Case Number: PC-2019-3654
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Reviewer: Victoria H

STATE OF RHODE ISLAND SUPERIOR COURT

PROVIDENCE, SC

CHARTERCARE COMMUNITY BOARD	:	
v.	:	C.A. No.: PC-2019-3654
SAMUEL LEE, ET AL	:	

PLAN RECEIVER'S PARTIAL OBJECTION TO GREEN EQUITY INVESTORS V, LP AND GREEN EQUITY INVESTORS SIDE V, LP'S MOTION TO CONTINUE ORAL ARGUMENT AND EXTEND TIME TO FILE REPLY BRIEF

Stephen Del Sesto, as Receiver ("Plan Receiver") for the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby objects in part to the motion by Green Equity Investors V, LP and Green Equity Investors Side V, LP (the "Green Defendants") to continue the oral argument on the Green Defendants' motion to dismiss and to extend time to file a reply brief.

The Plan Receiver agrees that a short continuance of the hearing is appropriate, since the Green Defendants have tarried in responding to the Plan Receiver's jurisdictional discovery. The Green Defendants have indicated, in their parallel motion for an extension of time to respond to that discovery, that they will make their discovery production on November 10, 2020. Once the Plan Receiver has received that discovery, he will be in a better position to evaluate whether additional briefing is necessary or appropriate and, if so, how much additional time should be given.

The Plan Receiver does object, however, to the prolonged and perhaps indefinite continuance that the Green Defendants have requested.

The Green Defendants ask that the Court postpone further briefing and oral argument on the Green Defendants' (untimely and improper[1]) motion to dismiss until sometime after the U.S. Supreme Court and the Rhode Island Supreme Court decide several products liability cases involving issues of personal jurisdiction, *i.e.* Ford Motor Co. v. Bandemer, 140 S. Ct. 916, 205 L. Ed. 2d 519 (2020) (cert. granted) and Ford Motor Co. v. Montana Eighth Judicial Dist. Court, 140 S. Ct. 917, 205 L. Ed. 2d 519 (2020) (cert. granted) (collectively the "Ford Motor" cases), and Martins v. Bridgestone Americas Tire Operations, LLC, No. SU-2018-0143-A.

It would be unnecessary and inappropriate to wait for the U.S. Supreme Court and the Rhode Island Supreme Court to issue decisions in those cases before hearing the Green Defendants' motion to dismiss. A decision in any of those cases is unlikely to cast much light, if any, on the instant issues.

First, the Ford Motor and Martins cases are products liability stream of commerce cases involving products sold outside the forum by defendants who have other contacts with the forum unrelated to the particular products that caused the injuries.[2] Plaintiffs' claims against the Green Defendants (1) are not products liability claims; and (2) *do arise* out of the Green Defendants' contacts with Rhode Island. As discussed in Plaintiffs' memorandum in objection to the Green Defendants' motion to dismiss:

[1] As discussed in Plaintiffs' Memorandum of Law in opposition to the motion (Exhibit 1 hereto), the Green Defendants filed their motion to dismiss out of time and in violation of the parties' stipulation, and their motion is unsupported by any evidentiary showing whatsoever. The motion to dismiss should be denied on those bases standing alone.

[2] In the Ford Motor and Martins cases, the defendants sold similar products (vehicles and tires) within the forum but did not sell (within the forum) the particular products that caused the plaintiffs' injuries. In Martins, the injury occurred in Connecticut, entirely outside the forum.

- The loan and credit facilities used to fund the fraudulent transfers of dividends were guaranteed by Rhode Island entities;
- The loan and credit facilities used to fund the fraudulent transfers of dividends were secured by mortgages on Rhode Island real estate;
- The dividends were intended to be distributed in part to the State of Rhode Island, which was the Green Defendants' client and investor;
- The Green Defendants directly participated in the corporate approval of the Prospect entities' acquisition of the Rhode Island hospitals in 2013-2014;
- The Green Defendants received the fraudulent transfers made with the intent to hinder, delay, or defraud an in-forum creditor on an in-forum guaranty given by Prospect Medical Holdings, Inc.; and
- The Green Defendants are seeking to benefit from the pending Rhode Island regulatory proceedings seeking approval of the buyout of the Green Defendants' interest in the Prospect entities.

Exhibit 1 (Memorandum of Law in Support of Plaintiffs' Objection to Green Equity Investors V, LP and Green Equity Investors Side V, LP's Rule 12(b)(2) Motion to Dismiss) (attached hereto without exhibits) at 8–16.

Accordingly, the Ford Motor and Martins cases involve inapposite issues and facts, whose decision is unlikely to inform the Court's analysis of the pending motion except, at most, by way of dicta.

Second, the Ford Motor and Martins cases are unlikely to be decided for many months. While the U.S. Supreme Court recently[3] heard oral argument on the Ford Motor cases, a decision may not come until as late as July 2021. The Martins case will take even longer to generate a decision, as our Supreme Court, upon the joint request of all the parties in Martins, has postponed even conducting oral argument in that case

[3] *I.e.* on October 7, 2020.

until after the Ford Motor cases are decided. That postponement, in turn, entails many more months of delay.

The Green Defendants also point to State of Rhode Island v. Chevron Corp., et al., Case No. PC-2018-4716, in which the Superior Court (Vogel, J.) deferred decision on Rule 12(b)(6) and Rule 12(b)(2) motions to dismiss, pending the outcome of the Ford Motor and Martins cases. Chevron is not a comparable case. There, the plaintiff (Rhode Island) is asserting novel claims for injuries to the state's climate and coastline caused by the extraction and combustion of fossil fuels outside Rhode Island. See Green Defendants' Exhibit 1 (Judge Vogel's decision) at 1–2. In Chevron, the claims (a) may or may not state a claim; and (b) do not arise out of the defendants' contacts with Rhode Island.[4] Here, there is no pending Rule 12(b)(6) motion,[5] and, as noted *supra*, Plaintiffs' claims against the Green Defendants *do* arise out of their contacts with Rhode Island.

Finally, although the Green Defendants contend in their motion that they "sought the consent of the Plaintiffs' counsel and the Liquidating Receiver to continue oral arguments and extend time to file brief" [sic] and to "grant the consent for such a continuance," Green Defendants' Motion at 3, that contention is incorrect or at least incomplete. At no time prior to filing their motion did the Green Defendants seek a continuance *for the reasons stated in their motion*. Although counsel did briefly discuss

[4] For example, the plaintiff's claims relating to the extraction of fossil fuels do not allege that any fossil fuels were extracted inside Rhode Island.

[5] Only Defendant JPMorgan filed a Rule 12(b)(6) motion for failure to state a claim, which the Court denied pursuant to a written decision entered on November 6, 2020.

the Green Defendants' desire for a stay of discovery and other motion practice, the reasons given did not involve the pendency of the Ford Motor and Martins cases.

Respectfully submitted,

Stephen Del Sesto as Receiver,

By his Attorney,

/s/ Max Wistow
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
WISTOW, SHEEHAN & LOVELEY, PC
61 Weybosset Street
Providence, RI 02903
401-831-2700 (tel.)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

Dated: November 9, 2020

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CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of November, 2020, I filed and served the foregoing document through the electronic filing system on the following users of record:

Robert D. Fine, Esq.
Andre S. Digou, Esq.
Chace Ruttenberg & Freedman LLP
One Park Row, Suite 300
Providence, RI 02903
rfine@crfllp.com
adigou@crfllp.com

Vincent A. Indeglia, Esq.
Ryan J. Lutrario, Esq.
Jaclyn A. Cotter, Esq.
Indeglia & Associates
300 Centerville Road
The Summit East, Suite 320
Warwick, RI 02886
vincent@indeglialaw.com
rlutrario@indeglialaw.com
jaclyn.cotter@indeglialaw.com

W. Mark Russo, Esq.
Ferrucci Russo P.C.
55 Pine Street, 3rd Floor
Providence, RI 02903
mrusso@frlawri.com

Thomas S. Hemmendinger, Esq.
Sean J. Clough, Esq.
Lisa M. Kresge, Esq.
Ronald F. Cascione, Esq.
Brennan Recupero Cascione Scungio McAllister LLP
362 Broadway
Providence, RI 02909
themmendinger@brcsm.com
sclough@brcsm.com
lkresge@brcsm.com
rcascione@brcsm.com

Preston Halperin, Esq.
Christopher J. Fragomeni, Esq.
Shechtman Halperin Savage, LLC
1080 Main Street
Pawtucket, RI 02860
phalperin@shslawfirm.com
cfragomeni@shslawfirm.com

Mark W. Freel, Esq.
Samantha Vasques, Esq.
Locke Lord LLP
2800 Financial Plaza
Providence, RI 02903-2499
mark.freel@lockelord.com
Samantha.vasques@lockelord.com

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Benjamin Ledsham

Exhibit 1

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STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD et al.,

Plaintiffs

v.

SAMUEL LEE et al.,

Defendants

Hearing Date: Oct. 15, 2020 @ 10:00 a.m.

C.A. No. PC-2019-3654

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' OBJECTION TO GREEN EQUITY INVESTORS V, LP AND GREEN EQUITY INVESTORS SIDE V, LP'S RULE 12(B)(2) MOTION TO DISMISS

October 1, 2020

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INTRODUCTION

Plaintiff CharterCARE Community Board ("CCCB") is the minority member of Defendant Prospect Chartercare, LLC ("Prospect Chartercare"), and Defendant Prospect East Holdings, Inc. ("Prospect East") is the majority member of Prospect Chartercare. See Verified First Amended and Supplemental Complaint (hereinafter "Amended Complaint") ¶ 1. Plaintiff Stephen Del Sesto (the "Plan Receiver") is the Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"). Amended Complaint ¶ 6.[1]

In connection with the asset purchase transaction in 2014 involving CCCB and the Prospect entities, and as part of the conditions imposed by the Department of Health and the Rhode Island Attorney General for approval of that transaction, Prospect East became obligated, and Prospect Medical Holdings, Inc. ("Prospect Medical Holdings") became the guarantor[2] of the obligation, to contribute $50 million in long term capital to Prospect CharterCARE to enable Prospect CharterCARE to fund capital improvements at the hospitals owned by its subsidiaries Prospect CharterCARE RWMC, LLC and Prospect CharterCARE SJHSRI, LLC. Amended Complaint ¶ 37. That obligation was incorporated in the LLC Agreement between Prospect East Holdings and CCCB. Amended Complaint ¶¶ 38 – 40.

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[1] Under a 2018 settlement agreement among CCCB, the Plan Receiver, and other parties, approved by this Court in the Plan Receivership action, St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, No. PC-2017-3856, and by the U.S. District Court in the action Stephen Del Sesto et al. v. Prospect Chartercare, LLC et al., No. 18-CV-328 (D.R.I.), CCCB holds its minority interest in Prospect CharterCARE in trust for the Plan Receiver. Amended Complaint ¶¶ 103, 104. Thereafter, this Court appointed Thomas S. Hemmendinger (the "Liquidating Receiver") as liquidating receiver of CCCB. Amended Complaint ¶¶ 4, 5.

[2] A copy of Prospect Medical Holdings's May 23, 2014 guaranty is attached hereto as Exhibit 1.

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There is no evidence of payment of any portion of the $50 million long-term capital commitment, notwithstanding that CCCB has been demanding such evidence from Prospect on numerous occasions since at least September 2018. Amended Complaint ¶ 55. Instead of paying the long-term capital commitment, Prospect Medical Holdings distributed a dividend of $457 million to the shareholders of its ultimate parent's shareholders out of borrowed funds, from secured borrowings and credit facilities for which Prospect Medical Holdings incurred obligations (Amended Complaint ¶ 89); for which Prospect East (as well as Prospect CharterCARE and its Rhode Island subsidiaries) gave guaranties (Amended Complaint ¶¶ 96 – 97); and for which the Rhode Island hospital subsidiaries gave mortgages (see *infra* at 12). The transfers involved in these financing transactions are voidable under Rhode Island's Uniform Fraudulent Transfer Act. See Amended Complaint ¶¶ 152, 160.

Defendant Green Equity Investors V, LP ("Green Equity") and Defendant Green Equity Investors Side V, LP ("Green Side") (collectively the "Green Defendants") received hundreds of millions of dollars from the 2018 fraudulent transfers. Green Equity received $203.27 million. Amended Complaint ¶ 93. Green Side received $60.96 million. Amended Complaint ¶ 94.

The Green Defendants are also presently seeking to have an additional fraudulent transfer perpetrated in connection with the Change in Effective Control proceedings that are pending before the Rhode Island Department of Health.[3] Amended Complaint ¶ 102. Through those proceedings, the Green Defendants intend

[3] At the time the Amended Complaint was filed, it had not yet been disclosed to the Receivers or to the public that a parallel Hospital Conversion Act proceeding had been initiated with (and remains pending before) the Attorney General and the Department of Health.

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to receive $11,940,992 (plus an unspecified additional sum) from Prospect Medical Holdings to purchase the Green Defendants' ownership interest in Prospect Medical Holdings's ultimate parent entity (Defendant Ivy Holdings, Inc.), for the personal benefit of two other Defendants, Sam Lee and David Topper, who seek to become Prospect Medical Holdings's sole ultimate shareholders, through a complex chain of holding companies. Id.

Plaintiffs have asserted five counts against the Green Defendants: for aiding and abetting breaches of fiduciary duty (Counts VII and VIII), for fraudulent transfers (Counts IX and X), and for a declaratory judgment (Count XI).

The Green Defendants do not contest the sufficiency of the Amended Complaint against them. Instead, the Green Defendants have filed an untimely Super. R. Civ. P. 12(b)(2) motion to dismiss, asserting that they are not subject to personal jurisdiction in Rhode Island. They have filed this motion without any supporting evidence attesting to their lack of contacts with Rhode Island, either by way of affidavit or otherwise.

Plaintiffs contend that the Green Defendants' untimely motion is waived, and, in any event, there is ample basis for the Court to exercise personal jurisdiction over the Green Defendants. Indeed, the State of Rhode Island is itself one of the investor clients of the Green Defendants and is the recipient of at least $9 million of the funds that were fraudulently transferred to the Green Defendants.

If the Court has any doubts, however, it should defer decision on the motion until after the Green Defendants respond to outstanding jurisdictional discovery and the issues can be more fully briefed.

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THE SUPER. R. CIV. P. 12(B)(2) STANDARD

In adjudicating a Super. R. Civ. P. 12(b)(2) motion for "failure to make a *prima facie* showing of personal jurisdiction," the Court "draw[s] the facts from the pleadings and the parties' supplementary filings, taking facts affirmatively alleged by plaintiff as true and viewing disputed facts in the light most advantageous to plaintiff." Pullar v. Cappelli, 148 A.3d 551, 554 (R.I. 2016). In ruling, the Court may consider materials outside the complaint. See id.; In re CVS Health Corp. Securities Litigation, No. PC-2019-5658, 2020 WL 5392078, at *4 n.5 (R.I. Super. Sep. 01, 2020) ("In ruling on a 12(b)(2) motion to dismiss for lack of personal jurisdiction, the Court is not limited to the pleadings and may consider matters outside the Consolidated Complaint.") (Stern, J.).[4]

"A *prima facie* case of jurisdiction is established when the requirements of Rhode Island's long-arm statute are satisfied." Cerberus Partners, L.P. v. Gadsby & Hannah, LLP, 836 A.2d 1113, 1118 (R.I. 2003) (citation omitted). Rhode Island General Laws § 9-5-33(a) provides:

> Every foreign corporation, every individual not a resident of this state or his or her executor or administrator, and every partnership or association, composed of any person or persons not such residents, that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of the state of Rhode Island, and the courts of this state shall hold such foreign corporations and such nonresident individuals or their executors or administrators, and such partnerships or associations amenable to suit in Rhode Island in every case not contrary to the provisions of the constitution or laws of the United States.

[4] Consideration of matters outside the pleadings does not entail conversion of a Rule 12(b)(2) motion into a motion for summary judgment. See Dansereau v. Beirne, 701 A.2d 1031, 1032 (R.I. 1997) (noting that only Rule 12(b)(6) motions to dismiss and Rule 12(c) motions for judgment on the pleadings can be converted into motions for summary judgment). In addition, unlike its federal counterpart, Super. R. Civ. P. 8 does not require the plaintiff to allege any jurisdictional facts in the complaint. See Kent, Simpson, Flanders, Wollin, Rhode Island Civil Procedure § 8:9 ("References in Federal Rules 8(a) and 8(b) to jurisdictional allegations are omitted from this rule.").

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R.I. Gen. Laws § 9-5-33(a). Our Supreme Court has interpreted § 9-5-33(a) as allowing Rhode Island courts to exercise jurisdiction "over nonresident defendants to the fullest extent allowed by the United States Constitution." Rose v. Firstar Bank, 819 A.2d 1247, 1250 (R.I. 2003) (citing McKenney v. Kenyon Piece Dye Works, Inc., 582 A.2d 107, 108 (R.I. 1990)).

ARGUMENT

I. The Green Defendants' objection to personal jurisdiction is untimely and waived

On June 22, 2020, Plaintiffs and the Green Defendants filed this stipulation:

> It is hereby stipulated by and between the parties that the Defendants Green Equity Investors V, LP and Green Equity Investors Side V, LP shall have until July 6, 2020 to file a responsive pleading to Plaintiffs' Verified First Amended and Supplemental Complaint.

Exhibit 2 (June 22, 2020 Stipulation).[5]

The July 6, 2020 deadline came and went, without the Green Defendants' filing a responsive pleading. Nine days later, on July 15, 2020, the Green Defendants filed the instant motion to dismiss, which by then was (1) out of time; and (2) still not a responsive pleading.

The requirement of personal jurisdiction is "an individual right that can be surrendered." Pullar v. Cappelli, 148 A.3d 551, 558 (R.I. 2016). "Personal jurisdiction, unlike subject-matter jurisdiction, is primarily concerned with fairness to individual parties. Objections to jurisdiction over the person may be waived, either expressly or by

[5] Absent the parties' stipulation, the Green Defendants' time to respond to the Amended Complaint would have expired on June 15, 2020, *i.e.* twenty days following Plaintiffs' service of process on May 26, 2020. See Super. R. Civ. P. 12(a)(1).

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not asserting them in a timely manner." Knowlton v. Allied Van Lines, Inc., 900 F.2d 1196, 1199 (8th Cir. 1990). See Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 704, 102 S. Ct. 2099, 2105, 72 L. Ed. 2d 492 (1982) ("[U]nlike subject-matter jurisdiction, which even an appellate court may review *sua sponte*, under Rule 12(h), Federal Rules of Civil Procedure, a defense of lack of jurisdiction over the person is waived if not timely raised in the answer or a responsive pleading.") (discussing the federal analog to Super. R. Civ. P. 12(h)).

Under the parties' stipulation, the Green Defendants could have preserved their personal jurisdiction defense by asserting it in a timely answer to the Amended Complaint. They failed to do, and consequently that defense is waived.

II. The Green Defendants' motion should be denied for being unsupported by any evidentiary showing whatsoever

The Amended Complaint, which is a *verified* pleading, alleges that the Green Defendants "have sufficient minimum contacts with Rhode Island and are subject to the personal jurisdiction of this Court." Amended Complaint ¶ 29. The Green Defendants present no evidence to controvert this allegation, relying entirely instead on the unsworn arguments of their counsel. That is insufficient. See Kuan Chen v. United States Sports Acad., Inc., 956 F.3d 45, 56 (1st Cir. 2020) ("[F]acts are not deemed disputed merely because defense counsel, in an unsworn brief or in argument before a court, challenges them.") (applying the analogous Fed. R. Civ. P. 12(b)(2)); Amazon.com, Inc. v. Nat'l Ass'n of Coll. Stores, Inc., 826 F. Supp. 2d 1242, 1251 (W.D. Wash. 2011) ("Where, as here, the defendant's [Rule 12(b)(2)] motion is based on written materials, the plaintiff need only make a *prima facie* showing of jurisdictional facts to withstand the

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motion to dismiss. The plaintiff cannot simply rest on the bare allegations of its complaint, but uncontroverted allegations in the complaint must be taken as true.") (citations and quotations omitted).

As discussed *infra*, Plaintiff can point to ample grounds for the Court to conclude that it can exercise personal jurisdiction over the Green Defendants (which is an issue that has been waived in any event as discussed *supra*). However, the Court need not dwell long on Plaintiffs' documentary evidence here, in the complete absence of *any* contrary evidence proffered by the Green Defendants in support of their motion.

III. The Green Defendants are subject to personal jurisdiction in Rhode Island

A. Rhode Island's long-arm statute

Under Rhode Island's long-arm statute, R.I. Gen. Laws § 9-5-33, the Superior Court's personal jurisdiction over foreign corporations is coextensive with the maximum limits of constitutional due process:

> Every foreign corporation, every individual not a resident of this state or his or her executor or administrator, and every partnership or association, composed of any person or persons not such residents, that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of the state of Rhode Island, and the courts of this state shall hold such foreign corporations and such nonresident individuals or their executors or administrators, and such partnerships or associations amenable to suit in Rhode Island in every case not contrary to the provisions of the constitution or laws of the United States.

R.I. Gen. Laws § 9-5-33(a).

The Amended Complaint alleges that all Defendants, including the Green Defendants, "have sufficient minimum contacts with Rhode Island and are subject to the

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personal jurisdiction of this Court." Amended Complaint ¶ 29. Accordingly, the Court's analysis proceeds to the constitutional analysis.[6]

B. The Court has general jurisdiction, at least over Green Equity

As noted *supra*, our Supreme Court has interpreted § 9-5-33(a) as allowing Rhode Island courts to exercise jurisdiction "over nonresident defendants to the fullest extent allowed by the United States Constitution." Rose v. Firstar Bank, 819 A.2d 1247, 1250 (R.I. 2003) (citing McKenney v. Kenyon Piece Dye Works, Inc., 582 A.2d 107, 108 (R.I. 1990)).

"When its contacts with a state are continuous, purposeful, and systematic, a nonresident defendant will subject itself to the general jurisdiction of that forum's courts with respect to all claims, regardless of whether they relate to or arise out of the nonresident's contacts with the forum." Rose v. Firstar Bank, 819 A.2d 1247, 1250 (R.I. 2003). "Thus, if a nonresident's contacts with a forum are sufficient for general personal jurisdiction to exist, then such a party may be sued in that forum for "causes of action arising from dealings entirely distinct from those activities." Id. "A state's general jurisdiction over a defendant is established when the party's contacts with the forum state are continuous, purposeful, and systematic, such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." Cassidy v. Lonquist Mgmt. Co., LLC, 920 A.2d 228, 233 (R.I. 2007).

[6] The Green Defendants baldly contend that exercising personal jurisdiction here would violate R.I. Gen. Laws § 9-5-33. See Green Defendants' Memo. at 3. The Green Defendants do not identify any basis for this argument other than their due-process arguments.

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The Green Defendants contend in their memorandum, and without *any* evidentiary support for the contention, that they "do not have any purposeful contact in or with Rhode Island." Green Defendants' Memo. at 7. That is wrong. The State of Rhode Island is itself one of the Green Defendants' investor clients and has been for nearly their entire existence.

On December 6, 2006, the Green Defendants' managing partner, Jonathan Sokoloff, together with one of their partners, Timothy Flynn, personally attended a meeting of Rhode Island's State Investment Commission held at the Rhode Island State House, in Providence, Rhode Island. See Exhibit 3 (State Investment Commission minutes).[7] The minutes of that meeting reveal that Messrs. Sokoloff and Flynn successfully pitched Rhode Island's State Investment Commission on a substantial investment in Green Equity of $15 million (later increased[8] to $20 million).

In March 2007, the State of Rhode Island, through the Employees' Retirement System of Rhode Island, itself made a $20,000,000 investment in Green Equity, which the State of Rhode Island continues to hold. See Exhibit 5 (Employee Retirement System of Rhode Island Private Equity Performance, as of December 31, 2019). In connection with that investment, Green Equity has distributed at least $39,738,872 to its client the State of Rhode Island.[9]

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[7] The minutes state: "Mr. Jonathan D. Sokoloff, Managing Partner and Mr. Timothy J. Flynn, Partner[,] represented GEI V [i.e. Green Equity]." Exhibit 3 (December 6, 2006 minutes) at 2.

[8] See Exhibit 4 (February 28, 2017 State Investment Commission minutes) (voting to increase the investment in the Green Defendants to $20 million).

[9] See Exhibit 5 (Employee Retirement System of Rhode Island Private Equity Performance, as of December 31, 2019). Prior to the 2018 dividends at issue in this case, Green Equity had distributed only $30,369,301. See Exhibit 6 (Employee Retirement System of Rhode Island Private Equity Performance, as of December 31, 2017). Thus, of the nearly $40 million that the State of Rhode Island has received from Green Equity, the State of Rhode Island has specifically received over $9 million since Prospect Medical Holdings distributed the 2018 dividends to the Green Defendants.

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The State of Rhode Island's investment in the Green Defendants' affiliates dates back even further. On October 23, 2002, Mr. Sokoloff had attended another meeting of Rhode Island's State Investment Commission at the Rhode Island State House in Providence, Rhode Island. See Exhibit 7 (State Investment Commission minutes). There, Mr. Sokoloff again successfully pitched the State of Rhode Island on making a similarly sizable investment, $15 million, in the Green Defendants' affiliate Green Equity Investors IV, LP. Id.

Green Equity's contacts with Rhode Island have been continuous, purposeful, and systematic for as long as Green Equity has existed. According to the Delaware Secretary of State's website, Green Equity[10] was incorporated on October 13, 2006, less than two months before Mr. Sokoloff's meeting with the State Investment Commission and only five months before Rhode Island made its investment. Counting from the latter event alone, Green Equity has had continuous, purposeful, and systematic contact with the State of Rhode Island itself for over 97% of its corporate existence.

And those are simply the Green Defendants' business relationships with the State of Rhode Island itself. The Plan Receiver has propounded jurisdictional discovery requests on the Green Defendants, which have not yet responded thereto. See *infra* at 16 – 17. Plaintiffs anticipate that discovery may reveal more Rhode Island investors who are doing business with the Green Defendants, as well as other grounds

[10] According to the Delaware Secretary of State's website, Green Side was incorporated on June 28, 2007, at a time when the State of Rhode Island was already an investor.

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evidencing that the Green Defendants are subject to the general jurisdiction of the Court.

C. The Court has specific jurisdiction over both of the Green Defendants

"Specific jurisdiction exists when the cause of action arises out of or is related to the defendant's contacts with the forum." Goetz v. LUVRAJ, LLC, 986 A.2d 1012, 1017 (R.I. 2010). "If a defendant's conduct does provide the basis for the litigation, all that need be shown for jurisdiction to be proper is a 'relationship among the defendant, the forum, and the litigation.'" Nicholson v. Buehler, 612 A.2d 693, 696 (R.I. 1992). "Thus we must employ a two-step analysis: first, we must determine whether the cause of action arises out of the defendant's contacts with Rhode Island; if we answer this question in the affirmative, we must then determine whether any relationship among the defendant, the forum, and the litigation exists." Id.

Here, the relationship among the Green Defendants, Rhode Island, and the instant litigation can be demonstrated on numerous levels.

1. The loan and credit facility used to fund the dividends were guaranteed by Rhode Island entities

The Amended Complaint alleges that the Green Defendants received $264.23 million in dividends or distributions (Amended Complaint ¶¶ 93 & 94) from the proceeds of a secured loan and credit facility obtained by Prospect Medical Holdings that were guaranteed by the Rhode Island subsidiaries of Prospect. These guarantors include Prospect Chartercare, LLC (Amended Complaint ¶ 97), Prospect Chartercare SJHSRI, LLC (Amended Complaint ¶ 98), and Prospect Chartercare RWMC, LLC (Amended

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Complaint ¶ 99), each of which is a Rhode Island limited liability company organized under Rhode Island law. See Amended Complaint ¶ 16 (Prospect Chartercare, LLC); Exhibit 8 (Prospect Chartercare SJHSRI, LLC's articles of organization); Exhibit 9 (Prospect Chartercare RWMC, LLC's articles of organization).

2. The loan and credit facility used to fund the dividends were secured by mortgages on Rhode Island real estate

In addition to being guaranteed by Rhode Island entities, the loan and credit facility used to fund the dividends were secured by a series of mortgages on Rhode Island real estate owned by Prospect Chartercare, LLC's Rhode Island subsidiaries. See Exhibits 10 to 21. Where a fraudulent transfer claim arises from a mortgage on in-forum real estate, minimum contacts with the forum are established. See Wells Fargo Equip. Fin., Inc. v. Bacjet, LLC, 221 So. 3d 671, 676 (Fla. Dist. Ct. App. 2017) ("First, the lender's contact in Florida, the mortgaged property, gave rise to the creditor's fraudulent transfer claim in the proceedings supplementary. This satisfies the first element of the minimum contacts test.").

3. The dividends were intended to be distributed in part to the State of Rhode Island, which was the Green Defendants' client and investor

As noted *supra* at 9, the State of Rhode Island has received nearly $40 million in dividends or distributions from Green Equity. Of that nearly $40 million, more than $9 million is *prima facie* traceable to the $264.23 million in dividends at issue in the Amended Complaint.[11] Thus, the 2018 dividends were fraudulently transferred with the

[11] See *supra* at 2 n.3.

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Green Defendants' intended purpose of distributing a significant portion of those dividends directly to the State of Rhode Island.

The fact that the State of Rhode Island was and is one of the Green Defendants' clients is sufficient to establish general jurisdiction over at least Green Equity, as discussed *supra*. Here, it is also sufficient to establish specific jurisdiction over both of the Green Defendants, who participated in the same transaction designed to funnel money to the State of Rhode Island.

4. The Green Defendants were directly involved in approving the Prospect entities' acquisition of the Rhode Island hospitals in 2013-2014

The Green Defendants contend:

> The Plaintiff cannot rely on their conclusory statements to hale California investors into Rhode Island because an equity fund in which they invested in 2010, subsequently made an investment in a Rhode Island hospital; an investment which was a minor portion of an overall portfolio.

Green Defendants' Memo. at 7. This unsupported argument of counsel grossly understates the Green Defendants' involvement not only in the 2018 dividends transaction but also the 2013-2014 acquisition of the Rhode Island hospital assets. Prospect's entry into the September 24, 2013 Asset Purchase Agreement in Rhode Island was specifically subject to approval by the Green Defendants. As Prospect's management stated to CCCB's then-management, four days before the Asset Purchase Agreement was executed:

> Finally, our **LGP [Leonard Green Partners] board meeting** is set for Monday morning 10:30 a.m. PST. There will be issues there as well. We have continually provided the board with updates and they are excited about this opportunity. **We just need board approval to execute the documents.**

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Exhibit 22 (September 20, 2013 email from Frank Saidara to Kenneth Belcher).

5. The Green Defendants received the fraudulent transfers made with the intent to hinder, delay, or defraud an in-forum creditor on an in-forum guaranty

A fraudulent transfer made with intent to hinder, delay, or defraud an in-forum creditor will subject the recipient to specific jurisdiction in the forum:

> In the present case, Air Products alleges that Defendants knew that it owed a judgment debt to Air Products at the time it engaged in the allegedly fraudulent transfer, and Air Products alleges that Defendants transferred the assets with the intent to hinder, delay, or defraud Air Products. Defendants also undoubtedly knew that Air Products had its principal place of business in Michigan, and that the focal point of its actions and the brunt of the harm would be in Michigan. We find, therefore, that Defendants' contacts with Michigan are enhanced by its conduct which, at least as alleged, was intentionally directed to cause harm to a Michigan resident.

Air Prod. & Controls, Inc. v. Safetech Int'l, Inc., 503 F.3d 544, 553 (6th Cir. 2007).

That is especially true where, as here, the Green Defendants control more than a majority interest in the entities making the fraudulent transfers:

> As in *Air Products*, Franmar and its principal shareholder, Franklin, knew that Franmar owed Wheaton a significant amount on a judgment at the time that Franmar, acting at the direction of Franklin, made several transfers of property alleged to be fraudulent and alleged to be made for the sole purpose of hindering, delaying, or defrauding Wheaton in its efforts to collect on the judgment. Such is the crux of a fraudulent transfer claim. Moreover, the parties in *Air Products* had a past business relationship that led to the judgment debt at issue in the fraudulent transfer. 503 F.3d at 478. Both such facts exist here: Wheaton and Franmar, directed by Franklin, entered into a joint venture. Their business relationship soured, a lawsuit ensued, and a judgment was entered, most significantly against Franmar. *See Wheaton I*, supra.
>
> Considering that the first element for specific jurisdiction "may be satisfied by purposeful availment of the privilege of doing business in the forum; by

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> purposeful direction of activities at the forum; or by some combination thereof," *Yahoo! Inc.*, 433 F.3d at 1206 (9th Cir.2006) (en banc) (emphasis in original), the past business relationship between Franmar, Franklin, and Wheaton, combined with Plaintiff's allegation that Franklin directed the activities of Franmar's property disposal knowing of the unpaid judgment, rise to the level of purposeful direction sufficient to meet the first prong of the specific jurisdiction test.

Wheaton Equip. Co. v. Franmar, Inc., No. CV08-276-S-EJL, 2009 WL 464337, at *10–11 (D. Idaho Feb. 24, 2009).

Plaintiffs' fraudulent transfer claims depend in part on Prospect Medical Holdings, Inc.'s failure to honor its Rhode Island guaranty of the long-term capital commitment. See Exhibit 1 (Prospect Medical Holdings's guaranty). When even a non-forum transferor makes a fraudulent transfer to a non-forum transferee in order to obstruct collection on an in-forum guaranty, the transferee can reasonably expect to be haled into the forum to answer for the fraudulent transfer. See Fifth Third Bank v. Gentile, No. 1:08 CV 52, 2008 WL 2390780, at *7 (N.D. Ohio June 9, 2008) ("Specifically, the effect of the alleged fraudulent transfer was to harm a bank located in Ohio attempting to collect on a Guaranty entered into in Ohio.") (finding exercising personal jurisdiction over foreign transferee would not offend traditional notions of fair play and substantial justice).

6. The pending Rhode Island regulatory proceedings

As noted *supra* at 2 – 3, the Green Defendants are seeking to benefit financially from a Change in Effective Control proceeding pending[12] before the Rhode Island Department of Health, through which approval is being sought from the Department of

[12] See https://health.ri.gov/systems/about/requests/.

Health to have the Green Defendants' interest in Ivy Holdings, Inc. purchased for the personal benefit of Defendants Lee and Topper, using Defendant Prospect Medical Holdings's money. Although it is unclear[13] whether the Green Defendants are or will be made formal parties to that proceeding, it is being pursued on their behalf (as well on behalf of other Defendants hereto).

In addition, although it is not referenced in the Amended Complaint (because it was unknown to Plaintiffs at the time of the filing of that Amended Complaint), the Green Defendants also seek to benefit from a parallel Hospital Conversion Act proceeding pending before both the Rhode Island Attorney General and the Department of Health.[14]

IV. Plaintiffs are entitled to responses to outstanding jurisdictional discovery

Our Supreme Court has held that a motion to dismiss for lack of personal jurisdiction typically cannot be granted without affording the plaintiff an opportunity to conduct jurisdictional discovery. See Smith v. Johns-Manville Corp., 489 A.2d 336, 340 (R.I. 1985) ("Clearly, these questions concerning minimum contacts need to be answered before a motion dismissing for lack of jurisdiction may be granted."). The Plan Receiver has propounded jurisdictional interrogatories and requests for production of documents on the Green Defendants, to which they have not yet responded.[15] See Exhibit 23 (interrogatories); Exhibit 24 (requests for production of documents).

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[13] In connection with the Liquidating Receiver and Plan Receiver's motion to disqualify Adler Pollock & Sheehan P.C. ("APS"), pending before the Court in the Liquidating Receivership proceeding, In re: CharterCARE Community Board, PC-2019-11756, APS recently filed what it purports to be an updated and resubmitted CEC application. That resubmitted application, which unavailable from the Department of Health, contains conflicting and unsworn attestations and is incomplete on its face.

[14] See http://www.riag.ri.gov/CivilDivision/OfficeoftheHealthCareAdvocate.php.

[15] The Green Defendants' discovery responses are presently due on October 18, 2020.

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As discussed *supra*, the Green Defendants (1) have waived their personal jurisdiction defenses, (2) have not supported their motion with anything except the arguments of counsel, and (3) have amply sufficient contacts with Rhode Island on this record for the Court to exercise personal jurisdiction. However, to the extent the Court concludes the issue is not waived or deems the foregoing record insufficient to exercise personal jurisdiction over the Green Defendants, the Court should defer decision on the instant Rule 12(b)(2) motion until after the Green Defendants respond to discovery (and any discovery disputes are resolved), so that the parties can more fully brief the issues with the benefit of that discovery.

CONCLUSION

For the foregoing reasons, the Green Defendants' motion to dismiss should be denied.

Respectfully submitted,

Stephen Del Sesto as Plan Receiver,
By his Attorney,

/s/ Max Wistow
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
WISTOW, SHEEHAN & LOVELEY, PC
61 Weybosset Street
Providence, RI 02903
401-831-2700 (tel.)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

and

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CharterCARE Community Board,
by its Attorneys

/s/ Thomas S. Hemmendinger

Thomas S. Hemmendinger (#3122)
Permanent Liquidating Receiver of CharterCARE Community Board, Roger Williams Hospital, and St. Joseph Health Services of Rhode Island
Ronald F. Cascione (#2277)
Lisa M. Kresge (#8707)
Brennan, Recupero, Cascione, Scungio & McAllister, LLP
362 Broadway
Providence, RI 02909
Tel. (401) 453-2300
Fax (401) 453-2345
themmendinger@brcsm.com

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CERTIFICATE OF SERVICE

I hereby certify that, on the 1st day of October, 2020, I filed and served the foregoing document through the electronic filing system on the following users of record:

Robert D. Fine, Esq.
Andre S. Digou, Esq.
Chace Ruttenberg & Freedman LLP
One Park Row, Suite 300
Providence, RI 02903
rfine@crfllp.com
adigou@crfllip.com

Vincent A. Indeglia, Esq.
Ryan J. Lutrario, Esq.
Jaclyn A. Cotter, Esq.
Indeglia & Associates
300 Centerville Road
The Summit East, Suite 320
Warwick, RI 02886
vincent@indeglialaw.com
rlutrario@indeglialaw.com
jaclyn.cotter@indeglialaw.com

W. Mark Russo, Esq.
Ferrucci Russo P.C.
55 Pine Street, 3rd Floor
Providence, RI 02903
mrusso@frlawri.com

Preston Halperin, Esq.
Christopher J. Fragomeni, Esq.
Shechtman Halperin Savage, LLC
1080 Main Street
Pawtucket, RI 02860
phalperin@shslawfirm.com
cfragomeni@shslawfirm.com

Thomas S. Hemmendinger, Esq.
Sean J. Clough, Esq.
Lisa M. Kresge, Esq.
Ronald F. Cascione, Esq.
Brennan Recupero Cascione Scungio McAllister LLP
362 Broadway
Providence, RI 02909
themmendinger@brcsm.com
sclough@brcsm.com
lkresge@brcsm.com
rcascione@brcsm.com

Mark W. Freel, Esq.
Samantha Vasques, Esq.
Locke Lord LLP
2800 Financial Plaza
Providence, RI 02903-2499
mark.freel@lockelord.com
Samantha.vasques@lockelord.com

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/s/ Benjamin Ledsham