

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA**

**ALBANY DIVISION**

FEDERAL TRADE COMMISSION and )  
THE STATE OF GEORGIA, by and through )  
SAMUEL S. OLENS, ATTORNEY )  
GENERAL, )

Plaintiffs )

No. 11-CV-00058 (WLS)

v. )

PHOEBE PUTNEY HEALTH SYSTEM, INC., )  
PHOEBE PUTNEY MEMORIAL HOSPITAL, )  
INC., PHOEBE NORTH, INC., HCA, INC., )  
PALMYRA PARK HOSPITAL, INC., and )  
HOSPITAL AUTHORITY OF ALBANY- )  
DOUGHERTY COUNTY, )

Defendants. )

**PHOEBE PUTNEY HEALTH SYSTEM, INC., PHOEBE PUTNEY MEMORIAL  
HOSPITAL, INC., AND PHOEBE NORTH, INC.’S  
MOTION TO DISMISS AND VACATE**

Phoebe Putney Health System, Inc. (“PPHS”), Phoebe Putney Memorial Hospital, Inc. (“PPMH”), and Phoebe North, Inc. (“PNI”) (hereinafter, collectively, “Phoebe Putney”), by and through undersigned counsel, respectfully move this Court pursuant to Fed. R. Civ. Pro. 12(b)(1) and 12(b)(6), to dismiss Phoebe Putney defendants with prejudice, to dismiss Plaintiffs’ Complaint, Motion for Preliminary Injunction, any and all claims asserted in the above-captioned matter, and vacate the Temporary Restraining Order entered by this Court on April 21, 2011.

As set forth more fully in the accompanying Memorandum of Law in Support of their Motion to Dismiss, Phoebe Putney asserts that dismissal of the Phoebe Putney defendants with

prejudice, dismissal of the Complaint and Motion for Preliminary Injunction, and vacation of the Temporary Restraining Order is warranted for the following reasons:

(1) Phoebe Putney is not a proper party to this litigation. The Hospital Authority of Albany-Dougherty County, Georgia (the “Authority”) is acquiring Palmyra Park Hospital (“Palmyra”), and the Authority will own Palmyra. No Phoebe Putney defendant is the buyer of the assets underlying Plaintiffs’ allegations, nor was any Phoebe Putney defendant ever contemplated as a buyer.

(2) Plaintiffs do not allege a case or controversy involving Phoebe Putney. PPMH and PPHS are parties to the proposed asset purchase agreement for limited technical purposes that do not alter the fact that neither is acquiring Palmyra. PNI, per an Authority resolution, is no longer contemplated to have any role related to the Palmyra transaction. Plaintiffs allege that the Authority will lease Palmyra to PPMH or PPHS without adequate safeguards to ensure Authority supervision. There is no such lease and any terms have yet to be determined. Pure speculation as to the terms under which the Authority may lease Palmyra to PPMH or PPHS does not create an Article III case or controversy.

(3) The only “conduct” alleged against Phoebe Putney—that it initiated the idea to acquire Palmyra, proposed the idea to Palmyra’s parent entity, and then negotiated a proposed acquisition—would be a legal and Constitutionally protected petitioning of a government entity.

(4) The Federal Trade Commission (“FTC”) does not have statutory authority or jurisdiction over Phoebe Putney. Section 5 of the FTC Act only grants the FTC jurisdiction over corporations organized for its own profit or for the profit of its members. PPMH, PPHS, and PNI are all non-profit entities and are not organized for profits of its members. Section 7 of the

Clayton Act applies only to acquirers of assets or stock. Phoebe Putney is not an acquirer of assets or stock.

(5) The proposed acquisition of Palmyra by the Authority is immune from federal antitrust laws because the Authority is a political subdivision of the State of Georgia and the Authority's actions constitute "state action," and are entitled to antitrust immunity. Any conduct by, or including, Phoebe Putney subsequent to the acquisition does not defeat that immunity.

Phoebe Putney directs the Court to the Joint Statement of Undisputed Facts for the Motion to Dismiss filed by the Authority and joined by all defendants as support for any factual allegations contained in this motion.

Dated: May 16, 2011

Respectfully submitted,

By /s/ John H. Parker, Jr., Esq.  
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*Counsel for Defendants Phoebe Putney  
Memorial Hospital, Inc., Phoebe Putney  
Health System, Inc., and Phoebe North,  
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that this 16th day of May, 2011 a copy of the foregoing PHOEBE PUTNEY HEALTH SYSTEM, INC., PHOEBE PUTNEY MEMORIAL HOSPITAL, INC., AND PHOEBE NORTH, INC.'S MOTION TO DISMISS AND VACATE was electronically filed with the Clerk of Court through the CM/ECF system which will automatically send electronic mail notification of such filing to the CM/ECF registered participants as identified on the Electronic Mail Notice List.

This 16th day of May, 2011.

Parker, Hudson, Rainer & Dobbs LLP

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