STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY

MARY HARTSHORNE, et al.,

Plaintiffs,

- against -

THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK; ST. CLARE'S CORPORATION (FORMERLY KNOWN AS ST. CLARE'S HOSPITAL OF SCHENECTADY, N.Y.); ST. CLARE'S HOSPITAL RETIREMENT INCOME PLAN; TRUSTEES OF ST. CLARE'S RETIREMENT INCOME PLAN TRUST; JOSEPH F. POFIT; ROBERT PERRY; BISHOP EDWARD B. SCHARFENBERGER; and BISHOP HOWARD HUBBARD,

Defendants.

DECISION/ORDER

Index No. 2019-1989
RJI 46-1-2019-1284

APPEARANCES:

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VINCENT W. VERSACI, A.S.C.J.

By Summons and Complaint dated September 10, 2019, the Plaintiffs, who constitute a group of former employees of the Defendant, St. Clare's Corporation (formerly known as St. Clare's Hospital of Schenectady, N.Y., and hereinafter referred to as the "Corporation"), commenced this action against the Corporation, the Roman Catholic Diocese of Albany, New York (hereinafter referred to as the "Diocese") and various other named Defendants, seeking *inter alia*, compensatory, expectation and punitive damages for the loss or reduction of their vested retirement benefits. The causes of action alleged in the Complaint, as amended on January 9, 2020, sound in breach of contract, promissory estoppel, and breach of fiduciary duty.

In response to the Complaint, the Corporation, St. Clare's Hospital Retirement Income Plan, Joseph F. Pofit and Robert Perry (hereinafter collectively referred to as the "St. Clare's Defendants"), filed a Motion to Dismiss pursuant to CPLR Rule 3211(a)(1), (5) and (7), on the grounds that the Complaint fails to state a cause of action; is barred by documentary evidence; and is barred by the applicable statute of limitations. Similarly, the Diocese, Bishop Edward B. Scharfenberger and Bishop Howard J. Hubbard (hereinafter collectively referred to as the "Diocese Defendants"), also filed a Motion to Dismiss pursuant to CPLR Rule 3211(a)(1) and (7). Before both Motions were fully submitted, the Plaintiffs amended their Complaint.[1] Rather than requiring the Defendants to file new Motions to Dismiss the Amended Complaint, Counsel have agreed that the pending Motions relate to the Complaint as amended.

Oral argument of the Motions was originally scheduled for March 17, 2020, but was postponed due to the closure of the Courts during the COVID-19 pandemic. Oral

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[1] The Plaintiffs represent that the Amended Complaint merely added additional party plaintiffs to the caption and incorporated some minor changes, but did not materially alter the factual allegations contained in the original Complaint.

argument was subsequently held on May 20, 2020 via Skype, following which Counsel made supplemental written submissions. As discussed during oral argument and as further articulated by Counsel in their supplemental submissions, the Plaintiffs have agreed to discontinue their second cause of action sounding in promissory estoppel. The Plaintiffs' discontinuance of this cause of action is without prejudice to their right to renew this claim if they discover during the course of this litigation that the Defendants made promises independent from the alleged promises made to the Plaintiffs that are the subject of the breach of contract cause of action.

For purposes of deciding a motion to dismiss pursuant to CPLR Rule 3211 for failure to state a cause of action, the Court must "accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory". Ovitz v. Bloomberg L.P., 18 N.Y.3d 753, 758, quoting, Leon v. Martinez, 84 N.Y.2d 83, 87-88. See also, ABN AMRO Bank, N.V., et al. v. MBIA Inc. et al., 17 N.Y.3d 208, 227 ("On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction"); Sander v. Winship, 57 N.Y.2d 391; Morone v. Morone, 50 N.Y.2d 481; Rovello v. Orofino Realty Co., 40 N.Y.2d 633; Davis v. Cornerstone Telephone Co., LLC, 61 A.D.3d 1315. "When the motion to dismiss is premised upon documentary evidence, such motion may be appropriately granted only where the documentary evidence utterly refutes [the] plaintiff's allegations, conclusively establishing a defense as a matter of law". SUS, Inc. v. St. Paul Travelers Grp., 75 A.D.3d 740, 741 [internal quotations omitted]. See also, Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275 ("When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one").

The underlying facts as alleged in the Amended Complaint and as further developed

in the motion papers are as follows:[2] Dating as far back as 1959, the Corporation maintained a defined benefit pension plan for the exclusive benefit of its eligible employees and their beneficiaries. See, the St. Clare's Hospital Retirement Income Plan, January 1, 2000 Restatement, annexed to the Affirmation of Ali Naini, Esq., dated January 24, 2020, as Exhibit "D" (hereinafter referred to as the "Plan"). In or about 1992, the Corporation, at the behest of the Diocese who was the original sponsor and co-founder of the Corporation and donated the land upon which the hospital was built, obtained a ruling from the Internal Revenue Service (hereinafter referred to as the "IRS"), that deemed the Plan a "church plan". This ruling exempted the Plan from the minimum funding requirements of the Employee Retirement Income Security Act of 1974 as amended (hereinafter referred to as "ERISA"), and from the obligation to pay into and carry pension insurance through the Pension Benefit Guaranty Corporation insurance program (hereinafter referred to as "PBGC").

Beginning in or about 1998, the Corporation stopped making any employer contributions to the Plan or made only nominal contributions. The Plan continued to accrue liabilities however, which were no longer being offset by the Corporation's contributions. This imbalance caused the Plan to suffer financial distress, leading to the Corporation's decision in 2005 to freeze the Plan effective January 31, 2006. The Corporation informed its employees that they would no longer accrue any additional years of service for benefit calculation purposes, and that no new employees could join the Plan. Notably, in October, 2005, the Corporation revised its Summary Plan Description which provided in pertinent part as follows:

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[2] While portions of the following statement of facts are supported by the documentary evidence attached to the motion papers and other portions are based solely on the allegations of the Plaintiffs, for the sake of brevity and for ease of reading, the Court has not distinguished between the two portions since on a motion to dismiss, all of the facts as alleged are deemed to be true.

> While the Employer fully intends to continue the Plan indefinitely, it does reserve the right to modify, suspend, or terminate the Plan at any time. **However, no modification, suspension or termination of the Plan may reduce any Plan Benefits you have already accrued. Should the Plan be terminated, you will not earn any additional benefits, but you will be 100% vested in your Accrued Plan Benefit at the time of the Plan's termination. The assets of the Plan will be allocated to provide all Accrued Plan Benefits** and meet any other legal requirements. [Emphasis added].

(See, the Summary Plan Description, Revised October, 2005, at page 21, annexed to the Affirmation of Ali Naini, Esq., dated January 24, 2020, as Exhibit "E" (hereinafter referred to as the "SPD"). This revision to the SPD reassured the Plan participants that as long as their pension rights were vested, as were all of the Plaintiffs, they would receive their promised retirement benefits.

In or around 2006, the State of New York established the Commission on Health Care Facilities in the 21st Century, otherwise known as the "Berger Commission", to recommend ways to stabilize and strengthen the health care system within New York State. During this review process, the Plan continued to suffer financial distress, leading to the Corporation's decision in February, 2008 to further amend the Plan by increasing the retirement age to match that of the retirement age for social security benefits. Defendant Robert Perry, on behalf of the Defendants, sent correspondence to the Plan participants stating that this amendment would "fully fund the Plan" and promised that they would receive their accrued pension benefits upon retirement.

In June, 2008, pursuant to the mandates contained in the Report of the Berger Commission, the Corporation ceased operating as a hospital, surrendered its license and transferred its assets to Ellis Hospital. This hospital "merger" was implemented pursuant to an Asset Transfer Agreement that was approved by the Roman Catholic authorities at the Vatican in Rome, Italy. In connection with this asset transfer and due to the underfunding of the Plan by $27 million as documented in the Berger Report, the

Corporation submitted a grant application to the State of New York purportedly requesting $47 million to fully fund the Plan. In July, 2008, the Corporation received a public grant from the New York State Department of Health, but the Plan was funded with only $28.5 million. These grant monies were used to purchase an investment annuity which replaced a group annuity contract that the Corporation previously had with Prudential Annuity and Insurance Company. While the prior annuity contract fully insured and guaranteed the Plan's payment of pension benefits, the Defendants acknowledge that the investment annuity did not. Despite this fact, in November, 2009, Defendant Joseph F. Pofit, on behalf of the Defendants, wrote to the Plan participants assuring them that the Plan remained in full force and effect. This correspondence represented to the Plan participants, including the Plaintiffs, that they were guaranteed to receive all of their pension benefits upon retirement.

Although not subject to the requirements of Title I of ERISA that pension plans not fully insured must be funded through a trust, in December, 2009, the Corporation nevertheless decided that it was in its best interests to place the investment annuity into a trust. Accordingly, the Corporation established the St. Clare's Retirement Income Plan Trust (hereinafter referred to as the "Trust"), and appointed its own Directors, with the exception of the Bishop of the Diocese, to serve as the Trustees (see, Section 4.1 of the Trust Agreement, annexed to the Affidavit of Joseph F. Pofit, sworn to on December 11, 2019, as Exhibit "C"). The Trustees were given the power to hold, manage and invest the Trust corpus exclusively for the retirement income benefits of the Plan participants and were required to make payments or disbursements of such benefits pursuant to the terms of the Plan (see, Sections 2.2, 2.3, 7.1 and Articles 5 and 6 of the Trust Agreement).

Following the creation of the Trust, the Defendants, through the Board of Directors of the Corporation, provided annual updates to the Plan participants regarding the Plan's assets held by the Trust. Notably, in December, 2015, despite the funding of the Plan with

the State grant, the Corporation notified the Plan participants that the underfunding of the Plan had increased from approximately $14 million to approximately $33 million. See, the correspondence from the Board of Directors of the Corporation that was sent to the Plan participants, dated December 2, 2015, annexed to the Affidavit of Joseph F. Pofit, sworn to on December 11, 2019, as part of Exhibit "D". The Board of Directors explained that this increase was due to the Plan's actuaries taking a more conservative investment approach that resulted in lower investment returns. Id. In October, 2016, the Plan participants were notified for the first time that the Plan was going to run out of funds between 2024 and 2028, but that they were guaranteed their accrued benefits until that time. See, the correspondence from the Board of Directors of the Corporation that was sent to the Plan participants, dated October 11, 2016, annexed to the Affidavit of Joseph F. Pofit, sworn to on December 11, 2019, as part of Exhibit "D". Then in July, 2017, the Defendants announced that the Plan's actuaries estimated that the Plan's assets would actually be exhausted sooner in 2025 or 2026. See, the correspondence from the Board of Directors of the Corporation that was sent to the Plan participants, dated July 27, 2017, annexed to the Affidavit of Joseph F. Pofit, sworn to on December 11, 2019, as part of Exhibit "D". The Plaintiffs allege that the Defendants, in making these representations, admitted that the Plan's actuaries woefully underestimated the $28.5 million figure that funded the Trust, but guaranteed the payment of accrued benefits until the Plan's assets ran out.

Given the impending termination of the Plan, the Corporation's Board of Directors passed a resolution in October, 2017, to elect ERISA coverage or reinstate PBGC coverage for the Plan. However, despite the passing of this resolution, ERISA or PBGC coverage was never elected or reinstated, leaving the remaining Plan assets unprotected and uninsured. Ultimately in October, 2018, the Corporation's Board of Directors passed a resolution abruptly terminating the Plan, effective November 1, 2018. As of November 1, 2018, the Plan had assets of approximately $29 million and estimated liabilities to the

Plan participants of $84.3 million. Accordingly, the Plan participants were notified that depending on whether they had attained the age of 62 by November 1, 2015, they would either receive 70% of their pension benefits or would receive nothing, regardless of the number of years they had worked for the Corporation.[3] This reduction or cessation of benefits, which became effective February 1, 2019, was contrary to the terms of the Plan and the SPD that provided that no amendment or termination of the Plan would reduce any vested benefits that had accrued under the Plan. See, the terms of the SPD quoted *supra*.

Thereafter, in March, 2019, the Corporation's Board of Directors filed with this Court a Petition for Judicial Dissolution pursuant to the Not-For-Profit Corporation Law ("NPCL"). In that proceeding, which is still pending before this Court, the Corporation acknowledged that its liabilities exceed its assets, estimating that the Corporation is indebted to the Plan in the amount of $53.5 million.

In support of their breach of contract claim, the Plaintiffs allege that the Corporation, the Plan, and the Diocese who purportedly controls the Corporation, all breached the terms of the Plaintiffs' employment contract that promised them defined pension benefits upon their retirement. The Plaintiffs primarily rely on the Plan as restated in 2000 and the SPD as revised in 2005 to evidence the Defendants' express agreement that they would fully fund the Plan and pay the promised benefits to all Plan participants and further, that they would not amend or modify the Plan in any way that would reduce or terminate any benefits that had accrued prior to such amendment. The Plaintiffs assert that the Defendants knowingly breached this agreement by failing to fund the Plan; by amending the Plan which in fact reduced or eliminated the payment of accrued pension benefits; and by terminating the Plan. The Plaintiffs also allege that the Defendants failed to adhere to ERISA's funding standards and/or failed to guarantee benefits up to PBGC's limit, all in

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[3] Approximately 440 Plan participants are receiving 70% of their vested benefits and approximately 661 Plan participants are not receiving any of their vested benefits.

violation of the express terms of the Plan.

In support of their breach of fiduciary duty claim, the Plaintiffs allege that the Defendants are the named and/or de facto fiduciaries of the Plan's assets that were placed in the Trust for the sole and exclusive benefit of the Plan participants. As such, all the Defendants owed and continue to owe to the Plaintiffs and to all Plan participants/Trust beneficiaries a duty of loyalty, fidelity and prudence in managing and protecting the Trust assets. They also owe a duty to disclose accurate and truthful information regarding the Plan and Trust.

The Plaintiffs assert that the Defendants breached their fiduciary obligations to the Plaintiffs by failing to ensure that the Plan had sufficient assets that were adequately preserved, prudently managed and invested in accordance with the Plan's terms and objectives so that the necessary funds would be available to pay the vested benefits promised to the Plaintiffs. The Plaintiffs further allege that the Defendants failed to adequately insure the Plan and/or reinstate ERISA coverage and PBGC insurance when it was clear that remedial actions were necessary to rectify their past mismanagement of the Plan. The Plaintiffs also claim that the Defendants provided misleading and inaccurate information to the Plan participants regarding the underfunding of the Plan, all in violation of their fiduciary duties owed to the Plaintiffs.

In asserting this claim against all of the Defendants, the Plaintiffs argue that each of the Defendants knew or should have known of the other Defendants' breaches and "either enabled, knowingly participated, or failed to take reasonable steps to remedy them" (see, paragraph "116" of the Amended Complaint). In essence, the Plaintiffs are claiming that the Defendants acted in concert in committing the alleged breaches of fiduciary duty and are jointly and severally liable to the Plaintiffs for the substantial monetary losses they have sustained.

St. Clare's Defendants' Motion to Dismiss

In moving to dismiss the breach of contract cause of action, the St. Clare's Defendants assert that neither the Corporation nor the Plan had a contractual obligation to fully fund the Plan and had the right to unilaterally terminate the Plan at any time and for any reason. Further, the St. Clare's Defendants argue that even if the Plaintiffs had a valid claim for breach of contract based on the reduction or elimination of their promised benefits, that claim is now time-barred by the applicable six (6)-year statute of limitations.

Specifically, the St. Clare's Defendants state that the Plan, as Amended and Restated Effective January 1, 2011, provides that "the Corporation reserves the right . . . at any time to terminate the Plan." However, this restatement of the Plan is not applicable to the Plaintiffs in this case. By its express terms, it only applies to Plan participants who had hours of service under the Plan on or after January 1, 2011. None of the Plaintiffs had hours of service after January 1, 2011. Accordingly, the 2011 Amendment and Restatement does not apply to the Plaintiffs or this action, but rather, only the 2000 Amended and Restated Plan and the 2005 SPD apply herein. See, the Preamble to the Amended and Restated Plan effective January 1, 2011, which provides in pertinent part that "the rights of any person who did not have an Hour of Service under the Plan on or after January 1, 2011, shall generally be determined in accordance with the terms of the Plan as in effect on the date for which he was last credited with an Hour of Service."

The 2000 Plan specifically promises that all eligible participants "shall receive payment of such benefit" that becomes 100% vested after five (5) years of credited service. See, Exhibit "D" annexed to the Affirmation of Ali Naini, Esq., dated January 24, 2020. The Plan further provides as follows:

> No pension or other benefit granted prior to the time of any amendment or modification of the Plan shall be reduced, suspended, or discontinued as a result thereof, except to the extent necessary to enable the Plan to meet the requirements for qualification under the Code or the requirements of any governmental authority.

Id. Further, as quoted above, the 2005 SPD provides that "a monthly Plan Benefit . . . will be [paid] for life" and that "no modification . . . or termination of the Plan may reduce any Plan Benefits you have already accrued. Should the Plan be terminated, . . . you will be 100% vested in your Accrued Plan Benefit at the time of the Plan's termination. The assets of the Plan will be allocated to provide all Accrued Plan Benefits . . ."[4] See, Exhibit "E" annexed to the Affirmation of Ali Naini, Esq., dated January 24, 2020.

With respect to the Plaintiffs' claim that the Defendants breached the contract by failing to adhere to ERISA's funding standards and/or failing to guarantee benefits up to PBGC's limit, the St. Clare's Defendants are correct in pointing out that the Plan is exempt from ERISA as a "church plan" and therefore excused from any particular funding requirements. However, as alleged by the Plaintiffs, the Defendants had previously insured the Plan's assets and both the 2000 Plan and the 2005 SPD contain promises that the Plaintiffs' accrued pension rights were guaranteed in accordance with ERISA and up to the amount covered by the PBGC. Both of these documents refer to the ERISA standards and incorporate the rights and protections provided under ERISA.

New York law is clear that pensions are not a gratuity but are "wage supplements". See, Labor Law §198-c. Participants may enforce their right to promised retirement benefits under a breach of contract claim if they can demonstrate "(1) formation of a contract between plaintiff and defendant; (2) performance by plaintiff; (3) defendant's failure to perform; and (4) resulting damage." Clearmont Prop., LLC v. Eisner, 58 A.D.3d 1052, 1055. See, generally, Agway, Inc. v. Curtin, 161 A.D.2d 1040, 1041. See also, Scoville v. Surface Transit, Inc., 39 Misc.2d 991 (the pension plan, by which the employer promised to pay the plaintiffs certain pension benefits upon their retirement, "vested in each [plaintiff] an indefeasible right to the promised benefits" upon their completion of

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4 Summaries of employee benefit plans such as the 2005 SPD have been held to be expressions of employment contract obligations. See, Matter of Consol. Mut. Ins. Co., 77 N.Y.2d 144, 148-149.

service); Cantor v. Berkshire Life Ins. Co., 171 Ohio St. 405. Although not binding on this Court, the Opinion by the Supreme Court of Ohio in Cantor is instructive, and reads in pertinent part as follows:

> . . . [A]n employer cannot offer a retirement system as an inducement to employment and, after an employee has accepted employment under such circumstances, withdraw or terminate the program after an employee has complied with all the conditions entitling him to retirement rights thereunder.
>
> Therefore, whether a retirement plan is contributory or noncontributory and even though the employer has reserved the right to amend or terminate the plan, once an employee, who has accepted employment under such plan, has complied with all the conditions entitling him to participate in such plan, his rights become vested and the employer cannot divest the employee of his rights thereunder.
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> Plaintiff having complied with all the conditions in his contract entitling him to retirement rights and having reached retirement age under the contract, his retirement rights became vested and Berkshire could not terminate his contract so as to divest him of such rights.

Id., at 410.

Based on the documentary evidence as referenced above, and affording the Amended Complaint a liberal construction as the Court must do when deciding a motion to dismiss, the Court finds that at this stage in the proceedings, the Plaintiffs have sufficiently pleaded the essential elements of their breach of contract cause of action as follows: The Plaintiffs have alleged the existence of an employment contract between the parties which promised wages and future pension benefits in exchange for work performed. They have alleged that they worked for the Corporation for at least five (5) years which, pursuant to the contract terms, entitled them to the accrual of fully vested pension benefits. The Plaintiffs further allege that the Defendants breached their contractual duty by failing to pay the benefits promised to the Plaintiffs, and that they sustained monetary damages as a direct result of such failure. These allegations adequately support the Plaintiffs' pleadings for breach of contract.

With regard to the St. Clare's Defendants' statute of limitations defense, the movants are correct that a cause of action for breach of contract accrues at the time of the alleged breach and must be brought within six (6) years of the occurrence of the breach. See, CPLR §213(2); Ely-Cruikshank Co. v. Bank of Montreal, 81 N.Y.2d 399, 402. The St. Clare's Defendants argue that the breach the Plaintiffs rely on occurred in 2008 when the Plan was amended to increase the retirement age to match that of the retirement age for social security benefits. Therefore, the Plaintiffs' breach of contract cause of action had to be brought within six (6) years of the 2008 amendment, or by 2014. Stated differently, the St. Clare's Defendants argue that since this action was not commenced until September 10, 2019, any alleged breaches occurring prior to September 10, 2013, are time-barred.

In response to this defense, the Plaintiffs argue that the six (6) year limitations period did not begin to run until February 1, 2019, the date on which the Corporation first reduced or eliminated the pension benefits owed to them. The Plaintiffs rely on the Second Department's decision in Medalie v. Jacobson, 120 A.D.2d 652 wherein the Court held that "[t]he contract at issue provides for annual pension payments over a period of time. The Statute of Limitations therefore begins to run at the time of the failure to make each payment, and the plaintiff can sue for any payments due within the six years prior to the commencement of the suit". Id., citing, Matter of Philippe, 31 Misc.2d 193, aff'd, 19 A.D.2d 587, aff'd, 14 N.Y.2d 600. See also, Bielecki v. Bielecki, 106 A.D.3d 1454, 1455. The Plaintiffs' breach of contract cause of action is not time-barred. The Court agrees that the Plaintiffs' claim did not accrue until February 1, 2019, the date on which the Defendants first failed to pay the Plaintiffs their accrued pension benefits. Since the Plaintiffs commenced this action within six (6) years of that date, this action is timely.

Next, in moving to dismiss the breach of fiduciary duty cause of action, the St. Clare's Defendants allege that the allegations are not pleaded with sufficient specificity as

required by CPLR §3013 and Rule 3016(b), and are also duplicative of the breach of contract claim. Further, since the Defendant Robert Perry has had no relationship to the Corporation or the Plan since 2008, the breach of fiduciary duty claim against him is time-barred. Specifically, the St. Clare's Defendants argue that the Plaintiffs improperly assert their breach of fiduciary duty claims against all of the Defendants collectively "without any specification as to the precise tortious conduct" allegedly committed by each particular Defendant. See, Aetna Casualty & Surety Co. v. Merchants Mutual Insurance Co., 84 A.D.2d 736, cited by the St. Clare's Defendants. They contend that the Plaintiffs lumped all eight (8) Defendants together without identifying the individual breach committed by each Defendant separately, and as such, the Amended Complaint fails to satisfy the heightened pleading requirements mandated by the CPLR.

The elements of a breach of fiduciary duty claim are: (1) a special relationship of trust that was established between the parties for the benefit of the plaintiffs; (2) the defendants' breach of their duty ensured by that trust; and (3) injury sustained by the plaintiffs as a result of the defendants' breach. Northeast Gen. Corp. v. Wellington Adv., 82 N.Y.2d 158, 160-62. The Court finds that the Plaintiffs have alleged each of these elements in their Amended Complaint and that the Amended Complaint is "sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." See, CPLR §3013. The Court rejects the St. Clare's Defendants' argument that the Amended Complaint does not satisfy the standard set forth in this statute.

The Court also rejects the St. Clare's Defendants' argument that the Amended Complaint does not satisfy the heightened pleading requirements set forth in CPLR Rule 3016(b). See, CPLR Rule 3016(b), which mandates that "the circumstances constituting the wrong shall be stated in detail . . . where a cause of action . . . is based upon . ..

misrepresentation [or] breach of trust". The Court of Appeals has held that this higher standard does not mean that the Plaintiff must plead each and every detail of its claim. See, Pludeman v. Northern Leasing Systems, Inc., 10 N.Y.3d 486, which held that a complaint need only "allege the basic facts to establish the elements of the cause of action. . . Necessarily, then, section 3016 (b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct." Id., at 492. The Pludeman Court further cautioned that "it would work a potentially unnecessary injustice to dismiss a case at an early stage where any pleading deficiency might be cured later in the proceedings (see, CPC Intl. v. McKeeson Corp., 70 N.Y.2d 268, 285-286; Houbigant, Inc. v. Deloitte & Touche LLP, 303 A.D.2d 92, 97-98). Id., at 491-492.

In addition, the Court finds that the Plaintiffs' allegations that the Defendants all worked together as part of the governing body of the Corporation, the Plan and the Trust, are sufficiently particular and do not need to separate out which individual acts were committed by which Defendant, especially at this pre-answer stage of the case. See, Pludeman v. Northern Leasing Systems, Inc., supra, at 492. The Plaintiffs allege specifically identified acts and omissions that the Defendants committed as a group and as such, provide the Defendants with sufficient notice of the alleged breaches. In any event, the appropriate remedy to obtain exact specificity as to the Plaintiffs' allegations is for the Defendants to seek a bill of particulars or other discovery, not for the Court to dismiss the action at this early stage. See, Serio v. Rhulen, 24 A.D.3d 1092, 1094.

Nor does the Court find that the breach of fiduciary duty cause of action is duplicative of the breach of contract cause of action. Although these causes of action are based on the same underlying conduct, each one sets forth a separate and independent legal theory of recovery. "[T]he Court of Appeals has identified 'borderland situations' where '[a] legal duty independent of contractual obligations may be imposed by law as an incident to the parties' relationship'". Reade v. SL Green Operating Partnership, LP, 30

A.D.3d 189, 190, quoting, Sommer v. Federal Signal Corp., 79 N.Y.2d 540, 551. See also, New York Univ. v. Continental Ins. Co., 87 N.Y.2d 308, 316-317.

While the Plaintiffs' breach of contract claim is founded upon the employment contract itself and the promises contained therein as discussed above, the breach of fiduciary duty claim is based on common law. Furthermore, the causes of action do not seek the same identical damages. Each cause of action seeks a different remedy. The breach of contract cause of action seeks monetary damages in the form of compensation for lost benefits, while the breach of fiduciary duty cause of action seeks equitable damages in the form of adequately funding the Trust. These respective remedies can of course, be offset to avoid a double recovery. Thus, affording the Amended Complaint a liberal construction, the Court finds that the causes of action for breach of contract and breach of fiduciary duty are not duplicative of each other.

Lastly, for the same reasons that the breach of contract cause of action is not time-barred as stated above, the breach of fiduciary duty cause of action is not time-barred against the Defendant Perry. Since the Plaintiffs' claim against the Defendant Perry, who acted in concert with all of the Defendants, did not accrue until February 1, 2019, the date on which the Defendants first failed to pay the Plaintiffs their accrued pension benefits, the breach of fiduciary duty claim is likewise timely.

Diocese Defendants' Motion to Dismiss

In moving to dismiss all causes of action contained in the Amended Complaint, the Diocese Defendants generally argue that they are not proper Defendants in this case. They argue that the Diocese is a separate legal entity distinct from the Corporation, and that it does not control the Corporation and the Plan as alleged by the Plaintiffs. The Diocese Defendants contend that the Diocese, as a parent corporation, is not liable for any of its subsidiary's breaches of legal duty since it does not exercise dominion or control over the Corporation or the Plan. In addition, the Diocese Defendants move to dismiss the

breach of fiduciary duty cause of action as it is based on group pleading in violation of CPLR Rule 3016(b).

It is well settled that in order for a parent corporation to be liable for its subsidiary's legal breaches, a plaintiff must show "direct intervention by the parent in the management of the subsidiary to such an extent that the subsidiary's paraphernalia of incorporation, directors and officers are completely ignored." SUS, Inc. v. St. Paul Travelers Grp., supra, at 743. "[A] fact-laden claim to pierce the corporate veil is unsuited for resolution on a pre-answer, pre-discovery motion to dismiss". Cortlandt St. Recovery Corp. v. Bonderman, 31 N.Y.3d 30, 47. "Generally, a plaintiff seeking to pierce the corporate veil must show that (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury". Id., quoting, Conason v. Megan Holding, LLC, 25 N.Y.3d 1, 18. At the pleading stage, the plaintiff "must adequately allege the existence of a corporate obligation and that defendant exercised complete domination and control over the corporation and abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice". Id., at 47-48, quoting, East Hampton Union Free School Dist. v. Sandpebble Bldrs., Inc., 16 N.Y.3d 775, 776.

Applying these principles to the Plaintiffs' allegations against the Diocese Defendants, the Court finds that the Plaintiffs have sufficiently alleged facts in their Amended Complaint to state a claim for alter ego liability of the Diocese Defendants. The Plaintiffs cite to the high level of control the Diocese Defendants had over the Corporation, particularly with respect to the management of the Plan. The Plaintiffs accuse the Diocese of taking advantage of the corporate form, mismanaging the Plan to the point of creating an enormous deficit, and then causing the Corporation to apply for a judicial dissolution to simply write off the debt owed to the Plan and by extension, the debt owed to the Plaintiffs and the other Plan participants.

In support of their claim that the Diocese exercised complete control over the Corporation and the Plan, the Plaintiffs specifically point to the fact that the Diocese and the Corporation share a common address; the Diocese and the Corporation share officers, directors and personnel; the Corporation's organizational chart shows a direct reporting line to the Diocese; and the Corporation was listed in the Official Catholic Directory. The Amended Complaint further states that all of the members of the original Board of Directors of the Corporation were associated with or were employees of the Diocese. The Diocese donated the land upon which the hospital was built and the Corporation has been part of the Diocese since its creation. The Bishop is automatically appointed as a director of the Corporation's Board and controls the appointment of the other directors. The Plaintiffs allege that "Diocesan employees, including but not limited to the Bishop, made all major decisions affecting the rights and benefits of the Plan's participants". See, paragraphs "58" and "59" of the Amended Complaint.

In further support of the Diocese's complete dominion and control over the Corporation, the Plaintiffs cite to purported representations made by the Corporation to the IRS for the purpose of obtaining the letter ruling that deemed the Plan a "church plan". The Plaintiffs allege that in order to obtain this ruling, representations were made to the IRS under the penalties of perjury that the Corporation was controlled by the Diocese and that its employees were the employees of the church. Although the Plaintiffs only have a redacted version of the IRS letter ruling at this time, they believe that an unredacted version, when obtained through discovery, will prove these allegations.

Notably, the Plaintiffs also allege that the Diocese, as well as the Corporation itself, knew that the $28.5 million grant from the State of New York was not sufficient to satisfy their pension obligations owed to the Plan participants. However, despite this knowledge, the Corporation's Board, under the purported control of the Diocese, repeatedly misrepresented to the Plan participants the status of their accrued benefits. Then, after

terminating the Plan, the Corporation's Board sought the judicial dissolution of the Corporation. In that proceeding, the Corporation seeks to absolve itself of the $53.5 million debt it admittedly owes to the Plan. "Allegations that corporate funds were purposefully diverted to make it judgment proof or that a corporation was dissolved without making appropriate reserves for contingent liabilities are sufficient to satisfy the pleading requirement of wrongdoing which is necessary to pierce the corporate veil on an alter-ego theory." Baby Phat Holding Co., LLC v. Kellwood Co., 123 A.D.3d 405, 407-408. Clearly, at this pre-answer, pre-discovery stage, the Plaintiffs have sufficiently pleaded that the Diocese exercised domination and control over the Corporation.

Finally, with respect to the Diocese Defendants' argument that the breach of fiduciary duty cause of action must be dismissed because it is based on group pleading in violation of CPLR Rule 3016(b), the Court rejects this argument for the same reasons that the similar argument raised by the St. Clare's Defendants was rejected as set forth above.

Based on all of the foregoing, and according the Plaintiffs the benefit of every possible favorable inference, the Court finds that the causes of action for breach of contract and breach of fiduciary duty as alleged in the Amended Complaint are sufficient to withstand a dismissal pursuant to CPLR Rule 3211(a)(1), (5) or (7). The St. Clare's Defendants' Motion to Dismiss is hereby denied in its entirety. The Diocese Defendants' Motion to Dismiss is also hereby denied in its entirety. The Defendants are hereby directed to serve their respective Answers to the Amended Complaint within thirty (30) days of the date of this Decision and Order. Counsel shall thereafter endeavor to enter into a written stipulation with respect to a discovery schedule and submit same to the Court to be So Ordered.

The parties' remaining arguments, to the extent not specifically addressed herein, have been considered and found to be unavailing.

The foregoing shall constitute the Decision and Order of this Court.

Signed at Schenectady, New York, this 15th day of July, 2020.

HON. VINCENT W. VERSACI
Acting Supreme Court Justice

ENTER: