

Nebraska Judicial Branch

Case Summary

In the District Court of Dodge County
 The Case ID is CI 19 0000071
 Total Respiratory v. Celebrate Life, In
 The Honorable Geoffrey Hall, presiding.
 Classification: Contract Disputes
 Filed on 02/25/2019
 This case is Open as of 02/25/2019

PENDING

Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE Total Respiratory & Rehab, Inc.	Gretchen L McGill 9500 W. Dodge St., Suite 100 Omaha NE 68114 402-934-4770
Defendant ACTIVE Celebrate Life, Inc. Attn: Pamela Quinn, Reg. Agent 1120 Walnut St. North Bend NE 68649 Alias is d/b/a Birchwood Manor of North Bend	

Case Schedule Information

Hearing is scheduled
 for 07/12/2019 at 09:30 AM in room District Courtroom

Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	02/25/2019	\$35.00
Plaintiff	Filing Fee - State	02/25/2019	\$1.00
Plaintiff	Automation Fee	02/25/2019	\$8.00
Plaintiff	NSC Education Fee	02/25/2019	\$1.00
Plaintiff	Dispute Resolution Fee	02/25/2019	\$0.75
Plaintiff	Indigent Defense Fee	02/25/2019	\$3.00
Plaintiff	Uniform Data Analysis Fee	02/25/2019	\$1.00
Plaintiff	J.R.F.	02/25/2019	\$6.00
Plaintiff	Filing Fee-JRF	02/25/2019	\$6.00
Plaintiff	Legal Aid/Services Fund	02/25/2019	\$6.25
Plaintiff	Complete Record	02/25/2019	\$15.00
Plaintiff	Service Fees	03/07/2019	\$6.95

Financial Activity

No trust money is held by the court
No fee money is held by the court

Payments Made to the Court

Receipt	Type	Date	For	Amount
9019789	Non-Monetary Rec	05/28/2019	Total Respiratory & Re	\$6.95
			Service Fees	\$6.95
178100	Electronic Trans	02/25/2019	Total Respiratory & Re	\$83.00
			Petition	\$35.00
			Filing Fee - State	\$1.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$6.00
			Legal Aid/Services Fun	\$6.25
			Complete Record	\$15.00

Register of Actions

06/21/2019 Amended Notice of Hearing
This action initiated by party Total Respiratory & Rehab, Inc.
Image ID N191723QG05

06/19/2019 Order-Withdraw as Counsel
This action initiated by Geoffrey Hall

eNotice Certificate Attached
Image ID J00052400D05

06/19/2019 Motion-Withdraw as Counsel
This action initiated by party Celebrate Life, Inc.
Image ID N19170MH4D05

06/18/2019 Evidence Index-Support of Summary J
This action initiated by party Total Respiratory & Rehab, Inc.
Image ID N19169GXQD05

06/18/2019 Statement of Undisputed Facts
This action initiated by party Total Respiratory & Rehab, Inc.
Image ID N19169GW8D05

06/18/2019 Motion-Summary Judgment

This action initiated by party Total Respiratory & Rehab, Inc.
Image ID N19169GVWD05

- 06/13/2019 Order
This action initiated by Geoffrey Hall
eNotice Certificate Attached
Image ID J00052342D05
- 05/24/2019 Journal Entry
This action initiated by Geoffrey Hall
eNotice Certificate Attached
Image ID J00052184D05
- 05/22/2019 Evidence Index in Opposition
This action initiated by party Celebrate Life, Inc.
Image ID N19142NU2D05
- 05/21/2019 Statement of Disputed Facts
This action initiated by party Celebrate Life, Inc.
Image ID N19141FJWD05
- 05/21/2019 Affidavit
This action initiated by party Celebrate Life, Inc.
Image ID N19141FJGD05
- 05/10/2019 Evidence Index-Support of Summary J
This action initiated by party Total Respiratory & Rehab, Inc.
Image ID N191302DWD05
- 05/10/2019 Statement of Undisputed Facts
This action initiated by party Total Respiratory & Rehab, Inc.
Image ID N191302CMD05
- 05/10/2019 Motion-Summary Judgment
This action initiated by party Total Respiratory & Rehab, Inc.
Hearing set for May 22, 2019 at 3:00 p.m.
Image ID N191302AUD05
- 03/29/2019 Answer
This action initiated by party Celebrate Life, Inc.
Image ID N190884LSD05
- 03/07/2019 Return Summons/Alias Summons
The document number is 00038224
Served 02/27/2019, Certified Mail
Image ID N19066V94D05
- 02/25/2019 Summons Issued on Celebrate Life, Inc.

The document number is 00038224
Summons e-mailed
Image ID D00038224D05
- 02/25/2019 Praecipe-Summons/Alias
This action initiated by party Total Respiratory & Rehab, Inc.
Image ID N19056DH2D05
- 02/25/2019 Complaint-Praecipe
This action initiated by party Total Respiratory & Rehab, Inc.
Image ID N19056DGUD05

Judges Notes

05/22/2019
 05-22-2019
 Both counsel present. Evidence received. Briefing schedule set.
 Matter taken under advisement.
 05/24/2019
 05-24-2019
 Signed Journal Entry.
 06/13/2019
 06-13-2019
 Signed Order.
 06/19/2019
 Hall, Geoffrey,
 Signed Order Granting Sam King Leave to Withdraw as Attorneys for
 Defendant.

Exhibit List

Exhibit		Ofrd	Rcvd	*****	BOE	Pages	*****
No.	Description	Y/N	Y/N	Mark	Ofrd	Ruled	Found
1	Billing and Equipment Agreement	Y	Y				
2	Affidavit of Jon Novak	Y	Y				
3	Affidavit of Debi Sauls	Y	Y				
4	Affidavit of Pamela Quinn	Y	Y				

IN THE DISTRICT COURT OF DODGE COUNTY, NEBRASKA

TOTAL RESPIRATORY & REHAB, INC.,)	Case No. C119-_____
)	
Plaintiff,)	
)	
v.)	COMPLAINT AND JURY DEMAND
)	
CELEBRATE LIFE, INC., d/b/a)	
BIRCHWOOD MANOR OF NORTH)	
BEND,)	
)	
Defendant.)	

Plaintiff, Total Respiratory & Rehab, Inc. ("Total Respiratory"), for its claims for relief against Defendant, Celebrate Life, Inc. d/b/a Birchwood Manor of North Bend ("Birchwood Manor"), states and alleges as follows:

PARTIES

1. Total Respiratory is a Nebraska corporation with its principal place of business in Omaha, Douglas County, Nebraska.
2. Birchwood Manor is a Nebraska corporation with its principal place of business in North Bend, Dodge County, Nebraska.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to Neb. Rev. Stat. § 24-302.
4. Venue is proper in this Court pursuant to Neb. Rev. Stat. § 25-403.01, because the circumstances giving rise to the claim for relief arose in Dodge County, Nebraska.

FACTUAL BACKGROUND

5. Birchwood Manor operates a skilled nursing home facility located at 1120 Walnut Street, North Bend, Nebraska 68649 (the "Facility") commonly known as

Birchwood Manor.

6. Total Respiratory provides durable medical equipment ("DME") and fitting services ("Services") to patients who require such equipment and services.

7. Total Respiratory and Birchwood Manor entered into an Agreement (the "Agreement").

8. Pursuant to the Agreement, Total Respiratory provides DME and Services to the residents of the Facility.

9. Total Respiratory, in its normal course of business, has been issuing invoices for the DME and Services provided to the residents of the Facility.

10. Despite Total Respiratory issuing the invoices, Birchwood Manor has failed to make payment for the DME and Services provided to the residents of the Facility.

11. Total Respiratory fulfilled all of its obligations pursuant to the Agreement.

12. Total Respiratory has made repeated written and verbal demands to Birchwood Manor for payment for the DME and Services provided, but Birchwood Manor has failed and/or refused to make payment to Total Respiratory for the full amount that remains due and owing.

13. Total Respiratory has satisfied all conditions precedent to be entitled to payment in full.

**FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT**

14. Total Respiratory incorporates the foregoing paragraphs as if fully set forth herein.

15. Total Respiratory and Birchwood Manor entered into the Agreement for the DME and Services at the Facility.

16. Total Respiratory provided the DME and Services to the residents at the Facility.

17. Birchwood Manor has breached the Agreement existing between Total Respiratory and Birchwood Manor by failing to pay for the DME and Services provided to the residents at the Facility.

18. Total Respiratory has satisfied all conditions precedent to seek recovery under the Agreement.

19. By failing to make pay for the DME and Services provided, Birchwood Manor materially breached its duties under the Agreement with Total Respiratory and injured the right of Total Respiratory to receive the benefit of the Agreement.

20. As a direct and proximate cause of Birchwood Manor's breach of its duties under the Agreement, Total Respiratory has sustained damages in an amount to be proven at trial.

WHEREFORE, Plaintiff, Total Respiratory & Rehab, Inc., respectfully requests that this Court enter judgment in favor of Total Respiratory and against Defendant, Celebrate Life, Inc. d/b/a Birchwood Manor of North Bend, in an amount of at least \$14,455.67, plus prejudgment and post-judgment interest at the maximum legal rate, for an award of attorney fees and costs, and for such other, further and different relief as the Court deems just and equitable.

**SECOND CLAIM FOR RELIEF
AS AN ALTERNATIVE TO THE FIRST CLAIM, UNJUST ENRICHMENT**

21. Total Respiratory incorporates the foregoing paragraphs as if fully set forth herein.

22. Total Respiratory has provided DME and Services to the residents of the

facility.

23. During the period Total Respiratory provided DME and Services to the residents of the Facility, the Facility was owned by Celebrate Life, Inc.

24. Total Respiratory provided DME and Services to the residents of the Facility with the expectation that it would be paid in full for the DME and Services it provided.

25. Total Respiratory was not paid in full for the DME and Services it provided.

26. Birchwood Manor has knowingly retained the benefits of the DME and Services Total Respiratory provided at the Facility.

27. It would be inequitable and unconscionable to permit Birchwood Manor to receive and retain the benefits of the DME and Services at the Facility without paying reasonable value for the same.

28. The reasonable value of the benefits that Birchwood Manor received, but for which it has not paid Total Respiratory, and was unjustly enriched, totals more than \$14,455.67.

WHEREFORE, Plaintiff, Total Respiratory & Rehab, Inc., respectfully requests that this Court enter judgment in favor of Total Respiratory and against Defendant, Celebrate Life, Inc. d/b/a Birchwood Manor of North Bend, in an amount to be proven at trial, plus prejudgment and post-judgment interest at the maximum legal rate, for an award of attorney fees and costs, and for such other, further and different relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff, Total Respiratory & Rehab, Inc., hereby demands a jury trial.

Dated this 25th day of February, 2019.

TOTAL RESPIRATORY & REHAB,
INC., Plaintiff,

By: /s/ Gretchen L. McGill

Heather S. Voegele, #22730

Gretchen L. McGill, #21726

Dvorak Law Group, LLC

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Attorneys for Plaintiff.