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Re: Providence Creek Academy Charter School, Inc. v.  
Saint Joseph's at Providence Creek, et al.  
C.A. No. 1210-K  
Date Submitted: August 9, 2005

Dear Counsel:

Respondents Saint Joseph's at Providence Creek, Inc. ("SJPC"), The Saint Joseph's Project Foundation, Inc., and Providence Creek Services, L.L.C. (collectively the "Respondents") have moved, under Court of Chancery

Rule 12(b)(6), to dismiss the Complaint of Petitioner Providence Creek Academy Charter School, Inc. (“PCA”) for failure to state a claim as a matter of law. Except for Providence Creek Services, L.L.C., which is allegedly owned by SJPC, the parties are not-for-profit entities.

SJPC leased approximately 20 acres of its property in Clayton, Delaware (the “Property”) to PCA for an initial term of five years (with an option for an additional five years) on November 1, 2001.<sup>1</sup> The lease agreement contained an integration clause and expressly recited that the parties were not engaged in a joint venture.<sup>2</sup> In addition, after the lease agreement was executed, the parties frequently amended it (more than ten times) to reflect the changing nature of their relationship.<sup>3</sup>

The Complaint is fairly read as portraying that, for much of the time of their relationship, PCA and SJPC cooperated with one another in furtherance of a common goal: the operation of a school on the Property. For instance, PCA and

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<sup>1</sup> Complaint, at ¶ 13.

<sup>2</sup> The lease agreement was not submitted with the Complaint. The Respondents separately submitted the lease agreement with its numerous amendments. The Court may consider the lease agreement, as amended, for purposes of this motion to dismiss because PCA freely and frequently referred to it in its Complaint. *See, e.g., Vanderbilt Income & Growth Assocs. v. ARVIDA/JMB Managers, Inc.*, 691 A.2d 609, 613 (Del. 1996).

<sup>3</sup> Compl. at ¶ 33.

SJPC worked together to provide busing,<sup>4</sup> cafeteria services,<sup>5</sup> custodial services,<sup>6</sup> financial help for PCA,<sup>7</sup> administrative services,<sup>8</sup> and perhaps legal services.<sup>9</sup> While the Complaint, perhaps unintentionally, paints SJPC as the more magnanimous of the two, benevolent efforts were not completely one-directional. For example, PCA alleges that it acted in furtherance of SJPC's financial interests,<sup>10</sup> although it is unclear whether this assistance was as a joint-venturer or merely as a tenant which shared a mutual goal with its landlord. In addition to a common interest in developing a school, PCA and SJPC shared leadership: the Financial Director for PCA was Executive Director of SJPC.<sup>11</sup>

PCA now alleges that the relationship has evolved, as the parties expected, into a full-fledged joint venture:

From the outset, the principals involved agreed that it was in the mutual best interest of both PCA and SJPC to establish a permanent, as opposed to an interim, relationship. . . . PCA and SJPC, in good faith reliance on the word of each other, would enter into an arrangement, the practical effect of which would be a Joint Venture

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<sup>4</sup> *Id.* at ¶ 18.

<sup>5</sup> *Id.* at ¶ 21.

<sup>6</sup> *Id.* at ¶ 32.

<sup>7</sup> *Id.* at ¶ 31.

<sup>8</sup> *Id.* at ¶ 34.

<sup>9</sup> *Id.* at ¶ 29.

<sup>10</sup> *Id.* at ¶ 15.

<sup>11</sup> *Id.* at ¶ 30.

for the benefit of both, to be formalized at sometime in the future as might be necessary. All subsequent conduct of PCA and SJPC was therefore predicated upon this original informal agreement.<sup>12</sup>

The relationship between PCA and SJPC has gone sour. In this action, PCA seeks (1) a determination that PCA and SJPC are engaged in a joint venture; (2) imposition of a resulting trust for the benefit of the joint venture both on the Property and adjacent lands of SJPC;<sup>13</sup> and (3) an accounting.

The Respondents have moved to dismiss the Complaint on the grounds that it fails to allege facts that would show that PCA and SJPC's relationship is that of joint-venturers, as opposed to landlord and tenant.

Under Court of Chancery Rule 12(b)(6), if the Court determines with reasonable certainty that the plaintiff could not prevail on any set of facts that can be inferred from the pleading, the plaintiff's case must be dismissed. In considering a motion to dismiss for failure to state a claim, all facts of the pleadings and inferences that can reasonably be drawn therefrom are accepted as true. However, neither inferences nor conclusions of fact unsupported by allegations of specific fact are accepted as true.<sup>14</sup>

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<sup>12</sup> *Id.* at ¶ 16.

<sup>13</sup> PCA suggests, without precision, that SJPC's lands within the scope of the joint venture are not limited to the Property, *i.e.*, it was anticipated that additional space would be required to meet the school's needs for expansion. Indeed, PCA asks for imposition of a resulting trust on all of SJPC's approximately 300-acre parcel.

<sup>14</sup> *Daisy Constr. Co. v. Mumford & Miller Concrete, Inc.*, 2005 WL 1653943, at \*2 (Del. Ch. June 30, 2005) (footnotes and internal quotations omitted).

With the benefit of the “plaintiff-friendly” motion to dismiss standard, where all inferences must be drawn in favor of the plaintiff,<sup>15</sup> I am unable to conclude that PCA and SJPC have not been engaged in a joint venture. This decision is based on the well-pled allegations in the Complaint describing the coordination and support between PCA and SJPC. It is questionable whether the operation of the school was really a joint venture—as contrasted with two charitable organizations which entered into a landlord/tenant relationship and helped each other in furtherance of their mutual charitable goals.<sup>16</sup> It is also questionable whether the conduct of the parties was governed by some understanding or oral agreement outside of the lease agreement—especially in the context of the sophisticated lease agreement, its

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<sup>15</sup> See, e.g., *Goldman v. Pogo.com Inc.*, 2002 WL 1824910, at \*1 (Del. Ch. July 16, 2002).

<sup>16</sup> With a more developed factual record, it may turn out that the relationship between PCA and SJPC is simply one of landlord and tenant. Whether in the for-profit world or the not-for-profit world, it is frequently in the landlord’s best interests for its tenant to prosper. Assisting a tenant, thus, is, at least in general, paltry evidence, if that, of a joint venture. See, e.g., *Warren v. Goldinger Bros., Inc.*, 414 A.2d 507, 508-09 (Del. 1980) (existence of a joint venture “may be implied or proven by facts and circumstances showing that [a relationship of joint venture] was in fact entered into. A joint adventure has been broadly defined as an enterprise undertaken by several persons jointly to carry out a single business enterprise, not amounting to a partnership, for their mutual benefit, in which they combine their property, money, effects, skill and knowledge. The contribution of the parties need not necessarily be the same; one party may contribute land, another skill and experience, the third cash.”) (quoting *J. Leo Johnson, Inc. v. Carmer*, 156 A.2d 499, 502 (Del. 1959) (citations omitted). That PCA and SJPC may share a common interest—development and operation of a school—by itself cannot change the nature of the relationship. Moreover, to the extent that PCA seeks (and this may be read as the primary thrust of its complaint) an interest in SJPC’s real property, it confronts substantial impediments, not the least of which may be the statute of frauds.

integration clause, and the numerous amendments to the agreement that took place when the parties believed that redefining the terms of their relationship was necessary.<sup>17</sup> The Complaint, however, can fairly be read to allege that the parties, by an oral agreement or understanding based upon the conduct of the parties, formed a joint venture that overrides or supersedes the understanding expressed in the lease agreement (and its subsequent amended versions). Since this inference is reasonable, SJPC has not met its burden in showing that “the plaintiff could not prevail on any set of facts that can be inferred from the pleading.”<sup>18</sup> Thus, PCA’s claim for a “resulting trust and injunctive relief” under a joint venture with SJPC survives a motion to dismiss.

Also, because PCA has presented adequate allegations that a joint venture exists and because fiduciary duties may exist among such venturers,<sup>19</sup> the Court is unable to dismiss PCA’s claim for an accounting.

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<sup>17</sup> None of the amendments purports to establish a joint venture.

<sup>18</sup> *Daisy Constr. Co.*, 2005 WL 1653943, at \*2.

<sup>19</sup> *See, e.g., Fulk v. Wash. Serv. Assoc., Inc.*, 2002 WL 1402273, at \*11 (Del. Ch. June 21, 2002).

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Accordingly, the Respondents' motion to dismiss is denied.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ John W. Noble*

JWN/cap

cc: Register in Chancery-K