

UNITED STATE 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. :

C. A. No. 18-cv-00328-WES-LDA

PROSPECT CHARTERCARE, LLC, et al. :

Defendants. :

**PLAINTIFFS’ OBJECTION TO THE PROSPECT DEFENDANTS’
MOTION TO FILE A SUR-REPLY**

Plaintiffs object to the Prospect Defendants Motion to File a Sup-Reply (Dkt. # 87).

The Prospect Defendants seek to justify a sur-reply for three inapplicable and erroneous reasons:

- (i) the length and scope of the Reply;
- (ii) the Reply’s assertion of arguments outside the scope of those set forth in the Opposition; and
- (iii) the novelty of the issues presented.

As to (i), Plaintiffs make no apology for the length and scope of the Reply. In their objection to the settlement (Dkt. ## 75 and 75-1), the Prospect Defendants raised many issues, mostly in a perfunctory manner, and failed, in many instances, to advise

the Court of controlling law that eviscerates many of their arguments. These issues deserved the extended treatment Plaintiffs gave to them.

As to (ii), the Prospect Defendants make, as seems to be their wont, sweeping and unsupportable generalizations. The Reply covered only the arguments made by the Prospect Defendants. A glance at the Table of Contents in Plaintiffs' Reply makes this clear. There is not one argument that Plaintiffs made that is not in direct response to an argument made by Prospect Defendants.

As to (iii), Prospect points to the "novelty" of unidentified issues. But the issues are by no means novel. If one accepts the Prospect Defendants' arguments, the law is well-settled and clearly on their side on each and every point they make. They claim they are right and we are wrong. If, on the other hand, one credits Plaintiffs' arguments and the cases in support thereof, Plaintiffs are clearly right – the Prospect Defendants' wrong.

The Prospect Defendants have had ample opportunity to brief all the issues involving the settlement.

The Motion for Approval and Memorandum in Support (submitted jointly by the Receiver along with the seven individually named Plaintiffs and the settling Defendants) was filed with this Court on November 21, 2018. (Dkt. ## 63 and 63-1). But the non-settling Defendants were served almost three months earlier with the precise settlement in question. It was already executed by all of the Plaintiffs herein, and the Settling Defendants. Counsel for the Prospect Defendants were served with the settlement on September 4, 2018, the day it was submitted for approval by the Superior Court. (Dkt. # 63-3).

On September 27, 2018, each and every one of the Prospect Defendants filed their joint objection to this settlement in the Superior Court. (Dkt. # 63-5).

The Prospect Defendants had from September 4, 2018 to consider and formulate their objections to the settlement. During the nearly four (4) months until December 24 (when they filed their objection) they succeeded in producing a memorandum in opposition to the settlement that was so legally unsupported and generally disorganized that plaintiffs were unable to reply to their presentation in what would have been the normal manner: addressing each argument *seriatim*.

Instead, Plaintiffs were forced to address each issue raised by the Prospect Defendants, however cavalierly that argument had been advanced, in a logical format that they believed would aid the court in deciding the settlement issues. Plaintiffs simply did not go beyond those issues raised by the Prospect Defendants.

There is nothing in the Prospect Defendants' request to file a sur-reply that justifies a possible delay of the hearing now scheduled for February 7, 2019.

There are over 2,700 individuals (and an additional unknown number of their family members) who have been on tenterhooks since August 18, 2017. That was the date on which St. Joseph Health Services of Rhode Island petitioned the Retirement Plan into receivership in the Rhode Island Superior Court. The Petition stated that the Plan was "severely underfunded" and that an immediate 40% uniform reduction in benefits be set for hearing in thirty (30) days." (Dkt. # 65-1). While neither that reduction, nor any other, has yet been ordered by the Superior Court, the Plan's continued viability is unclear and depends on the outcome of this litigation.

The proposed settlement represents the first good news for the Plan participants, and the Plaintiffs are anxious to go forward.

CONCLUSION

The Prospect Defendants' Motion should be denied.

Respectfully submitted,

All Plaintiffs,

By their Attorney,

/s/ Max Wistow

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Dated: January 28, 2019

LR Cv 7(c)

While the Prospect Defendants have requested upwards of an hour of oral argument on their motion, Plaintiffs believe no oral argument is necessary.

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the within document was electronically filed on the 28th day of January, 2019 using the Electronic Case Filing system of the United States District Court and is available for viewing and downloading from the Electronic Case Filing system. The Electronic Case Filing system will automatically generate and send a Notice of Electronic Filing to the following Filing Users or registered users of record:

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