ORDERED.

Dated: August 22, 2023

Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

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

Debtor.
_____/

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

ORDER DENYING VITAS HEALTHCARE CORPORATION'S MOTION FOR RECONSIDERATION

THIS CASE came on for consideration without a hearing on Vitas Healthcare Corporation's *Motion for Reconsideration*[1] of this Court's March 31, 2023 *Order Granting Debtor's Motion for Attorney's Fees and Costs Against Vitas Healthcare Corporation* (the "Fee Order").[2]

The facts underlying the parties' dispute are described in the Fee Order.

[1] Doc. No. 525.

[2] Doc. No. 524.

Briefly, Vitas Healthcare Corporation ("Vitas") filed a $1 million proof of claim in Debtor's bankruptcy case, seeking indemnification for Debtor's alleged breach of representations and warranties in an asset purchase agreement between Vitas and Debtor (the "APA"). The alleged breach related to whether a generator transferred by Debtor to Vitas (the "Generator") complied with federal law. Debtor objected to the claim on the ground that it had not breached the APA's representations and warranties and that any indemnification claim was barred by an "as-is" provision in the parties' accompanying Real Estate Purchase Agreement (the "REPA").[3] The REPA included a prevailing party attorney's fee provision; the APA did not.

The Court found that Debtor did not breach the APA's representations and warranties and sustained Debtor's objection to the claim.[4] Thereafter, Debtor moved for an award of prevailing party attorney's fees under the REPA (the "Fee Motion"),[5] which the Court granted in the Fee Order.[6]

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[3] Doc. No. 316.

[4] Doc. No. 505, *Findings of Fact and Conclusions of Law on Debtor's Claim Objection and Turnover Motion*, entered on September 29, 2021, by Bankruptcy Judge Michael G. Williamson. Subsequent to sustaining Debtor's objection, Judge Williamson passed away, and this case was assigned to Chief Bankruptcy Judge Caryl E. Delano.

[5] Doc. No. 518.

[6] Doc. No. 524.

Vitas seeks reconsideration of the Fee Order because, it argues, the premise underlying the award—that the Court may treat the APA and REPA as a single contract for purposes of interpreting the REPA's prevailing-party fee provision—is "legally incorrect."[7]

Reconsideration of a previous order is an "extraordinary remedy" that should be "employed sparingly."[8]

> Motions for reconsideration are not vehicles for disappointed parties to re-litigate previously decided issues by raising new theories or to present evidence that could have been raised earlier. Nor should a motion for reconsideration be used to make new arguments on matters not previously raised by counsel.[9]

Yet, that is precisely what Vitas does here. In the Fee Motion, Debtor cited caselaw to support its contention that the Court should read the APA and REPA together when interpreting the REPA's prevailing-party fee provision.[10] Vitas' three-page response to the Fee Motion did not address Debtor's argument that the APA and REPA could be read together.[11] After the Court entered the Fee Order, Vitas argued for the first time—in its 14-page Motion for Reconsideration—that the Court

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[7] Doc. No. 525, ¶ 1.

[8] *Herendeen v. Regions Bank (In re Able Body Temp. Servs., Inc.)*, 2018 WL 11206122, at *4 (Bankr. M.D. Fla. Sept. 4, 2018) (quoting *In re Woide*, 2017 WL 960771, at *1 (M.D. Fla. Mar. 13, 2017)).

[9] *Id.* (citations omitted).

[10] Doc. No. 518, ¶ 21 (citing *Leon F. Cohn, M.D., P.A. v. Visual Health & Surgical Ctr., Inc.*, 125 So. 3d 860, 863 (Fla. 4th DCA 2013)).

[11] Doc. No. 522.

cannot treat the APA and REPA as a single integrated contract for awarding prevailing-party fees.[12] That is an improper use of a motion for reconsideration.

In any event, Vitas is not entitled to reconsideration on the merits. Reconsideration is warranted only when (1) there has been an intervening change in controlling law; (2) newly discovered evidence would merit a different result; or (3) reconsideration is necessary to correct a clear error of law or fact or to prevent a "manifest injustice."[13]

Vitas contends that this Court's decision to treat the APA and REPA "as a single contract for purposes of enforcing a prevailing party attorneys' fee provision in the REPA in litigation solely involving the APA is clear error."[14] Vitas' argument is premised primarily on two contentions: (1) the claims-objection litigation *solely* involved the APA; and (2) the APA and REPA each had an "independent" purpose. Neither contention is correct.

First, Vitas overlooks the fact that although its breach of warranty claim under the APA related to the Generator, Vitas purchased the Generator under the REPA, not under the APA.

Second, contrary to Vitas' contention, Debtor specifically objected to Vitas' proof of claim on the ground that under the REPA, Vitas purchased real property,

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[12] Doc. No. 525.

[13] *In re Able Body Temporary Servs., Inc.*, 2018 WL 11206122, at *4.

[14] Doc. No. 525, ¶ 5.

which included the Generator, "as is."[15] Although the Court sustained Debtor's claim objection on an alternative argument—that Debtor had not breached its representations and warranties under the APA—without needing to address Debtor's REPA argument,[16] contrary to Vitas' assertion, the claims-objection litigation involved the REPA.

Third, the APA and REPA did not have *independent* purposes. The APA's integration clause provides that the APA supersedes all prior agreements and—*along with the REPA*—constitutes a "complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter."[17] More important, the REPA expressly provides that closing of the APA is a *condition precedent* to Debtor's obligations under the APA.[18] Given that closing of the APA was a *condition precedent* to Debtor's obligations under the REPA, Vitas can hardly claim the APA and REPA had *independent* purposes.

Because Debtor's claim objection relied on an "as-is" provision in the REPA, and the APA (among other things) was a condition precedent to the REPA, it was not a clear error of law or fact for this Court to rely on *Leon F. Cohn, M.D., P.A. v.*

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[15] Doc. No. 316, pp. 11 – 13.

[16] Doc. No. 505, p. 18, n. 103 ("The Debtor has argued that Vitas' indemnification claim is barred by an 'as-is' provision in the [REPA]. That argument turns on whether the generator is a fixture and whether the [REPA] is an independent document. The Court need not address those issues because it concludes that the Debtor did not breach its representations and warranties [under the APA].") (citations omitted).

[17] Doc. No. 533, Ex. B, § 13.8.

[18] *Id.* at ¶ 25.

Visual Health & Surgical Ctr., Inc.[19] and *TRX Integration, Inc. v. Stafford-Smith, Inc.*[20] in treating the APA and REPA as a single integrated contract for purposes of awarding Debtor fees under the REPA's prevailing-party fee provision.

Accordingly, it is

ORDERED that Vitas' Motion for Reconsideration is **DENIED.**

Clerk's Office to serve on interested parties via CM/ECF.

[19] 125 So. 3d 860, 863 (Fla. 4th DCA 2013).

[20] 2016 WL 705989, at *4 (M.D. Fla. Feb. 23, 2016).