

ORDERED.

Dated: March 31, 2023

  
Caryl E. Delano  
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
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In re:

Case No. 8:19-bk-07720-CED  
Chapter 11

Friends of Citrus and The Nature  
Coast, Inc., f/k/a Hospice of Citrus  
County, Inc.,

Debtor.

**ORDER GRANTING DEBTOR'S MOTION FOR ATTORNEY'S  
FEES AND COSTS AGAINST VITAS HEALTHCARE CORPORATION**

THIS CASE came on for consideration without a hearing on Debtor's Motion for Attorney's Fees and Costs against Vitas Healthcare Corporation.<sup>1</sup> For the reasons stated below, the Court finds that Debtor is entitled to an award against Vitas Healthcare Corporation ("Vitas") for the reasonable attorney's fees and costs Debtor incurred in litigating its objection to Vitas' proof of claim.

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<sup>1</sup> Doc. No. 518.

## **I. BACKGROUND**

Debtor is a charitable non-profit organization that formerly provided options for end-of-life hospice care to residents of Citrus County, Florida.<sup>2</sup> Debtor's business operations included an in-patient hospice facility in Lecanto, Florida, known as "Hospice House."<sup>3</sup>

In 2018, Debtor entered into an asset purchase agreement for the sale of its hospice operations, including the Hospice House, to Vitas for the total purchase price of \$11 million (the "APA").<sup>4</sup> The APA was accompanied by a real estate purchase agreement (the "Real Estate Purchase Agreement"). The Real Estate Purchase Agreement stated that Debtor's sale of Hospice House to Vitas was in "as is" condition.<sup>5</sup>

In the APA, Debtor represented and warranted, among other things, that Debtor was not in violation of any federal, state, or local law, regulation, license, or permit governing Hospice House.<sup>6</sup> And Debtor agreed to indemnify Vitas for losses or damages it suffered as a result of any false representation or warranty by Debtor.<sup>7</sup>

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<sup>2</sup> Doc. No. 505 at 2 – 3.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 11 – 12; Debtor's Trial Ex. 1, Doc. No. 320-1, § 2.4.

<sup>5</sup> *Id.*; Debtor's Trial Ex. 2, Doc. No. 320-2, § 16.

<sup>6</sup> Doc. No. 505 at 12.

<sup>7</sup> *Id.* at 13.

To secure its indemnification obligations, Debtor agreed to escrow \$1.3 million of the purchase price.<sup>8</sup>

Under section 12.5 of the APA, Vitas was required to notify Debtor in writing if it suffered any damages resulting from Debtor's breach of its representations and warranties.<sup>9</sup> If Debtor timely objected to a claim by Vitas, the escrow agent was required to hold the disputed amount in escrow until the claim was resolved.<sup>10</sup>

In September 2018, the parties closed on the APA. Ten months after the closing, Vitas notified Debtor that it was making a claim against the escrowed funds for the cost of replacing the Hospice House's generator.<sup>11</sup> Vitas contended that the Hospice House's existing electrical generator was insufficient to provide the Hospice House with an "alternate source of energy" to maintain safe temperatures in case of an emergency and that, contrary to Debtor's representation in the APA, Debtor was not in compliance with federal regulations governing facilities that participate in Medicare reimbursement.<sup>12</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* Under section 12.5.2 of the APA, on the first anniversary of the closing, the escrow agent was required to release \$650,000 of the escrowed funds to Debtor, less any amount needed to satisfy any pending indemnification claims. And under section 12.5.3 of the APA, the escrow agent was required to release the balance of the escrowed funds—less any amount needed to satisfy any pending indemnification claims—to Debtor on the second anniversary of the closing. Debtor's Trial Ex. 1, Doc. No. 320-1, §§ 12.5.2 & 12.5.3.

<sup>11</sup> Doc. No. 505 at 17.

<sup>12</sup> *Id.* at 17 – 19.

A month later, Debtor filed for chapter 11 bankruptcy. Vitas filed an unsecured proof of claim in the amount of \$1,055,270.33,<sup>13</sup> and Debtor objected to the claim (the “Objection”).<sup>14</sup>

Debtor raised two grounds in the Objection. First, Debtor argued that Vitas’ indemnification claim was barred by the “as is” clause in the Real Estate Purchase Agreement.<sup>15</sup> Second, Debtor argued that its representations and warranties in the APA were, in fact, true: federal Medicare regulations did not require Debtor to have a generator to maintain safe temperatures in case of emergency.<sup>16</sup> Therefore, Debtor demanded the return of \$1.3 million in escrowed funds, which Debtor contended were property of the estate.<sup>17</sup>

Bankruptcy Judge Michael G. Williamson presided over a four-day trial of Debtor’s Objection,<sup>18</sup> after which he ruled that (a) Debtor was not required to have a generator to comply with federal—or state—law; (b) Debtor otherwise had a plan in place for maintaining safe temperatures at the Hospice House in case of an emergency; and (c) Debtor had not breached the APA’s representations and

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<sup>13</sup> Claim No. 12.

<sup>14</sup> Doc. No. 316.

<sup>15</sup> *Id.* at 11 – 13.

<sup>16</sup> *Id.* at 14 – 18.

<sup>17</sup> *Id.* at 18.

<sup>18</sup> Doc. Nos. 385 – 387 & 397.

warranties.<sup>19</sup> Based on his ruling, Judge Williamson declined to rule on Debtor's argument that Vitas' indemnification claim was barred by the "as is" clause.<sup>20</sup>

Judge Williamson then sustained Debtor's Objection and ordered the escrow agent to turn over the \$1.3 million in escrowed funds to Debtor.<sup>21</sup>

## **II. DEBTOR'S MOTION FOR ATTORNEY'S FEES AND COSTS**

As the prevailing party on the Objection, Debtor now seeks attorney's fees under the Real Estate Purchase Agreement.<sup>22</sup> Section 22 of the Real Estate Purchase Agreement contains a prevailing-party fee provision:

Should either party employ attorneys to enforce any of the provisions of this Agreement, the non-prevailing party in connection with any litigation shall pay to the prevailing party all costs, expenses and reasonable attorneys' fees expended or incurred by the prevailing party in connection therewith. This provision shall survive the termination of this Agreement.<sup>23</sup>

Debtor contends it has satisfied the requirements of section 22: it employed attorneys to enforce the "as is" provision under the Real Estate Purchase Agreement, and Vitas was the non-prevailing party in the dispute.<sup>24</sup>

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<sup>19</sup> Doc. No. 505 at 20 – 25.

<sup>20</sup> *Id.* at 18.

<sup>21</sup> *Id.* at 31 – 32; Doc. No. 510.

<sup>22</sup> Doc. No. 518.

<sup>23</sup> *Id.* at ¶ 17; Debtor's Trial Ex. 2, Doc. No. 320-2, § 22.

<sup>24</sup> *Id.* at ¶ 18.

Vitas, however, says the Real Estate Purchase Agreement is not the relevant contract.<sup>25</sup> Instead, Vitas contends that because Vitas' claim and Debtor's Objection arose out of the APA's indemnification provisions, the APA—which Vitas contends does not include a fee shifting provision—is the relevant contract.<sup>26</sup> Because Debtor did not seek indemnification under the APA, Vitas contends Debtor cannot recover prevailing party attorney's fees.<sup>27</sup>

### III. ANALYSIS

The question before the Court<sup>28</sup> is whether the prevailing party attorney's fees provision of the Real Estate Purchase Agreement applies to Vitas' claim for indemnification under the APA.

Under Florida law, two agreements may be treated as a single agreement if they were executed by the same parties at (or around) the same time; they reference each other; and they deal with the same overarching transaction.

For example, in *Leon F. Cohn, M.D., P.A. v Visual Health & Surgical Center, Inc.*, the court held that because an asset purchase agreement and a comprehensive service agreement relating to an ophthalmology practice referenced each other and were

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<sup>25</sup> Doc. No. 522, ¶ 2.

<sup>26</sup> *Id.* The APA provides for attorney's fees as part of the "damages" that can be recovered by a party who successfully asserts an indemnification claim. Debtor's Trial Ex. 1, Doc. No. 320-1, § 12.2.

<sup>27</sup> Doc. No. 522, ¶ 3.

<sup>28</sup> After the death of Bankruptcy Judge Michael G. Williamson, this case was assigned to Chief Bankruptcy Judge Caryl E. Delano.

executed at the same time, the asset purchase agreement’s attorney’s fee provision applied to a breach of contract claim under the comprehensive service agreement.<sup>29</sup>

And in *TRX Integration, Inc. v. Stafford-Smith, Inc.*, the court held that two contracts entered into by the same parties concerning the same subject matter—a written agreement concerning a trademark license and an oral agreement concerning implementation and enhancement to related software—“should be construed as one contract.”<sup>30</sup>

Here, Debtor and Vitas were parties to both the APA and the Real Estate Purchase Agreement; the agreements were entered into within a week of each other (the APA was entered into as of September 5, 2018, and the Real Estate Purchase Agreement was entered into as of September 13, 2018); the APA and the Real Estate Purchase Agreement reference each other, with the APA defining “Transaction Documents” as including the Real Estate Purchase Agreement;<sup>31</sup> and the agreements deal with the same overarching transaction: the sale of Debtor’s hospice operations. The Court finds that, under Florida law, the APA and the Real Estate Purchase Agreement are properly treated as a single contract.

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<sup>29</sup> 125 So. 3d 860, 863 (Fla. 4th DCA 2013) (citing *Citicorp Real Estate, Inc. v. Ameripalms 6B GP, Inc.*, 633 So. 2d 47, 49 (Fla. 3d DCA 1994) (“The law is well established that two or more documents executed by the same parties, at or near the same time, and concerning the same transaction or subject matter are generally construed together as a single contract.”)).

<sup>30</sup> 2016 WL 705989, at \*4 (M.D. Fla. 2016).

<sup>31</sup> Debtor’s Trial Ex. 1, Doc. No. 320-1, pp. 9 – 10.

And there is no question that Debtor incurred fees enforcing both the Real Estate Purchase Agreement and the APA: Vitas made a claim to the escrowed funds, forcing Debtor to retain counsel to litigate the claim and seek turnover of the funds. In other words, Debtor was compelled to retain counsel to enforce its rights under section 12.5 of the APA.

Finally, there is no question that Debtor prevailed on its efforts to enforce the APA: Judge Williamson sustained Debtor's objection to Vitas' indemnification claim and ordered the escrow agent to turn over the escrowed funds.<sup>32</sup> Moreover, the prevailing party fee provision here is broad. Section 22 of the Real Estate Purchase Agreement provides for the prevailing party's recovery of all fees incurred "in connection with *any* litigation" to enforce the agreement's provisions.<sup>33</sup>

Accordingly, it is

**ORDERED:**

1. Debtor's Motion for Attorney's Fees and Costs is **GRANTED**.
2. Debtor is entitled to recover its reasonable attorney's fees and costs incurred enforcing its rights under the APA and the Real Estate Purchase Agreement.

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<sup>32</sup> Doc. Nos. 505 and 510.

<sup>33</sup> Debtor's Trial Ex. 2, Doc. No. 320-2, § 22 (emphasis added).



3. Within 30 days of this Order, Debtor shall file a supplemental motion setting forth the reasonable attorney's fees and costs it contends it incurred enforcing its rights under the APA and the Real Estate Purchase Agreement.

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.