

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

FEDERAL TRADE COMMISSION)
and THE STATE OF GEORGIA,)

Plaintiffs,)

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.)

CIVIL ACTION
FILE NO. 1-11-CV-00058-WLS

**DEFENDANTS HCA INC. AND PALMYRA PARK HOSPITAL, INC.’S
MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION AND IN SUPPORT OF CROSS-MOTION TO DISMISS
OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT,
AND TO DISSOLVE THE TEMPORARY RESTRAINING ORDER**

Now come HCA Inc. (“HCA”) and Palmyra Park Hospital, Inc., (“Palmyra”) (collectively, the “HCA Defendants”), and hereby join, adopt and incorporate (1) the Motion of the Hospital Authority of Albany-Dougherty County (the “Hospital Authority”) to Dismiss or in the Alternative, for Summary Judgment, and to Dissolve Temporary Restraining Order; and Brief in Support of Motion and in Opposition to Plaintiffs’ Motion for Preliminary Injunction; and (2) Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc. and Phoebe North, Inc.’s (collectively, “Phoebe Putney”) Motion to Dismiss and Vacate; and Memorandum of Law in Opposition to Plaintiffs’ Motion for a Preliminary Injunction and in Support of Cross-Motion to Dismiss, and to Vacate the Temporary Restraining Order (collectively, the “Co-

Defendants' Briefs").¹ For the reasons set forth in the Co-Defendants' Briefs, the Motions should be granted as to all Defendants. In addition, Plaintiffs' Motion for Preliminary Injunction should also be denied for the reasons set forth in the Co-Defendants' Briefs. Further, for the additional reasons set forth below, the Motions of (1) the Hospital Authority; (2) Phoebe Putney; and (3) the HCA Defendants should be granted and the Plaintiffs' Motion for Preliminary Injunction should be denied.

Contrary to the allegations of the Plaintiffs, the HCA Defendants have contracted to sell Palmyra to the Hospital Authority – not to Phoebe Putney. Indeed, no Phoebe Putney entity is a party to this transaction except with respect to a limited function as guarantor of the Hospital Authority's debt and possible fees. *See* Pls.' Mem., Ex. PX0008 at 64, 80-82; *see also* Phoebe Putney Br., § I. Any action the Hospital Authority may choose to take post-acquisition with respect to Palmyra (i.e., leasing Palmyra to any Phoebe Putney entity) is not relevant to the transaction at hand and has nothing to do with HCA.

Moreover, the acquisition of Palmyra by the Hospital Authority is immune from antitrust scrutiny under the state action doctrine. The Hospital Authority's conduct satisfies the three-part test established in *F.T.C. v. Hospital Board of Directors of Lee County*, 38 F.3d 1184, 1187-88 (11th Cir. 1996). *See generally* Hosp. Auth. Br. § II, A; Phoebe Putney Br. § II, E. First, as admitted by the Plaintiffs, the Hospital Authority is a political subdivision of Georgia for purposes of state action immunity. *See Crosby v. Hosp. Auth. of Valdosta and Lowndes*, 93 F.3d 1515, 1526 (11th Cir. 1996); *see also* Pls. Mem. at 6. Second, the Hospital Authority is expressly authorized to acquire another hospital within its county by Georgia law. *See* O.C.G.A. §§ 31-7-75(4), 31-7-71(5) (2010). Third, given that Georgia has expressly granted hospital

¹ The HCA Defendants also incorporate by reference the Statement of Facts filed by Co-Defendants in conjunction with their Motions and accompanying Memorandums.

authorities the power to acquire hospitals that are within the same county, it was reasonably foreseeable that this empowerment could result in the displacement of competition through the acquisition of competitor hospitals. *Cf. Lee County*, 38 F.3d at 1191-92 (finding Florida statute *implicitly* conveyed to a hospital authority “the power to acquire other hospitals in an effort to provide low-cost healthcare primarily to indigent citizens of Lee County”). Because the transaction here clearly meets the *Lee County* test, the Hospital Authority’s acquisition of Palmyra is state action and therefore not subject to antitrust scrutiny.

Likewise, the HCA Defendants’ actions in selling Palmyra to the Hospital Authority are also entitled to state action immunity. Private entities that contract with a political subdivision of the state enjoy state action immunity by extension. *See Charley’s Taxi Radio Dispatch v. SIDA of Hawaii, Inc.*, 810 F.2d 869, 878 (9th Cir. 1987) (holding that state action “exempts state action, not merely state actors”); *Elec. Inspectors, Inc. v. Vill. of E. Hills*, 320 F.3d 110, 126 (2d Cir. 2003); *Cine 42nd St. Theater Corp. v. Nederlander Org.*, 790 F.2d 1032, 1048 (2d Cir. 1986); *City Comm’n, Inc. v. City of Detroit*, 660 F. Supp. 932, 935 (E.D. Mich. 1987) (“Once it is determined that the [state actor] is protected by the state action doctrine, a private party who is merely the beneficiary of the [state actor’s] exercise of power should also be protected.”) Because the Hospital Authority is immune from the antitrust laws under the state action doctrine, the HCA Defendants, as private parties entering into a contract with the Authority, are immune by extension. *See, e.g., Charley’s Taxi*, 810 F.2d at 878.

CONCLUSION

For these reasons, and for the reasons set forth in the Co-Defendants' Briefs, the Plaintiffs' Motion for Preliminary Injunction should be denied, and the Court should (1) dismiss with prejudice all Defendants from this action; (2) deny Plaintiffs' motion for a preliminary injunction; and (3) vacate the temporary restraining order.

RESPECTFULLY SUBMITTED this 16th day of May, 2011

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