



**SO ORDERED,**

**Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: March 14, 2016**

**The Order of the Court is set forth below. The docket reflects the date entered.**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**NATCHEZ REGIONAL MEDICAL CENTER,**

**CASE NO. 14-01048-NPO**

**DEBTOR.**

**CHAPTER 9**

**ORDER ON PAROL EVIDENCE ISSUE  
RAISED IN RESPONSE OF THEREX, INC. D/B/A REHABCARE  
(“REHABCARE”) TO OBJECTION TO PROOF OF CLAIM NUMBER 39**

This matter came before the Court on the Objection to Proof of Claim Number 39 Filed by TherEX, Inc. d/b/a RehabCare Group Management Services, Inc. (the “Objection”) (Dkt. 664) filed by the Liquidation Trustee for the Natchez Regional Medical Center (the “Trustee”) and the Response of TherEX, Inc. d/b/a RehabCare (“RehabCare”) to Objection to Proof of Claim Number 39 (the “Response”) (Dkt. 768) filed by TherEX, Inc. d/b/a RehabCare (“RehabCare”) in the above-referenced chapter 9 bankruptcy case (the “Bankruptcy Case”). After a telephonic status conference on January 22, 2016, the Court entered the Order Setting Hearing, Deadline for Filing Joint Stipulation, and Briefing Schedule (the “Order”) (Dkt. 780). Consistent with the Order, RehabCare filed the Creditor’s Brief on the Application of the Parol Evidence Rule to Trustee’s Objection to Claim (Dkt. 786) on February 12, 2016, and the Trustee filed the Memorandum in Support of Objection to Proof of Claim Number 39 Filed by TherEX,

Inc. d/b/a RehabCare Group Management Services, Inc. (the “Trustee’s Brief”) (Dkt. 790) on February 19, 2016. After fully considering the matter, the Court finds as follows:

### **Jurisdiction**

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Notice of the Objection was proper under the circumstances.

### **Facts**

The general background facts, which are not in dispute, are as follows:

1. Natchez Regional Medical Center (the “Hospital”) was a Mississippi community hospital governed by the Board of Supervisors of Adams County in Natchez, Mississippi.<sup>1</sup> (Obj. at 1).

2. The Hospital provided rehabilitation therapy services to its patients through its Rehabilitation Department, a distinct unit within the Hospital, until the Hospital entered into the Rehabilitation Services Agreement (the “Agreement”) (Dkt. 786-2) with RehabCare on July 15, 2013. Under the Agreement, the Hospital granted RehabCare the exclusive right to manage and staff the Hospital’s Rehabilitation Department. (Agreement at 1).<sup>2</sup>

3. The Hospital commenced the Bankruptcy Case on March 26, 2014. (Dkt. 1).

4. In the Agreed Order Regarding Rejection of Executory Contract with TherEX, Inc. d/b/a RehabCare (Dkt. 208), the Hospital rejected the Agreement as an executory contract. The Hospital entered into a new post-petition contract with RehabCare on the same terms and conditions as the original Agreement, but on an interim basis.

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<sup>1</sup> See Community Hospital Act, MISS. CODE ANN. § 41-13-10 *et seq.*

<sup>2</sup> Citations to the Agreement are to the number shown on the bottom of the page of the Agreement, not to the page number of the docket.

5. On June 13, 2014, RehabCare filed proof of claim #39 in the amount of \$514,149.02 (the “RehabCare Claim”) for payment of rehabilitation services allegedly rendered under the Agreement.

6. On September 30, 2014, the Court entered the Findings of Fact, Conclusions of Law, and Order Confirming the Chapter 9 Plan of Adjustment for Natchez Regional Medical Center (the “Confirmation Order”) (Dkt. 481), confirming the Second Amended Plan for the Adjustment of Debts of Natchez Regional Medical Center (the “Second Amended Plan”) (Dkt. 405). The Second Amended Plan made certain modifications to the First Amended Plan for the Adjustment of Debts of Natchez Regional Medical Center (Dkt. 368), which itself modified the Plan for the Adjustment of Debts of Natchez Regional Medical Center (Dkt. 364).

7. Pursuant to the Confirmation Order and the Second Amended Plan, the Trustee is charged with the responsibility of reviewing all claims and proofs of claim and asserting any objections to such claims as deemed necessary. The Trustee filed the Objection on July 28, 2015, in accordance with these provisions. In the Objection, the Trustee asks the Court to consider the parties’ conduct in determining the intent of the Agreement. On December 14, 2015, RehabCare filed the Response raising the parol evidence issue.

### **Discussion**

In support of the Trustee’s efforts to prove that RehabCare agreed to assist the Hospital in the claims denial process, the Trustee asks the Court to consider RehabCare’s past conduct in appealing the denials and/or reductions in fees for rehabilitation services. RehabCare, in turn, argues that such evidence is inadmissible under the parol evidence rule. The parties agree that the present dispute hinges solely on the applicability of the parol evidence rule. If the Trustee is limited to the terms of the Agreement, the grounds for the Objection could become moot. The

parties ask the Court to resolve the issue in advance of the trial set for March 23, 2016. The issue is whether extrinsic evidence may be introduced to help the Court determine whether RehabCare had a duty to handle the denial and appeals of claims.<sup>3</sup>

#### **A. Parol Evidence Rule**

This Court has held that “the parol evidence rule preserves the integrity of an unambiguous, fully integrated, written agreement by prohibiting the admission of extrinsic or parol evidence to prove either the intent of the parties or the meaning of the terms used in the agreement.” *Good Hope Constr., Inc. v. RJB Fin., LLC (In re Grand-Soleil Natchez, LLC)*, Adv. No. 12-00013-NPO, slip op. at 41 (Bankr. S.D. Miss. Aug. 13, 2013) (citing *In re Riedel*, No. 10-51106-KMS, 2011 WL 5025324, at \*4 (Bankr. S.D. Miss Oct. 21, 2011) (applying Mississippi law). Mississippi courts generally agree that the parol evidence rule bars consideration of negotiations that took place before the execution of a written contract. *See Thomas v. Rice (In re Rice)*, 526 B.R. 631, 642 (Bankr. N.D. Miss. 2015). But “the rule does not prohibit the use of parol evidence to clarify or explain ambiguous terms.” *Id.* (citing *Lambert v. Miss. Limestone Corp.*, 405 So. 2d 131, 132 (Miss. 1981)). In other words, the parol evidence rule “does not apply when extrinsic evidence is offered merely to explain the written agreement.” *Good Hope Constr., Inc.*, slip op. at 41.

If a contract is silent as to a particular condition, it is ambiguous and parol evidence generally is admissible to determine the parties’ intent. In *Deer Creek Constr. Co. v. Peterson*, 412 So. 2d 1169 (Miss. 1982), for example, a breach of contract action was brought against a construction company because of its failure to complete construction of a home in a timely manner. *Id.* at 1171. The construction contract did not contain a provision as to when the home

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<sup>3</sup> The Court specifically does not address the Trustee’s assertion in the Trustee’s Brief that the doctrine of equitable estoppel applies. (Tr. Br. at 7).

would be completed, but the plaintiff testified at trial that the construction company informed her it would complete the construction within ninety (90) days. *Id.* at 1172. The Mississippi Supreme Court held that the construction contract was ambiguous or indefinite as to the length of time for construction and, therefore, the plaintiff's testimony was admissible at trial to clarify the intent of the parties. *Id.* at 1173.

This Court previously decided that parol evidence could be introduced to supplement the parties' sales contract. *In re Rice*, 526 B.R. at 642. In *Rice*, this Court looked to the "four corners" of the sales contract and could not determine the purchase price of the mobile home that was at issue in that case, or, more specifically, whether the down payment and monthly payments made before a certain date were intended to be credited toward the purchase price of the mobile home. *Id.* Because a contract "must be read as a whole so as to give effect to all of its clauses," the Court rejected an interpretation of the sales contract that would require the Court to ignore a provision regarding down payments. *Id.* In the end, the Court allowed the receipts into evidence to clarify the intent of the parties. *Id.*

In a case that is factually analogous except for one important difference, *Benchmark Health Care Center, Inc. v. Cain*, 912 So. 2d 175 (Miss. Ct. App. 2005), the provider sued the nursing home for nonpayment of fees owed under the contract. The nursing home in *Benchmark* argued that the provider's fees were denied by Medicare and, therefore, the nursing home did not have to pay the provider. *Id.* at 178. The Mississippi Court of Appeals found that the specific words of the contract provided that the nursing home was responsible for "all billing, collections,

denials, and payments,” and thus there was no ambiguity in the contract. *Id.* at 182 (emphasis added).<sup>4</sup>

## **B. Parties’ Arguments**

The Trustee argues that the Agreement is ambiguous as to whether RehabCare was required to assist in the claims denial process. Thus, the Trustee seeks to admit extrinsic evidence demonstrating that RehabCare has the duty to appeal denials and/or reductions. However, RehabCare argues that the parol evidence rule bars the introduction of extrinsic evidence.

### **1. Trustee**

The Trustee contends in the Objection that RehabCare should receive only what the Hospital received from the Centers for Medicare and Medicaid Services (“CMS”) for the rehabilitation services. (Tr. Br. at 2). Consequently, it is the Trustee’s argument that the RehabCare Claim should be reduced by the amount of the disallowance or reduction to which RehabCare should have objected, but failed to do so in a timely manner. (Obj. at 2-3). The Trustee contends that: (1) the failure of RehabCare to contest the disallowance or reduction has impaired the ability of the Hospital to receive payment for such services (*Id.* at 3); (2) the Hospital has received over \$300,000.00 of disallowance or reduction notices for services performed by RehabCare (*Id.* at 2); and (3) although RehabCare advised the Hospital that it would contest the disallowance or reduction in payment, RehabCare did not do so. (*Id.*). The Trustee seeks an order disallowing the RehabCare Claim in its entirety. (*Id.* at 3).

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<sup>4</sup> The important distinction in the Bankruptcy Case is that the term “denials” is not included in the list of responsibilities of the Hospital in the Agreement. The Agreement is silent regarding the procedure and the responsibilities of each party if an appeal of a denial or reduction is necessary.

Pursuant to the Agreement, RehabCare would bill the Hospital for rehabilitation services, and the Hospital would submit the same bill for reimbursement under various federal reimbursement programs administered by CMS. (Tr. Br. at 1). CMS would reimburse the Hospital for the patient rehabilitation services on a temporary basis and would then review each reimbursement and either accept, deny, or reduce the reimbursement. (*Id.*). If the reimbursement was denied or reduced, CMS would offset the amount denied or reduced from the next payment to the Hospital. (*Id.*). The Hospital could appeal the denial or reduction of a reimbursement and if successful, CMS would either reduce or refund the amount of the charge, or not offset the amount denied. (*Id.* at 2).

The Trustee asserts that extrinsic agreements existed between the Hospital and RehabCare that authorized the Hospital to reduce the amount owed to RehabCare to the extent a bill was disallowed or reduced by CMS. (*Id.* at 1). In addition, the Trustee argues that RehabCare acted on behalf of the Hospital if RehabCare believed CMS's denial of the payment or reimbursement was unwarranted. (Obj. at 2). Indeed, the Trustee alleges that until sometime in 2015, RehabCare, not the Hospital, handled all appeals for denial or reductions for rehabilitation services. (Tr. Br. at 2). The Trustee admits that the Agreement does not specifically task RehabCare with the responsibility for appealing denials, but he points out that there are several provisions in the Agreement indicating that they had certain shared responsibilities. (*Id.* at 2-3). These provisions include:

### 2.3 Shared Responsibilities

Consistent with the foregoing, Hospital and [RehabCare] acknowledge the following joint responsibilities:

- 2.3.1 [RehabCare] and Hospital recognize that their administrative functions either will overlap or affect the other party's performance of its functions, and they will meet periodically to discuss such matters.

2.3.2 Whenever required to make a decision or take action under this Agreement, a party shall proceed diligently and in good faith and shall communicate its decision and/or take action expeditiously.

2.3.3 Each Party shall share with the other party relevant information it believes to be important or is requested by the other party concerning the overall operation of the Rehabilitation Department and the quality of care being rendered.

(Agreement at 2-3). In addition, the Trustee points out that the Agreement includes requirements that RehabCare operate in compliance with various federal regulations and standards, including CMS's conditions of participation and certification. (Tr. Br. at 4).

#### 4.1 General Responsibilities

[RehabCare] shall perform those functions reasonably required to operate the Rehabilitation Department, including but not limited to those set forth in the remainder of this Article 4, consistent with generally accepted management techniques and the reasonable exercise of judgment:

4.1.1 operate and maintain the Rehabilitation Department as integral and efficient departments of the Hospital, consistent with Hospital policies and procedures;

4.1.2 operate and provide Rehabilitation Services in compliance with applicable statutes, ordinances, laws, rules, regulations and orders of governmental or regulatory bodies having jurisdiction, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Joint Commission's hospital standards for medical rehabilitation programs and Centers for Medicare and Medicaid Services ("CMS") conditions of participation and certification;

\* \* \*

4.1.6 cooperate and assist in Hospital's compliance programs;

4.1.7 manage the timely preparation of and deliver to Hospital all documentation needed for billing and collection of fees for Rehabilitation Services;

(Agreement at 4).



The Trustee argues that the Agreement is ambiguous. (Tr. Br. at 4). The language in the Agreement relied on by RehabCare in section 5.1.6 does not specifically mention the procedure for handling denials for service reimbursements or the appeals. (*Id.*). Instead, the Trustee points to provisions of the Agreement in sections 2.3.1, 2.3.2, 2.3.3, 4.1.1, 4.1.2, 4.1.6, and 4.1.7, which place shared responsibilities on the parties. (*Id.* at 2-3). The essence of the Trustee’s argument is that these provisions create enough of an ambiguity as to RehabCare’s role in pursuing the denials of claims to allow the admission of extrinsic evidence to determine the intent of the parties. (*Id.* at 6-7).

The Trustee cites *Henry v. Moore*, 9 So. 3d 1146, 1153-54 (Miss. Ct. App. 2009). There, the Mississippi Court of Appeals held that a land lease that included the phrase, “assuming the responsibility of one (1) log cabin, one (1) law office, and one (1) barn,” was ambiguous because it was unclear from the contract what responsibilities the parties assumed. *Id.* Similarly, the Mississippi Supreme Court in *Hadad v. Booth*, 82 So. 2d 639 (Miss. 1955), found that the requirement “to furnish all labor and materials for roughing[-]in and setting of fixtures and equipment to be furnished by you” was ambiguous on the issue of whether such obligation required the plumbers to install a heater. *Id.* at 643. The *Hadad* Court explained:

Whenever the terms of a contract are susceptible of more than one interpretation, or an ambiguity arises, or the intent and object of the contract cannot be ascertained from the language employed, parol evidence may be introduced to show what was in the minds of the parties at the time of making the contract.

*Id.*

## **2. RehabCare**

RehabCare relies on Mississippi’s application of traditional contract law that “the intention of the parties must be drawn from the words of the whole contract, and if, viewing the language used, it is clear and explicit, then the court must give effect to [the] contract unless it

contravenes public policy.” *HeartSouth, PLLC v. Boyd*, 865 So. 2d 1095, 1105 (Miss. 2003). RehabCare insists there is no ambiguity in the Agreement. (Dkt. 786 at 1, 4). Section 8.1 of the Agreement requires the Hospital to compensate RehabCare “as specified in Schedule 8.1, ‘Rate and Manner of Compensation.’” According to RehabCare, it simply had no obligation in the Agreement to handle denials or appeals of claims on behalf of the Hospital because the billing of patients and the collection of all payments for services rendered to patients were the responsibilities of the Hospital under the Agreement.<sup>5</sup> (*Id.* at 3). Simply put, RehabCare contends that the Hospital was required to pay RehabCare whether CMS reimbursed the Hospital or not. (*Id.* at 5-6). RehabCare cites two provisions in the Agreement, sections 5.1.6 and 5.4:

5.1 Establishment and Maintenance of Departments

Hospital shall, at its sole costs and expense,

\* \* \*

5.1.6 provide all billing and collection services, accounting services, and management information services related to the Rehabilitation Services as reasonably necessary.

5.4 Patient Admission, Treatment and Finances

Each Patient referral to the IRU shall be screened prior to admission and approved for admission by the Medical Director. Hospital shall have the sole right to approve or deny admission and treatment of any Patient. Hospital shall be responsible for processing all charges and for the collection of all payments for services rendered to Patients.

(Agreement at 7-8). Therefore, RehabCare insists that the RehabCare Claim is not subject to reduction. (Resp. at 3).

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<sup>5</sup> RehabCare contends that the disallowance or reduction notices related to services were provided by the Hospital before RehabCare entered into the Agreement, a fact issue that is not before the Court at this time.

**C. Parol Evidence to Supplement the Agreement**

Although the Agreement appears to be a final writing intended to be a complete expression of the agreement, the Court is unable to determine from the “four corners” of the Agreement whether RehabCare is obligated to handle the appeal of denials and/or reductions. Unlike the agreement in *Benchmark*, the Agreement is silent as to whose responsibility it was to appeal the denial and/or reduction of claims. Evidence of RehabCare’s past conduct in appealing the denials and/or reduction in fees for rehabilitation services will aid the Court in interpreting the Agreement.

Because the Agreement is ambiguous in terms of whether RehabCare is obligated to appeal the denials and/or reduction in fees for rehabilitation services, the Court finds that extrinsic evidence may be used to explain and clarify the Agreement. The use of extrinsic evidence will be limited to evidence that is consistent with the terms of the Agreement. No extrinsic evidence may be introduced that is contrary to the terms of the Agreement.

IT IS, THEREFORE, ORDERED that the parties may introduce extrinsic evidence to supplement the terms of the Agreement.

IT IS FURTHER ORDERED that no extrinsic evidence may be introduced to contradict the terms of the Agreement.

**##END OF ORDER##**