 was confidential.

14 Now, the statute that we're talking about that  
15 allowed the attorney general to designate these  
16 confidential depositions is very, very, very specific as  
17 to who is bound by that and I will just read it to your  
18 Honor. It's 23-17.14-32(a), which is part of the  
19 Hospital Conversion Act, and it says, "The attorney  
20 general has the power to decide whether any information  
21 required by this chapter of an applicant is confidential  
22 and/or proprietary. The decision by the attorney general  
23 shall be made prior to any public notice of an initial  
24 application or any public review of any information."  
25 Here is the important part. "And shall be binding on the

1 attorney general, the Department of Health, and all  
2 experts or consultants engaged by the attorney general or  
3 the Department of Health."

4 So clearly what we're talking about here is in case  
5 there's a FOIA, Freedom of Information Act, application  
6 or a Public Records Act application, the statute is  
7 saying that the attorney general or the Department of  
8 Health can withhold these. It mentions nothing about law  
9 suits, and to suggest -- this is the statute regarding  
10 confidentiality. To suggest that there is an implied  
11 limitation on this Court raises all sorts of  
12 constitutional questions of whether or not the  
13 legislature could if they intended limit the Court's  
14 ability to make it, but there is no such constitutional  
15 issues. Nobody is going to imply the limitations on the  
16 Court when the legislature is absolutely clear on who is  
17 bound.

18 So for all of those reasons, your Honor, we would  
19 ask that you free up, if I may use the colloquialism, the  
20 documents we requested so we can use them on the hearing  
21 on the 13th. Thank you.

22 THE COURT: I did receive the papers from the  
23 attorney general and others. Would any of the other  
24 parties like to be heard?

25 MR. LYNESS: If I may briefly, your Honor. Good



1 morning, your Honor. Sean Lyness from the Department of  
2 Attorney General. Special Counsel is absolutely correct,  
3 the attorney general does not have an objection to the  
4 present motion. I would just like to very briefly  
5 emphasize the attorney general holds responsibilities and  
6 obligations under the Hospital Conversion Act in  
7 particular with respect to confidentiality  
8 determinations. Notwithstanding, we certainly recognize  
9 this is a truly exceptional and unique case and we  
10 respectfully refer to your Honor's judgment on this  
11 motion.

12 THE COURT: Thank you very much. Counsel.

13 MR. CONN: Just very briefly. We did support the  
14 request to be classified confidentiality. Mr. Wistow is  
15 relying on it in his intervention papers and we haven't  
16 seen it. The Court has seen it. He has seen it. We  
17 need to see it so we will be able to respond to it at the  
18 hearing. Thank you.

19 THE COURT: Thank you. The Court not only has had  
20 the opportunity to review the papers, but the Court under  
21 what is called an in-camera review, the Court has had an  
22 opportunity to review those documents which are bate  
23 stamped documents, EGE14135384 and EGE14135425. So the  
24 Court has reviewed the documents and considered the  
25 papers and the following is the Court's ruling:

1           On November 29, 2017, this Court heard Special  
2 Counsel's motion to compel production of certain records  
3 from the Rhode Island Attorney General. Among those  
4 records was the document filed originally submitted to  
5 the attorney general around 2014 in connection with the  
6 St. Joseph's Hospital Conversion Act proceedings. The  
7 attorney general characterized the documents as  
8 confidential pursuant to R.I. General Laws  
9 23-17.14-32(a).

10           This Court allowed Special Counsel's motion to  
11 compel on the condition that the documents among other  
12 papers be designated or continue to be designated as  
13 confidential. At the same time, as Attorney Wistow just  
14 pointed out, this Court expressly reserves the right to  
15 hear future requests by the Special Counsel to unseal  
16 certain records. The confidentiality order entered into  
17 provides for the classification procedure whereby the  
18 Special Counsel could, with notice to the attorney  
19 general, St. Joseph's Health Services, Prospect's request  
20 for unsealed records subject to that order.

21           On June 18th after investigation, Special Counsel  
22 filed a complaint both from the U.S. District Court of  
23 the District of Rhode Island, and the Providence Superior  
24 Court alleging that Prospect entities misrepresented  
25 financial information in connection with the St. Joseph's

1 cy pres proceeding. The Receiver asserts that the  
2 Hospital Conversion Act proceedings were similarly taken  
3 by assurances that certain pension obligations would be  
4 honored. The Receiver contends the documents  
5 substantiate the alleged misrepresentations.

6 After hearing from the parties and reviewing the  
7 papers, the Court finds pursuant to the Rhode Island  
8 Hospital Conversion Act, the legislature gave the  
9 attorney general the power to determine whether any  
10 information sought from an application is confidential  
11 and/or proprietary. The purpose of this provision is to  
12 ensure candor and forthrightness with notice of the  
13 materials.

14 As the attorney general properly notes in its  
15 submission, many healthcare documents subject to a  
16 conversion application are confidential in nature.  
17 Moreover, the attorney general does not routinely reverse  
18 the confidentiality status of documents so labeled. This  
19 Court is mindful of the confidentiality principles and  
20 the Hospital Conversion Act does not override the  
21 attorney general's determination or consider them absent  
22 strong countervailing policies. At the same time the  
23 statute only precludes public disclosure by the attorney  
24 general, the Department of Health and the respective  
25 agents. Therefore, the Court may order public

1 disclosure of confidential conversion records.

2 Our Supreme Court explained in the context of the  
3 Access of Public Records Act that disclosure of  
4 confidential information may be appropriate where the  
5 public interest and disclosure is manifest and the  
6 disclosure would not impair the government's ability to  
7 obtain necessary information in the future. Of  
8 particular importance, disclosure is sometimes necessary  
9 to establish the legitimacy of claims as a function of  
10 the judicial process, indisputably this proceeding. Our  
11 Supreme Court has at times declined to recognize certain  
12 privileges even where a statute manifests and effectuates  
13 an important legislature policy favoring confidentiality  
14 and generally prohibits disclosure of information.

15 In other words, this judiciary holds in high regard  
16 confidentiality concerns surrounding the H.C.H. process.  
17 The two recognizes a need to order disclosure on certain  
18 occasions of records initially established as  
19 confidential. Unsealing, declassifying this document  
20 invokes a powerful public interest to help establish  
21 whether the H.C.H. proceedings in this matter were fraud  
22 with any misrepresentations or false assurances regarding  
23 the pension obligations. On the other side of the  
24 equation an order to unseal the documents will not likely  
25 deter future applicants' candor with the attorney

1 general.

2 As this Court has stressed, it does not take likely  
3 unsealing documents submitted under the Hospital  
4 Conversion Act process. Neither the attorney general nor  
5 Prospect Entities has expressed opposition to the order  
6 to unseal. The documents involved information from  
7 several years ago and their contents contained  
8 potentially significant matters affecting the pensions  
9 and the lives of many. Other than a reference to general  
10 confidentiality principles this Court has heard no basis  
11 for denying the motion to unseal the documents.  
12 Balancing confidentiality considerations against the  
13 needs to uncover potential misrepresentations, this Court  
14 deems it appropriate to unseal the documents in an effort  
15 to bring the truth to life.

16 For the foregoing reasons, this Court finds the  
17 public interest in unsealing the documents outweighs the  
18 interest in maintaining confidentiality granted by the  
19 attorney general on these narrowed facts. Therefore, the  
20 motion is granted. I would ask counsel to please submit  
21 the appropriate order.

22 MR. WISTOW: I will, your Honor.

23 THE COURT: I would like to address two other  
24 issues. The Court received this morning an emergency  
25 motion from CharterCARE Foundation to postpone the

1 September 13th hearing that this Court scheduled with  
2 respect to a proposed settlement. The Court received  
3 that this morning. I imagine counsel just received it as  
4 well. As it's an emergency motion, the Court will review  
5 any response and will hear that motion at 3:00 p.m.  
6 tomorrow. The parties can arrange whether this will be  
7 an on-the-record call with the court reporter or whether  
8 we will appear in court for the motion itself at 3:00  
9 tomorrow. If there is no agreement, we will be hearing  
10 it in this courtroom at 3:00 p.m. tomorrow.

11 The second issue I want to bring up is also on the  
12 13th is a motion by the Receiver and Special Counsel to  
13 intervene in the CharterCARE Foundation matter. The  
14 Court has had the opportunity to review the extensive  
15 briefings by both sides and I know we had oral argument.  
16 I just want to point out to the parties now that I've  
17 read the papers, that while I appreciate all the  
18 briefing, the issue before the Court is intervention.  
19 There is a lot in the papers dealing with issues once an  
20 intervention if it happens.

21 I just want to be clear what the Court is most  
22 interested in in oral argument is whether or not the  
23 elements have been reached as far as the Court granting  
24 intervention in the case. While I appreciate some of the  
25 other briefings on some of the other underlying issues

1 and it may very well be relevant to that inquiry, I  
2 thought it would be prudent to bring that up so at least  
3 the parties are focused on what the Court will be  
4 considering. Is there anything else from the parties?

5 MR. WISTOW: I just want to make sure I understood  
6 your Honor's instructions to us about the 3:00 o'clock  
7 tomorrow. Do I understand correctly if there is a  
8 possibility that we would agree to something that we  
9 don't need to hear it. I can tell you now we vigorously  
10 oppose. I think we need to do it in open court.

11 THE COURT: And that's fine. What I envision more  
12 is if the parties had reached some sort of halfway or  
13 arrangement we can put something on the record. That's  
14 why I said both sides need to agree. As I said, the  
15 default if you can get your papers filed this evening for  
16 me, so I have an opportunity to review if there is  
17 anything you want to submit. If you want to make your  
18 arguments on the record, that's fine. This is scheduled  
19 for next week. The Court did agree to scheduling what I  
20 believe is nine days' notice instead of ten, but we have  
21 an emergency motion on. I want to give both sides the  
22 opportunity to be heard.

23 MR. WISTOW: That's fine, your Honor. I can tell  
24 your Honor there will be no agreement about any kind of  
25 continuance.

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THE COURT: Then I'll see you all at 3:00 tomorrow.  
Thank you very much. The Court will be in recess.

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