

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD (through
THOMAS S. HEMMENDINGER as Permanent
Liquidating Receiver), individually and derivatively, as
member of PROSPECT CHARTERCARE, LLC and
as trustee of the beneficial interest of its membership
interest in PROSPECT CHARTERCARE, LLC; and
STEPHEN DEL SESTO, as receiver and administrator
of the St. Joseph Health Services of Rhode Island
Retirement Plan and as holder of the beneficial interest
of CHARTERCARE COMMUNITY BOARD's
membership interest in PROSPECT CHARTERCARE,
LLC,

Plaintiffs,

v.

C.A. No.: PC-2019-3654

SAMUEL LEE; DAVID TOPPER; THOMAS
REARDON; VON CROCKETT; EDWIN SANTOS;
EDWARD QUINLAN; JOSEPH DISTEFANO; ANDREA
DOYLE; PROSPECT EAST HOSPITAL ADVISORY
SERVICES, LLC; PROSPECT CHARTERCARE, LLC;
PROSPECT EAST HOLDINGS, INC.; PROSPECT
MEDICAL HOLDINGS, INC.; IVY HOLDINGS INC.;
IVY INTERMEDIATE HOLDING INC.; DAVID &
ALEXA TOPPER FAMILY TRUST; GREEN EQUITY
INVESTORS V, LP; GREEN EQUITY INVESTORS
SIDE V, LP; JPMORGAN CHASE BANK, N.A. as
Administrative agent and collateral agent for certain
lenders; ABC CORPS 1-10; JOHN DOE 1-10; and
JANE DOE 1-10,

Defendants.

**ANSWER OF PROSPECT MEDICAL HOLDINGS, INC., PROSPECT EAST
HOLDINGS, INC., PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC, AND
PROSPECT CHARTERCARE, LLC**

NOW COME Prospect Medical Holdings, Inc. ("Prospect Medical"), Prospect East Holdings, Inc. ("Prospect East"), Prospect East Hospital Advisory Services, LLC ("Prospect Advisory") and Prospect Chartercare, LLC ("Prospect Chartercare," or collectively with Prospect

Medical, Prospect East, and Prospect Advisory, “Prospect”), and hereby answer the above-captioned plaintiffs’ Verified First Amended and Supplemental Complaint as follows:

PARTIES

A. THE PLAINTIFFS

1. Admitted that CCCB holds a membership interest in Prospect Chartercare. In further answering, however, CCCB’s membership interest in Prospect Chartercare is subject to setoff or reduction to the extent that CCCB does not satisfy its indemnification obligations pursuant to the Amended and Restated Limited Liability Company by and between CCCB, Prospect East, and Prospect Chartercare dated June 20, 2014 (“LLC Agreement”). As to the remainder of the allegations in paragraph 1, denied inasmuch as the agreement dated as of August 31, 2018 (“Agreement”) speaks for itself.

2. Admitted.

3. Admitted.

4. Admitted that CCCB, St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital filed a petition for judicial dissolution on December 13, 2019. As to the remainder of the allegations in paragraph 4, denied inasmuch as the petition speaks for itself.

5. Admitted.

6. Admitted that Stephen Del Sesto (“Del Sesto”) is the receiver of the SJHSRI Retirement Plan (“Plan”). The remainder of the allegations in paragraph 6 are denied inasmuch as the Agreement provides the beneficial interest that Del Sesto holds and that Agreement speaks for itself.

B. THE DEFENDANTS

7. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 7 and therefore denies same.

8. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 8 and therefore denies same.

9. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 9 and therefore denies same.

10. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 10 and therefore denies same.

11. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 11 and therefore denies same.

12. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 12 and therefore denies same.

13. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 13 and therefore denies same.

14. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 14 and therefore denies same.

15. Admitted that Prospect Advisory is a limited liability company organized under the laws of the State of Delaware with a principal office in Los Angeles, California. The remainder of the paragraph is denied.

16. The citizenship of Prospect Chartercare for purposes of diversity jurisdiction is a legal conclusion and does not require a response, and, to the extent that an answer is required, denied. The remainder of paragraph 16 is admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 20 and therefore denies same.

21. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 21 and therefore denies same.

22. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 22 and therefore denies same.

23. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 23 and therefore denies same.

24. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 24 and therefore denies same.

25. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 25 and therefore denies same.

26. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 26 and therefore denies same.

27. Prospect is without sufficient knowledge to admit or deny the allegations of paragraph 27 and therefore denies same.

JURISDICTION AND VENUE

28. Paragraph 28 sets forth a legal conclusion and therefore does not require a response.

If a response is required, denied.

29. Paragraph 29 sets forth a legal conclusion and therefore does not require a response.

If a response is required, denied.

30. Paragraph 30 sets forth a legal conclusion and therefore does not require a response.

If a response is required, denied.

31. Paragraph 31 sets forth a legal conclusion and therefore does not require a response.

If a response is required, denied.

32. Paragraph 32 sets forth a legal conclusion and therefore does not require a response.

If a response is required, denied.

SUPER. R. CIV. P. 23.1 ALLEGATIONS

33. Admitted.

34. Denied.

35. The entirety of paragraph 35 is denied.

FACTS

A. ALLOWING PROSPECT EAST AND PROSPECT MEDICAL HOLDINGS TO FAIL TO FUND THE \$50 MILLION LONG-TERM CAPITAL COMMITMENT.

36. Admitted that as of September 24, 2013, Prospect East, Prospect Chartercare, and other parties, entered into an Asset Purchase Agreement (“APA”). The remainder of paragraph 36 is denied inasmuch as the APA speaks for itself.

37. Denied.

38. Admitted.

39. Denied inasmuch as the LLC Agreement speaks for itself.

40. Denied inasmuch as the LLC Agreement speaks for itself.

41. Denied.

42. Admitted that Samuel Lee, on behalf of Prospect Medical Holdings, executed a Guaranty dated May 23, 2014. The remainder of paragraph 42 is denied.

43. Denied inasmuch as obligations of Prospect Chartercare are set forth in the LLC Agreement and that LLC Agreement speaks for itself.

44. Denied.

45. Admitted that by letter dated December 13, 2016 (“December 13, 2016 Letter”), Chartercare Health Partners wrote to the Attorney General. The remainder of paragraph 45 is denied inasmuch as the December 13, 2016 Letter speaks for itself.

46. Admitted that by letter dated December 16, 2016 (“December 16, 2016 Letter”), Attorney General Katie Enright responded to the December 13, 2016 Letter. The remainder of paragraph 46 is denied inasmuch as the December 16, 2016 Letter speaks for itself.

47. Denied.

48. Denied.

49. Denied.

50. Denied inasmuch as the LLC Agreement speaks for itself.

51. Admitted.

52. Denied.

53. Denied.

54. Denied.

B. PERMITTING REFUSALS TO PROVIDE INFORMATION ABOUT THE LONG TERM CAPITAL COMMITMENT AND ACCOUNTS RECEIVABLE.

55. Denied.

56. Denied.

57. Denied that there were any refusals, and denied inasmuch as the LLC Agreement speaks for itself.

58. Denied that there were any refusals. Further, whether an action or inaction violates a statute is a legal conclusion that does not require a response, and to the extent that a response is required, denied.

59. Denied that there were any refusals. The remainder of paragraph 58 is denied inasmuch as Prospect does not have sufficient knowledge as to Plaintiffs belief.

60. Denied.

61. Denied inasmuch as the LLC Agreement speaks for itself.

62. Denied.

63. Denied.

C. EXPOSING PROSPECT CHARTERCARE TO LIABILITY IN CONNECTION WITH MUNICIPAL TAX STABILIZATION AGREEMENTS.

1. With the City of Providence

64. Admitted that counsel to Prospect Medical sent a letter dated March 13, 2014 (“March 13, 2014 Letter”) to Michael Solomon, president of the Providence City Council. The remainder of paragraph 64 is denied.

65. Denied inasmuch as the March 13, 2014 Letter speaks for itself.

66. Admitted.

67. Admitted.

68. Admitted.

69. Admitted.

70. Admitted.

71. Admitted.

72. Admitted that on June 19, 2014 and June 23, 2014, the Providence City Council voted to adopt the ordinance. The remainder of paragraph 72 is denied.

73. Denied.

74. Denied.

75. Denied.

2. With the Town of North Providence

76. Admitted that on May 6, 2014, the North Providence Town Council publicly met to discuss a tax exemption/stabilization Ordinance as requested by counsel for Prospect Chartercare. The remainder of paragraph 76 is denied.

77. Admitted.

78. Denied as to the characterization of the substance of the concerns of the members of the North Providence Town Council. Admitted that there was discussion that regarding “ramp up” taxation on such property during a ten-year period.

79. Admitted that Chris Callaci testified before the North Providence Town Council. The remainder of paragraph 79 is denied.

80. Admitted.

81. Admitted.

82. Admitted that the meeting was attended by counsel for Prospect Chartercare, who testified. The remainder of paragraph 82 is denied.

83. Admitted.

84. Admitted in part; denied in part inasmuch as counsel only appeared on behalf of Prospect Chartercare.

85. Admitted.

86. Denied.

87. Denied.

88. Denied.

D. THE DIVIDENDS

89. Denied.

90. Denied inasmuch as the financial statements speak for themselves.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied inasmuch as the financial statements speak for themselves.

97. Denied inasmuch as the financial statements speak for themselves.

98. Denied inasmuch as the financial statements speak for themselves.

99. Denied inasmuch as the financial statements speak for themselves.

100. Denied.

101. Denied.

102. Denied.

E. THE SETTLEMENT BETWEEN CCCB, THE PLAN RECEIVER, AND OTHERS

103. Admitted.

104. Denied inasmuch as the Agreement provides the beneficial interest that Del Sesto holds and that Agreement speaks for itself

105. Admitted that on September 13, 2018 counsel for Prospect Medical and Prospect East delivered a letter captioned “Re: Notice of Dispute” to CCCB, its counsel, and CCCB’s President (“Notice of Dispute”). The remainder of the paragraph is denied inasmuch as the Notice of Dispute speaks for itself.

106. Denied.

F. FORUM SELECTION CLAUSES

107. Denied inasmuch as the LLC Agreement speaks for itself.

108. Denied inasmuch as the Guaranty speaks for itself.

109. Paragraph 109 sets forth a legal conclusion and therefore requires no response. To the extent that a response is required denied inasmuch as the LLC Agreement speaks for itself.

CAUSES OF ACTION

COUNT I (SPECIFIC PERFORMANCE OF CONTRACTUAL OBLIGATIONS, DERIVATIVELY)

110. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 109 as if set forth fully herein.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

COUNT II (SPECIFIC PERFORMANCE OF CONTRACTUAL OBLIGATIONS, NON-DERIVATIVELY)

116. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 109 as if set forth fully herein.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

COUNT III (BREACH OF CONTRACT – FAILURE TO PROVIDE REQUESTED INFORMATION)

122. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 109 as if set forth fully herein.

123. Admitted in part inasmuch as Prospect Chartercare's contractual duty to provide CCCB with books and records is limited to certain books and records as provided in the LLC Agreement and common law, which Prospect has already provided to CCCB. The remainder of paragraph 123 is denied.

124. Admitted in part inasmuch as Prospect Chartercare's statutory duty to provide CCCB with books and records is limited to certain books and records as provided under Rhode Island law and common law, which Prospect has already provided to CCCB. The remainder of paragraph 124 is denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

COUNT IV (VIOLATION OF STATUTORY DUTY TO PROVIDE REQUESTED INFORMATION)

129. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 109 as if set forth fully herein.

130. Denied.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

COUNT V (BREACH OF FIDUCIARY DUTY, DERIVATIVELY)

135. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 109 as if set forth fully herein.

136. Paragraph 136 sets forth a legal conclusion and therefore does not require a response. If a response is required, denied.

137. Denied.

138. Denied.

139. Denied.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

COUNT VI (BREACH OF FIDUCIARY DUTY, NON-DERIVATIVELY)

140. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 109 as if set forth fully herein.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

COUNT VII (AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY, DERIVATIVELY)

145. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 144 as if set forth fully herein.

146. Denied.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

COUNT VIII (AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY, NON-DERIVATIVELY)

147. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 144 as if set forth fully herein.

148. Denied.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

COUNT IX (FRAUDULENT TRANSFER, § 6-16-4(A)(1))

149. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 109 as if set forth fully herein.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

157. Denied.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

COUNT X (FRAUDULENT TRANSFER, §§ 6-16-4(A)(2) AND/OR 6-16-5(A))

158. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 109 as if set forth fully herein.

159. Denied.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

COUNT XI (DECLARATORY JUDGMENT)

166. Prospect repeats and realleges its answers as set forth in paragraphs 1 through 165 as if set forth fully herein.

167. Denied.

168. Denied.

169. Denied inasmuch as the statute speaks for itself.

The WHEREFORE paragraph does not require a response; however, to the extent a response is required, denied.

First Affirmative Defense

Plaintiffs' claims fail to state claims upon which relief can be granted.

Second Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

Third Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of res judicata and/or collateral estoppel.

Fourth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

Fifth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of setoff.

Sixth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by virtue of Plaintiffs' breach of contract.

Seventh Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, for lack of standing.

Eighth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

Ninth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, for lack of ripeness.

Tenth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

Eleventh Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, for failure to mitigate damages.

Twelfth Affirmative Defense

Prospect reserves the right to assert additional affirmative defenses.

Respectfully Submitted,

PROSPECT CHARTERCARE, LLC,

/s/ W. Mark Russo

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PROSPECT MEDICAL HOLDINGS, INC.,
PROSPECT EAST HOLDINGS, INC., AND
PROSPECT EAST HOSPITAL ADVISORY
SERVICES, LLC

By its Attorneys,

/s/ Preston W. Halperin

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Dated: June 15, 2020

Certificate of Service

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/s/Preston W. Halperin
