

REAL ESTATE INVESTOR IDENTIFIED AS CONSPIRATOR IN RECENT ANTITRUST MONOPOLIZATION COMPLAINT

Recently, a Hudson County, New Jersey-based health system (“Plaintiff”) filed a complaint in the United States District Court for the District of New Jersey alleging a conspiracy, in violation of the Sherman Act, § 2, between multiple parties to monopolize the general acute care hospital services market in Hudson County, New Jersey. Of note, real estate players – while not named defendants – were considered key parties in the conspiracy. By transacting in the real estate under key hospital facilities in coordination with proposed acquisitions of those hospitals, the real estate players exercised a level of control that led to their inclusion in the complaint. With the increase in antitrust attention focused on health care transactions, it is important for those who own or manage the real estate involved in these transactions to maintain a neutral position to avoid unnecessary legal scrutiny.

BACKGROUND

In the complaint, Plaintiff, makes a case that a large New Jersey health system (“Defendant”), both independently and with the aid of conspirators, was attempting to force Plaintiff into insolvency, hoping to lead to the closure of certain hospitals and Defendant’s acquisition of others. The defendant is one of the largest and most comprehensive health care systems in New Jersey and owns and operates multiple health care facilities and medical practices in Hudson County, as well as a satellite emergency department in Bayonne, New Jersey. Defendant, along with their real estate player conspirators, allegedly colluded to destabilize Plaintiff and its facilities in order to capitalize on the patients and revenue flow of the Hudson County market and form a monopoly.

REAL ESTATE INVOLVEMENT

One of the key real estate conspirators mentioned in the complaint (“Conspirator”) owns or controls a significant portion of the real estate under the hospitals that Plaintiff manages. The complaint describes Conspirator’s close relationship with Defendant’s management team that, when combined with his real estate control, was a key factor in him being named in the complaint. Additionally, Conspirator’s inclusion in this complaint is related to ongoing litigation in the Delaware court system between Plaintiff and Conspirator’s multiple holding companies – litigation alleging tortious interference on the part of Conspirator’s affiliates. The Delaware Chancery Court has denied Conspirator’s motions for summary judgment and has stricken all counterclaims, tending to support that his involvement here is only one part of a larger disagreement between himself and Plaintiff, as well as between Plaintiff and Defendant due to Conspirator’s ongoing relationship with the hospital system.

As it relates to this complaint, Plaintiff began to explore the sale of certain hospitals in 2018 and their executives included Conspirator in strategic discussions due to his ownership share of the real estate. During the months that Plaintiff was exploring the sale of their facilities, Defendant was allegedly also working with Conspirator to ensure the ability to control the real estate under Plaintiff’s facilities should they successfully complete an acquisition. The complaint alleges that Conspirator, in collusion with Defendant and through his affiliate, a large New Jersey nursing home company, acquired further ownership of the real estate under two of Plaintiff’s three hospitals, and acquired a minor equity interest in the operator of the third. These interests were subsequently assigned to other affiliates that Conspirator created and controlled, and those transactions proceeding were a key factor both in Defendant’s decision to officially propose an acquisition of two of Plaintiff’s hospitals and then to eventually back out of the transaction.

Subsequently, through his ownership of the real estate underneath the hospitals, the complaint suggests Conspirator continued to collaborate with the Defendants to influence transactions, selling the land underneath one of Plaintiff’s facilities to a competing hospital in an attempt to force Plaintiff’s hand in the bidding process. Conspirator’s involvement and influence were strong enough that they garnered attention from government officials such as the Mayor of Jersey City and a state senator. Overall, Conspirator’s ability to benefit from the land ownership should Plaintiff’s system fail appears to have aligned his interests closely with those of Defendant in monopolizing the Hudson County market. This alignment, while not rising to a level that required naming Conspirator as a defendant, created enough scrutiny for being mentioned in the complaint.

PRACTICAL TAKEAWAYS

While the real estate players, in this case, were not named as defendants, this complaint still serves as a reminder to parties who own or significantly control portions of the real estate associated with hospitals and health care facilities that neutrality in dealings with multiple health care providers in a single market is important to keep in mind. Litigation, even that which is unrelated to antitrust liability, can be costly, time-consuming and lead to larger disagreements, as it has here. Further, though the real estate investors, in this case, do not face antitrust charges, the complaint is a helpful reminder that working with health care organizations to attempt to influence the outcome of various transactions, especially in ways that look to increase the market power of any one party, can lead to antitrust liability.

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