

12-Person Jury

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Cook County, IL

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COOK COUNTY, IL
2019CH03041

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

VILLAGE OF MELROSE PARK,

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, and
ERIC WHITAKER, an individual,

Defendants.

Case No.

2019CH03041

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Village of Melrose Park (“Plaintiff” or “Village”) brings 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 and Eric Whitaker (the “Individual Defendants”), for their role in a fraudulent scheme to acquire Westlake Hospital under false pretenses, and seek to recover monetary and injunctive relief for harm and injuries caused to the Village resulting therefrom. Plaintiff, for its 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. This lawsuit arises from a fraud perpetrated by a consortium of private equity funds and their owners in connection with their purchase of Westlake Hospital (“Westlake”), a health facility located in Melrose Park, only to shutter it. Defendants knew that their fraudulent

scheme would harm and injure the Village of Melrose Park, its residents, hundreds of Westlake employees, and the tens of thousands of patients who rely on the hospital for medical care and services.

2. Westlake is 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 Melrose Park and the surrounding suburbs.

3. Critically, Westlake is a “safety net” hospital, meaning that it will not turn away patients that cannot pay for medical care. As the one and only safety net hospital in the area, Westlake provides significant levels of services and care to thousands of low-income and medically vulnerable community members, including Medicaid beneficiaries and the uninsured.

4. Westlake provides services completely free of charge to individuals in households with incomes less than 200% of the Federal Poverty Level—called “charity care”—and steeply discounted services to individuals in households with incomes under 500% of the Federal Poverty Level or that are already cost-burdened by medical debt.

5. In 2018, Pipeline Health LLC and TWG Partners LLC—through their respective principals, Nicholas Orzano and Eric Whitaker—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 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 Illinois Health Facilities Planning Act (the “Planning Act”) and related rules and regulations.

6. On September 6, 2018, the Private Equity Defendants submitted their application to change ownership of Westlake, and promised that the hospital would remain open. Specifically, the application states that “following the transaction, Westlake will continue to operate for the benefit of the residents of Chicago and the greater Chicago area, including serving poor and underserved individuals through Westlake’s charitable activities,” and the transaction “will result in no changes to the scope of services offered at Westlake.” September 6, 2018 Change of Ownership Application, attached hereto as Exhibit 1, at 0150–51. Defendant Orzano personally affirmed that these statements were accurate and truthful by submitting a signed certification with the application. (*Id.* at 010, 013.)

7. 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.

8. The same application includes signed certifications affirming that:

- (a) Defendants will adopt a charity care policy that “is not more restrictive than the current charity care policies at Westlake;” and
- (b) their “charity care policy will remain in place for *not less than two years* following the consummation of the transaction.”

(Ex. 1 at 0150–51.) These affirmations were signed and certified by Defendant Nicholas Orzano, the Chief Executive Officer of Defendant SRC Healthcare Investments II, and a principal at Pipeline Health where he sits on the company’s executive management team.

9. Defendant Eric Whitaker, on behalf of the Private Equity Defendants, also promised that Westlake Hospital would remain open and operating for the benefit of the community. He made that and additional statements to the Village, as well as to community

members and the public through numerous interviews with local newspapers and television networks.

10. Based on these representations, including specifically the statements made by Defendant Whitaker, the Village made the decision to (i) waive its right to object and oppose the Private Equity Defendants' Change of Ownership Application; (ii) waive its right to request a public hearing on the matter before the Review Board; and (iii) approve the Private Equity Defendants' request that it assign the rights to a Redevelopment Agreement that the Village entered into with the previous owner of Westlake.

11. Unfortunately for the Village and the tens of thousands of underserved and medically vulnerable individuals for whom Westlake serves as a safety net, the representations made by the Private Equity Defendants and Individual Defendants were false.

12. The Private Equity Defendants and Individual Defendants had no intention to keep Westlake open once the purchase was completed, despite the promises they made to the Village, the Review Board, the community members that rely on Westlake's safety net services, and the public.

13. Indeed, just *two weeks* 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. (February 21, 2019 Application for Discontinuance, attached hereto as Exhibit 2.)

14. Plaintiff seeks 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 Village and the State of Illinois.

PARTIES

15. Plaintiff Village of Melrose Park is a municipal corporation existing under the laws of the State of Illinois.

16. Defendant Pipeline Health LLC (“Pipeline”) 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

JURISDICTION AND VENUE

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

23. 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.

24. 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 Provides Significant Medical Services to Community Members.

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

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

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

28. Westlake is 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 is the only option.

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

Westlake Hospital Provides Safety Net Services and Charity Care to Tens of Thousands of Community Members Every Year.

30. As the area's only safety net hospital, Westlake provides care to low-income, medically, and socially vulnerable populations, including Medicaid beneficiaries and the uninsured. Many of the services provided by Westlake—especially with respect to pregnancy, childbirth, and in-patient psychiatric care—are not provided anywhere else in the area.

31. Between Westlake's 2015 and 2018 fiscal years, the hospital served more than 30,000 Medicaid beneficiaries.

32. For many years, Westlake has maintained a commitment to the community to provide "charity care"—steeply discounted or free medical care—to those with low incomes or who are burdened with medical debt.

33. Westlake's charity care policy is to provide entirely free medical services for emergency, non-elective care for uninsured individuals with family incomes below 200 percent of the Federal Poverty Level. Westlake also provides discounts of between 40 and 80 percent to those with incomes below 500 percent of the Federal Poverty Level or who have balances due for hospital services that exceed a quarter of their annual incomes.

34. Between Westlake's 2015 and 2018 fiscal years, it provided completely free care to more than 2,500 people through its charity care program.

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

35. Entities seeking to purchase a hospital in Illinois must first obtain approval from the Review Board pursuant to the Illinois Health Facilities Planning Act, 20 ILCS 3960/1 *et seq.*

36. 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.

37. 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.

38. 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.

39. 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).

40. 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.

41. 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). Any member of the public may request a hearing.

42. As detailed below, in 2018, Defendants jointly planned to (1) acquire Westlake, (2) shutter the hospital, and (3) sell off the assets for profit. In order to accomplish this scheme, Defendants lied to Plaintiff, the Review Board, and members of the community about their true intentions for Westlake, to prevent anyone from interfering. As part of this venture, each Defendant authorized and approved the representations that were made to the Review Board in the change of ownership application, the Village, and to the public.

43. On September 6, 2018, the Private Equity Defendants submitted an application to the Review Board for a change of ownership exemption. The application made several material representations, including:

- (a) “Following the Transaction, SRC will be adopting a Charity Care Policy at Westlake” that is identical to the charity care policy already in place (the “SRC Charity Care Policy”);

- (b) “The SRC Charity Care Policy is not more restrictive than the current charity care policies at Westlake” (emphasis in original);
- (c) “The SRC Charity Care Policy will remain in place for no less than two (2) years following the consummation of the Transaction”;
- (d) “Following the Transaction, Westlake will continue to operate for the benefit of the residents of Chicago and the greater Chicago area, including serving poor and underserved individuals through Westlake’s charitable activities”;
- (e) “The Transaction set forth in this [Change of Ownership Exemption] will result in no changes to the scope of services offered at Westlake”;
- (f) “Following the Transaction, SRC will be implementing a Charity Care Policy at Westlake;” and
- (g) “The SRC Charity Care Policy will not be more restrictive than the current Charity Care Policy at Westlake, and will remain in effect for at least two (2) years after the Transaction.”

(Ex. 1 at 0150-0151.)

44. These statements were made by Defendant SRC Hospital Investments and Defendant Pipeline–Westlake Hospital, and the truth and veracity of these statements was affirmed by Defendant Orzano.

45. On information and belief, Defendant Pipeline Health and Defendant TWG Partners—as owners of SRC Hospital Investments—and Defendant Eric Whitaker, a principal at Defendant TWG Partners, directed these statements be made and/or specifically approved the statements before they were submitted to the Review Board.

46. When the transaction was completed, Defendant Pipeline announced that Defendant Whitaker joined the company as a principal and vice chairman. Upon information and belief, given the timing of the announcement, Plaintiff believes that this arrangement was contingent upon the consummation of the purchase agreement and was meant to serve as compensation to Defendant Whitaker’s compensation for his participation in the scheme.

The Private Equity Defendants Also Made These Representations to the Village in Connection With a Request to Assign Them the Rights And Benefits of a Redevelopment Agreement.

47. Because of the importance of its role in the community, Plaintiff has invested heavily in Westlake's viability and success. In 2010, the Village entered into a Redevelopment Agreement ("RDA") with then-owner Vanguard Health Systems—which was later assigned to the hospital's most recent owner, Tenet Healthcare Corporation—to help Vanguard make capital improvements to Westlake.

48. Complementing the Redevelopment Agreement was the Village's creation of the Chicago Avenue/Superior Street Tax Increment Financing ("TIF") District, which set aside certain property tax revenues to provide Westlake with the financial support called for in the Redevelopment Agreement.

49. The goal of the Agreement and TIF district was to keep the hospital open and operating. Through that agreement, Westlake's owner received 50% of the set-aside TIF funds from the district for redevelopment projects.

50. Pursuant to its terms, the RDA could be assigned to future owners of Westlake, but only upon the written consent of the Village. When Tenet purchased Vanguard, the Village consented to the assignment of the RDA to Tenet.

51. Between June 2018 (when the purchase was announced) and October 22, 2018, Defendant Whitaker, on behalf of the Private Equity Defendants, sought approval from the Village to reassign the rights in the RDA to Pipeline.

52. When confronted with the Private Equity Defendants' request for assignment of the RDA, the Village—through Mayor Ronald Serpico—told Defendant Whitaker that the Village would only consent to the assignment of the RDA if the Private Equity Defendants promised not to close Westlake Hospital. Defendant Whitaker, on behalf of the Private Equity Defendants, responded by unequivocally promising that Westlake would remain open and

continue serving the Melrose Park community. This representation was made to both Mayor Serpico and members of the Village Council, and was consistent with other public statements being made by Defendants.

53. Given the Defendants' promise not to close Westlake, Mayor Serpico and members of the Village Council voted to approve the request for assignment of the RDA to Pipeline on October 22, 2018. Had Mayor Serpico and Village Council members known that the Defendants intended to close Westlake, they would not have voted to approve the assignment of the RDA.

In Light of All These Representations, the Village Waived its Rights to Oppose the Change of Ownership Application and Request a Public Hearing.

54. Relying on the representations made directly to the Village by Defendant Whitaker, as well as those made through the Private Equity Defendants' application, Plaintiff waived its right to oppose the change of ownership application and similarly waived its right to request a public hearing before the Review Board. As a result, there was no opposition to the application and no public hearing was held.

55. On November 11, 2018, the Review Board—also relying on the statements—granted the exemption.

56. After the exemption was granted, Defendants continued to represent through the completion of the purchase that Westlake would remain open, and never corrected their earlier representations. Accordingly, neither the Village nor any other party sought review of the Board's decision to grant the exemption.

The Private Equity Defendants and Individual Defendants Repeatedly Made Representations Regarding Their Plan to Keep Westlake Hospital Open After They Acquired It.

57. Since mid-2018, the Private Equity Defendants and Individual Defendants have engaged in a concerted effort to convince the public—and by extension, the Village, the

community, the Review Board, and the State of Illinois—that they were purchasing Westlake to invest in the facility and improve the delivery of health care in Melrose Park.

58. Pursuant to this concerted effort, the Individual Defendants and other Private Equity Defendant principals, made numerous statements to the press, including:

- (a) Defendant Whitaker’s statement on January 29, 2019, before the purchase was consummated, that “Pipeline is primed to revitalize struggling community hospitals that allow residents to access care closer to home.”¹
- (b) That same day, Pipeline CEO Jim Edwards stated that “We’re not put out by the fact that these hospitals have some issues and problems from a financial perspective . . . We feel strongly with our resources, our finances, our experience we can come in and make a difference, and, for lack of a better way to put it, save these hospitals.”²
- (c) Jim Edwards told another outlet that “[Defendant Whitaker is] going to be very instrumental in our ability to take these hospitals and make them sustainable and viable for years to come . . . There’s a need for community hospitals. The quality and cost structure we can bring to hospitals like Weiss, West Suburban and Westlake is just what these communities need.”³
- (d) Days later, Jim Edwards reiterated that “We spent a great amount of time and due diligence studying these hospitals and understanding them as much as we could. We just felt that these were hospitals that could be solid community hospitals . . . I think all three hospitals are loved by the physicians who are here. They are very eager to be working with us as we go forward here and try to bring these hospitals back to very viable, sustainable hospitals that can be here for a long time.”⁴

¹ Alex Kacik, *Tenet sells its remaining Chicago hospitals to Pipeline Health*, MODERN HEALTHCARE (Jan. 29, 2019), <https://cite.law/9FL5-GR5L>.

² Lisa Schenker, *‘We can . . . save these hospitals’: Weiss, Westlake, and West Suburban sold for \$70 million to for-profit firm*, CHICAGO TRIBUNE (Jan. 29, 2019), <https://www.chicagotribune.com/business/ct-biz-westlake-weiss-suburban-hospital-sale-0129-story.html>.

³ Stephanie Goldberg, *Pipeline Health acquires Chicago-area hospitals*, CRAIN’S CHICAGO BUSINESS (Jan. 29, 2019), <https://cite.law/MUH9-YB2L>.

⁴ *On the Record with Jim Edwards, CEO, Pipeline Health*, HEALTH NEWS ILLINOIS (Feb. 1, 2019), <https://cite.law/LPV2-3Q46>.

Two Weeks After the Purchase Was Completed, the Private Equity Defendants Announced Their Plans to Close Westlake Hospital as Quickly as Possible, Thus Revealing Their Fraud for the First Time.

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

60. Just two weeks after Edwards's statements, and after Westlake's sale was completed, Defendant Whitaker began calling the area's political representatives, including Representative Emanuel Chris Welch, to announce Defendants' plans to close the hospital.⁵

61. Defendant Whitaker represented that the Defendants did not anticipate having to close Westlake: "As we looked at the financials, the losses had accelerated tremendously and it was beyond what we had projected . . . To the extent that we would have to pour a lot of capital into Westlake, it really would have endangered the other two hospitals we had as part of the purchase."⁶

62. Of course, Defendants' representations that Westlake would be kept open were never true. Defendants knew that they would close Westlake immediately after the sale was completed.

63. Defendants' representations regarding their commitment to maintain the same charity care policy at Westlake for at least two years, and to continue providing medical services to community members were lies intended to deceive the Village, the Review Board, and the community into putting up no opposition to the sale.

64. The Private Equity Defendants thereafter immediately filed an application to close

⁵ Stephanie Goldberg, *Melrose Park hospital to close after being acquired*, CRAIN'S CHICAGO BUSINESS (Feb. 15, 2019), <https://cite.law/X74G-8GRW>.

⁶ Lisa Schencker, *Melrose Park's Westlake Hospital to close, reversing plans by new owner to invest in 670-employee hospital*, CHICAGO TRIBUNE (Feb. 17, 2019), <https://www.chicagotribune.com/business/ct-biz-westlake-hospital-melrose-park-to-close-20190216-story.html>.

Westlake with the Review Board on February 21, 2019. (Ex. 2.)

65. Amazingly, Defendants do not even pretend that there has been a sudden change of circumstances that necessitate the closing of Westlake in the application. Instead, and contrary to all of the representations that Defendants made in their change of ownership application, the Defendants blame the sudden need to shut down the hospital on a variety of reasons, including (i) that there are additional operational costs associated with “a broad national trend over the past 20 years of moving away from inpatient care toward outpatient and ambulatory care,” (b) hospitals in Illinois face increasing financial pressure, as demonstrated by the fact that “between 2012 and 2017 . . . hospitals in Illinois discontinued more than 170 pediatric beds,” (c) there is a “continuously-reducing demand for services at Westlake,” (d) “the hospital has operated at a significant loss since at least 2015,” and (e) Westlake incurred net operating losses of \$14 million in 2018. (Ex. 2 at 000080-000084.)

66. Each of these supposed reasons to immediately shut down Westlake demonstrates Defendants’ knowledge of the fraud: Every single one of these excuses is based on events that occurred in the past, before the Private Equity Defendants consummated the agreement to purchase the hospital. None of the reasons for discontinuance of the hospital articulated by Defendants excuse—or even address—the numerous representations made by the Private Equity Defendants and Individual Defendants since they announced their plans to purchase the hospital.

67. To the contrary, given that each of the reasons for discontinuation listed in the application are based on past occurrences and information that was available prior to the consummation of the purchase agreement, these statements prove that Defendants’ earlier representations were knowingly false and deceptive at the time they were made.

FIRST CAUSE OF ACTION
VIOLATION OF MELROSE PARK MUNICIPAL CODE § 9.04.030

68. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

69. Under the Village Code of Melrose Park, “[i]t is unlawful for any person in the village to obtain possession of any goods, property or thing of value by any false proceedings or by cheating or by fraud of any kind.” Melrose Park Muni. Code § 9.04.030.

70. Defendants obtained possession of both property (the hospital itself) and a thing of value (the benefits provided under the RDA) through intentional misrepresentations made to the Village by Whitaker, on behalf of the Private Equity Defendants, and to the Village residents, and to the community members that rely on Westlake, which is located in the Village, for medical services, including safety net services.

71. Plaintiff seeks all fines and penalties allowable under Melrose Park Muni. Code § 1.16.010 for each and every violation of the ordinance.

SECOND CAUSE OF ACTION
VIOLATION OF MELROSE PARK MUNICIPAL CODE § 9.08.020

72. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

73. Under the Village Code of Melrose Park, “[i]t is unlawful for any person to interfere with, hinder or resist any officer or employee of the village, while engaged in the duties of his or her office or employment.” Melrose Park Mun. Code § 9.04.030.

74. The Private Equity Defendants interfered with the work of the Village Mayor and the Village Council by intentionally misrepresenting, through Defendant Whitaker, that they would not close Westlake when they (i) requested the Village not to oppose their change of ownership application, and requested assignment of the RDA, when in fact, they knew that they would.

75. Plaintiff seeks all fines and penalties allowable under Melrose Park Mun. Code § 1.16.010 for each and every violation of the ordinance.

THIRD CAUSE OF ACTION
FRAUDULENT MISREPRESENTATION

76. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

77. The Private Equity Defendants—themselves and through the Individual Defendants—repeatedly represented that Westlake Hospital would not close, and that it would continue operating and serving patients in the Melrose Park community and surrounding area. These statements were made publicly, directly to the Village, and directly to the Review Board.

78. Defendant Orzano also made statements and representations that Westlake Hospital would not close.

79. Defendant Whitaker made these statements directly to the Village and, on information and belief, specifically approved or directed the statements before they were submitted to the Review Board as a principal of TWG Partners and, shortly thereafter, Pipeline.

80. All Defendants knew that these representations were false at the time they were made.

81. This representation was material to the Village, the Review Board, and to the members of the community that rely on Westlake for essential medical services.

82. Defendant Whitaker, on behalf of the Private Equity Defendants, intended for his statements to deceive the Village, the Review Board, and the public.

83. The Village relied upon these statements, and as a foreseeable consequence of these statements, waived its right to oppose the sale of Westlake to Defendants and waived its right to seek a public hearing before the Review Board.

84. As a direct and foreseeable consequence of these statements, the Village also consented to the assignment of the benefits of the RDA to Pipeline.

85. Had the Village known Whitaker's and the Private Equity Defendants' representations were false, it would have opposed the sale, sought a public hearing in front of the

Review Board, and rejected any assignment of the RDA.

86. The Village has suffered and will suffer considerable injury resulting from the fraud Defendant perpetrated on the Village, the Board, and the community.

87. The Village is directly and proximately harmed by the increased costs posed by Westlake's closure. Melrose Park (and its taxpayers) pay for the Village of Melrose Park Fire Department, including emergency ambulance services, and the Village of Melrose Park Police Department. Even if patients can be absorbed by nearby hospitals—an impossibility for many, given Westlake's role as a safety net provider—the increased distance to care will endanger Village patients and pose additional costs in ambulance services. The lack of other healthcare options in the area will also increase emergency calls that could otherwise have been prevented.

88. As the only facility providing methadone treatment in the area, Westlake mitigates and prevents some of the worst effects of the opioid crisis from reaching the heart of Melrose Park. When the hospital is shuttered, the tremendous costs of the opioid crisis will rise: the significant taxpayer money that the Village spends to combat opioid abuse and addiction, including increased use of ambulance services, increased use of police services, and increased administrations of naloxone.

89. The Village also relied on Defendants' representations about keeping Westlake open when it determined its budget for 2019, which relies upon the more than \$1 million in annual property taxes that the Village receives from Westlake. Once Westlake is closed, those funds will no longer be paid to Plaintiff.

**FOURTH CAUSE OF ACTION
CIVIL CONSPIRACY**

90. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

91. A civil conspiracy is a combination of two or more persons to accomplish an unlawful end or to accomplish a lawful end by unlawful means. *Adcock v. Brakegate, Ltd.*, 164

Ill. 2d 54, 62 (1994).

92. Each of the Defendants acted tortiously in concert with each other in pursuit of a common goal: to profit from the acquisition, closure, and sale of Westlake Hospital and all of its assets.

93. Each of the Defendants agreed to, and did, pursue a common strategy to convince the Village, community members, elected officials, the Review Board, and the public that if allowed to purchase Westlake, they would keep the hospital open and continue providing medical services, including safety net services, to the community. This agreement is evidenced by the Private Equity Defendants' Change of Ownership Application (Ex. 1.), and the knowingly false statements contained therein and affirmed by Defendant Orzano. (*See id.* at 0150-0151.) Defendant Whitaker, on information and belief, agreed to this scheme, and approved and directed that the statements be made, as a principal of TWG Partners and as a soon-to-be principal of Pipeline.

94. Each of the Defendants knew that if they told the truth about what they would do with Westlake, the Village, elected officials, and the tens of thousands of community members that rely on the hospital would exercise their rights under the Planning Act to oppose their efforts, lodge formal objections with the Review Board, and exercise their right to a public hearing, which Defendants wanted to avoid at all costs. Each of the Defendants also knew that if they told the truth about closing Westlake, the Village would have denied their request for assignment of the RDA.

95. As such, each of the Defendants agreed with each other that Defendant Whitaker would disseminate false and deceptive statements to the Village and other elected officials to convince them that if allowed to purchase Westlake, they would keep the hospital open and continue providing medical services, including safety net services, to the community. Whitaker

made these misrepresentations to the Village beginning in or around June 2018 and continuing through at least September 2018.

96. Defendant Whitaker and the Private Equity Defendants knew that the Village and the members of the community would be rely on and be misled by these misrepresentations.

97. Defendants' conduct was malicious, purposeful, intentional, and unlawful, and proximately caused the direct and foreseeable consequences of this conduct discussing herein.

98. Plaintiffs respectfully request this Court enter an order awarding judgment in their favor to compensate them for injuries sustained as a result of Defendants' misconduct, for restitution of any money acquired as a result thereof, and awarding such other relief as this Court may deem just.

99. Plaintiffs also request this Court enter an order awarding declaratory relief by declaring that Defendants' activities constituted a civil conspiracy, enjoining them from engaging in any further activities constituting civil conspiracy, and providing injunctive relief requiring them to abate any harm caused by their civil conspiracy.

FIFTH CAUSE OF ACTION
PUBLIC NUISANCE

100. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

101. Under Illinois law, a public nuisance is the “doing or the failure to do something that injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public.” *Burns v. Simon Props. Grp., LLP*, 2013 IL App (5th) 120325, ¶ 6. A public nuisance claim must identify “(1) the existence of a public right; (2) a substantial and unreasonable interference with that right by the defendant; (3) proximate cause; and (4) injury.” *Id.*

102. Plaintiff's residents have a common right to be free from conduct creating an unreasonable risk of harm to public health, morals, comfort, welfare, and safety in their

community, and to be free from conduct creating a disturbance and reasonable apprehension of danger to people and property.

103. As described herein, Defendants have created a continuing public nuisance in Plaintiff's community through their conduct, including their fraudulent scheme to shut down Westlake and deprive tens of thousands of community members of healthcare service that is dependent on Westlake's safety net services and charity care.

104. This has caused and will cause a significant and unreasonable interference with the public health, safety, welfare, peace, comfort, and convenience of Plaintiff's citizens.

105. As such, Defendants have individually and collectively created an unreasonable public nuisance in Plaintiff's community.

106. Plaintiff respectfully requests this Court enter an order awarding judgment in its favor, including damages and reasonable attorneys' fees, and awarding Plaintiff such other and further relief as this Court may deem just.

107. Plaintiff also requests this Court enter an order awarding declaratory relief by declaring that Defendants' activities constituted a public nuisance, enjoining Defendants from engaging in any further activities constituting the public nuisance, and requiring Defendants to abate the public nuisance caused by their misconduct.

108. Defendants' conduct will cause Plaintiff to spend additional sums of money every year to abate the nuisance caused by Defendants' fraudulent actions through increased expenditures on public services, including medical, emergency, fire, and police services, as well as the increased costs necessary for its ambulances to transport patients to emergency rooms located outside Melrose Park. Defendants' conduct will also result in the loss of property tax revenue from Westlake, which among other things, Plaintiff relied on when determining its budget for 2019.

SIXTH CAUSE OF ACTION
DECLARATORY JUDGMENT

109. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

110. 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.”

111. 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).

112. Plaintiff seeks a judgment declaring that Defendants have violated Melrose Park Municipal Code §§ 9.04.030 and 9.08.020, as alleged above.

113. Plaintiff also seeks a judgment declaring that Defendants have violated the Illinois Health Facilities Planning Act, 20 ILCS 3960/1 *et seq.*

114. Plaintiff further seeks a judgment that Defendants have defrauded the Village and the Review Board, and engaged in a civil conspiracy to do so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Village of Melrose Park respectfully requests that the Court enter an order granting the following relief:

- A. Declaring that Defendants violated Melrose Park Municipal Code §§ 9.08.020 and 9.04.030;
- B. Declaring that Defendants have made fraudulent misrepresentations to the Plaintiff and to the Review Board and engaged in a civil conspiracy;
- C. Declaring that Defendants have created a public nuisance;
- D. Imposing fines in accordance with Village ordinances for each and every violation thereof in an amount to be determined at trial;

- E. Awarding damages incurred by Plaintiff as a result of Defendants' misconduct to be determined at trial, or in the alternative, awarding nominal damages;
- F. Awarding such and other injunctive and declaratory relief as is necessary;
- G. Awarding Plaintiff compensatory and punitive damages against Defendants;
- H. Awarding Plaintiff reasonable attorneys' fees and costs;
- I. Awarding Plaintiff pre- and post-judgment interest; and
- J. Awarding such other and further relief as equity and justice may require.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

VILLAGE OF MELROSE PARK,

Dated: March 7, 2019

By: /s/ Ari J. Scharg
One of Plaintiff's Attorneys

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