

CAUSE NO. DC-21-06135

OMNICARE PHARMACY OF TEXAS 2, LP	§	IN THE DISTRICT COURT OF
d/b/a OMNICARE OF TYLER,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	116th
	§	_____ JUDICIAL DISTRICT
	§	
TYLER OPS LTC INC. d/b/a PETAL HILL	§	
NURSING AND REHABILITATION, and	§	
NORTH TX OPS LTC INC. d/b/a ROSE	§	
HILL NURSING AND REHABILITATION,	§	
<i>Defendants.</i>	§	DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

By this action, Plaintiff Omnicare Pharmacy of Texas 2, LP d/b/a Omnicare of Tyler (“Omnicare”), seeks, among other things, to enforce its contractual and/or quasi-contractual rights against each of defendants Tyler Ops LTC Inc. d/b/a Petal Hill Nursing and Rehabilitation (“Petal Hill”) and North TX Ops LTC Inc. d/b/a Rose Trail Nursing and Rehabilitation (“Rose Trail”), for the provision of pharmaceutical goods and services.

PARTIES

1. Plaintiff is a Delaware limited partnership registered to do business in Texas.
2. Defendant Petal Hill is a domestic corporation, with a place of business designated in Smith County, Texas. Defendant Petal Hill may be served with process through its registered agent, Trent B. Krienke, at 5608 Parkcrest Drive, Suite 200, Austin, TX 78731, or wherever they may be found.
3. Defendant Rose Trail is a domestic corporation, with a place of business designated in Smith County, Texas. Defendant Petal Hill may be served with process through its registered agent, Trent B. Krienke, at 5608 Parkcrest Drive, Suite 200, Austin, TX 78731, or wherever they may be found.

4. At all times hereinafter mentioned, upon information and belief, the nursing and rehabilitation facilities known as Petal Hill and Rose Trail are owned by the Hopkins County Hospital District, and defendants, collectively, operate, manage, and/or otherwise exercise control over the day-to-day operations of each for said Hopkins County Hospital District.

5. At all times hereinafter mentioned, upon information and belief, defendants are under the collective control of, among other people, William Schindele, who is the sole officer and director of each defendant.

DISCOVERY CONTROL PLAN

6. Discovery is to be conducted under Level 1 of Rule 190 of the Texas Rules of Civil Procedure.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds this Court's minimum jurisdiction requirement.

8. In bringing this action in this venue, Plaintiff waives the venue provision set forth in Section 8.11 of the 2018 Master Agreement, but expressly reserves all remaining provisions of the 2018 Master Agreement pursuant to *In re ADM Investor Serv., Inc.*, 257 S.W.3d 817, 820 (Tex. App.–Tyler 2008) (stating that forum selection clauses apply to all parties to the contract, but may be waived by either party).

9. Venue is proper in Dallas County, Texas because all or a substantial part of the events or omissions giving rise to the claim occurred in Dallas County, Texas. TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.002 and 15.035(a).

FACTS COMMON TO ALL COUNTS

10. Defendants' predecessor-in-interest, Regency Integrated Health Services, LLC ("Regency") and Omnicare entered into a certain master pharmacy services agreement dated as of October 1, 2018, pursuant to which Omnicare agreed to provide certain pharmaceutical goods and services to the nursing home and skilled nursing facilities operated, managed, or otherwise under the control of Regency (the "2018 Master Agreement").

11. The 2018 Master Agreement included as exhibits thereto various "standard facility", "pharmacy product and services" and "pharmacy consulting" agreements.

12. The Regency facilities relevant for the purposes of 2018 Master Agreement were the facilities operated at each of:

- a. 900 South Baxter Avenue, Tyler, Texas (known publicly as Petal Hill);
 - and
 - b. 930 South Baxter Avenue, Tyler, Texas (known publicly as Rose Trail);
- (collectively, the "Facilities").

13. Pursuant to the terms of the 2018 Master Agreement, each of the Facilities entered into separate forms of the "standard facility", "pharmacy product and services" and "pharmacy consulting" agreements with Omnicare.

14. Pursuant to the terms of the 2018 Master Agreement, and as more specially set forth in each Facility's "specific standard facility", "pharmacy product and services" and "pharmacy consulting" agreements, Regency and the Facilities agreed to pay Omnicare in exchange for Omnicare's provision of pharmaceutical goods and services in accordance with the terms of the Agreement.

15. From the execution of the 2018 Master Agreement and the execution of each of the Facilities' "standard facility", "pharmacy product and services" and "pharmacy consulting" agreement, Regency and Omnicare operated their respective businesses in accordance with the 2018 Master Agreement, in that Omnicare provided pharmaceutical goods and services to the Facilities, and Regency and the Facilities paid Omnicare for the pharmaceutical goods and services received, based on the competitive pricing determined by the 2018 Master Agreement.

16. In or about May, 2019, Defendants acquired management rights and/or control of each of the Facilities from Regency, and continued to operate the Facilities in substantially the same outwardly fashion as Regency, in that the Facilities continued operating at the same locations, and with the same staff and personnel.

17. In accordance with the 2018 Master Agreement, upon information and belief, Regency notified Omnicare that it had assigned each of the Facilities' "specific standard facility", "pharmacy product and services" and "pharmacy consulting" agreements, including all of its rights and responsibilities, to Defendants and/or Defendants' subsidiaries that operated the Facilities.

18. Upon information and belief, as part of the May, 2019 acquisition of the now-former Regency Facilities by Defendants, the 2018 Master Agreement and the Facilities' "specific standard facility", "pharmacy product and services" and "pharmacy consulting" agreements were expressly assumed by Defendants – as evidenced by the fact that Regency, upon information and belief, informed Omnicare of its assignment of the 2018 Master Agreement to Defendants, and that Defendants accepted Omnicare's provision of continuous service to the Facilities immediately after the acquisition.

19. Upon information and belief, if the Facilities’ “specific standard facility”, “pharmacy product and services” and “pharmacy consulting” agreements were not expressly assumed or assigned by Defendants, Defendants’ acceptance of Omnicare’s provision of several months of continuous service to the Facilities immediately after the acquisition demonstrates an implied assumption and/or assignment.

20. Upon information and belief, if the Facilities’ “specific standard facility”, “pharmacy product and services” and “pharmacy consulting” agreements were not expressly or impliedly assumed or assigned by Defendants, the post-May, 2019 operation of the Facilities by Defendants in the same locations, with generally the same staff and personnel, evidenced and constituted a de facto merger of consolidation of Regency and Defendants at the Facilities.

21. After the May 2019 acquisition of the now-former Regency Facilities by Defendants, regardless of the form of Defendants’ acquisition of the Facilities, Omnicare continued to provide and service the Facilities, and Defendants accepted the receipt of pharmaceutical goods and services from Omnicare.

22. From May 2019 through December 2019, Omnicare provided pharmaceutical goods and services to Defendants at the Facilities pursuant to the terms of the 2018 Master Agreement, and continued to honor the competitive pricing it had provided to Regency before the Defendants’ acquisition of the Facilities.

23. From May 2019 through December 2019, Defendants accepted Omnicare’s provision of pharmaceutical goods and services at the Facilities pursuant to the terms of the 2018 Master Agreement.

24. If not for the existence of the 2018 Master Agreement and the Facilities’ “specific standard facility”, “pharmacy product and services” and “pharmacy consulting” agreements and

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