STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: November 14, 2018]

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.	:	
v.	:	**C.A. No. PC-2017-3856**
ST. JOSEPHS HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, as amended	:	

DECISION

STERN, J. Stephen Del Sesto, Permanent Receiver (Receiver) for the St. Josephs Health Services of Rhode Island Retirement Plan (Plan), petitions this Court for an order adjudging Prospect CharterCARE, LLC (PCC) in contempt for filing petitions for declaratory relief (Petitions) with the Rhode Island Attorney General (AG) and the Rhode Island Department of Health (DOH).[1] The Receiver contends PCC filed the Petitions in violation of an injunctive order (Injunctive Order) enjoining actions against the Plan's assets, and requests as relief an order requiring PCC to withdraw its Petitions and contribute fifty thousand dollars to the Plan.[2]

[1] PCC filed the Petitions pursuant to G.L. 1956 § 42-35-8, which is "an administrative counterpart of the Declaratory Judgments Act." *See Liguori v. Aetna Cas. & Sur. Co.*, 119 R.I. 875, 883-84, 384 A.2d 308, 312 (1978). Section 42-35-8(a) provides in pertinent part: "[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner."

[2] The Receiver had originally sought attorneys' fees and costs but modified his prayer for relief.

I

Facts and Travel

On August 18, 2017, this Court entered an order appointing the Receiver to temporarily "take control" of the Plan which, due to its severe undercapitalization, had been placed into receivership. Order Appointing Temporary Receiver ¶¶ 1-3. Soon after appointing the Receiver, this Court allowed the Receiver's petition to hire the law firm of Wistow, Sheehan & Lovely, PC as counsel (Special Counsel) to investigate the circumstances resulting in the Plan's underfunding. Order Approving Receiver's Emergency Pet. to Engage Special Legal Counsel. On October 27, 2017, this Court converted the Receiver's temporary appointment into a permanent one and entered the Injunctive Order enjoining actions against the Plan's assets as follows:

> "That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, **or any other proceeding, in law, or in equity or under any statute, or otherwise, against the Respondent or any of its assets or property,** in any Court, **agency**, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, corporation, partnership or any other entity or person, or the levy of any attachment, execution or other process upon or against any asset or property of the Respondent, or the taking or attempting to take into possession any asset or property in the possession of the Respondent or of which the Respondent has the right to possession, or the cancellation at any time during the Receivership proceeding herein of any insurance policy, lease or other contract with the Respondent, by any of such parties as aforesaid, other than the Receiver designated as aforesaid, without obtaining prior approval thereof from this Honorable Court, in which connection said Receiver shall be entitled to prior notice and an opportunity to be heard, **are hereby restrained and enjoined until further Order of this Court**." Order Appointing Permanent Receiver ¶ 15 (emphasis added).

On August 31, 2018, the Receiver executed a proposed settlement agreement (PSA) with various hospital entities—CharterCARE Community Board (CCCB), St. Joseph Health Services of Rhode Island (SJHSRI), and Roger Williams Hospital (RWH) (collectively Settling Defendants)—against whom the Receiver had filed claims[3] on behalf of the Plan participants. *See* Receiver's Pet. for Settlement Instr. Ex. A. Pursuant to the PSA's terms, CCCB agrees to hold its "Hospital Interest"[4] in trust for the Receiver, and that the Receiver will have the "full beneficial interests therein." *Id.* ¶ 1(d). The Settling Defendants agree to "cooperate" and "take all reasonable measures" necessary to obtain what the PSA refers to as an "Order Granting Preliminary Settlement Approval" and an "Order Granting Final Settlement Approval." *Id.* ¶ 9. The PSA defines the Order Granting Final Settlement Approval as one which approves the PSA "1) as fair, reasonable, and adequate, 2) as a good faith settlement under R.I. Gen. Laws § 23-17.14-35, 3) awarding attorneys' fees to [Special Counsel], and 4) such other and further relief as the Court may direct." *Id.* ¶ 1(x). The PSA's "Effective Date" is defined as "the date upon which the Order Granting Final Settlement Approval is entered." *Id.* ¶ 1(m). The PSA also contains two conditions that, if triggered, would render the PSA "null and void": (1) failure to obtain the Providence County Superior Court's authority to proceed with the PSA; and (2) failure to obtain the Order Granting Final Settlement Approval.[5] *Id.* ¶¶ 2, 35.

[3] The Receiver filed parallel claims in both state and federal court. The federal action is filed as C.A. No. 1:18-CV-00328-WES-LDA. The state action is filed as C.A. No. PC-2018-4386.

[4] The Hospital Interest "means all of the claims, rights and interests against or in [PCC] that CCCB received in connection with [PCC's] LLC Agreement or subsequently obtained, including but not limited to the 15% membership interest in [PCC], and any rights or interests that SJHSRI or RWH may have in connection therewith." *See* Receiver's Pet. for Settlement Instr. Ex. A ¶ 1(d). Note the PSA refers to the "Hospital Interest" in plural form.

[5] The PSA does not dictate which court should enter Order Granting Final Settlement Approval, which is reasonable considering the parallel-track litigation.

On September 4, 2018, the Receiver filed a petition for instructions requesting that this Court authorize the Receiver to proceed with the PSA. *See* Receiver's Pet. for Settlement Instr. 1. PCC objected to the Receiver's petition and attached to its objection a copy of the Petition it had filed with the AG on September 27, 2018. Mem. Supp. of Joint Obj. of Prospect Medical Holdings, Inc. Ex. B, Sept. 27, 2018. PCC stated at oral argument that it filed the Petition with the DOH on or about the same time. The Petitions both seek a determination that prior administrative rulings—implicating the Hospital Conversions Act (HCA) and the Health Care Facility Licensing Act (HLA) allowing the sale of various hospital assets to PCC[6]—preclude CCCB from assigning the Hospital Interest to the Receiver. *See id.* The Petitions seek four declarations:

> "(a) If the HCA and HLA are properly interpreted and applied and/or the Final Conversion and CEC Decisions are properly applied to the Petitioner, the transfer proposed by the Receiver to advance the [PSA] violates the HCA and HLA, as it is at variance with the Final Conversion and CEC Decisions. Thus, the Receiver would have to apply to the administrative agencies with jurisdiction for relief;
> "(b) If the HCA and HLA are properly interpreted and applied, the transfer proposed by the Receiver to advance the [PSA] is a 'conversion' as defined by §4(6) of the HCA, as it would result in the transfer of more than 20% of the voting control of the Acquiror. Thus, the Receiver could not effectuate such a conversion without application to, review, and approval by the Departments of Health and/or the Department of Attorney General;
> "(c) If the Receiver applied to modify the Final Conversion and/or CEC Decisions, or applied for the review and approval of the proposed conversion embodied within the [PSA], the Receiver's application would be barred by the doctrine of administrative finality; and
> "(d) The Receiver's cause of action in the Federal Court Litigation alleging Plan liability as against the Acquiror is barred by the doctrine of *res judicata* and the bar should be enforced in the

[6] Such rulings were necessary to comply with the regulatory scheme governing hospital "conversions." G.L. 1956 §§ 23.17.14-1, *et seq.* and §§ 23-17-1, *et seq.*

> first instance by the administrative agencies with jurisdiction over the Conversion and CEC Proceedings.[7]" *See id.* ¶ 47.

On October 29, 2018, this Court issued a Decision approving the PSA subject to two conditions. This Court will consider two main issues: (1) whether the Receiver's contingent right in the Hospital Interest constitutes an "asset" of the Plan's estate; and (2) if so, whether the Petitions are actions "against" that asset.[8] If this Court answers both questions affirmatively, then PCC violated the Injunctive Order by not seeking relief from this Court prior to filing the Petitions.

II

Standard of Review

"'The authority to find a party in civil contempt is among the inherent powers of our courts.'" *Town of Coventry v. Baird Props., LLC*, 13 A.3d 614, 621 (R.I. 2011) (quoting *Now Courier, LLC v. Better Carrier Corp.*, 965 A.2d 429, 434 (R.I. 2009)). The purpose of holding a party in contempt is to "coerce the contemnor into compliance with [a] court order and to compensate the complaining party for losses sustained." *See Now Courier, LLC*, 965 A.2d at 434. A finding of contempt is committed to the sound discretion of the trial justice. *See Durfee v. Ocean State Steel, Inc.*, 636 A.2d 698, 704 (R.I. 1994). Establishing civil contempt requires a demonstration by "clear and convincing evidence" that a court order—"sufficiently specific in its directive to the parties"—has been violated. *See Now Courier, LLC*, 965 A.2d at 434 (citing

[7] This Court will not differentiate between the two Petitions because counsel for PCC represented at oral argument that the two Petitions are identical.

[8] PCC does not contend it was not subject to the Injunctive Order, nor does PCC argue the Injunctive Order is insufficiently clear and certain to enable parties to learn what they may do thereunder. Further, for purposes of this Court's subsequent analysis, it will refrain from addressing PCC's argument that the Receiver lacked the authority to enter into a binding contract without this Court's approval. This Court addressed that argument in its October 29, 2018 Decision granting the Receiver the authority to proceed with the PSA. Finally, PCC does not argue that the Plan's estate is limited to "pre-petition" property and therefore waives any argument to that effect.

State v. Lead Industries, Ass'n, Inc., 951 A.2d 428, 464 (R.I. 2008)); *see also Ventures Mgmt. Co., Inc. v. Geruso*, 434 A.2d 252, 254 (R.I. 1981) (explaining that a finding of contempt is only appropriate where an order has been violated, and that order is "clear and certain and its terms [are] sufficient to enable one reading the [ ] order to learn" what types of conduct are permissible thereunder).

III

Analysis

A

Whether the Hospital Interest is an "Asset" of the Plan's Estate

PCC argues that because the Receiver's rights to the Hospital Interest are "contingent,"[9] "third-party membership" rights, they are not cognizable as assets or property for purposes of the Injunctive Order. Mem. Supp. of Prospect CharterCARE, LLC's Obj. 13, Oct. 22, 2018. PCC further argues that the PSA's requirement of court approval constitutes a condition precedent; therefore, the Receiver holds no presently possessory rights under the PSA. The Receiver argues that even contingent rights are protectable assets under the Injunctive Order and further avers that court approval operates as a condition subsequent.

Before determining whether the Receiver's contingent claim to the Hospital Interest constitutes an asset of the Plan's estate, this Court will determine how broadly to define the Plan's estate. While this Court has found—and the parties have cited—limited receivership case law addressing the scope of a debtor's estate, the Bankruptcy Code defines the scope of a bankruptcy estate, for purposes of its automatic stay order, in broad and sweeping terms. *See In*

[9] This Court will not assume for purposes of its analysis that the Receiver's interest in the Hospital Interest is something less that a "contingent" interest because PCC repeatedly characterized the interest as such.

re Graham, 726 F.2d 1268, 1270 (8th Cir. 1984). This Court will therefore look to the Code for guidance. *See Reynolds v. E & C Assocs.*, 693 A.2d 278, 281 (R.I. 1997).

It is well-settled that a bankruptcy estate includes "all legal or equitable interests of the debtor," subject to a few enumerated exceptions. *In re Dittmar*, 618 F.3d 1199, 1207 (10th Cir. 2010). That definition includes "all kinds of property, including tangible and intangible property" as well as "causes of action." *See In Re Anderson*, 128 B.R. 850, 853 (D.R.I. 1991). The scope of an estate is construed "most generously" and an interest is not outside the estate's reach merely because it is "novel or contingent or because enjoyment had to be postponed." *See id.* at 854 (citing *Segal v. Rochelle*, 382 U.S. 375, 379 (1966)). In fact, the Bankruptcy Code's definition of the debtor's estate "reaches all sorts of future, nonpossessory, contingent, speculative, and derivative interests." *See id.* at 853; *see also In re Johnston*, 209 F.3d 611, 612 (6th Cir. 2000) (holding debtor's future interest in earned income tax credit, which would only vest at year-end, was part of bankruptcy estate); *In re Yonikus*, 996 F.2d 866, 869 (7th Cir. 1993) (explaining a debtor's contingent interest in future income is part of the bankruptcy estate). Congress intended to include within a debtor's estate "anything of value" to the debtor. *In re Ross*, 548 B.R. 632, 637 (E.D.N.Y. 2016) (citing H.R. Rep. No. 95-595, at 175-76). This Court can find no sound reason to adopt a restrictive view in defining receivership estates in light of the Code's liberal approach.

Turning specifically to the matter at hand, PCC argues the Hospital Interest is not an asset of the Plan's estate because the PSA is "subject to and contingent upon Court approval—which has not yet been given." Mem. Supp. of Prospect CharterCARE, LLC's Obj. 14. Pursuant to Bankruptcy Code precedent, the fact that the right to an asset depends upon a contingency does not prevent that asset from becoming a part of a debtor's estate. For example, the United States

District Court for the District of Rhode Island has held that even though a debtor's interest arising under a will would only "materialize" when certain real estate was sold and the proceeds passed under a residuary clause, the interest was still part of the debtor's estate. *In Re Anderson*, 128 B.R. at 853. Similarly, here, even though the Receiver's rights in the Hospital Interest cannot fully materialize until court approval, that does not prevent these rights from becoming part of the Plan's estate. *See id.* It is of no legal consequence that court discretion, a matter completely outside the Plan's control, is the contingency restraining the Hospital Interest from fully materializing. See *In re Dittmar*, 618 F.3d at 1207-08 (holding that even though a debtor's entitlement to stock appreciation rights (SAR) was "entirely dependent upon the economic decisions" of an employer, the debtor still had a contingent interest in the SAR for purposes of defining the employee's estate). Therefore, the Receiver's rights to the Hospital Interest are a part of the Plan's estate, despite these rights being contingent and ultimately dependent upon court approval.

Furthermore, even assuming court approval constitutes a "condition precedent" precluding the Hospital Interest from becoming "property" of the Plan in the traditional sense, defining property for purposes of a debtor's estate requires a more liberal analysis. The United States Supreme Court has explained that in interpreting relevant provisions of the Code, "it is impossible to give any categorical definition to the word 'property,' nor can we attach to it in certain relations the limitations which would be attached to it in others." *See Segal*, 382 U.S. at 379. Accordingly, the Supreme Court held a loss-carryback refund constituted "property"—despite that it was not recoverable until the year's end at the earliest—because the future right to the refund was nevertheless valuable to the bankruptcy estate. *See id.* Precedent dictates that this Court need not determine whether the Receiver's contingent rights in the Hospital Interest

are "property" in the formal sense because they are doubtlessly valuable to the Plan. More fundamentally, this Court need not categorize the proprietary status of the Receiver's rights because the Injunctive Order protects the Plan's "assets *or* property" from suit. The Injunctive Order's disjunctive construction (use of the "or") militates against limiting the Plan's estate with technical principles of property law. After examining the relevant facts and authority, this Court finds that the Receiver's "contingent rights" in the Hospital Interest are, at the very least, assets of the Plan's estate for purposes of the Injunctive Order.

PCC cites *Levinger v. Providence Watch Hosp., LCC* to suggest a debtor's estate is confined to presently possessory property. *See* Nos. PB 09-3687, PB 09-3688, 2010 WL 3281057 (R.I. Super. Aug. 13, 2010). While *Levinger* does analyze whether property was in a debtor's "possession," the court only proceeded with that analysis because the court was asked to address whether a third party violated an order enjoining the "taking or attempting to take into possession any property in the possession of [the debtor] . . . ." *See id.* at *2. *Levinger* does not stand for the proposition that only presently possessory property comes within a debtor's estate. *See id.*[10]

B

Whether the Petitions Are Actions "Against" the Plan's Estate

Having determined the Hospital Interest is a contingent asset of the Plan's estate, this Court next considers whether the Petitions are actions against this asset. PCC argues that the Petitions do not seek to "invalidate" the PSA. Mem. Supp. of Prospect CharterCARE, LLC's Obj. 11. In particular, PCC argues it was merely asking the AG/DOH to render "a determination of the preclusive effect of the HCA and CEC decisions" and whether the Hospital Interest

[10] Nor does *Levinger* hold that a debtor's estate is limited to assets that are unequivocally and undoubtedly assets of the estate, as PCC would have this Court find.

assignment is a "conversion." *Id.* at 9-10. PCC contends, in effect, that because it sought no "affirmative relief," the Petitions did not impact the Plan's assets. The Receiver counters that the Petitions "interfere" with the Plan's contingent rights to the Hospital Interest, notwithstanding the fact that the Petitions do not seek any affirmative relief. Receiver's Reply Mem. Supp. of His Motion to Adjudge Prospect CharterCARE, LLC in Contempt 12-13, Oct. 23, 2018.

To assess whether the Petitions are actions against the Plan, this Court must determine whether declaratory judgment actions, which seek a determination adverse to a debtor, come within the ambit of the Injunctive Order. Bankruptcy courts have held the automatic stay operates to prevent any sort of action "the resolution of which may have a significant impact on the debtor." *See Maaco Enters., Inc. v. Corrao*, Civ. A. No. 91-3325, 1991 WL 255132, at *2 (E.D. Pa. Nov. 25, 1991); *see also In re 48th Street Steakhouse, Inc.*, 835 F.2d 427 (2d Cir. 1987). Under the Code, the relevant analysis does not turn on whether the debtor is actually a named party or whether the proceeding is merely declaratory in nature. *See In re Kaiser Aluminum Corp., Inc.*, 315 B.R. 655, 658 (D. Del. 2004) (Kaiser). For example, the *Kaiser* Court held a creditor's declaratory action against an insurance company—concerning the creditor's right to insurance proceeds in which the debtor claimed a right—violated the Bankruptcy Code's automatic stay. *See id.* The *Kaiser* Court reasoned the reach of the automatic stay is "not determined solely by whom a party chose to name in the proceeding" and to hold otherwise would elevate form over substance. *See id.* In short, an action violates the automatic stay if the resolution of the action will significantly impact a debtor, regardless of whether it seeks affirmative relief or names the debtor.

There can be little doubt that the Petitions significantly impact the Plan's contingent rights to the Hospital Interest. The Petitions essentially ask the AG and the DOH to make three

findings: (1) CCCB's assignment of the Hospital Interest violates the law; (2) that to effectuate the assignment, the Receiver would have to seek administrative approval; and, (3) even if the Receiver sought administrative approval, the doctrine of administrative finality would preclude the assignment nonetheless. *See* Mem. Supp. of Joint Obj. of Prospect Medical Holdings, Inc. Ex. B ¶ 47. The declarations sought by PCC clearly jeopardize the Receiver's contingent rights in the Hospital Interest. The *Kaiser* Court took issue with a request for analogous declarations sought in connection with a debtor's right to certain insurance proceeds. *See id.* It makes no difference that the Plan is not a named party to the Petitions or that PCC did not seek affirmative relief.[11] Framed under the appropriate test, it becomes clear that the Petitions significantly impact the Plan's assets such that—prior to filing the Petitions—PCC should have sought this Court's relief. *See Maaco Enters.*, 1991 WL 255132, at *2.

C

Whether Equity Requires Retroactive Relief from the Injunctive Order

The only remaining question is whether equity demands retroactive relief from the Injunctive Order. PCC contends that because a receiver "stands in no better shoes" than a debtor's estate, the Receiver should have "exhausted [his] administrative remedies" prior to filing a cause of action against PCC or accepting an assignment of the Hospital Interest, which

[11] PCC cites an Illinois district court case by reference, *Paden v. Union For Experimenting Colleges and Univs.*, 7 B.R. 289 (Bankr. N.D. Ill. 1980) to suggest that declaratory actions are not covered by the automatic stay. However, PCC's reliance on the *Paden* case is inapposite. *Paden* held a declaratory action arising under Title VII was not barred by the automatic stay because the purpose of the automatic stay—"to prevent the dissipation or diminution of the bankrupt's assets during the pendency of the [bankruptcy proceeding]"—was not implicated on the facts presented. *See id.* at 290. Moreover, even in holding the declaratory actions were exempt from the stay, the Illinois court nevertheless held the stay should apply until the Title VII plaintiff obtained relief from the stay order through the appropriate motion, thereby suggesting PCC's filing without seeking this Court's authority was at least technically a violation of the Injunctive Order.

PCC categorizes as "violative" of prior administrative rulings. Mem. Supp. of Prospect CharterCARE, LLC's Obj. 18, 20. In other words, PCC argues the Receiver ignored the appropriate administrative procedure and should be estopped from relying on the Injunctive Order.

Merits of those arguments aside, they should have been raised on a motion for relief from the Injunctive Order—not *ex post facto* as a justification for violating it. Rhode Island courts recognize the doctrine of "unclean hands,"[12] defined as a "self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the [other party]." *Precision Instrument Mfg. Co v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814-15 (1945). The maxim gives courts a "wide range" of discretion "in refusing to aid the unclean litigant." *See id.* at 815. PCC filed the Petitions without advising this Court or seeking its input—despite the dictates of the Injunctive Order—until after the Petitions had already been filed. Accordingly, this Court will refrain from exercising its inherent authority to aid PCC in its violation of the Injunctive Order.

IV

Conclusion

In conclusion, the PSA assigned to the Receiver contingent rights in the Hospital Interest, irrespective of whether the PSA's substantive terms are ultimately approved by court order. The PSA is valuable to the Plan, and because the Petitions seek administrative determinations that significantly impact various aspects of the PSA, PCC violated the Injunctive Order by not seeking relief from this Court before filing. Nevertheless, because a finding of contempt is

[12] *See School Comm. of City of Pawtucket v. Pawtucket Teachers All., Local No. 930, AFT, AFL*, 101 R.I. 243, 257, 221 A.2d 806, 815 (1966).

committed to the discretion of a trial justice, this Court will allow PCC ten (10) days to withdraw the Petitions commencing on the date of an Order entered in accordance with the above findings.[13] In the interim, this Court will reserve its contempt determination. Counsel for the Receiver shall prepare and submit the appropriate order for entry.

[13] Nothing stated in the foregoing should be construed as precluding PCC from moving for relief from the Injunctive Order through the appropriate procedure.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended
CASE NO:	PC-2017-3856
COURT:	Providence County Superior Court
DATE DECISION FILED:	November 14, 2018
JUSTICE/MAGISTRATE:	Stern, J.

ATTORNEYS:

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