

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND :
ADMINISTRATOR OF THE ST. JOSEPH :
HEALTH SERVICES OF RHODE ISLAND :
RETIREMENT PLAN, et al. :

Plaintiffs :

v. :

C.A. No: 1:18-CV-00328-WES-LDA

PROSPECT CHARTERCARE, LLC, et al. :

Defendants. :

**PLAINTIFFS’ RESPONSE TO THE DIOCESAN DEFENDANTS’
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Now come Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the “Receiver”), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carol Short, Donna Boutelle, and Eugenia Levesque, individually as names plaintiffs (“Named Plaintiffs”) and on behalf of all class members as defined herein (the Receiver and the Named Plaintiffs are referred to collectively as “Plaintiffs”) and respond to Defendants Roman Catholic Bishop of Providence, a corporation sole (“RCB”), Diocesan Administration Corporation, and Diocesan Service Corporation (collectively “the Diocesan Defendants”) Statement of Undisputed Material Facts (ECF # 237) (the “Diocesan Defendants’ SUMF”) in support of the Diocesan Defendants’ Motion for Summary Judgment on Count IV of the Plaintiffs’ First Amended Complaint (ECF # 236). Plaintiffs follow the numbering of the Diocesan Defendants’ SUMF. The following responses are made for purposes only of the Diocesan Defendants’ Motion for Summary Judgment.

Responses

21. In general, Defendant CCCB as the Class A Member was given the power to appoint the majority of the Board of Trustees, and control over all major (non-religious) decisions, and the consent of RCB as Class B Member was required for certain religious matters, including matters affecting SJHSRI's compliance with Catholic ethical directives. See Exhibit 10 (SJHSRI Bylaws) at 2, 5-7; see also Pls.' SOF ¶ 27.

RESPONSE: While this statement is undisputed, it overlooks the fact that the consent of RCB as Class B Member was required for certain major issues, including “the sale, mortgaging or leasing of any real or personal property of the Corporation having a value in excess of the relevant canonical threshold as the same may exist from time to time...” Diocesan Defendants' Exhibit 10 (SJHSRI By-laws) at 7.

22. As noted, the Plan was amended and restated effective July 1, 2011. See Exhibit 4 (the “2011 Plan”); see also Pls.' SOF ¶ 28.

RESPONSE: While this statement is undisputed, it overlooks the fact that the Plan was amended and restated effective July 1, 2011 *by SJHSRI* only. See Diocesan Defendants' Exhibit 4 at 66. However, the predecessor version of the Plan only provided for amendment by the Bishop-led/appointed Retirement Board. See Diocesan Defendants' Exhibit 3 (1999 Plan) at 34.

23. The 2011 Plan did not provide for any retirement board, or a retirement board controlled by the Most Reverend Bishop of the Diocese of Providence or RCB. See Exhibit 4 (2011 Plan). The 2011 Plan did grant the “Most Reverend Bishop of Providence” the right to determine where any remaining balance in Plan assets would be directed after all Plan liabilities were satisfied in the event SJHSRI had ceased to exist. See id. at 55-56.

Otherwise, the 2011 Plan granted no other authority to the “the Most Reverend Bishop of Providence” or RCB.

RESPONSE: While this statement is undisputed, it overlooks the fact that the Plan could only be amended by the Bishop-led/appointed Retirement Board. See Diocesan Defendants’ Exhibit 3 (1999 Plan) at 34.

25. The 2011 Plan and the 2016 Plan did not provide for any retirement board, or a retirement board controlled by the Most Reverend Bishop of the Diocese of Providence. See Exhibit 4 (2011 Plan) at 3, 38; Exhibit 5 (2016 Plan) at 4, 41.

RESPONSE: While this statement is undisputed, it overlooks the fact that the Plan could only be amended by the Bishop-led/appointed Retirement Board. See Diocesan Defendants’ Exhibit 3 (1999 Plan) at 34.

26. The 2011 Plan and the 2016 Plan did not refer to, or confer any authority on any organization, the principal purpose or function of which was the administration or funding of the Plan. See Exhibit 4 (2011 Plan) at 3, 38; Exhibit 5 (2016 Plan) at 4, 41; see also Pls.’ SOF ¶ 32.

RESPONSE: This statement is undisputed as to the period between 2011 and June 20, 2014, during which period SJHSRI operated Fatima Hospital, and SJHSRI’s Board of Trustees supervised management’s operation of Fatima Hospital. This statement is disputed as to the period from June 20, 2014 until October 20, 2017, when the Board of Trustees of SJHSRI irrevocably designated Plaintiff Receiver as administrator of the Plan. See Diocesan Defendants’ Exhibit 11 (October 20, 2017 Resolution). During that period the principal purpose of both SJHSRI and, consequently, SJHSRI’s Board of Trustees, was the administration and funding of the Plan. The Affidavit of Richard P. Land dated March 8, 2022

(“Land Aff.”) attesting to that fact is Exhibit 89 to Plaintiffs’ LR Cv 56(a)(4) Statement of Undisputed and Disputed Material Facts in Opposition to the Diocesan Defendants’ Motion for Summary Judgment. See Land Aff. ¶¶ 6, 17–30.

27. Instead, the 2011 Plan provided that “[t]he Employer shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Directors [sic], shall designate a person or committee of persons to be the Administrator and named fiduciary.” See Exhibit 4 (2011 Plan) at 38; see also Pls.’ SOF ¶ 33.

RESPONSE: The word “instead” is denied as to the period from June 20, 2014 until October 20, 2017, for the reasons set forth in response to paragraph 26.

Plaintiffs
By their Attorneys,

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