

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH :
SERVICES OF RHODE :
ISLAND, INC., :

Plaintiff, :

v. :

C.A. No. PC-2017-03856

ST. JOSEPH’S HEALTH :
SERVICES OF RHODE ISLAND :
RETIRMENT PLAN, AS :
AMENDED, :

Defendant. :

In re: :

CHARTERCARE COMMUNITY :
BOARD, ST. JOSEPH HEALTH :
SERVICES OF RHODE :
ISLAND, and ROGER :
WILLIAMS HOSPITAL :

C.A. No. PC-2019-11756

ORDER

This matter came before the Court on February 15, 2023, the Honorable Associate Justice Brian P. Stern presiding, on Attorney Stephen Del Sesto’s Petition to Partially Distribute Corpora of Certain Trusts. He brings the Petition in his capacity as (1) Permanent Receiver (the Plan Receiver) of the St. Joseph Health Services of Rhode Island Retirement Plan (the Plan); and (2) Permanent Liquidating Receiver (the Liquidating Receiver) of CharterCARE Community Board (CCCB), St. Joseph Health Services of Rhode Island (SJHSRI), and Roger Williams Hospital (RWH) (SJHSRI and RWH collectively, the Heritage Hospitals).

By way of background, the Heritage Hospitals owned and operated certain healthcare facilities, including Our Lady of Fatima Hospital and Roger Williams Hospital. (Pet. to Partially Distribute Corpora of Certain Trusts (Pet.) ¶ 7.) On June 20, 2014, the Heritage Hospitals sold those assets to for-profit entities under the aegis of Prospect Medical Holdings, Inc. (the 2014 Asset Sale). *Id.* On August 17, 2017, SJHSRI commenced receivership proceedings in this Court (the Plan Receivership). *Id.* ¶¶ 1-2; *see St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-03856. SJHSRI alleged that the Plan was insolvent and requested that the Court, *inter alia*, appoint a Temporary Receiver and impose an immediate 40 percent reduction in benefits for Plan participants. (Pet. ¶ 2.) Attorney Del Sesto was appointed Temporary Receiver—and later Permanent Receiver—of the Plan. *Id.* ¶¶ 3, 5.

On October 11, 2017, the Plan Receiver filed an Emergency Petition to Engage Legal Counsel, which was granted on October 17, 2017. *Id.* ¶ 4. The Plan Receiver engaged Wistow, Sheehan & Loveley, PC (WSL) as Special Counsel to investigate potential claims on behalf of the Plan Receiver. *See id.* ¶¶ 4, 6. In or about May and June of 2018, seven individual Plan participants (the Seven Named Plaintiffs) retained WSL to bring individual and class action claims. *Id.* ¶ 6. On June 18, 2018, WSL commenced litigation on behalf of the Plan Receiver and the Seven Named Plaintiffs in the United States District Court for the District of Rhode Island (the Federal Action) and the Rhode Island Superior Court (the State Action). *Id.* ¶ 8; *see Del Sesto v. Prospect Chartercare, LLC*, C.A. No. 18-cv-00328-WES (D.R.I.); *Del Sesto v. Prospect Chartercare, LLC*, C.A. No. PC-2018-04386 (R.I. Super. Ct.).

The litigation resulted in 3 settlements. (Pet. ¶¶ 10-11, 13.) The first settlement (Settlement A) related to Federal Action claims against CCCB, SJHSRI, and RWH, resulting in an initial gross

recovery of \$12.6 million. *Id.* ¶ 10. The second settlement (Settlement B) related to Federal Action claims against CharterCARE Foundation, resulting in a gross recovery of \$4.5 million. *Id.* ¶ 11. The third settlement (Settlement C) related to claims asserted against persons and entities affiliated with Prospect Medical Holdings, Inc. and The Angell Pension Group, Inc., resulting in a gross recovery of \$30 million. *Id.* ¶ 13. Under the terms of Settlement A, CCCB and the Heritage Hospitals agreed, *inter alia*, (1) to pay cash and assign rights to the Plan Receiver; (2) that they were jointly and severally liable to the Federal Action plaintiffs for at least \$125 million; and (3) to petition for liquidation proceedings. *See id.* ¶ 14(a)-(e).

On December 13, 2019, CCCB and the Heritage Hospitals filed a Petition for Judicial Dissolution and Liquidation of Assets and Affairs pursuant to G.L. 1956 § 7-6-60(a)(3) and § 7-6-61 (the Liquidation Proceedings). *Id.* ¶ 15. Attorney Thomas Hemmendinger was appointed Temporary Receiver—and later Permanent Receiver—of CCCB and the Heritage Hospitals. *Id.* ¶¶ 16, 18. Upon his appointment, Receiver Hemmendinger received the income and distributions from charitable trusts (the Subject Trusts) listing SJHSRI and RWH as beneficiaries.¹ *Id.* ¶ 19. Bank of America (Bank of America or Trustee) is the Trustee for the Subject Trusts. *Id.* ¶ 20.

¹ The Subject Trusts include the following:

The Trust under Will of Sarah S. Brown dated June 21, 1911
Total valuation: \$1,855,821.58 as of September 30, 2022
RWH's 50 percent share: \$927,910.79
Other beneficiaries: Rhode Island Hospital (50 percent)

The Trust under Will of C. Prescott Knight dated November 14, 1932
Total valuation: \$324,973.65 as of September 30, 2022
RWH's 100 percent share: \$324,973.65
Other beneficiaries: None

The Trust under Will of George Luther Flint dated June 25, 1935
Total valuation: \$986,045.06 as of September 30, 2022
RWH's 50 percent share: \$493,022.53

On May 10, 2022, the Plan Receiver filed a Proof of Claim in the Liquidation Proceedings on behalf of the Plan and its members, which was not disputed. *Id.* ¶¶ 23-25. On February 27, 2022, the Plan Receiver filed a Petition to Apply Trust Income to the Plan, seeking an order (1) directing Receiver Hemmendinger to pay accumulated income or distributions from the Subject Trusts to the Plan Receiver; and (2) directing Bank of America to pay future income or distributions from the Subject Trusts directly to the Plan Receiver for the benefit of the Plan. *Id.* ¶ 27. The Plan Receiver’s Petition was granted on April 7, 2022. *Id.* ¶ 28. On December 16, 2022, Receiver Hemmendinger was discharged as Liquidating Receiver and the Plan Receiver was appointed Permanent Liquidating Receiver of CCCB and the Heritage Hospitals. *Id.* ¶ 33.

Other beneficiaries: Rhode Island Hospital (50 percent)

The Trust under Will of Albert K. Steinert dated July 11, 1927

Total valuation: \$287,823.92 as of November 30, 2022

SJHSRI’s 16.66 percent share: \$47,970.66

RWH’s 16.66 percent share: \$47,970.66

Other beneficiaries: Rhode Island Hospital (16.66 percent), Miriam Hospital (16.66 percent), Women & Infants Hospital (16.66 percent), Wellesley College (8.33 percent), and Brown University (8.33 percent),

The Herbert G. Townsend Trust dated January 2, 1929, as restated on June 14, 1949, as amended on October 6, 1955, and as modified by agreement on November 18, 1971

Total valuation: \$19,811,058.44 as of September 30, 2022

SJHSRI’s 33.33 percent share: \$6,603,686.15

Other beneficiaries: Rhode Island Hospital (33.33 percent) and Women & Infants Hospital (33.33 percent)

The Harold A. Sweetland Fund

Total valuation: \$912,995.19 as of September 30, 2022

Life income beneficiary: Jean Corcoran

SJHSRI’s 33.33 remainder share: \$304,311.73

Other remainder beneficiaries: Rhode Island Hospital (33.33 percent) and Women & Infants Hospital (33.33 percent)

(Pet. ¶ 19(a)-(f).)

As of July 31, 2022, the Plan’s assets are valued at \$67,872,555. *Id.* ¶ 34. However, the Plan Receiver avers that the Plan needs more than \$192,000,000 to meet its liabilities. *See id.* ¶¶ 34-36. Accordingly, the Plan Receiver seeks to recover other assets that may be available to meet Plan liabilities, such as the Heritage Hospitals’ shares of the Subject Trusts. *See id.* ¶¶ 19(a)-(f), 37. On January 9, 2023, the Plan Receiver filed a Petition to Partially Distribute the Corpora of the Subject Trusts. *See Pet.* On February 8, 2023, the Trustee filed an Opposition, arguing that the Court should deny the Petition because it is contrary to the Subject Trust settlors’ intent. (Trustee Opp’n to Receiver’s Pet. to Partially Distribute the Corpora of Certain Trusts (Trustee Opp’n) 2.) The Rhode Island Office of the Attorney General also responded to the Petition on January 27, 2023, arguing that the Court should wait until it determines whether the Plan can be saved by other means not involving deviation from the Subject Trusts’ terms. *See Rhode Island Attorney General Response to Pet. to Partially Distribute Corpora of Certain Trusts (RIAG Response).* The Plan Receiver filed Replies to both filings. *See Docket, PC-2019-11756.*

The Plan Receiver asks the Court to (1) terminate the terms of the Subject Trusts relative to the Heritage Hospitals; and (2) distribute the Heritage Hospital’s pro-rata share of the Subject Trusts’ corpora to the Plan Receiver under equitable deviation pursuant to the Restatement (Third) *Trusts* § 66. (Pet. ¶¶ 38-51.) Section 66 provides that:

“The court may modify an administrative or distributive provision of a trust, or direct or permit the trustee to deviate from an administrative or distributive provision, if because of circumstances not anticipated by the settlor the modification or deviation will further the purposes of the trust.” Section 66(1).

The Trustee argues that Rhode Island has not adopted the Restatement (Third) *Trusts*, and that the Court should not consider its provisions. *See Trustee Opp’n* 6-7 & n.2. Thus, the Trustee argues that the Plan Receiver’s only available remedy is cy pres pursuant to G.L. 1956 § 18-4-1.

Id. at 7. Furthermore, even if the Court were to adopt § 66, the Trustee argues that the Court should not grant the Petition because the Petitioner seeks an outcome that does not further the intent of the Subject Trusts' settlors. *Id.* at 2-6, 8-9.

Assuming *arguendo* that the Court were to adopt § 66, the Court finds that equitable deviation would be improper because distributing corpora to the Plan Receiver does not further the intent of the Subject Trusts' settlors. "The purpose of equitable deviation '[i]s not to disregard the Settlor's intent but to modify the inopportune details to effectuate the Settlor's broader purposes.'" *Id.* at 41 (quoting Uniform Trust Code § 412 cmt. a.). When determining a settlor's intent, "donative language should be interpreted with reference to the whole trust." *Steinhof v. Murphy*, 991 A.2d 1028, 1033 (R.I. 2010). "[T]he words of a trust should be 'given their primary, ordinary, and common meaning unless it plainly [appears] that they were used in some other sense.'" *Id.* (quoting *Hunt v. Citizens Trust Co.*, 519 A.2d 1120, 1122 (R.I. 1987)).

While the Court notes that it granted the Petitioner's prior request to apply trust income to the Plan on April 7, 2022, the Court finds that the same rationale for applying the trusts' income does not apply to distributing corpora at this time. At the hearing, Petitioner argued that without the corpora, Plan beneficiaries would receive *de minimis* monthly checks. However, the Court notes that the Plan, as of the last report, has nearly \$70 million in assets, enough to make pension payments to the beneficiaries for several years. In addition, the Pension Benefit Guaranty Corporation (the PBGC) may provide coverage to the Plan, obviating or reducing any distribution of the corpora, in one lump sum, to the Petitioner. Petitioner also argued that if the Plan were vested with the corpora of the Subject Trusts, the PBGC may be more inclined to guarantee the Plan's pension payments. The Court finds this argument speculative at best. The PBGC has not yet opined on whether it will provide coverage to the Plan. In fact, the PBGC may also consider

the Plan's income as a redeeming quality of the Plan. Furthermore, as the Court has noted, Petitioner's request does not align with the settlors' intent at this time and under the present conditions. The Court will review this determination in twelve months or at such time that there is a material change of circumstances. Until there is a material change demonstrating that the Subject Trusts should be fully distributed to the Plan and not make distributions in perpetuity the status quo will remain in effect.

Accordingly, it is hereby:

ORDERED, ADJUDGED, AND DECREED

That the Petition to Partially Distribute Corpora of Certain Trusts is **DENIED WITHOUT PREJUDICE**. This Court will review its decision in 12 months or such earlier time as there is a material change to the Plan.

ENTERED as an Order of Court this 21st day of March, 2023.

ENTER:

Brian P. Stern, J.

JUSTICE STERN
March 21, 2023

PER ORDER:

/s/ Carin Miley
Deputy Clerk I

DEPUTY CLERK I
March 21, 2023