Hearing: September 21, 2020

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD et al., Plaintiffs v. SAMUEL LEE et al., Defendants	C.A. No. PC-2019-3654

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' OBJECTION TO JPMORGAN CHASE BANK'S MOTION TO DISMISS

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 "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"). 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

[1] Under a 2018 settlement agreement among CCCB, the Plan Receiver and other parties, CCCB holds its minority interest in Prospect CharterCARE in trust for the Plan Receiver. Complaint ¶¶ 103, 104. Thereafter, this Court appointed Thomas S. Hemmendinger (the "Liquidating Receiver") as liquidating receiver of CCCB. Complaint ¶¶ 4, 5.

Rhode Island Attorney General for approval of that transaction, Prospect East became obligated, and Prospect Medical Holdings, Inc. ("Prospect Medical Holdings") became the guarantor of the obligation, to contribute $50 million in long term capital contributions 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. That obligation was incorporated in the LLC Agreement between Prospect East Holdings and CCCB.

There is no evidence of payment of any portion of the $50 million long-term capital commitment. Instead, Prospect Medical Holdings distributed a dividend of $457 million to the shareholders of its ultimate parent out of borrowed funds, from secured borrowings and credit facilities for which Prospect Medical Holdings incurred obligations, and for which Prospect East (as well as Prospect CharterCARE and its subsidiaries) gave guaranties. The transfers involved in these financing transactions are voidable under Rhode Island's Uniform Fraudulent Transfer Act (the "UFTA").

JPMorgan Chase Bank ("JPMorgan") is a defendant because of its role in those fraudulent transfers and obligations as a transferee and as administrative agent and collateral agent for undisclosed lenders/transferees.

In Counts IX and X of the Complaint, the Plaintiffs allege that certain transfers and obligations of Prospect CharterCARE, Prospect East and Prospect Medical Holdings to JPMorgan constitute actual or constructively fraudulent transfers and obligations under the

UFTA, R.I. Gen. Laws §§ 6-16-1 et seq.[2] Among other remedies, the Complaint seeks avoidance of these transfers and obligations.

JPMorgan has filed a motion to dismiss this action against it under Super. R. Civ. P. 12(b)(6) for failure to state a claim on which relief may be granted. However, as demonstrated below, the Complaint fully and adequately sets forth causes of action against JPMorgan under the UFTA. Accordingly, the motion should be denied.

STANDARD OF REVIEW

Under Rule 12(b)(6), "[t]he sole function of a motion to dismiss is to test the sufficiency of the complaint." Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008) (quoting authority). A court must assume the truth of a complaint's allegations and "examine the facts in the light most favorable to the nonmoving party." A.F. Luisi Const., Inc. v. Rhode Island Convention Center Authority, 934 A.2d 791, 795 (R.I. 2007) (citations omitted). A court may only grant a motion to dismiss if the court is convinced beyond a reasonable doubt that the plaintiff would not be "entitled to relief under any conceivable set of facts." Estate of Sherman v. Almeida, 747 A.2d 470, 473 (R.I. 2000).

A plaintiff's "general averments" that a transfer or obligation was made "to hinder, delay, or defraud" under the UFTA are sufficient at the motion to dismiss stage even under particularized pleadings standards required for fraud claims. Gemma v. Sweeney, No. PC-2018-3635, 2019 WL 5396136, at *10 (R.I. Super. Oct. 15, 2019) (Stern, J.). Similarly, allegations that

[2] Effective July 2, 2018, this statute was prospectively amended and renamed the Uniform Voidable Transactions Act, but none of these amendments affect the claims against any Defendant in this action. See 2018 R.I. Pub. Law chs. 141 and 236. JPMorgan correctly acknowledges that Plaintiffs' claims are governed by the pre-July 2018 Uniform Fraudulent Transfer Act, see JPMorgan's Memo. at 2 n.1, although JPMorgan does not always follow through and cite or quote the correct statutory provisions in its memorandum. See *infra* at 9, 12, 14.

a debtor did not receive "reasonably equivalent value" in exchange for a transfer or obligation are sufficient to withstand a Rule 12(b)(6) motion. Id.

STATEMENT OF FACTS

The affairs of Prospect CharterCARE are principally governed by June 20, 2014 LLC agreement (the "LLC Agreement") among CCCB, Prospect East, and Prospect CharterCARE. Complaint ¶ 38. The LLC Agreement provides, in part:

- Prospect East must advance $50 million in capital contributions to the hospitals (the "Long-Term Capital Commitment")[3] for certain capital projects on or before June 20, 2018. (Complaint ¶¶ 37, 39.)[4]
- Prospect CharterCARE and its subsidiaries must make at least $10 million per year in additional capital expenditures related to Our Lady of Fatima Hospital and Roger Williams Medical Center, which are subsidiaries of Prospect CharterCARE. (Complaint ¶¶ 40, 43.)
- Prospect CharterCARE must give access to documents and other information to CCCB. (Complaint ¶¶ 55 – 59, 62, 63, and Exhibit 1.)
- CCCB has a "put option" to compel Prospect East to purchase CCCB's membership interest. (Complaint ¶ 60; *Id.* Exhibit 1.) CCCB holds the membership interest, including the put option, in trust for the Plan. (Complaint ¶ 104.)

However, these Prospect Defendants have breached their obligations to CCCB and the Plan Receiver. For example:

- Prospect East has not shown that it has fulfilled the Long-Term Capital Commitment. (Complaint ¶ 41.)
- Prospect Medical Holdings has failed to honor its guaranty of the Long-Term Capital Commitment. (Complaint ¶ 42.)
- Prospect CharterCARE has not shown that it has made the $10 million annual capital

[3] Separately, Prospect Medical Holdings guaranteed the Long-Term Capital Commitment. (Complaint ¶ 42.)

[4] The Long-Term Capital Commitment is also set forth in the parties' Asset Purchase Agreement of on or about September 24, 2013. See Complaint ¶ 36.

expenditures. (Complaint ¶¶ 43, 44.)

- Prospect CharterCARE has failed to provide certain documents and information to the Receivers despite its obligation to do so. (Complaint ¶¶ 55 – 63.) This includes documents and information that this Court ordered Prospect CharterCARE to provide by an order entered July 21, 2020.

In 2018 Prospect Medical Holdings incurred debt to JPMorgan. See Complaint ¶¶ 89 – 96. Both Prospect CharterCARE and its subsidiaries, including the entities which own the local hospitals, guaranteed this debt. Complaint ¶¶ 97 – 100. In 2018, these obligations funded or facilitated the payment of $457 million in dividends to the ultimate owners of Prospect Medical Holdings. Complaint ¶ 96. In early 2019, these dividends caused Moody's Investors Service to change its rating on the Prospect entities to "on review for downgrade." Complaint ¶ 101.

Prospect Medical Holdings, Prospect CharterCARE, and Prospect East incurred these obligations to JPMorgan with actual intent to hinder, delay or defraud their respective creditors. Complaint ¶¶ 151, 152. Furthermore, Prospect Medical Holdings, Prospect CharterCARE, and Prospect East incurred these obligations to JPMorgan Chase without receiving in exchange reasonably equivalent value. Complaint ¶ 159. Moreover, at the time they incurred these obligations, Prospect Medical Holdings, Prospect CharterCARE, and Prospect East:

- were engaged or were about to engage in a business or transaction for which their remaining assets were unreasonably small in relation to the business or transaction;
- intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due; and/or
- were insolvent or became insolvent as a result of the obligations they incurred.

Complaint ¶¶ 159(a) and 159(b).

At the time the Prospect entities made transfers and incurred obligations to JPMorgan, CCCB and the Plan Receiver were creditors of both Prospect Medical Holdings, Prospect CharterCARE, and Prospect East. Complaint ¶¶ 1 – 134, 150, 159.

ARGUMENT

A. PLAINTIFFS HAVE STATED *PRIMA FACIE* CLAIMS AGAINST JPMORGAN

1. THE COMPLAINT SETS FORTH A CAUSE OF ACTION AGAINST JPMORGAN FOR INTENTIONALLY FRAUDULENT TRANSFERS AND OBLIGATIONS UNDER UFTA SECTION (4)(A)(1).

If a debtor makes a transfer or incurs an obligation with actual intent to hinder, delay, or defraud any of its creditors, that transfer or obligation is fraudulent as to, and avoidable by, any present or future creditor of the debtor:

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (1) With actual intent to hinder, delay, or defraud any creditor of the debtor[.]

R.I. Gen. Laws § 6-16-4(a)(1) (pre-July 2018). See Gemma v. Sweeney, No. PC-2018-3635, 2019 WL 5396136, at *10 (R.I. Super. Oct. 15, 2019) ("In an action for relief, a creditor's remedies include 'avoidance of the transfer to the extent necessary to satisfy the creditor's claims.'"). Plaintiffs are creditors under the statute. See id. ("As defined by the RIUFTA, a 'creditor' means a person who has a 'claim,' and a 'claim' means 'a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.'").

As noted *supra*, Plaintiffs have expressly alleged that Prospect CharterCARE, its own subsidiaries, Prospect Medical Holdings, and Prospect East incurred obligations to JPMorgan, and that these obligations were incurred with actual intent to hinder, delay or defraud their respective creditors, including CCCB and the Plan Receiver. These allegations are sufficient to satisfy the Super. R. Civ. P. 9(b) pleading requirements. See Gemma v. Sweeney, No. PC-2018-

3635, 2019 WL 5396136, at *10 (R.I. Super. Oct. 15, 2019) ("Plaintiff has expressly alleged the transfers were made 'to hinder, delay, or defraud'; these general averments are sufficient at the motion to dismiss stage even under particularized pleadings standards required for fraud claims.").

Therefore, the Complaint states a claim on which relief may be granted under R.I. Gen. Laws § 6-16-4(a)(1).

2. THE COMPLAINT SETS FORTH A CAUSE OF ACTION AGAINST JPMORGAN FOR CONSTRUCTIVELY FRAUDULENT TRANSFERS AND OBLIGATIONS UNDER UFTA SECTION (4)(A)(2).

A transfer or obligation is fraudulent as to present or future creditors, if a debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and, at the time of the transfer or obligation, the debtor either:

1) was engaged or was about to engage in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; or

2) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due.

R.I. Gen. Laws § 6-16-4(a)(2).

When a subsidiary entity guarantees a parent entity's debts, the guaranty may not constitute "reasonably equivalent value." See, e.g., In re TOUSA, Inc., 680 F.3d 1298, 1311 (11th Cir. 2012) ("even if all the purported benefits of the transaction [involving a subsidiary's guaranty of its parent's debt] were legally cognizable, they did not confer reasonably equivalent value").

In this action, as shown above, Plaintiffs are alleged to be creditors of Prospect CharterCARE, Prospect Medical Holdings, and Prospect East.

Prospect Medical Holdings, Prospect East, and Prospect CharterCARE are alleged to

have incurred obligations to JPMorgan in substantial part to fund $457 million in dividends to the ultimate shareholders of Prospect Medical Holdings. Complaint ¶¶ 89 – 96. Further, as subsidiaries of Prospect Medical Holdings, Prospect CharterCARE, its own subsidiaries, and Prospect East guaranteed Prospect Medical Holdings' obligations to JPMorgan. Complaint ¶¶ 89, 97 – 100. That transaction conferred no discernable benefit on Prospect CharterCARE, its own subsidiaries, or Prospect East, see Complaint ¶¶ 89, 97 – 100, and in fact resulted in a Moody's credit downgrade. Complaint ¶ 101. Further, to the extent Prospect Medical Holdings paid out $457 million in dividends, it did not receive any benefit from the JPMorgan transaction. Therefore, these entities did not receive reasonably equivalent value for the obligations they incurred to the bank. See Complaint ¶¶ 96 – 101, 159.

Finally, at the time Prospect Medical Holdings and Prospect East incurred obligations to JPMorgan, at least one of the following was true:

1) These Prospect entities were each engaged or were about to engage in a busines or transaction (the loan and guaranties) for which each entity's remaining assets were unreasonably small in relation to the business or transaction. (Complaint ¶¶ 96 – 101, 159.)

2) These Prospect entities each intended to incur, or believed or reasonably should have believed that each entity would incur, debts beyond its ability to pay as they became due. (Complaint ¶¶ 96 – 101, 159.)

Therefore, the Complaint states a claim on which relief may be granted under R.I. Gen. Laws § 6-16-4(a)(2).

3. THE COMPLAINT SETS FORTH A CAUSE OF ACTION AGAINST JPMORGAN FOR CONSTRUCTIVELY FRAUDULENT TRANSFERS AND OBLIGATIONS UNDER UFTA SECTION 5(A).

A transfer or obligation is fraudulent as to present creditors, if a debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the

transfer or obligation, and, either, at the time of the transfer or obligation the debtor was insolvent, or the transfer or obligation rendered the debtor insolvent. R.I. Gen. Laws § 6-16-5(a).

In this action, as shown above, both CCCB and the Plan Receiver are creditors of Prospect CharterCARE, Prospect Medical Holdings, and Prospect East. Further, as shown above, these entities did not receive reasonably equivalent value in exchange for the obligations they incurred to JPMorgan.

Finally, at least one of the following was true:

1) These Prospect entities were insolvent at the time they made transfers and incurred obligations to JPMorgan. (Complaint ¶¶ 96 – 101, 159(b).)

2) These Prospect entities were rendered insolvent as the result of the transfers and obligations. (Complaint ¶¶ 96 – 101, 159(b).)

Therefore, the Complaint states a claim on which relief may be granted under R.I. Gen. Laws § 6-16-5(a).

B. JPMORGAN'S ARGUMENTS HAVE NO MERIT

1. PLAINTIFFS HAVE INDEED ALLEGED THAT JPMORGAN IS A TRANSFEREE

Mis-citing provisions of the post-July 2018 Rhode Island Uniform Voidable Transactions Act instead of the UFTA,[5] JPMorgan contends that "Plaintiffs do not allege that JPMC is a transferee of any such asset."

That is incorrect. Plaintiffs here have indeed alleged that JPMorgan was a transferee. See Complaint ¶¶ 153 & 161 (both alleging that "assets of Defendants Prospect Medical Holdings, Prospect East, and related entities . . . were transferred to . . . JP Morgan. . . .") and 97

[5] See JPMorgan's Memo. at 5 (mis-citing R.I. Gen. Laws §§ 6-16-8(b)(1)(i)-(ii)). Those subsections were added by Rhode Island's Uniform Voidable Transactions Act and were not part of the applicable pre-July 2018 Uniform Fraudulent Transfer Act. See 2018 Rhode Island Public Laws Ch. 18-141 (18-H 7334) § 4 (stating that the 2018 amendments were prospective).

– 100 (alleging that Prospect CharterCARE, its subsidiaries, and Prospect East each guaranteed the JPMorgan debt).

2. THE UFTA DOES NOT REQUIRE THE PLAINTIFFS TO PROVE ANY ACT OR OMISSION OF JPMORGAN OTHER THAN THAT IT RECEIVED TRANSFERS OR OBLIGATIONS

JPMorgan concentrates its arguments on the absence of allegations that it "engaged in any acts or omissions in violation of the applicable statutes, or engaged in any conduct that would constitute any of the essential elements for such claims as a matter of law" or that it had a relationship with the plaintiffs that would give rise to a UFTA claim. See JPMorgan's Memo. at 4.

However, as demonstrated above, the causes of action under UFTA §§ 4(a)(1), 4(a)(2) and 5(a) do not require that that the transferee of a transfer or of an obligation commit any other act or omission whatsoever. It is enough that the transferee receives the transfer or obligation—and the Plaintiffs have sufficiently alleged that receipt against JPMorgan. Complaint ¶¶ 89 – 102, 151, 159. JPMorgan's state of mind and its acts or omissions related to the plaintiffs are completely irrelevant. Once a creditor makes out its *prima facie* case, it may avoid the transfer or obligation to the extent necessary to satisfy the creditor's claim. R.I. Gen. Laws § 6-16-7(a)(1). See M2 Multihull, LLC v. West, No. KC 10-1530, 2012 WL 3279463, at *8 (R.I. Super. Aug. 07, 2012) (Rodgers, J.) (A "cause of action for fraudulent conveyance may lie against a transferee just as it would as against the debtor who fraudulently transferred assets").

JPMorgan cites Rohm & Haas Co. v. Capuano, 301 F. Supp. 2d 156, 161 (D.R.I. 2004) for the proposition that "a creditor can only proceed under the Act against an entity that is liable to it on a claim." See JPMorgan's Memo. at 5. However, that statement from Rohm & Haas Co. concerned the liability of participants in transfers *who were neither debtors nor transferees*. See

Rohm & Haas Co., 301 F. Supp. 2d at 160. In contrast, as noted *supra*, Plaintiffs here have alleged that JPMorgan was a transferee. See Complaint ¶¶ 153 & 161 (both alleging that "assets of Defendants Prospect Medical Holdings, Prospect East, and related entities . . . were transferred to . . . JP Morgan. . . ."). Rohm & Haas Co. itself recognized the transferee liability of another defendant. See Rohm & Haas Co., 301 F. Supp. 2d at 161 ("As a transferee of assets from the Capuanos, Greenfields is properly named as a party to this action.").

JPMorgan also mentions Kondracky v. Crystal Restoration, Inc., 791 A.2d 482, 484 (R.I. 2002) as having been cited by Rohm & Haas Co., *supra*. Kondracky involved fraudulent transfer claims that were dismissed because the underlying claims against the debtors did not arise until more than three and a half years *after* the transfers. See Kondracky, 791 A.2d at 484. In contrast, Plaintiffs' underlying claims against the debtors date back to the June 20, 2014 approval of the asset sale, more than three and a half years *before* the fraudulent transfers in question.

Finally, JPMorgan cites this Court's decision in Gemma v. Sweeney, No. PC-2018-3635, 2019 WL 5396136, at *11 (R.I. Super. Oct. 15, 2019) for the proposition that "Plaintiff can proceed on the fraudulent transfer claim against any entity that is 'liable to it on a claim.'" See JPMorgan's Memo. at 5. That proposition is true, uncontroversial, and beside the point.

JPMorgan attempts to segue, by way of logical fallacy, from that proposition to its inverse: JPMorgan's own contention that Plaintiffs cannot proceed on a fraudulent transfer claim against any entity that is not liable to them on an underlying debt (i.e. that Plaintiffs cannot proceed against mere transferees). See JPMorgan's Memo. at 5. Gemma stands for nothing of the sort.

3. PLAINTIFFS HAVE SUFFICIENTLY ALLEGED, IN THE ALTERNATIVE, THAT JPMORGAN WAS A PERSON FOR WHOSE BENEFIT THE TRANSFERS WERE MADE

JPMorgan contends that Plaintiffs have insufficiently alleged, in the alternative, that JPMorgan was a person for whose benefit transfers were made under R.I. Gen. Laws § 6-16-8(b)(1)(i) [sic]. See JPMorgan's Memo. at 6. JPMorgan contends that Plaintiffs' specific allegations that JPMorgan was one of the "persons for whose benefit the transfers were made within the meaning of R.I. Gen. Laws § 6-16-8(b)(1)" is a legal conclusion and cannot be credited on a motion to dismiss. See id.

First, JPMorgan's contention that the Complaint "appears to base claims against JPMC solely on this language, alleging in connection with both Count IX and Count X that JPMC is a 'person[] for whose benefit the transfers were made . . . .'" JPMorgan's Memo. at 6. As noted *supra* at 10, Plaintiff has also expressly alleged JPMorgan's liability as a transferee.

Second, and again, the correct and applicable statute is R.I. Gen. Laws § 6-16-8(b)(1) (pre-July 2018), not R.I. Gen. Laws § 6-16-8(b)(1)(i) (effective July 2, 2018), which was added prospectively by the adoption of the Uniform Voidable Transactions Act. See *supra* at 9 n.5.

Third, the only purported support JPMorgan offers for this argument is M2 Multihull, LLC v. West, No. KC 10-1530, 2012 WL 3279463, at *8 n.5 (R.I. Super. Aug. 07, 2012) (Rodgers, J.) (citing Doe v. East Greenwich Sch. Dept, 899 A.2d 1258, 1262-63 n.2 (RI. 2006)). In M2 Multihull, LLC, the Superior Court had dismissed "alter ego" claims against a debtor's wife for alleged liability on her husband's debts because "an individual cannot be an alter ego of another individual, and that such theory of liability is reserved to reach the assets of a corporation when the corporate veil should be pierced and not to hold one spouse liable for the individual debts of the other spouse." M2 Multihull, LLC, 2012 WL 3279463, at *3. Having

dismissed that "alter ego" claim, i.e. the only claim that might have made the wife a debtor of the plaintiff, the Superior Court dismissed the claim that the wife had made fraudulent transfers to her husband.[6] See id. at *8 n.5. That result clearly does not apply in the instant case, where Plaintiffs' claims that the various Prospect entities are debtors remain in the case.

Fourth, and in any event, the allegation that JPMorgan was a person for whose benefit transfers was made is a factual allegation, not a legal conclusion, although it is a factual allegation with some legal significance.

JPMorgan also contends that Plaintiffs' allegation that JPMorgan benefited from the transfers is inconsistent with Plaintiffs' separate allegation that JPMorgan was an "administrative agent and collateral agent" since "[t]hose roles, by their nature, confer administrative responsibilities, not beneficiary status." This *ipse dixit* is a disguised Iqbal/Twombly plausibility argument, and our Supreme Court has rejected the Iqbal/Twombly plausibility standard.[7] It is not *inconceivable* for JPMorgan to have been both a beneficiary and "an administrative agent and collateral agent," (either together within the same fraudulent transfer, or with differing roles as to other fraudulent transfers). See Estate of Sherman v. Almeida, *supra*, 747 A.2d 470, 473 (R.I. 2000) (motion to dismiss only grantable where plaintiff would not be "entitled to relief under any conceivable set of facts.").

In fact, the Plaintiffs alleged that, as the administrative agent and collateral agent, JPMorgan holds the Prospect Medical Holdings loans and also the guaranties by Prospect CharterCARE, its subsidiaries, and Prospect East. Complaint ¶¶ 96 – 100.

[6] The Superior Court also dismissed claims against the wife as a transferee of the husband's fraudulent transfers, in light of the husband's bankruptcy petition, which vested such claims exclusively in the bankruptcy trustee. See M2 Multihull, LLC, 2012 WL 3279463, at *9 n.6.

[7] See DiLibero v. Mortg. Elec. Registration Sys., Inc., 108 A.3d 1013, 1016 (R.I. 2015).

4. PLAINTIFFS HAVE SUFFICIENTLY ALLEGED JPMORGAN'S INTENT TO HINDER, DELAY, OR DEFRAUD

JPMorgan contends that Plaintiffs have failed to allege JPMorgan's intent under Count IX for liability under R.I. Gen. Laws § 6-16-4(a)(1).

First, as noted supra, this Court has expressly held that "general averments" that a transfer or obligation was made "to hinder, delay, or defraud" under the Uniform Fraudulent Transfer Act are sufficient at the motion to dismiss stage even under particularized pleadings standards required for fraud claims. Gemma v. Sweeney, No. PC-2018-3635, 2019 WL 5396136, at *10 (R.I. Super. Oct. 15, 2019) (Stern, J.). See Super. R. Civ. P. 9(b) ("Malice, intent, knowledge, and other condition of mind of a person may be averred generally.").

Second, and yet again, JPMorgan miscites and misquotes the post-July 2018 Uniform Voidable Transactions Act, not the pre-July 2018 UFTA.[8] See JPMorgan's Memo. at 7.

Third, the only purported support that JPMorgan cites is Boveri, S.A. v. Alcoa Fujikura Ltd., No. PC-2002-1084, 2007 WL 1234523 (R.I. Super. Apr. 11, 2007) (Silverstein, J.), which does not actually support the proposition. Boveri, S.A. was (a) a summary judgment case, where (b) the Court *denied* summary judgment, because the plaintiff might prove the defendant's intent, including through some of the various "non-exclusive" badges of fraud enumerated in the statute. Boveri, S.A. did not involve a motion to dismiss and did not involve pleading standards. And here, the Plaintiffs have already specifically alleged at least one of those badges of fraud (which are *non*-exclusive in any event) elsewhere in the Complaint. See R.I. Gen. Laws § 6-16-4(b)(9) (pre-July 2018) ("(9) The debtor was insolvent or became insolvent shortly after the transfer was

[8] See R.I. Gen. Laws § 6-16-4(a)(1) (pre-July 2018) ("(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: (1) With actual intent to hinder, delay, or defraud any creditor of the debtor").

made or the obligation was incurred"); Complaint ¶ 159 (... "the debtor(s) was insolvent at that time or the debtor(s) became insolvent as a result of the transfer").

5. PLAINTIFFS ARE NOT LIMITED TO PURSUING THEIR CLAIMS AGAINST OTHER DEFENDANTS

Separately from the issue of whether Plaintiffs have stated claims against JPMorgan (addressed *supra*), JPMorgan also contends that Plaintiffs do not *need* to pursue their claims against JPMorgan. See JPMorgan's Memo. at 8-9 (contending by way of *ipse dixit* that Plaintiffs' "remedies properly lie against parties other than [JPMorgan]," that Plaintiffs' "claims could be accomplished entirely through relief against the borrowers or recipients of funds, and not by direct claims against [JPMorgan]," and that there "is no reason that Plaintiffs must proceed against [JPMorgan] to obtain this requested relief.").

That is not a proper basis for a Super. R. Civ. P. 12(b)(6) motion, which JPMorgan acknowledges earlier in the *standard of review* portion of its memorandum (as it must) is limited to determining whether Plaintiffs' pleading fails to state a claim against JPMorgan. Moreover, the practical necessity of Plaintiffs' claims against JPMorgan obviously cannot be determined within the four corners of Plaintiff's pleading, since it would depend on (*inter alia*) the solvency of other Defendants.[9]

In this action, CCCB and the Plan Receiver have alleged every element of their *prima facie* case against JPMorgan. Therefore, they are entitled to pursue avoidance of the transfers and obligations to JPMorgan.

[9] And to the extent the various transfers and obligations rendered the Prospect Defendants insolvent (as is alleged), those claims against the underlying debtors may be uncollectible.

CONCLUSION

For all these reasons, this Court should deny JPMorgan's motion to dismiss.

Respectfully submitted,

CharterCARE Community Board, individually and derivatively, as nominal member and as trustee of the beneficial interest of its membership in Prospect CharterCARE, LLC,
By its Attorneys,

/s/ Thomas S. Hemmendinger

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August 28, 2020

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2020:

1) I electronically filed the foregoing document. This document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

2) The following parties received electronic notice: any parties entered to be notified through the Rhode Island Judiciary's Electronic Filing System.

3) The document was served by United States Postal Service, postage prepaid, on the following persons: N/A

/s/ Thomas S. Hemmendinger

Thomas S. Hemmendinger