

**IN THE COURT OF COMMON PLEAS
OF LAWRENCE COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION**

**COMMONWEALTH
OF PENNSYLVANIA
BY ATTORNEY GENERAL JOSH
SHAPIRO,**

Plaintiff,

v.

**AMERICORE HEALTH, LLC,
AMERICORE HEALTH SOLUTIONS,
LLC, ELLWOOD CITY MEDICAL
CENTER OPERATIONS, LLC,
ELLWOOD CITY MEDICAL CENTER,
LLC,**

-and-

GRANT WHITE, Individually and as Chief
Executive Officer of Americore Health, LLC,
and as President and owner of Americore
Health Solutions, LLC,

Defendants.

CIVIL ACTION

Case No.: 70081 of 2017, M.D.

**PETITION TO ENFORCE ASSET
PURCHASE AGREEMENT AND
FOR MONETARY DAMAGES**

Filed on behalf of the Commonwealth
of Pennsylvania by Attorney General
Josh Shapiro,
Plaintiff.

Counsel of Record:

Mark A. Pacella
Chief Deputy Attorney General
Pa. I.D.: No. 42214
Eugene Herne
Senior Deputy Attorney General
Pa. I.D.: No. 82033

**Charitable Trusts and Organizations
Section**

Office of Attorney General
1251 Waterfront Place, Mezzanine
Pittsburgh, PA 15222
412-565-7680

Nancy A. Walker
Chief Deputy Attorney General
Pa. I.D.: No. 66816
Christopher S. Hallock
Deputy Attorney General
Pa. I.D.: No. 307004
Catherine Twigg
Deputy Attorney General
Pa. I.D.: No. 327406

Fair Labor Section

Office of Attorney General
1600 Arch St., Suite 300
Philadelphia, PA 19103
215-560-2402

The Commonwealth of Pennsylvania, acting as *parens patriae* through its Attorney General, Josh Shapiro, files this action to redress and enjoin the defendants' continuing violations of the March 6, 2019 Asset Purchase Agreement approved by this Honorable Court and in support thereof, avers the following:

BACKGROUND

On September 22, 2017 this Court approved the sale of the former nonprofit Ellwood City Hospital to the Ellwood City Medical Center, Americore Health, LLC, Americore Health Solutions, LLC, and Grant White based upon the defendants' representations memorialized in the Asset Purchase Agreement entered into on March 6, 2017. On or about December 9, 2019, the Office of Attorney General began receiving numerous complaints from current and former Ellwood City Medical Center employees alleging that: (1) Defendants failed to pay wages owed to employees; (2) employees were denied unemployment compensation benefits after their layoff as a result of Defendants' failure to remit unemployment compensation contributions and file timely reports with the Office of Unemployment Compensation; and, (3) various other employee and citizen complaints. The public interest will be served by this Honorable Court entering an order granting the relief requested herein.

PARTIES

1. Plaintiff, the Commonwealth of Pennsylvania acting as *parens patriae* through its Attorney General, Josh Shapiro ("Attorney General"), is the chief law enforcement officer of the Commonwealth and maintains an office at 1600 Arch Street, Suite 300, Philadelphia, Pennsylvania 19103, and also throughout the Commonwealth.

2. Defendant, Americore Health, LLC ("Americore"), is a for-profit Delaware corporation that maintains a registered corporate address at 1201 Orange Street, Wilmington,

Delaware 19801, and a principal place of business at 501 SE 2nd Street, Apartment 901, Fort Lauderdale, Florida 33301.

3. Upon belief, Americore Health Solutions, LLC (“Health Solutions”), is a for-profit Delaware corporation with a principal place of business at 501 SE 2nd Street, Apartment 901, Fort Lauderdale, Florida 33301, and is the controlling member of Americore. At all times relevant and material Health Solutions has been owned and controlled by defendant Grant White.

4. Defendant, Ellwood City Medical Center Operations, LLC, is a for profit Delaware corporation with a registered address at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, and owns and operates Ellwood City Medical Center.

5. Defendant, Ellwood City Medical Center, LLC (“ECMC”) is a for-profit corporation operating the hospital located at 724 Pershing Street, Ellwood City, Lawrence County, Pennsylvania 16117. At all times relevant and material ECMC has been owned and controlled by defendant Ellwood City Medical Operations and Americore Helath, LLC.

6. Grant White (“White”) is an adult individual residing at 6857 Crest Road, Rancho Palos Verdes, California 90275. At all times relevant hereto, White was the Chief Executive Officer of Americore, and in that capacity directed, supervised, controlled, approved, formulated, authorized, ratified, benefited from, and/or otherwise participated in the acts and practices hereinafter described.

FACTS

7. Ellwood City Hospital was founded in 1910 as a 10-bed community hospital in a residential home.

8. Financing to construct the hospital’s current location on Pershing Street is the result of private donations from many local residents and businesses.

9. After nearly One-Hundred (100) years of operation as a non-profit, the hospital encountered economic difficulties and was put up for sale.

10. In 2017, the Hospital was sold to Americore and White to operate as a for-profit business under the name of Ellwood City Medical Center, LLC.

11. Prior to the sale, the Attorney General and this Court reviewed and approved the terms of sale based, in part, upon representations made by Americore and/or White.

12. The representations made include that, among other things, Defendants would operate a licensed hospital and licensed emergency department for ten (10) years, would make annual contributions funding the employee defined-benefit pension fund, and otherwise comply with all federal and state laws.

13. Shortly after the sale, there were reports of employees not receiving wages, resulting in several state and local investigations commencing.

14. In November of 2019, the emergency department closed when the Pennsylvania Department of Health determined the hospital had failed to comply with various licensing requirements regarding the functionality of emergency room equipment.

15. Upon information received, on or about November 22, 2019, the regularly scheduled pay day, no employees received remuneration for time worked.

16. Upon information received, on or about November 25, 2019, employees received a capped amount of Five-Hundred and Fifty Dollars (\$550) in wages regardless of the amount employees were actually owed. The majority of the approximately one-hundred and seventy (170) employees were owed more than Five-Hundred and Fifty Dollars (\$550).

17. Upon information received, on or about November 27, 2019, some employees received up to an additional Two-Hundred and Fifty Dollars (\$250).

18. Upon information received, on or about November 28, 2019, more than ninety (90) employees were laid off without notice.

19. Upon information received, employee terminations continued after November 28, 2019, and to date, approximately one-hundred and fifty-two (152) employees have been laid off and none has received notice.

20. Upon information received, on or about December 6, 2019, the next regularly scheduled payday, none of the approximately one-hundred and seventy (170) employees received remuneration for time worked.

21. Upon information received, on or about December 7, 2019, employees who were laid off and filed for unemployment compensation began receiving notices from the Pennsylvania Department of Labor and Industry, Office of Unemployment Compensation, that their applications for benefits were denied due to no reports of earning being submitted by ECMC for certain quarters.

22. Upon information received, on or about December 12, 2019, the Office of Unemployment Compensation sent agents to ECMC to obtain the information necessary to review claims and begin awarding benefits.

23. Upon information received, although some employees have received benefits, Defendants remain delinquent on well over One-Hundred Thousand Dollars (\$100,000) of unemployment compensation contributions.

24. According to news reports, Defendants Americore and White have engaged in similar activity around the country.

25. It was reported that Americore purchased the non-real estate assets of the Pineville Community Hospital Association in Pineville, Kentucky in March 2017, and began doing business

by and through its subsidiary, Pineville Medical Center, Inc. (“PMC”) and engaged in the following:

- a. PMC went into Chapter 7 bankruptcy in November 2018; and
- b. Bankruptcy proceedings revealed that PMC was delinquent on three payrolls and related tax obligations totaling roughly Seven-Hundred Thousand Dollars (\$700,000).

26. Likewise, news agencies reported that Americore purchased the Lee County Hospital building, located in Lee County, Virginia, and entered into a management agreement with the county hospital authority in 2017, and the following took place:

- a. As part of the deal, Americore was required to have the hospital licensed and open by December 31, 2018; and
- b. Lee County issued Americore a notice of default when it failed to meet that deadline.

27. Defendants purchased the Ellwood City Hospital, a charitable nonprofit institution, in September of 2017.

28. Due to Ellwood City Hospital’s charitable status and the terms of the Asset Purchase Agreement, review of the sale was required by the Office of Attorney General and the Lawrence County Orphans’ Court.

29. To secure a no-objection letter from the Attorney General and approval of this Court, Defendants made material representations that in exchange for assuming ownership of Ellwood City Hospital, no money would be paid, but that Defendants would, among other things, operate a licensed hospital and licensed emergency room twenty-four (24) hours per day, seven (7) days a week, three-hundred and sixty-five days a year (365), for the next ten (10) years.

(September 22, 2017 Order of Court, Paragraphs 3, 5 and 14, and Conclusions of Law at paragraph 3) (attached hereto as “Exhibit A”).

30. Based on Defendants’ representations that they would maintain a licensed hospital and emergency room for at least ten years, the Attorney General did not object to the purchase of ECMC and this Court found that the transaction would not constitute or result in an unlawful diversion of charitable assets.

31. On September 22, 2017, this Court issued an Order approving the sale.

32. In that Order, the Court stated:

The Pennsylvania Attorney General’s Office shall have continuing standing to sue for monetary damages or to enforce the provisions of the Asset Purchase Agreement, Amended Escrow Agreement, and side letter agreement as amended by agreement of the parties on August 30, 2017 and under 28 Pa. Code § 101.143.

(Exhibit A, September 22, 2017 Order of Court, Paragraph 1(e)).

33. By failing to maintain a licensed hospital and emergency room, Defendants have diverted charitable assets to their pecuniary benefit in violation of the Asset Purchase Agreement and September 22, 2017 Order of Court.

i. Unlawful Withholding of Employees’ Wages

34. To secure a no-objection letter from the Attorney General and approval by this Court, Defendants made material representations regarding compliance with Pennsylvania law.

35. Section 260.3(a) of the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.3(a), provides that employers must pay all wages due to employees on regularly scheduled paydays designated in advance.

36. Upon information received, on or about November 22, 2019, employees of ECMC received communications from Beverly Annarumo, CEO of ECMC, that they would not be

receiving their paychecks, which were scheduled for distribution that day pursuant to a biweekly wage payment arrangement.

37. The communications stated:

We did receive some funds today from Corporate; however, it is not enough to pay everyone in full. Anyone with a paycheck that was under \$550 will receive their full paycheck. For those of us that have paychecks that are over \$550[,] you will be given a check today for \$550.00. The \$550.00 is the equivalent of earning \$9.20 an hour for 80 hours and having taxes taken out at 25%. I know this is disappointing for all of us, but I wanted everyone to have some money before Thanksgiving. I will try to get additional money to you all on Wednesday. Checks will be available at 4:30 p.m. in your departments. Anyone with a remaining paycheck of \$550.00 or less will receive the rest of their paycheck today. For everyone else with a remaining amount owed to them higher than \$550.00, they will be receiving a check for an additional \$250.00. The checks are now available in your departments for pick up. There will be no one in H.R. this afternoon for any arrangements to be made, so please check with your departments directly. Thank you!

38. Annarumo also notified employees on or about November 22, 2019 that the emergency department and inpatient services of ECMC had been temporarily suspended.

39. On or about November 25, 2019, employees received checks in an amount up to Five-Hundred and Fifty Dollars (\$550.00), regardless of the amount they were owed.

40. On or about November 27, 2019, employees whose November 22, 2019 paychecks should have been in excess of Five-Hundred and Fifty Dollars (\$550.00) received up to an additional Two-Hundred and Fifty Dollars (\$250.00) on November 27, 2019.

41. Employees whose November 22, 2019 paychecks should have been in excess of Eight-Hundred Dollars (\$800) were never paid the balance of their wages due.

42. On the following regularly scheduled pay date, December 6, 2019, no ECMC employee was paid.

43. To date, employees have not received the balance of their wages.

44. Further, no employee was provided notice of the layoff or advised of a return-to-work date.

ii. *Defendants Failed to Make Required Disposition of Unemployment Compensation Contributions and File Quarterly Reports.*

45. To secure a no-objection letter from the Attorney General and approval by this Court, Defendants made material representations that they would comply with Pennsylvania employment tax laws and regulations.

46. All employers and employees in the Commonwealth are required to make contributions to the Unemployment Compensation Fund (“UC Fund”). 43 P.S. § 781; 43 P.S. § 781.4.

47. Employers are responsible for withholding employee contributions, and for remitting employee contributions to the UC Fund. 43 P.S. § 781.4.

48. Employers are required to file two (2) reports on or before the last day of the month immediately following the end of the calendar quarter for which the reports are filed. These are known as the Employer’s Report for Unemployment Compensation and the Employer’s Quarterly Report of Wages Paid to Each Employee (collectively, “Reports”). 34 Pa. Code § 63.52.

49. The Employer’s Report for Unemployment Compensation establishes the amount of contributions due, and the Employer’s Quarterly Report of Wages Paid to Each Employee depicts the amount of wages paid to each employee. 34 Pa. Code § 63.52.

50. Upon information and belief, since purchasing ECMC in 2017, Defendants have taken payroll deductions from employees in the amounts required by the Unemployment Compensation Act, 43 P.S. § 751 *et seq.*

51. Upon information received, Defendants failed to report paying any wages to employees, did not made the required employer contributions to the UC Fund, and did not remit

to the UC Fund employee contributions collected between the fourth quarter of 2018 through the second quarter of 2019.

CLAIMS FOR RELIEF

COUNT ONE

Violations of the Asset Purchase Agreement and Order Approving the Sale

52. Plaintiff re-alleges and incorporates by this reference all prior paragraphs of this Petition.

53. Pursuant to 15 Pa.C.S. § 5976, it is unlawful to sell property committed to charitable purposes if the sale will divert the assets from the purposes to which the property was originally committed without an Order approving the sale pursuant to 15 Pa.C.S. § 5547.

54. The September 22, 2017 Order that determined the sale of Ellwood City Hospital to the Defendants would not result in a diversion of charitable assets was based upon the Defendants' commitments and representations to the Attorney General and this Court that they would maintain a licensed hospital and emergency room 24 hours per day, seven days per week, 365 days per year, for ten years.

55. By failing to satisfy the requisite ten-year (10) period that supported the sale to the Defendants for no financial or other consideration the Defendants have breached the terms of the Asset Purchase Agreement as well as the representations that the Attorney General and this Court relied upon in approving the sale.

56. The Defendants' breach resulted in mass employee layoffs and employee wages being owed.

57. As alleged, this Court's September 22, 2017 Order that approved the sale specifically provides that "[t]he Pennsylvania Attorney General's Office shall have continuing

standing *to sue for monetary damages or to enforce the provisions of the Asset Purchase Agreement . . .*” (emphasis added).

COUNT TWO

Failure to compensate the employees of the Ellwood City Medical Center

58. Plaintiff re-alleges and incorporates by this reference all prior paragraphs of this Petition.

59. When Defendants purchased Ellwood City Hospital, it was agreed that the hospital and emergency department would be kept open and functional and in accordance with the laws of the Commonwealth of Pennsylvania for ten (10) years and other terms pertaining to the maintenance of employees’ status of benefits were set forth in the Asset Purchase Agreement.

60. A functioning hospital and emergency department necessitates, among other things, staffing and paying employees in accordance with Pennsylvania wage law.

61. Pennsylvania law explicitly requires employers to pay all wages due to employees on regularly scheduled paydays designated in advance. 43 P.S. § 260.3(a).

62. Defendants have failed to comply with both Pennsylvania law and the terms of the Asset Purchase Agreement by not paying employees’ wages owed.

63. The resulting breaches of the Asset Purchase Agreement caused extreme financial hardship to the current and past employees of the Ellwood City Medical Center.

COUNT THREE

Failure to comply with Pennsylvania Employment Tax Law

64. Plaintiff re-alleges and incorporates by this reference all prior paragraphs of this Petition.

65. When Defendants purchased Ellwood City Hospital, Defendants agreed to adhere to all federal and state income and employment tax laws. March 6, 2019 APA § 7.2(b)(attached hereto as “Exhibit B”).

66. Pennsylvania law explicitly requires employers to withhold employee contributions to remit those contributions to the UC Fund. 43 P.S. § 781.4.

67. Employers are required to file two (2) reports on or before the last day of the month immediately following the end of the calendar quarter for which the reports are filed. These are known as the Employer’s Report for Unemployment Compensation and the Employer’s Quarterly Report of Wages Paid to Each Employee (collectively, “Reports”). 34 Pa. Code § 63.52.

68. Defendants have failed to comply with both Pennsylvania law and the terms of the Asset Purchase Agreement by not remitting to the UC Fund unemployment taxes that were withheld from employee paycheck, and by not filing quarterly reports as is required.

COUNT FOUR

Failure to make required pension contributions

69. Plaintiff re-alleges and incorporates by this reference all prior paragraphs of this Petition.

70. Pursuant to the APA, Defendant agreed to assume all liabilities including the Pension Plan obligations.

71. At the time of Closing, the Pension Plan was adequately funded and all insurance payments were current.

72. Defendant agreed to continue making annual contributions to the employee pension plan.

73. Defendant has breached the terms of the APA by failing to make the required pension contributions.

74. That breach resulted in financial harm to the past and current employees of the Ellwood City Medical Center.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General respectfully requests that this Honorable Court enter an order:

1. Declaring Defendants' conduct as described herein to be in violation of the terms of the Asset Purchase Agreement, contrary to the material representations relied upon by the Attorney General and this Court in approving the sale, and constitutes an unlawful diversion of charitable assets resulting in the Defendants' private pecuniary benefit prohibited by 15 Pa.C.S. §§ 5547 and 5976;

2. Permanently enjoining Defendants and all other persons acting on their behalf, directly or indirectly, from engaging in any future violations;

3. Ordering Defendants to take all action necessary to bring ECMC into compliance with emergency room licensure requirements, including operational equipment, and continue to operate ECMC as required under the APA;

4. Divesting Defendants of all legal and equitable ownership rights in ECMC should they fail to bring ECMC into licensure requirements and appointing a trustee or receiver to operate ECMC;

5. Ordering Defendants to pay all outstanding wages to affected employees;

6. Ordering Defendants to remit payment of unemployment compensation taxes;

7. Ordering Defendants to pay all outstanding pension contributions;

8. Compel Defendants to provide an accounting of financial expenditures from September 22, 2017 through to the present;

9. Directing Defendants to pay the Attorney General's investigative and litigation costs incurred in connection with this matter; and

10. Granting such other relief as this Court deems necessary and appropriate.

Dated: December 23, 2019

Respectfully submitted,

Josh Shapiro
Attorney General

By: _____
Eugene Herne
Senior Deputy Attorney General

VERIFICATION

I, Eugene Herne, hereby state that I am an Attorney with the Pennsylvania Office of Attorney General, Charitable Trusts and Organizations Section, and am authorized to make this verification on behalf of the Plaintiff in the within action. I hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge or information and belief.

I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____

EUGENE HERNE

VERIFICATION

I, Taryn Liebttag, hereby state that I am an Agent with the Pennsylvania Office of Attorney General, Bureau of Consumer Protection, and am authorized to make this verification on behalf of the Plaintiff in the within action. I hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge or information and belief.

I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____

TARYN LIEBTAG

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: _____

Signature: _____

Name: _____

Attorney No.: _____

CERTIFICATE OF SERVICE

I certify that on the 23rd day of December, 2019, service of the Petition to Enforce Asset Purchase Agreement and for Monetary Damages was made via certified mail, return receipt requested, and via regular mail on the following parties:

Americore Health, LLC
501 SE 2nd Street,
Apartment 901,
Fort Lauderdale, Florida 33301

Ellwood City Medical Center Operations, LLC,
Corporation Trust Center,
1209 Orange Street,
Wilmington, Delaware 19801

AND ALSO SERVED AT:

1201 Orange Street,
Wilmington, Delaware, 19801

Ellwood City Medical Center, LLC
724 Pershing Street,
Ellwood City, Pennsylvania 16117

Americore Health Solutions, LLC
501 SE 2nd Street,
Apartment 901,
Fort Lauderdale, Florida 33301

Grant White
6857 Crest Road,
Rancho Palos Verdes, California 90275

AND ALSO SERVED AT:

1201 Orange Street,
Wilmington, Delaware, 19801

AND ALSO SERVED AT:

501 SE 2ND Street
Fort Lauderdale, Florida 33301

By: _____
Eugene Herne
Senior Deputy Attorney General