

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF
RHODE ISLAND, INC.

v.

ST. JOSEPH'S HEALTH SERVICES OF
RHODE ISLAND RETIREMENT PLAN,
AS AMENDED

C.A. No.: PC-2017-3856

Hearing Date: Dec. 13, 2022
@ 10:00 A.M

In re:

CharterCARE Community Board,

St. Joseph Health Services of
Rhode Island,

And

Roger Williams Hospital

C.A. No.: PC-2019-11756

**JOINT PETITION TO APPOINT PLAN RECEIVER AS
LIQUIDATING RECEIVER OF CCCB, SJHSRI, AND RWH**

NOW COME Stephen F. Del Sesto, Esq., solely in his capacity as the Permanent Receiver (the "Plan Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") and Thomas S. Hemmendinger, Esq. ("Liquidating Receiver"), as Permanent Liquidating Receiver of CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI") and Roger Williams Hospital ("RWH") (the Plan Receiver and the Liquidating Receiver being collectively the "Receivers"), and hereby Petition this Court for an order appointing Stephen F. Del Sesto, Esq. as the Permanent Liquidating Receiver of CCCB, SJHSRI, and RWH as successor to Thomas S. Hemmendinger and discharging Thomas S. Hemmendinger, Esq. from that

appointment, in the interests of economy and efficient administration of the two receiverships.

As grounds for this Joint Petition, the Receivers hereby state as follows:

1. The Plan Receivership was commenced on August 17, 2017, upon the Petition of SJHSRI to appoint a receiver of the Plan.

2. SJHSRI's Petition alleged that the Plan was insolvent and sought an immediate reduction in benefits of 40% for all Plan participants. Specifically, SJHSRI's Petition sought the following relief:

(1) the Court appoint a Temporary Receiver forthwith and also appoint a Permanent Receiver to take charge of the assets, affairs, estate, effects and property of the Plan, (2) that the Temporary Receiver and Permanent Receiver be authorized to continue to operate the Plan, (3) that the request for appointment of a permanent receiver and for an immediate 40% uniform reduction in benefits be set for hearing thirty (30) days.

3. As a result of the Petition the Court appointed Stephen F. Del Sesto, Esq. as temporary Receiver of the Plan on August 18, 2017.

4. On October 27, 2017, the Court appointed Stephen F. Del Sesto, Esq. as Permanent Receiver of the Plan.

5. On October 11, 2017, the Plan Receiver filed his Emergency Petition to Engage Legal Counsel, pursuant to which he sought leave to engage Wistow, Sheehan & Loveley, P.C. ("WSL") as Special Counsel. On October 17, 2017, the Court granted the Emergency Petition. The Order granting the Emergency Petition states in pertinent part:

That for the reasons stated in the Receiver's Petition and in accordance with the terms of the Engagement, attached to the Petition as Exhibit A and incorporated herein by reference, the Receiver is hereby authorized to retain the law firm of Wistow Sheehan & Loveley PC ("WSL") to act as the Receivership Estate's special litigation counsel for the purposes more specifically set forth in the Petition and the Engagement

6. With the approval of the Plan Receiver and in addition to its representation of and investigation related to claims of the Plan Receiver, WSL was also retained in May and June 2018 by seven individual Plan participants, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque (“Seven Named Plaintiffs”). The Plan Receiver together with the Seven Named Plaintiffs agreed to act on their own behalf and on behalf of the other Plan participants in one or more class actions.

7. On June 18, 2018, WSL filed separate Complaints in both the Federal Court Action¹ and the State Court Action.²

8. Thereafter, over several years of intense litigation, WSL negotiated and the Plan Receiver entered into three settlements.

9. The first settlement (“Settlement A”) was of the Federal Court Action Plaintiffs’ claims against CCCB, SJHSRI, and RWH, and involved an initial³ gross recovery of \$12,600,000.

10. The second settlement (“Settlement B”) was of the Receiver’s claims against CharterCARE Foundation and involved a gross recovery of \$4.5 million.

11. Those settlements were ultimately approved both by this Court in this Plan Receivership (on November 16, 2018 and December 27, 2018, respectively) and by the

¹ Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No. 18-cv-00328-WES (D.R.I.) (the “Federal Court Action”).

² Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No. PC-2018-4386 (R.I. Super.) (the “State Court Action”). The State Court Action was consensually stayed and, since such date, all litigation activities concerning the claims asserted in the State Court Action have occurred exclusively in the Federal Court Action.

³ Subsequent recoveries attributable to this settlement include the income distributions from the trusts discussed herein.

court in the Federal Court action (on October 9, 2019 and September 30, 2019 respectively) after extensive motion practice and detailed review by both courts of the validity and fairness of both settlements.

12. The third settlement (the “Prospect/Angell Settlement”) was of the claims asserted against persons and entities affiliated with Prospect Medical Holdings, Inc. and The Angell Pension Group, Inc., for a gross settlement amount of \$30 million. The Prospect/Angell Settlement received approvals from the Court in this Plan Receivership (on March 4, 2021) and the Liquidating Receivership (on March 4, 2021), and from the court in the Federal Court Action (on July 29, 2021). The validity and fairness of this settlement were also reviewed and approved by both courts.

13. Under Settlement A, CCCB, SJHSRI, and RWH (the “Settling Defendants”) agreed:

- a) to pay cash to the Plan Receiver;
- b) to assign certain rights to the Plan Receiver;⁴
- c) that they were jointly and severally liable to the Federal Court Action’s Plaintiffs for at least \$125 million;
- d) to petition themselves into the Liquidation Proceedings;
- e) to take all reasonable steps in such proceedings to marshal their other assets and oppose and seek to limit the claims of other creditors.

14. Following judicial approvals of Settlement A, on December 13, 2019, and as required by Settlement A, CCCB, SJHSRI, and RWH⁵ initiated the Liquidation

⁴ These rights included CCCB’s membership interests in Prospect Chartercare, LLC and CharterCARE Foundation, which were later disposed of (in exchange for cash consideration) in the Prospect/Angell Settlement and Settlement B, respectively.

⁵ SJHSRI and RWH are wholly owned subsidiaries of CCCB.

Proceedings by filing a Petition for Judicial Dissolution and Liquidation of Assets and Affairs pursuant to R.I. Gen. Laws § 7-6-60(a)(3) and § 7-6-61, seeking appointment of a liquidating receiver. Following a hearing on that petition, this Court granted the petition and Thomas Hemmendinger was subsequently appointed as the Liquidating Receiver of CCCB, SJHSRI, and RWH.

15. Certain releases were exchanged in connection with the settlement, but the releases that the Plan Plaintiffs gave to the CCCB, SJHSRI, and RWH expressly preserved all of the Plan Plaintiffs' claims to the extent that there may be assets of the CCCB, SJHSRI, and RWH available to be distributed in the Liquidation Proceedings.

16. On January 17, 2020, the Liquidating Receiver was duly appointed permanent liquidating receiver of CCCB, SJHSRI, and RWH, and of all real property and all tangible and intangible personal property of CCCB, SJHSRI, and RWH.

17. Pursuant to his duties the Liquidating Receiver gave notice to potential creditors of CCCB, SJHSRI, and RWH of the commencement of the receivership and directed them to file claims.

18. On May 6, 2020, the Liquidating Receiver advised the Court that he had entered into an agreement with the Plan Receiver that the Plan Receiver could file a proof of claim in the Liquidating Receivership on behalf of all Plan participants, and that individual Plan participants were not required to file separate proofs of claim in their capacity as Plan participants. On May 22, 2020, the Court approved and ratified that agreement.

19. On May 10, 2020, the Plan Receiver in that capacity and on behalf of all members of the Plan filed his proof of claim (“Plan Receiver’s Proof of Claim”) in the Liquidation Proceedings.

20. The Plan Receiver’s Proof of Claim states in pertinent part as follows:

The Debtors are jointly and severally liable to the Plan Claimants as reflected in the Federal Complaint and the Settlement Agreement^[6] [for Settlement A]. The Debtors have admitted in the Settlement Agreement that they are jointly and severally liable to the Plan Claimants for (inter alia) breach of contract in the amount of damages of at least \$125,000,000.00, less the \$12,596,253.48 that the Debtors paid in October 2019 pursuant to the Settlement Agreement, and less the \$84,949.43 that the Debtors paid pursuant to the Settlement Agreement shortly before filing their petition for judicial liquidation. Debtors’ total liability to the Plan Claimants includes the amount necessary to fully fund the Plan, which fluctuates based on investment returns and disbursements. Said amount was owed by the Debtors as of December 18, 2019, and is now due to the Plan Claimants from the Debtors.

As part of Settlement A, the Debtors admitted their obligation.⁷

21. Before the start of the Liquidating Receivership, neither CCCB, SJHSRI, nor RWH disputed or questioned the validity of Settlement A or of the claims of the Plan Receiver or the Plan participants thereunder.

22. The Liquidating Receiver has examined the documentation regarding Settlement A and the Plan Receiver’s Proof of Claim, and he has concluded that there is no factual or legal basis to dispute or question the validity of the claims of the Plan Receiver or the Plan participants.

⁶ The “Settlement Agreement” referred to in this excerpt from the Plan Receiver’s Proof of Claim was for Settlement A.

⁷ See paragraph 13(c) above.

23. On February 27, 2022, in the Liquidating Receivership, the Plan Receiver filed his Petition to Apply Trust Income to Pension Plan, seeking to have the distributions from certain trusts (the “Trusts”) redirected from SJHSRI and RWH to the Plan Receivership, pursuant to the Final Judgment entered in In re: Chartercare Health Partners Foundation; Roger Williams Hospital; and St. Joseph Health Services of Rhode Island V. Stephen Del Sesto, as Receiver and Administrator Of the St. Joseph Health Services Of Rhode Island Retirement Plan; Gail J. Major; Nancy Zompa; Ralph Bryden; Dorothy Willner; Caroll Short; Donna Boutelle; and Eugenia Levesque, KM-2015-0035 (the “2015 Cy Pres Action”).

24. On March 17, 2022, the Liquidating Receiver filed the Liquidating Receiver’s Response to Plan Receiver’s Petition to Apply Trust Income to Pension Plan, recommending it be granted.

25. On April 7, 2022, in the Liquidating Receivership, the Court entered its Order granting the Plan Receiver’s Petition to Apply Trust Income to Pension Plan. The Court directed that “the Liquidating Receiver shall pay to the Plan Receiver the sum of \$1,005,776 which represents all of the accumulated income and distributions that the Liquidating Receiver has received as of March 28, 2022 from the Trusts . . .” and directed that the Trustee (Bank of America, N.A.) pay all future income and distributions from the Trusts to the Plan Receiver.

26. Following the entry of the April 7, 2022 Order, all of the regular income and distributions that were previously being received by the Liquidating Receiver have become payable instead to the Plan Receiver. The Liquidating Receivership is no longer receiving any regular source of income.

27. On May 31, 2022, in the Plan Receivership, the Plan Receiver filed his Twenty-Fourth Interim Report and Twenty-Third Interim Request for Approval of Fees, Costs and Expenses, which stated in part as follows:

In light of the minimal issues remaining in the Liquidating Receivership, the ultimate benefit to the Plan from those issues and in order to maximize efficiencies and minimize expenses going forward, your Receiver and the Liquidating Receiver have agreed to seek joint approval from this Court to discharge the Liquidating Receiver and appoint the Receiver as the substitute Liquidating Receiver.

WHEREFORE Petitioners respectfully request that the Court order and direct that:

- a. Stephen F. Del Sesto, Esq. be appointed the Permanent Liquidating Receiver of CCCB, SJHSRI, and RWH with all of the power and authority previously granted Thomas S. Hemmendinger, Esq.;
- b. Thomas S. Hemmendinger, Esq. be discharged from his duties as the Permanent Liquidating Receiver of CCCB, SJHSRI, and RWH after submission of his final report and request for fees and expenses; and
- c. Such other relief as may be just and necessary to accomplish the foregoing.

Respectfully submitted,

Stephen F. Del Sesto, Esq. (#6336),
Solely in His Capacity as Permanent Plan
Receiver of the St. Joseph Health Services of
Rhode Island Retirement Plan,

By his Attorneys,

/s/ Max Wistow

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Thomas S. Hemmendinger, as Liquidating
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/s/ Thomas S. Hemmendinger

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Dated: November 17, 2022

CERTIFICATE OF SERVICE

I hereby certify that, on the 17th day of November, 2022, I filed and served the foregoing document through the electronic filing system on the following users of record:

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/s/ Benjamin Ledsham