

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
IN AND FOR LEON COUNTY, FLORIDA**

**CITRUS MEMORIAL HEALTH  
FOUNDATION, INC., a Florida not-for-  
profit corporation,**

**Plaintiff,**

**Case No. 2011-CA-1653**

v.

**CITRUS COUNTY HOSPITAL BOARD, an  
independent special district of the State  
of Florida, and the STATE OF FLORIDA,**

**Defendants.**

---

**ORDER GRANTING PLAINTIFF'S EMERGENCY  
MOTION FOR TEMPORARY INJUNCTION**

This cause came before the Court for hearing on Plaintiff's Emergency Motion for Temporary Injunction. The court having reviewed the pleadings, heard argument of counsel and being otherwise advised in the premises, finds as follows:

Plaintiff, Citrus Memorial Health Foundation, Inc. ("Foundation"), seeks an emergency temporary injunction against the Citrus County Hospital Board ("CCHB") to preclude the implementation HB 1043, a special law which was signed into law by Governor Scott on June 24, 2011 ("Special Law").<sup>1</sup> The Foundation alleges that the Special Law is unconstitutional because it retroactively impairs the Foundation's contractual rights in violation of Fla. Const. art. I, § 10 and the Due Process clause of the Florida Constitution. The Special Law became effective on July 1, 2011.<sup>2</sup>

---

<sup>1</sup> At the time of the hearing on this motion, the law was not yet in effect. As of the writing of this order it is as Chapter 11-256, Laws of Florida. For purposes of this order, however, the Court will simply refer to it as the "Special Law."

<sup>2</sup> By stipulation, CCHB agreed that it would take no action it was authorized to take pursuant to the Special Law, pending a determination by the Court of the matters raised in the motion.

## FINDINGS OF FACT

CCHB is an independent special district of the State of Florida established in 1949 to operate hospitals and medical facilities in Citrus County, Florida.

The Foundation is a private, not-for-profit corporation, incorporated in 1987 under chapter 617 of the Florida Statutes, originally for the purpose of raising charitable contributions and to enter into joint ventures in which CCHB, as a public entity, could not participate. As a private not-for-profit corporation in Florida, the Foundation filed Articles of Incorporation, adopted Bylaws, files annual reports, maintains the corporate records required by law, files tax returns with the Internal Revenue Service, and otherwise complies with the requirements of Chapter 6-7 of the Florida Statutes and provisions of the Internal Revenue Code governing private not-for-profit corporations.

Under the Foundation's original articles of incorporation, CCHB had majority control of the Foundation's Board of Directors. The articles at that time provided, as they still do today, that they could be amended only by the Foundation.

On November 27, 1989, at a time when CCHB had majority control, the Foundation unanimously approved an amendment to the articles of incorporation to provide that CCHB trustees were no longer entitled to constitute a majority of the Foundation's Board.<sup>3</sup> The Foundation made this amendment to its articles in anticipation of leasing the hospital from CCHB. Three of the five CCHB trustees were present at the November 27, 1989 meeting of the Foundation's Board, and all three

---

<sup>3</sup> On February 26, 1990, CCHB unanimously passed a "resolution that the Articles of Incorporation and all amendments thereto of the Foundation, and each and every term and condition contained therein, have been reviewed and approved by the Board as of the date hereof."

voted in favor of the amendment to the Foundation's articles of incorporation.<sup>4</sup> The other two CCHB trustees at that time were not present. The amended articles of incorporation were filed on November 28, 1989. Subsequent to that amendment, the CCHB trustees have not had the right to sit as a majority on the Foundation's Board.

After its approval of the 1989 amendment to the Foundation's articles ceding its majority control of the Foundation's Board to directors elected by the Foundation, CCHB leased Citrus Memorial Hospital to the Foundation on March 1, 1990 pursuant to a Lease Agreement (the "Lease"). The parties contemporaneously executed an Agreement for Hospital Care (the "Agreement"), which was amended and restated on March 1, 1992. CCHB's objectives in leasing the hospital to the Foundation were primarily (1) to enable the Foundation to achieve cost savings by opting out of the public retirement program and (2) to allow the Foundation to have greater flexibility to better compete with private hospitals, such as by providing "an array of services through joint ventures under one corporate umbrella."

The Lease and Agreement definitively govern the Foundation's obligation to operate the hospital and to provide hospital services, CCHB's obligation to fund a portion of the Foundation's operational and capital needs, the procedures for financial review and oversight by CCHB, and the restrictions on the Foundation's use of tax funding provided by CCHB. The Lease and Agreement do not expire until 2033, and

---

<sup>4</sup> The Foundation restated its articles in 2006, and the parties have operated under the Articles since that time. Under those Articles, CCHB is the Foundation's sole member. As the member, CCHB's right under the Foundation's Bylaws are limited to the right to approve (1) the dissolution or merger of the Foundation or (2) any action resulting in fewer than five CCHB trustees sitting on the Foundation's Board.

the Foundation then has a 45-year renewal option. Under the terms of these contracts, CCHB may terminate them only upon the occurrence of certain specified events of default. These contracts may be amended only by mutual agreement, in writing and signed by both parties. The Agreement places no limitations on the Foundation's use of funds generated from the operation of the hospital and sources other than CCHB. Funds from such other sources constitute the majority of the Foundation's budget.

### **THE "SPECIAL LAW"**

Section 16 (5) of the Special Law expressly provides that CCHB trustees shall "constitute a majority of the voting directors of the not-for-profit corporation." It further provides that "to the extent the governance documents of the not-for-profit corporation do not so presently provide, the not-for-profit corporation shall forthwith take all steps necessary to bring them into conformity with this majority membership requirement." This overrides the provisions of the Foundation's Articles that now allow the Foundation to elect a majority of its own Board, and instead turns majority control of the Foundation's Board, and therefore of the Foundation itself, over to CCHB.

In addition, section 16(6) requires that CCHB approve all Foundation directors, including current directors elected by the Foundation Board pursuant to its governing documents. Section 16(2) requires CCHB approve the Foundation's articles of incorporation and bylaws, including those currently in effect. Finally, Sections 16(8)-(11) impose new operational and financial requirements, that are either absent from or inconsistent with the parties' Agreement.

In essence, these new provisions grant CCHB control over all of the Foundation's revenues, not just CCHB's tax funded appropriations. In contrast, the Agreement

places no limitations on the Foundation's use of funds generated from the operation of the Hospital and sources other than CCHB. Funds from such other sources constitute the majority of the Foundation's budget.

The Special Law requires CCHB both to seize control of the Foundation and to alter the provisions of the now existing Lease and Agreement. Thereafter, CCHB will have absolute authority over important operational matters, now within the total purview of the Foundation.

The Special Law, in effect, gives CCHB total control over the Foundation. The foundation will lose its existing right to have a majority of directors on the Foundation Board. The Foundation will lose its existing right to elect any directors without CCHB approval. Further, the Foundation will lose its existing right to amend its Articles and Bylaws without CCHB approval. It will lose its existing right to make its budget without CCHB approval. And finally, it will lose its operational flexibility and benefits that Fla. Stat. 155.40 affords to similar hospitals and that it has previously enjoyed.

### **Conclusions of Law**

In order to enter a temporary injunction, a court must consider (1) the likelihood of success on the merits, (2) the likelihood of irreparable harm, (3) the availability of an adequate remedy at law, and (4) whether the requested injunction will serve the public interest. St. John's Inv. Management Co. v. Albaneze, 22 So. 3d 728, 731 (Fla. 1st DCA 2009). All four factors support entry of a temporary injunction against the retroactive impairment of the Foundation's contracts by section 16 of the Special Law. Issuance of an injunction will serve the salutary purpose of preserving the status quo until the Court can make a final determination of the Foundation's constitutional claims.

**A. The Foundation has a substantial likelihood of success on the merits.**

The Florida Constitution expressly provides that “[n]o . . . law impairing the obligation of contracts shall be passed.” Fla. Const. art. I, § 10. Florida courts have faithfully enforced that constitutional prohibition against impairment of contracts. Stressing the “sanctity of contracts,” the Florida Supreme Court has declared:

To justify retroactive application it is not enough to show that this legislation is a valid exercise of the state's police power because that power, however broad in other contexts, here collides with the constitutional ban on laws impairing contracts. Virtually no degree of contract impairment has been tolerated in this state.

Yamaha Parts Distributors Inc. v. Ehrman, 316 So. 2d 557, 559 (Fla. 1975). The Court further explained that legislation that “lessens the efficacy” of the means by which parties can be obliged to perform their contractual obligations impairs the contract “in the constitutional sense.” Id. at 559 n.12. The Florida Supreme Court has held that any law that “detracts in any way from the value of the contract is inhibited by the Constitution” and must be invalidated. Dewberry v. Auto-Owners Ins. Co., 363 So. 2d 1077, 1080 (Fla. 1978).

The effect of the Special Law is to retroactively alter the Foundation's rights under its contracts and Articles. The Foundation's articles of incorporation are a contract. Cohn v. Grand Condominium Ass'n, 26 So. 3d 8, 9-11 (Fla. 3d DCA 2009), aff'd 2011 WL 1158938 (invalidating impairment to articles of incorporation under impairment of contracts clause); Aztec Motel, Inc. v. State, 251 So. 2d 849, 852 (Fla. 1971) (“once a charter is granted a corporation, the charter becomes a contract and the law in force at the time of such a contract enters into it”).

The Foundation's Articles place the CCHB trustees in a minority position on the Foundation's Board. The Special Law mandates that CCHB instead be given majority control, thus turning the Foundation's governance and operation of its leased hospital over to an entity now entitled only to minority voting rights on the Foundation's Board. The Special Law specifically directs the Foundation to rewrite its existing Articles to create this new governance regime. It then provides CCHB with a litany of rights over the financial and operational decisions of the Foundation, contrary to the terms of the parties' Lease and Agreement. Thus, the Special Law substantially deprives the Foundation of the value of its rights under existing contracts and substantially increases CCHB's rights under agreements now governing the parties' rights and relationship, turning over the Foundation's very governance and operational control to CCHB. Under Dewberry and its progeny, the Foundation has a substantial likelihood of succeeding on its claim that the Special Law must be invalidated.

But even if the Special Law were not invalid under Dewberry, the Foundation would still have a substantial likelihood of success on its claim that the Special Law fails to pass constitutional muster under the test set forth in Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774, 776-82 (Fla. 1979), which courts have subsequently used to evaluate legislation that affects contracts but does not immediately diminish the value of the contract rights, thereby requiring invalidation under Dewberry.

First, the impairment of the Foundation's contracts is severe, fundamentally altering the Foundation's core governance, operational, and financial rights. Second, even if the degree of impairment here were constitutionally tolerable, the law nonetheless must be justified by a broad and general public purpose to overcome the

strong presumption in Florida against any impairment of contract rights. Pomponio, 378 So. 2d at 778-79; United States Fidelity & Gty. Co. v. Dept. of Ins., 453 So. 2d 1355, 1360 (Fla. 1984). The purpose of the Special Law is focused on altering only the contract between CCHB and the Foundation. The legislative goal of the Special Law is thus neither broad nor generalized, and it serves no public purpose of statewide concern. Third, while the Special Law touches on the operation of a member of a regulated industry, the Special Law cannot be justified as reasonable regulation of the health care industry, as it only regulates one hospital and does so in a manner totally different from the regulation of similarly situated hospitals.

The Foundation has a substantial likelihood of success on the merits not only under the impairment of contracts clause, but also under the Florida due process clause. The Florida Supreme Court has consistently invalidated laws that retroactively create or impose new obligations or duties, impair or destroy existing rights, or impose new penalties or disabilities with respect to vested rights. Menendez v. Progressive Express Ins. Co., Inc., 35 So. 3d 873, 877-80 (Fla. 2010). A “vested right” is “an immediate right of present enjoyment or a present, fixed right of future enjoyment.” Florida Hospital Waterman Inc. v. Buster, 984 So.2d 478, 490 (Fla. 2008). “Vested rights” include rights fixed by contract. See Menendez, 35 So. 3d at 877-80 (invalidating statute retroactively impairing vested rights under insurance policies). A statute is impermissibly retroactive when it imposes new legal consequences to the detriment of a party’s vested rights. Id. at 877.

The Foundation’s rights under its Articles and contracts vested at the time they were entered into, and they provide a “present, fixed right of future enjoyment” until they are terminated or amended in accordance with the express terms of the contracts. The

parties specifically provided in their agreements that they could be changed only by a mutual, signed writing. By attempting to give CCHB control over the Foundation's Board, in place of CCHB's current minority voting status, the Special Law materially impairs those contract terms, thereby retroactively depriving the Foundation of the full value of its vested rights under these long-term agreements.

**B. The Foundation will suffer irreparable harm in the absence of an injunction, without an adequate remedy at law.**

The status quo is dramatically altered immediately upon the Special Law taking effect, as CCHB will be required both to seize control of the Foundation and to alter the provisions of the Lease and Agreement. Thereafter, CCHB will have absolute authority over important operational matters now within the purview of the Foundation. These include the provision of hospital services, borrowing and spending, and termination of current employees. This change in the status quo inevitably will occur, absent an injunction, because, under the Special Law, the Foundation will lose its existing right to have a majority of directors on the Foundation's Board. Closely related to this issue, the Foundation will lose its existing right to elect any directors without CCHB approval.

In addition to this governance shift, the Foundation will lose its existing right to amend its Articles and Bylaws without CCHB approval. It will lose its existing right to make its budget without CCHB approval. It will lose its existing rights to make expenditures and borrow money without CCHB approval. It will lose the operational flexibility and benefits that Fla. Stat. 155.40 affords to similar hospitals and that it previously enjoyed.

These adverse effects are certain because they are required to occur under the Special Law. It would be impossible to compensate the Foundation for the loss of these

contract rights by any award of money damages, thus warranting equitable relief. Cohen v. Cohen, 567 So. 2d 1015, 1016 (Fla. 3d DCA 1990) (defining “irreparable harm” as harm for which money damages “cannot make the injured party whole again”).

**C. A temporary injunction serves the public interest**

There is no public interest in investing the time, resources, and effort to enforce unconstitutional legislation. KH Outdoor, LLC v. City of Trussville, 458 F.3d 1261, 1272-73 (11th Cir. 2006). The Special Law warrants no exception to this salutary rule. To the contrary, the fact that a public entity is being singularly favored requires the Court to pay less deference to the purported public purpose of the Special Law. USF&G, 453 So. 2d at 1361; State v. Leavins, 599 So. 2d 1326, 1332 (Fla. 1<sup>st</sup> DCA 1992).

Moreover, the requested temporary injunction would serve the public interest by promoting the sanctity of contracts with public entities. As the Pomponio court emphasized, once parties have reached contracts controlling their business affairs, “those rights and obligations are binding under the law, and the parties are entitled to rely on them.” Pomponio, 378 So. 2d at 782 n.48. If the Legislature can step in to alter the contractual arrangement in this case in favor of CCHB, it can step in to alter or abrogate any number of public contracts with private entities throughout a variety of industries. This would discourage private entities from contracting with the government for a variety of services that are valuable to the public.

Finally, a temporary injunction will protect the public interest by promoting order and stability until it can be determined by declaratory judgment whether the retroactive provisions of the Special Law are constitutional. It is not in the public interest to have the hospital in turmoil, with its governance rights abruptly altered, especially where that

hospital has important responsibilities for indigent health care. If this dramatic change in the hospital's operations should ever take place, it should occur only after a final determination of its legality.

In light of the foregoing, it is hereby ORDERED and ADJUDGED that Plaintiff's Motion for Temporary Injunction should be and it hereby GRANTED as follows:

1. CCHB is hereby enjoined from taking any steps to implement Section 16 of the Special Law until such time as the injunction entered herein is dissolved by order of the Court or a final judgment is entered herein.

2. The Foundation is not required to take any steps to comply with Section 16 of the Special Law until such time as the injunction entered herein is dissolved by order of the Court or a final judgment is entered herein.

3. The Foundation shall post a bond in cash or by surety in the amount of \$ 1,000,000.00.

4. This matter is set for trial on Thursday, October 27, 2011 at 7:30 a.m. Pre-trial deadlines will be established by a separate scheduling order to be submitted by the parties within ten days.

DONE and ORDERED this 10 day of July, 2011.

cc: Counsel of Record

\_\_\_\_\_  
Jackie L. Fulford  
Circuit Court Judge