

**IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS**

DANIEL BROWNSTONE, VICKEN)
CHALAIN, CATHARINE CROCKETT,)
PAIGE HOLT, TRAVIS HOLT, BRETT)
KELLER, OMAR KHOKHAR)
BENJAMIN LEAK, DAVID NAOUR,)
JOSEPH NEWCOMER, DANIEL)
NORD, SCOTT PINTER, and SCOTT)
O’CONNOR, Individually and)
Derivatively on behalf of the Nominal)
Defendant, EASTLAND MEDICAL)
PLAZA SURGICENTER, L.L.C., an)
Illinois limited liability company,)
Plaintiffs,)
v.)
OSF HEALTHCARE SYSTEM, an)
Illinois not-for-profit corporation,)
Defendant, and)
EASTLAND MEDICAL PLAZA)
SURGICENTER, L.L.C., an Illinois)
limited liability company,)
Nominal Defendant.)

Case No. 2024CH000002

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DONALD R. EVERHART, JR.
CLERK OF THE CIRCUIT COURT
MCLEAN COUNTY, ILLINOIS

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, by and through their attorneys, individually and derivatively and on behalf of the Nominal Defendant, Eastland Medical Plaza Surgicenter, LLC (“Eastland”), state as follows for their Complaint against Defendant OSF Healthcare System (“OSF”):

PARTIES AND OVERVIEW OF ACTION

1. Eastland is an Illinois limited liability company with its principal place of business located in Bloomington, Illinois. Eastland owns and operates an approximately sixteen thousand two hundred sixty-two (16,262) square foot AAAHC accredited, Medicare-certified multi-specialty surgery center located at 1505 Eastland Drive, Bloomington, Illinois, known as Eastland Medical Plaza SurgiCenter (the “Eastland Center”).

2. As described more fully in Eastland’s Third Amended and Restated Operating Agreement dated November 10, 2010 (“Operating Agreement”), Eastland has two Member classes: (1) a Class A Member class consisting of physicians practicing in the Bloomington, Illinois area, and (2) a Class B Member class consisting of OSF as the lone Class B Member.¹

3. Plaintiffs are Illinois citizens, surgeons, and Class A Members who have practiced in the Bloomington, Illinois, area for many years.

4. Defendant OSF is Illinois not-for-profit corporation with its principal place of business located in Peoria, Illinois. Among other things, OSF operates hospitals and other medical facilities in Illinois and Michigan.

5. Eastland also owns 100% of the membership interests in Bloomington-Normal Healthcare, LLC (“BNHC”). BNHC previously owned and operated a Medicare-certified ambulatory surgery center located at 2100 Ft. Jesse Road, Normal, Illinois (the “Ft. Jesse Center”). The Ft. Jesse Center operations ceased on or about August 18, 2023.

6. OSF is seeking to force a sale of the BNHC membership interests to OSF over the objections of the Class A Members with the stated intention of resuming operations at the Ft. Jesse

¹As contemplated by 735 ILCS 5/2-606, Plaintiffs recite in this Complaint the relevant terms of the Operating Agreement.

Center. Plaintiffs bring this action seeking declaratory relief to prevent this pursuant to the non-competition clause set forth in Section 11.6 of the Eastland Operating Agreement as described below.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 735 ILCS 5/2-209.

8. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 as McLean County, Illinois is the county “in which the transaction or some part thereof occurred out of which the cause of action arose.” Further, Section 13.14(f) of the Operating Agreement states that “[a]ll disputes relating to breaches of Sections 7.7 and 11.6 through 11.9 . . . shall be resolved by a court of law with the site of venue in or around Bloomington, Illinois.”

DERIVATIVE ACTION/FUTILITY OF A DEMAND

9. In addition to asserting their claim below in their individual capacities, Plaintiffs also assert that claim derivatively on behalf of Eastland pursuant to 805 ILCS 180/40-1, *et. seq.*

10. Plaintiffs are currently Class A Members of Eastland, and they have been so at all time periods referenced in this Complaint.

11. Plaintiffs have not requested Eastland’s Board Members to commence the claims referenced in this Complaint against OSF. Any such efforts would be futile and not likely to succeed for, among others, the reasons noted below.

12. One, Eastland’s Board has six seats, three of which are appointed by the Class A Members and three of which are appointed by OSF as the Class B Member. The Board Members appointed by OSF purport to have majority control of the Board, and part of that position ties to OSF’s efforts to hinder and or otherwise refuse to acknowledge the sale of Units to the Class A Members described below.

13. Two, the Class A Members are ready, willing and able to, and/or have purchased, additional Units to achieve a 50/50 control of the Board between the two classes, and do not believe any further action or approvals by the Board is necessary to allow this occur. However, the Board Members appointed by OSF have stated that they refuse to allow and/or acknowledge 50/50 control of the Board until after OSF completes its putative purchase of the BNHC membership interests over the objections of the Class A Members.

14. Three, on December 15, 2023, Plaintiffs' counsel a letter to OSF's outside counsel which set forth an analysis relating to the Operating Agreement's prohibition against OSF competing against the Eastland Center by resuming operations at the Ft. Jesse Center after OSF acquires the BNHC membership interests.

15. Four, OSF's counsel did not respond to the above-referenced letter dated December 15, 2023 in 2023. Instead, in the final days of 2023, he worked to facilitate the retention of McGuireWoods, a law firm, to allegedly represent Eastland in its negotiations with OSF. On January 2, 2024, the three Eastland Board Members appointed by the Class A Members received from McGuireWoods for the first time a proposed engagement letter which, contrary to the Class A Board members' objections as previously stated to McGuireWoods and OSF's counsel on December 28, 2023, included within McGuireWoods' proposed scope of engagement "the review of and finalizing of a purchase transaction between client and OST Healthcare System," *i.e.*, OSF's disputed acquisition of the BNHC membership interests.

16. Among other things, the acts and omissions above make clear that OSF is using its alleged control (at present) of Eastland's Board to cram down on the Class A Members OSF's proposed purchase of the BNHC membership interests. Meanwhile, the Eastland Board Members appointed by OSF who purport to control the Board will not permit Eastland to sue OSF to enforce

the non-competition obligations referenced below because, among other things, OSF seeks to violate those same obligations in connection with its disputed plans to acquire the BNHC membership interests and resume operations at the Ft. Jesse Center.

THE OPERATING AGREEMENT

17. In October 2023, over the objection of the Board Members appointed by the Class A Members, the three Eastland Board Members appointed by OSF approved a letter of intent regarding OSF's intention to purchase the BNHC membership interests which stated, among other things:

“Closing. The closing of the Potential Transaction would be on or before November 30, 2023 (‘Closing’). OSF’s obligation to close would be subject to its due diligence including, without limitation, investigations relating to licenses and permits required to consummate the Potential Transaction and for BNHC to resume operations of the surgery center facility located at 2100 Ft. Jesse Rd., Normal, Illinois 61761.”

18. The location where the Ft. Jesse Center formerly operated, which OSF seeks to resume operations of, is less than four (4) miles from the Eastland Center.

19. Section 11.6(a) of the Operating Agreement, titled “Non-Competition,” states as follows:

“During the term of a Member’s membership in the Company, and for a period of two (2) years thereafter, other than through the Company, no Member nor any of its Affiliates, except as provided below, shall, without the prior written Approval of the Board, directly or indirectly own, manage, operate, control or participate in any manner in the ownership, management, operation or control of, or serve as a partner, employee, principal, agent, consultant, medical director or otherwise contract with, or have any financial interest in, or aid or assist any other person or entity that operates a facility (including an ambulatory surgical center or hospital that provides any of the services offered by the Company) to provide outpatient surgical services including, without limitation, a state-licensed, Medicare-certified or accredited surgery center or hospital or office-based or practice-based facility or operating site or room (which office-based or practice-based facility or operating site or room is accredited by AAAHC or the Joint Commission) within a thirty (30) mile radius from the address of either Center (a “Competing Facility”) (the “Non-Competition Covenant”). For the purposes of this Section, except as provided

below, it shall be presumed that a person or entity competes with the Company and violates this provision if it has any interest in any facility or center of any type whatsoever for the conduct of or compensation relationship with any outpatient surgery center within a thirty (30) mile radius of any facility or center operated by the Company, directly or indirectly.”

20. Further, Section 11.6(c) states:

“notwithstanding the Non-Competition Covenant, the Class B Member shall not be prohibited from (i) operating or expanding a hospital, (ii) expanding, acquiring or developing a hospital outpatient department, (iii) employing physicians who have ownership interests in or who provide services at Competing Facilities, (iv) acquiring, being acquired by, or merging with, a hospital or other provider that owns an outpatient surgery center; or (v) acquiring an interest in an existing outpatient surgery center that has been operating for more than five (5) years; provided that the Class B Member agrees that it will not be involved in establishing a new joint venture outpatient surgery center.”

21. As indicated above, Section 11.6(c) explicitly states “has been operating for more than five (5) years” as opposed to “previously operated for five (5) years.” This defeats OSF’s previously stated position that it may acquire the BNHC membership interests and resume operations at the Ft. Jesse Center following any such acquisition based on the operations of the Ft. Jesse Center prior to August 18, 2023.

22. Section 11.6(e) of the Operating Agreement states as follows:

Each Member hereby acknowledges and agrees that any breach or threatened breach of the provisions of this Section 11.6 hereof that are binding on such Member will result in irreparable harm and injury to the other Members and the Company and that monetary damages will not provide an adequate remedy to the other Members and the Company. Accordingly, each Member hereby agrees that in the event of a breach or threatened breach of the provisions of this Section 11.6, the non-breaching Members and the Company shall be entitled to: (a) a temporary restraining order, preliminary injunction and permanent injunction to enjoin such breach or threatened breach; (b) an accounting for any and all monies, earnings, profits and other benefits that the breaching Member has derived or received, directly or indirectly, as a result of such breach or threatened breach; and (c) recover from the breaching Member the reasonable attorneys’ fees and costs incurred by the non-breaching Members and/or Company in enforcing the provisions of this Section 11.6. The breaching Member further agrees that in the event of a breach or threatened breach of the provisions of this Section 11.6, the restrictions set forth in this Section 11.6 shall be extended during the period of any breach or threatened breach by the breaching Member. The rights and remedies set forth herein are

cumulative and shall be in addition to any other rights or remedies to which a Member or the Company may be entitled.

Each Member hereby acknowledges that the restrictions set forth in this Section 11.6 are minimal, reasonable in scope and duration and necessary to protect the legitimate interests of the Company and the Members and that any breach or threatened breach of these restrictions will result in irreparable harm to the non-breaching Members and Company. In the event that any of the restrictions are found by a court of competent jurisdiction to be too broad to permit enforcement to its full extent, then such restrictions shall be enforced to the maximum extent allowable by law and the Members hereby consent to and authorize the court to modify the restrictions in a manner to permit their enforcement.

COUNT I – DECLARATORY JUDGMENT

23. Plaintiffs incorporate by reference paragraphs 1 through 22 above as if fully set forth herein.

24. A dispute has arisen between Plaintiffs and OSF regarding the interpretation of Section 11.6 of the Operating Agreement.

25. Plaintiffs contend that the proper interpretation of Section 11.6 of the Operating Agreement is that OSF may not acquire the BNHC membership interests and resume operations at the Ft. Jesse Center.

26. OSF disagrees and contends that the proper interpretation of Section 11.6 of the Operating Agreement is that it may acquire the BNHC membership interests and resume operations at the Ft. Jesse Center.

27. The parties' dispute regarding the proper interpretation of Section 11.6 of the Operating Agreement has made performance under the Operating Agreement uncertain in the face of OSF's intended breach thereof.

28. Plaintiff seeks a declaratory judgment from this Court declaring the rights and obligations of the parties under the Operating Agreement regarding Section 11.6 of the Operating Agreement.

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- A. A declaration that, under Section 11.6 of the Operating Agreement, OSF may not acquire the BNHC membership interests or resume operations at the Ft. Jesse Center following any such acquisition;
- B. For Plaintiffs' reasonable costs and attorney's fees incurred in connection with this action; and
- C. For such other and further relief as the Court deems just and proper.

Dated: January 11, 2024

RESPECTFULLY SUBMITTED,

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