

UNITED STATES DISTRICT COURT
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.

PROSPECT CHARTERCARE, LLC, et al.

Defendants.

Case No. 1:18-cv-00328-WES-LDA

**JOINT MOTION FOR LEAVE TO PROPOUND LIMITED DISCOVERY
RELATING TO SETTLEMENT BETWEEN PLAINTIFFS
AND CHARTERCARE COMMUNITY BOARD**

Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively, “Prospect Entities”), by and through their attorneys, respectfully request that the Court grant them leave to propound discovery on the limited question of whether the proposed settlement between Plaintiffs and Defendant, Chartercare Community Board (“CCCB”) was executed in good faith.

As grounds therefor, the Prospect Entities state as follow:

1. On November 21, 2018, the Plaintiffs in the above-captioned matter (“Plaintiffs”) filed a Joint Motion for Settlement and Settlement Class Certification (“Motion for Settlement,” ECF No. 63), seeking the Court’s approval of a settlement by and between Stephen Del Sesto, as receiver (“Receiver”) for the St. Joseph Health Services of Rhode Island Retirement Plan (“Plan”), Chartercare Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”).
2. Thereafter, the Prospect Entities filed an opposition to the Settlement Motion (“Opposition,” ECF No. 75), arguing, *inter alia*, that the Settlement Motion should be denied because the Settlement Agreement evidenced collusion by the parties thereto.
3. Implored by counsel for Plaintiffs to make a finding of good faith, the Court indicated at the conclusion of the hearing on February 12, 2019 that it may consider making a finding that the settlement was executed in good faith if the language of the Order approving the settlement sufficiently preserved the rights of the non-settling

defendants, including the right to assert that the Rhode Island special act that limits contributions rights, R.I. Gen. Laws § 23-17.14-35 (the “Special Act”), is pre-empted by ERISA or otherwise is inapplicable to the pending case.

4. In their memorandum submitted to the Court in support of their Motion for Settlement, Plaintiffs argued that the Court should make the requisite finding under the Special Act so that the settlement would be “a judicially approved good faith” settlement as required by the Special Act. (Memorandum in Support of Motion for Settlement,” ECF No. 63-1).
5. The Prospect Entities continue to believe that the Court need not make any “good faith” determination at the present time. As the Court is aware, under Rule 23 of the Rules of Civil Procedure, the Court need only find that the settlement is “fair, reasonable, and adequate.” Since the Court has not decided whether ERISA pre-empt the Special Act, the good faith determination could be unnecessary; only if the Court decides that ERISA does not apply and/or does not pre-empt the Special Act is this determination relevant. Accordingly, the Prospect Entities request that the Court address the standards set forth under Rule 23 and defer the question of good faith to a later date, if it is determined that the Special Act applies to the settlement.
6. However, if the Court intends to make a good faith determination, this is a question of fact. Under the Special Act, a “good faith settlement” is “one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), irrespective of the settling or non-settling tortfeasors’ proportionate share of liability.”
7. The Prospect Entities have identified specific provisions in the Settlement Agreement (paragraphs 28 and 30) that they believe to conclusively demonstrate collusion, which if accepted to be true, precludes a finding of good faith. The language of the Settlement Agreement evidences the intent of the parties thereto to engage in collusion in an effort to advantage the settling parties and to disadvantage the non-settling parties.
8. Plaintiffs acknowledge on page 28 of their Memorandum in Support of their Joint Motion that in order to determine whether improper collusion occurred, the court’s inquiry is focused on the settling parties’ negotiations and intent. Plaintiffs further argue that the non-settling parties have the burden of proof.
9. While the Settlement Agreement itself is some evidence of collusion, to the extent that the Court may be considering a factual finding on the issue of good faith, the Prospect Entities wish to conduct limited discovery on this critical issue before any finding is made.

Wherefore, the Prospect Entities request that the Court grant them leave to propound document requests and take the depositions of the Receiver and CCCB solely on the issue of whether the settlement was executed in good faith. To the extent that the Court deems it necessary, the Prospect Entities request a hearing on this motion, and anticipate that such hearing would be no longer than one hour.

PROSPECT MEDICAL HOLDINGS, INC.
and PROSPECT EAST HOLDINGS, INC.

By their attorneys,

/s/ Ekwon E. Rhow, Esq.

/s/ Thomas V. Reichert, Esq.

Ekwan E. Rhow, Esq.

Pro Hac Vice

Thomas V. Reichert, Esq.

Pro Hac Vice

BIRD, MARELLA, BOXER, WOLPERT, NESSIM
DROOKS, LINCENBERG & RHOW, P.C.
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
Phone: 310-201-2100
erhow@birdmarella.com

/s/ Preston W. Halperin, Esq.

/s/ Dean J. Wagner, Esq.

/s/ Christopher J. Fragomeni, Esq.

Preston W. Halperin, Esq. (#5555)

Dean J. Wagner, Esq. (#5426)

Christopher J. Fragomeni, Esq. (#9476)

SHECHTMAN HALPERIN SAVAGE, LLP

1080 Main Street

Pawtucket, RI 02860

Phone: 401-272-1400

Fax: 401-272-1403

phalperin@shslawfirm.com

dwagner@shslawfirm.com

cfragomeni@shslawfirm.com

PROSPECT CHARTERCARE, LLC,
PROSPECT CHARTERCARE SJHSRI,
LLC AND PROSPECT CHARTERCARE
RWMC, LLC

By their attorneys,

/s/ W. Mark Russo

W. Mark Russo (#3937)

FERUCCI RUSSO P.C.

55 Pine Street, 4th Floor

Providence, RI 02903

Phone: 401-455-1000

Fax: 401-455-7778

mrusso@frlawri.com

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2019, I have caused the within Motion to be filed with the Court via the ECF filing system. As such, this document will be electronically sent to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Christopher J. Fragomeni, Esq.