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DOROTHY BROWN
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Attorney No. 10295

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

8907220

VILLAGE OF MELROSE PARK,

Case No. 19 CH 3041

Plaintiff,

Honorable Eve M. Reilly

v.

PIPELINE HEALTH SYSTEM LLC, a
Delaware limited liability company, SRC
HOSPITAL INVESTMENTS II LLC, a
Delaware limited liability company, PIPELINE-
WESTLAKE HOSPITAL LLC, a Delaware
limited liability company, TWG PARTNERS
LLC, an Illinois limited liability company,
NICHOLAS ORZANO, an individual, ERIC
WHITAKER, an individual, and James
Edwards, an individual,

Defendants.

People ex rel. KIMBERLY M. FOXX, State's
Attorney of Cook County,

Intervenor-Plaintiff,

v.

PIPELINE HEALTH SYSTEM LLC, a
Delaware limited liability company, SRC
HOSPITAL INVESTMENTS II LLC, a
Delaware limited liability company, PIPELINE
WESTLAKE HOSPITAL LLC, a Delaware
limited liability company, TWG PARTNERS
LLC, an Illinois limited liability company,
NICHOLAS ORZANO, an individual, ERIC
WHITAKER, an individual and JAMES
EDWARDS, an individual

Defendants.

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**THE PEOPLE’S VERIFIED FIRST AMENDED
COMPLAINT FOR DECLARATORY RELIEF**

The People ex rel. Kimberly M. Foxx, State’s Attorney of Cook County (the “People”), by her Assistant State’s Attorneys, PAUL A. CASTIGLIONE and PRATHIMA YEDDANAPUDI, bring this action against Defendants Pipeline Health LLC, SRC Hospital Investments II LLC, Pipeline–Westlake Hospital LLC, and TWG Partners LLC (the “Private Equity Defendants”), along with Nicholas Orzano, Eric Whitaker and James Edwards (the “Individual Defendants”) (collectively “Defendants”), asking this Court to declare that Defendants have violated 20 ILCS 3960/1 *et seq.*, known as the Illinois Health Facilities Planning Act (the “Planning Act”). The People, for its Verified First Amended Complaint, alleges as follows based upon personal knowledge as to itself, and for all other matters, upon information and belief:

NATURE OF THE ACTION

1. Westlake Hospital (“Westlake”) was a full-service hospital with 230 beds and more than 600 employees that provides comprehensive medical services, including emergency, radiology, rehabilitation, surgical, behavioral health, psychiatric, and in-patient detoxification, to community members in the Village of Melrose Park (“Melrose Park”) and the surrounding suburbs.

2. Critically, Westlake would not turn away patients that could not pay for medical care. As the one and only such hospital in the area, Westlake provided significant levels of services and care to thousands of low-income and medically vulnerable community members, including Medicaid beneficiaries and the uninsured, and served as a critical community safety net.

3. In 2018, Pipeline Health LLC and TWG Partners LLC - - through their respective

principals, Nicholas Orzano, Eric Whitaker and James Edwards - - reached an agreement in principle to purchase Westlake from then-owner Tenet Healthcare. (The hospital would be owned by two newly-formed companies, SRC Hospital Investments II LLC and its wholly-owned subsidiary, Pipeline–Westlake Hospital, LLC.) The purchase was contingent upon the approval of the Illinois Health Facilities and Services Review Board (the “Review Board”), which, among other things, reviews change of ownership applications to ensure compliance with the Planning Act and related rules and regulations.

4. To obtain the requisite approval under the Planning Act, the Private Equity Defendants were further required to affirm to the Review Board, in writing, that (a) the facility will not adopt a more restrictive charity care policy than the policy in effect one year prior to the transaction and (b) signed certifications that the charity care policy will remain in effect for a two-year period following the change of ownership transaction. After the transaction was consummated, the Defendants backtracked on all of their promises and announced that they intended to close down Westlake by June 2019. They filed an Application for Discontinuance with the Review Board on February 21, 2019.

5. Melrose Park filed a complaint against Defendants that sought monetary and injunctive relief for its losses caused by the fraud perpetrated by the Private Equity Defendants and Individual Defendants, penalties for each violation of its municipal code, and a declaration that the Private Equity Defendants and Individual Defendants defrauded the Melrose Park and the State of Illinois.

6. Melrose Park moved for a temporary restraining order (“TRO”) against Defendants and, on April 9, 2019, the circuit court issued a TRO against Defendants.

7. Defendants appealed the TRO and the Appellate Court found that Melrose Park

lacked standing to seek injunctive relief to stop violations of the Planning Act.

8. Under Illinois law, the State's Attorney and the Attorney General have standing to bring enforcement actions under the Planning Act.

9. The People bring this amended complaint seeking a declaration that Defendants violated the Planning Act.

PARTIES

10. Plaintiff Village of Melrose Park, Illinois ("Melrose Park") is a municipal corporation existing under the laws of the State of Illinois.

11. Intervenor-Plaintiff Kimberly M. Foxx is the duly elected State's Attorney of Cook County, Illinois.

12. Defendant Pipeline Health LLC ("Pipeline Health") is a limited liability company existing under the laws of the State of Delaware, with its principal place of business located at 898 Pacific Coast Highway, Suite 500, El Segundo, California 90245.

13. Defendant SRC Hospital Investments II LLC ("SRC Hospital Investments") is a limited liability company existing under the laws of the State of Delaware, with its principal place of business located at 898 Pacific Coast Highway, Suite 500, El Segundo, California 90245.

14. Pipeline-Westlake Hospital LLC ("Pipeline-Westlake") is a limited liability company existing under the laws of the State of Delaware, with its principal place of business located at 1225 West Lake Street, Melrose Park, Illinois 60160. Pipeline-Westlake is a defendant in name only. The entity filed for bankruptcy on August 6, 2019.

15. Defendant TWG Partners LLC ("TWG Partners") is a limited liability company existing under the laws of the State of Illinois with its principal place of business located at 7030

South Euclid Avenue, Chicago, Illinois 60649.

16. Defendant Nicholas Orzano is a natural person and a resident of the State of California. Orzano is the Chief Executive Officer of Defendant SRC Hospital Investments II, and is a principal at Defendant Pipeline where he sits on the company's executive management team.

17. Defendant Eric Whitaker is a natural person and a resident of the State of Illinois. Whitaker is a principal at TWG Partners, and is a principal and vice chairman at Pipeline.

18. Defendant James Edwards is a natural person and a resident of the State of California. Edwards has represented himself to be the Chief Executive officer of Defendant SRC Hospital Investments and Chief Executive Officer of Pipeline Health Systems.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over the claims pursuant to Article VI, Section 9 of the Illinois Constitution.

20. This Court has personal jurisdiction over each Defendant pursuant to 735 ILCS 5/2-209 because each transacts business in Illinois, has committed tortious acts in Illinois, and owns, uses and/or possesses real estate situated in Illinois. The Court further has jurisdiction over Defendant TWG Partners because it is a limited liability company organized under the laws of Illinois. The Court further has jurisdiction over Defendant Whitaker because he is a natural person domiciled or residing within Illinois.

21. Venue is proper in this Court because Cook County is the county of residence of Defendants TWG Partners and Whitaker, and because the cause of action arises out of a transaction occurring in Cook County and statements that were specifically directed to, and received by, individuals in Cook County.

FACTUAL BACKGROUND

Westlake Hospital Provided Significant Medical Services to Community Members.

22. Westlake Hospital had been in operation since 1927. It grew into a 230-bed facility providing a broad range of medical services, with more than 200 practicing physicians in more than 30 specialties.

23. The hospital played a critical role in the provision of medical services to community members in Melrose Park, as well as the surrounding suburbs.

24. For example, the hospital was a Level II trauma facility and a Level II nursery, and was the only area hospital with a functioning obstetrics department providing pregnancy, childbirth, and post-partum services. Westlake was also a certified stroke center and chest pain center.

25. Westlake was the only area facility that provides in-patient psychiatric care to individuals that have exhausted their Medicare-eligible days of care (just 190 in an individual's lifetime). For Medicaid recipients that need frequent in-patient psychiatric care in the Melrose Park area, Westlake was the only option.

26. Westlake was also one of the few bulwarks against the opioid crisis in the area, operating the only in-patient substance abuse facility in Melrose Park. Similarly, it was the only place in Melrose Park where patients could receive opioid dependence treatment (including access to Suboxone, Vivitrol, and buprenorphine).

The Private Equity Defendants Sought Approval From the Review Board to Purchase Westlake Hospital.

27. Entities seeking to purchase a hospital in Illinois must first obtain approval from the Review Board pursuant to the Planning Act.

28. The Planning Act was enacted, in part, to "establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health

care to the general public” and “to maintain and improve the provision of essential health care services and increase the accessibility of those services to the medically underserved and indigent.” 20 ILCS 3960/2.

29. As a general rule, a permit must be obtained from the Review Board before any person or entity may purchase, build, or modify a hospital in Illinois, or make any changes to the scope of medical services offered at any hospital facility. When considering permit applications, the Review Board weighs various factors, including the impact that the change of ownership will have on the community at large, as well as on community members that rely on the hospital for medical care. This factor is especially relevant when the availability of safety net services may be reduced or taken away altogether.

30. While the general rule is that a permit must be obtained before starting a project regulated by the Planning Act, certain projects are “eligible for an exemption, rather than a permit.” 20 ILCS 3960/6(b). When applicants submit applications that qualify for an exemption, the Review Board must approve the application and has no discretion to deny it.

31. To qualify for a change of ownership exemption -- and avoid the permit process -- applicants must, among other things, affirm that they will not impose a more restrictive charity care policy at the subject hospital for two years:

An application for change of ownership of a hospital shall not be deemed complete without a signed certification that for a period of 2 years after the change of ownership transaction is effective, the hospital will not adopt a charity care policy that is more restrictive than the policy in effect during the year prior to the transaction.

20 ILCS 3960/8.5(a) (2019).

32. To be clear, the Planning Act does not always require purchasers to keep their newly-acquired hospitals open for two years. To the extent that change of ownership applicants

cannot commit to maintaining the charity care policy for two years, then they must seek approval for the change of ownership through the permit process rather than by seeking an exemption. When considering an application for a permit, the Review Board has the ability to weigh various factors, including the impact of the potential hospital closure against the health and safety needs of patients in the area, to determine whether the change of ownership is in the best interest of the community, the public, and the State of Illinois.

33. The Planning Act provides for public hearings on applications for a change of ownership, but only if a hearing is requested within 30 days. 20 ILCS 3960/8.5(b) (2019). Any member of the public may request a hearing.

Two Weeks After the Purchase Was Completed, the Private Equity Defendants Began Closing Westlake in Violation of the Planning Act

34. The sale of Westlake to the Private Equity Defendants was completed on January 29, 2019.

35. The Private Equity Defendants thereafter immediately filed an application to close Westlake with the Review Board on February 21, 2019.

36. Before the Review Board granted Defendants' application to close Westlake Hospital, Defendants prematurely closed the Hospital in violation of the Planning Act.

37. Particularly, Pipeline immediately began announcing that the facility would close before its application would even be heard by the Review Board. It also stopped accepting patients through its emergency room by going on "bypass" status despite there not being any medical need to do so.

38. On April 9, 2019, Defendant Jim Edwards, acting in his capacity as CEO of Pipeline Health Systems, instructed senior-level Pipeline-Westlake Hospital personnel to begin shutting down all operations at Westlake Hospital. Specifically, Defendant Edwards created and

distributed an action plan to senior-level Pipeline-Westlake personnel, which instructed them to, inter alia, stop admitting new patients, immediately transfer existing patients out of the hospital, stop scheduling new procedures for any new or existing patient, and cancel all surgical and outpatient procedures that had already been scheduled.

39. It is undisputed that Pipeline Health Systems ordered the immediate suspension of services and hospital closure. As explained by an April 9, 2019 memorandum that was circulated to the medical staff by senior Pipeline-Westlake Hospital personnel, “Pipeline Health has temporarily suspended inpatient admissions and all emergency surgeries at Westlake Hospital . . . The company today also issued WARN Act notices to Westlake employees, which provide staff 60 days advance notice of potential closure.” A few hours later, the Westlake Hospital website was updated with a new post stating, “Pipeline Health today announced a temporary service suspension at Westlake Hospital in Melrose Park.” The website post also featured a statement from Pipeline Health Systems CEO Jim Edwards explaining that “[t]his action is being taken after considering all alternatives and with the best interest of our patients in mind.”

40. Facing a public health crisis from the sudden shutdown of a local hospital serving especially vulnerable populations, the Village moved for a temporary restraining order (“TRO”) on April 9, 2019. The Court granted the TRO, enjoining Defendants from discontinuing services at the Hospital or changing the status quo. When Pipeline Health Systems continued forward with its closure plan, in violation of the TRO, Melrose Park filed an emergency petition for a rule to show cause. This Court, through Judge Jacobius, issued the rule to show cause and set the matter for an evidentiary hearing on April 16, 2019.

41. During the hearing, Pipeline Health Systems – not Pipeline-Westlake Hospital – freely admitted that it suspended services at the hospital and began closing it down. Judge

Jacobius thereafter granted Melrose Park's motion for a directed finding and held Defendants in indirect civil contempt.

Melrose Park And The People Filed Suit To Stop The Closure Of Westlake Hospital Based Upon Non-Compliance With The Planning Act

42. On April 30, 2019, the Review Board granted Pipeline Health Systems' application to close Westlake Hospital. Pipeline Health Systems announced that the facility would close on May 3, 2019 at 4:00 p.m.

43. On May 2, 2019, Melrose Park filed an action challenging the Review Board's decision to approve the application to close Westlake Hospital, along with an emergency motion to stay the Review Board's decision. The stay motion sought an order prohibiting Westlake Hospital from closing until after the administrative review action was adjudicated. *See Village of Melrose Park v. Illinois Health Facilities & Servs. Review Bd.*, 2019 CH 05553 (Cir. Ct. Cook Cty., Ill.).

44. The People joined this second lawsuit as a party plaintiff.

45. On May 7, 2019, the court granted the motion to stay and ordered Pipeline-Westlake Hospital and SRC Hospital Investments to keep Westlake Hospital open pending adjudication of the action.

46. Pipeline Health Systems exclusively funded the entire Westlake Hospital operation. Neither Pipeline-Westlake Hospital nor SRC Hospital Investments generated or received any capital or funding from any source other than Pipeline Health Systems. Pipeline-Westlake Hospital and SRC Hospital Investments were completely and entirely dependent on Pipeline Health Systems for capital and funding to operate Westlake Hospital.

47. Pipeline Health Systems structured its subordinate entities - - in this case Pipeline-Westlake Hospital and SRC Hospital Investments - - to be entirely dependent on Pipeline Health

Systems for capital and funding. As such, Pipeline Health Systems knew that its capital and funding was the sole source of capital and funding for the entire Westlake Hospital operation and that neither Pipeline-Westlake Hospital nor SRC Hospital Investments would receive (or could receive) any funding or capital from any other source. Accordingly, Pipeline Health Systems knew that without its capital and funding, Westlake Hospital would have no operating capital and would be unable to operate as a going concern.

Defendants Closed Westlake Hospital

48. Two months later, without any further warning or notice to Melrose Park or the Westlake Hospital employees, Pipeline Health Systems made good on its earlier threat to bankrupt the hospital.

49. On August 6, 2019, at Pipeline Health Systems' direction, the sham Pipeline-Westlake Hospital entity filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Delaware, a forum located more than 800 miles away from Westlake Hospital and more than 2,700 miles away from Pipeline Health Systems' and Pipeline-Westlake's shared corporate headquarters (a single office suite in El Segundo, California, that also serves as the corporate headquarters to more than a dozen other "Pipeline" entities).

50. Pipeline-Westlake Hospital's bankruptcy filing admitted that the entity was insolvent "as early as February 2019," thus proving that the sham entity was grossly undercapitalized and never intended to be the entity operating Westlake Hospital. Upon motion by the United States Trustee, the case was transferred to the United States Bankruptcy Court for the Northern District of Illinois, where it remains pending.

51. A few days later, on August 19, 2019, the Chapter 7 bankruptcy trustee closed Westlake Hospital.

Count I
DECLARATORY JUDGMENT

52. The People incorporate the foregoing allegations as if fully set forth herein.

53. Pursuant to 735 ILCS 5/2-701, this Court “may make binding declarations of rights, having the force of final judgments . . . including the determination . . . of the construction of any statute, municipal ordinance, or other governmental regulation . . . and a declaration of the rights of the parties interested.”

54. Such a declaration of rights “may be obtained . . . as incident to or part of a complaint . . . seeking other relief as well.” 735 ILCS 5/2-701(b).

55. The State’s Attorney has standing to bring enforcement actions under the Planning Act. *AFSCME, Council 31 v. Ryan*, 347 Ill. App. 3d 732, 741-742 (5th Dist. 2004).

56. The People seek a judgment declaring that Defendants have violated the Illinois Health Facilities Planning Act, 20 ILCS 3960/1 *et seq.*,

PRAYER FOR RELIEF

WHEREFORE, the People of the State of Illinois ex rel. Kimberly M. Foxx, State’s Attorney of Cook County, respectfully request that the Court enter an order granting the following relief:

- A. Declaring that Defendants violated the Illinois Health Facilities Planning Act, 20 ILCS 3960/1 *et seq.*; when they attempted to close Westlake Hospital prior to the April 30, 2019 meeting of the Review Board;
- B. Entering such other and further relief that this Court deems appropriate.

Respectfully submitted,

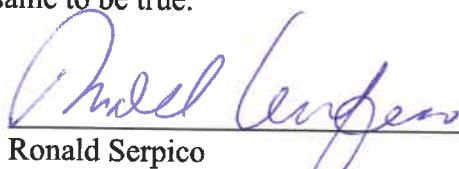
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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, in his capacity as Mayor of the Village of Melrose Park, certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: March 18, 2020



Ronald Serpico
Mayor of the Village of Melrose Park