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IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
20TH JUDICIAL DISTRICT
AT NASHVILLE
PART II

RECEIVED

Feb 17 2014
Dav. Co. Chancery Court

STATE OF TENNESSEE,)
ex rel. JULIE MIX MCPEAK, solely)
in her official capacity as)
Commissioner of)
Commerce & Insurance,)

Plaintiff,)

v.)

GALILEE MEMORIAL GARDENS,)
JM&M SERVICES, INC.,)
LAMBERT MEMORIAL CO., aka)
LAMBERT MEMORIALS, INC.)
LAMBERT & SONS, INC.)
JEMAR LAMBERT,)
MARJE LAMBERT,)
and MARY H. LAMBERT, and ALL)
PERSONS ACTING IN CONCERT)
WITH THEM,)

Defendants.)

N.F.
No. 14-102-II

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CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

ORDER APPOINTING COMMISSIONER AS RECEIVER FOR
GALILEE MEMORIAL GARDENS CEMETERY AND GRANTING
TEMPORARY INJUNCTION

This cause came to be heard, on the Verified Petition of the State of Tennessee, on the relation of Julie Mix McPeak, solely in her official capacity as Commissioner of the Tennessee Department of Commerce & Insurance (Commissioner), for her appointment, as Receiver of Galilee Memorial Gardens (and the related entities through which it conducts its business) (hereinafter the

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Cemetery), pursuant to Tenn. Code Ann. § 46-1-312, and for injunctive relief pursuant to Tenn. Code Ann. § 46-1-301(c). The Defendants, through counsel, filed a Response and Limited Objection in which they stated that they were amenable to the appointment of a Receiver subject to certain objections and conditions which the Court considered in its disposition of the Petition. Based upon the Verified Petition, supporting affidavits and other evidence filed in support and the Defendants' responses, and having considered statements of counsel and the entire record, the Court finds that the Commissioner's Petition is well taken and ought to be granted on the terms set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court makes the following Findings of Fact and Conclusions of Law in connection with the entry of this Order:

1. Plaintiff Julie Mix McPeak is the duly appointed Commissioner of the Department of Commerce & Insurance of the State of Tennessee. She brings this action solely in her official capacity.

2. The Cemetery Act of 2006 (Act), Tenn. Code Ann. Title 46, chapters 1 and 2, governs the operation of cemeteries in Tennessee. The duty and authority to administer and enforce the Act rests with the Commissioner. Tenn. Code Ann. § 46-1-301(a).

3. Under the Act, a valid certificate of registration is required before a person may lawfully operate a cemetery. Tenn. Code Ann. § 46-1-103. Persons who

operate cemeteries must also establish and properly fund a trust to provide for the perpetual care and maintenance of the cemetery grounds. Tenn. Code Ann. §§ 46-1-203 and -204. The Act further requires owners of cemeteries to maintain certain types of records and make them available for inspection by regulatory authorities. Tenn. Code Ann. §§ 46-1-215 and -216.

4. This Court has jurisdiction over the subject matter of this action pursuant to Tenn. Code Ann. § 46-1-312 and 46-1-301. Venue properly lies in Davidson County under Tenn. Code Ann. § 46-1-312.

5. Defendant Galilee Memorial Gardens (Galilee) is a cemetery that is located at 8283 Ellis Road, Memphis, TN, 38133, in Bartlett, TN. It was established and opened in 1960. Until December 31, 2010, Galilee operated under a valid certificate of registration issued by the Commissioner's predecessors.

6. Defendant JM&M Services, Inc. (JM&M) is a Tennessee corporation that does business under the name of "Galilee Memorial Gardens" and is identified on applications for certification of registration as the owner of Galilee. Its principal office is located at 8283 Ellis Road, Memphis, TN, 38133. Jemar Lambert is its registered agent for service of process.

7. Defendant Jemar Lambert is an adult resident of Shelby County Tennessee, and the president and chairman of the board of JM&M and owns 33% of its stock. Defendant Marje Lambert is an adult resident of Shelby County, Tennessee, a member of the board of directors of JM&M and owns 33% of its stock. Defendant Mary H. Lambert is an adult resident of Shelby County, Tennessee, a

member of the board of directors of JM&M and owns the remainder of its stock. The business address listed on applications with the Commissioner for Jemar Lambert, Marje Lambert and Mary H. Lambert is 8283 Ellis Road, Memphis, TN, 38133.

8. Defendants named as "Lambert Memorial Co.," "Lambert Memorials Inc." and "Lambert & Sons, Inc." are all business names that have appeared on one or more bank accounts that have been used by Jemar Lambert in connection with the operation of Galilee. Defendants assert that the Court has not yet determined the extent to which a monument and merchandise business that may have been conducted under these names is separate from the Cemetery operation, and this inquiry is to be made expeditiously by the Commissioner as Receiver.

9. Galilee has been owned and operated by one or more members of the Lambert family since February 1993. Jesse Lambert, through Lambert Memorials, Inc., purchased the cemetery from the estate of Ellis Road Gardens, Inc. When Jesse Lambert died on May 15, 2010, ownership of Galilee passed to his family members, Defendants Jemar, Marje and Mary H. Lambert. The certificate of registration that was issued for the operation of Galilee expired on December 31, 2010.

10. Applications by Defendants seeking a certificate of registration have been denied, and the Cemetery was barred from further at-need sales of cemetery lots or services. In July 2013, the Commissioner gave Galilee limited authorization to provide improvement care and general upkeep of the cemetery grounds and to fulfill

existing contracts for merchandise and services. Such written authorization expressly stated that Galilee was prohibited from selling burial plots or conducting any burials on an at-need basis. As referenced in the Affidavits of Robert Gribble and Roy Bozeman, Defendants continued to operate the Cemetery in violation of Tenn. Code Ann. § 46-1-103 and the limited authorization issued by the Commissioner.

11. Under Tenn. Code Ann. § 46-1-204, shortly after any transaction selling burial plots, other designated cemetery items and memorial care, a cemetery must deposit minimum prescribed amounts of the sales price into the improvement care trust for such cemetery. From August 25, 2013, until the entry of the Temporary Restraining Order in this case, the Cemetery has sold burial plots but has not made the required deposits into its improvement care trust fund, as required by Tenn. Code Ann. § 46-1-204. The Defendants deny those allegations. However, for reasons stated in the Response and Limited Objection, and at the February 10, 2014 hearing, the Defendants do not oppose the appointment of a receiver for the Cemetery for the purposes of rehabilitation.

12. The Commissioner has presented evidence that all of the grave spaces in the cemetery were occupied or sold by sometime in 2010 and since that time, one or more of the Defendants have continued to sell burial plots in the Cemetery even though no such plots were available. The Commissioner alleges that one or more of the Defendants have been able to continue such practice without detection by burying multiple bodies in a single grave. The Commissioner asserts that these

constitute fraudulent practices that raise reasonable and serious doubts concerning the reliability of the records that are kept by the Cemetery and indicate that the Cemetery has engaged in fraudulent activity and that the Cemetery is not able to continue to provide merchandise and services and/or to meet its obligations as they come due. The Defendants dispute whether these acts occurred, but do not oppose the imposition of a receivership on the Cemetery, for the purpose of, *inter alia*, determining an accurate status and identification of the burial plots of the Cemetery.

13. Based on the evidence before the Court, good grounds exist under Tenn. Code Ann. § 46-1-312 for the appointment of the Commissioner, as Receiver of the Cemetery for the purpose of rehabilitation of the Cemetery if possible as contemplated by that statute, to ascertain and determine the true financial and operational condition of the Cemetery, whether it can be reformed and rehabilitated and whether any other remedial action may be necessary and appropriate.

14. The Court concludes from the foregoing and the entire record that the same grounds supporting the appointment of the Commissioner as Receiver of Galilee under Tenn. Code Ann. §§ 46-1-312(a)(1)(A), (B), (E) and (G), also support granting the Commissioner's application for temporary injunction under Tenn. Code Ann. § 46-1-301(c) to prevent further violations of the Cemetery Act;

ORDER

Now therefore, in view of the foregoing, it is hereby ORDERED that the Commissioner be and hereby is appointed, in her official capacity, and with her

successors in office, as receiver for the Defendant Galilee Memorial Gardens (Cemetery), and of all entities doing business as the Cemetery, under Tenn. Code Ann. § 46-1-312(a) and that she shall have all of the powers and authority granted therein to enable her to take such action, with all due speed, as are necessary and appropriate to determine whether the Cemetery can be reformed or restored to enable it to continue to operate as a viable ongoing concern or if some other course of action is required. Further, in accordance with Tenn. Code Ann. §§ 46-1-312 and 46-1-301(c), this Court grants the Commissioner such other injunctive and equitable relief as provided herein, as such are required by the nature of the case, to promote the efficacy of receivership and serve the public interest in the Cemetery. The Defendants are granted until thirty (30) days after entry of this Order, to file a response to the substantive allegations of the Verified Petition and Application for Injunction, and, consistent with the appointment of a Receiver under Tenn. Code Ann. § 46-1-312, have all rights granted by that statute and the Cemetery Act reserved to such parties after a Receiver has been appointed. Further, the Court prescribes guidelines to the Receiver for duties, activities and reports of the Receiver as set forth herein.

Specifically, it is also ORDERED:

A. That Julie Mix McPeak, Commissioner of the Tennessee Department of Commerce and Insurance, is appointed in her official capacity, and with her successors in office, as statutory Receiver of Galilee Memorial Gardens (and the related entities through which it does business, JM&M Services, Inc., Lambert Memorial Co., Lambert Memorials, Inc., and Lambert & Sons, Inc.) (hereinafter Cemetery), as authorized by Tenn. Code Ann. § 46-1-312(a); and that the Commissioner, as Receiver, is granted all the power and authority conferred by

Tenn. Code Ann. § 46-1-312 and by law to receivers. The Receiver is directed forthwith to take exclusive custody, control and possession of all bank accounts, goods, chattels, causes of action, credits, monies, investments, stocks, shares, effects, books and records of account, other papers and property, and all interests, whether real or personal, tangible or intangible, of whatever type, kind or nature owned or held by or on behalf of Cemetery, with full power to sue for, collect, receive and take possession of such properties and assets and to conserve and administer them under the general supervision of the Court.

B. That the Commissioner, as Receiver, is authorized under Tenn. Code Ann. § 46-1-312(a) to appoint one or more special deputy receivers to assist in this matter who shall have the statutory powers of a receiver and all powers of the Commissioner as Receiver, and is authorized to employ such counsel, accountants, appraisers, managers, clerks, assistants, morticians, other appropriate experts and other persons as deemed necessary to properly execute the duties that have been conferred under this Order. The persons appointed under this section shall serve at the pleasure of the Commissioner. One such special deputy to be appointed with all the same statutory powers and responsibilities to implement this Order as held by the Commissioner as Receiver is David Kustoff, Esq. The compensation of the special deputies, counsel, accountants, appraisers, managers, clerks, assistants and other persons and all expenses of taking possession of the Cemetery and of conducting the proceeding shall be approved by the Court and shall be paid out of the funds or assets of the Cemetery and such other funds as deemed appropriate by this Court. Further, the Commissioner has access to such funds as may be available from the cemetery consumer protection account established under Tenn. Code Ann. § 46-1-105.

C. **SECURING OF ACCOUNTS.** That the Commissioner, as Receiver of the Cemetery, shall forthwith contact all financial, agency, trust or depository institutions maintaining accounts that were used or maintained by the Defendants in connection with the operation and/or management of Galilee Memorial Gardens (the Cemetery) without regard to the name on such account. Such names include but are not limited to: the Galilee Memorial Gardens Improvement Care Trust Fund and the Galilee Memorial Gardens Preneed Merchandise & Services Trust Fund, at Commercial Bank and Trust Company, P.O. Box 1090, Paris, TN 38242-1090; Galilee Memorial Gardens; JM&M Services, Inc.; JM&M Services d/b/a Galilee Memorial Gardens; Lambert Memorial Co.; Lambert Memorials, Inc.; Lambert & Sons, Inc.. The Receiver shall employ whatever lawful means necessary to secure the funds in these, and any other accounts, for the Receivership and on behalf of the Cemetery, and amend the signature cards so that only those persons approved by the Receiver shall be permitted to withdraw upon such accounts on behalf of or in the name of the Cemetery.

D. That the Commissioner as Receiver of the Cemetery, shall secure from any financial institution where the Cemetery maintains property or accounts of said Cemetery, including but not limited to bank accounts, all financial information required by the Receiver and said financial institutions shall provide this information to the Receiver.

E. **INJUNCTION:** That all persons, firms, corporations and associations, including but not limited to Defendants JM&M Services, Inc., JM&M Services d/b/a Galilee Memorial Gardens, Jemar Lambert, Marje Lambert, Mary H. Lambert, Lambert Memorial Co., Lambert Memorials, Inc., and Lambert & Sons, Inc., and their officers, directors, stockholders, members, subscribers, agents and all other persons in active concert or participation with them, are prohibited and enjoined:

- 1) from the transaction of further business of the Cemetery;
- 2) from the waste, transfer or disposition of property of the Cemetery, including but not limited to all assets that are held, or supposed to be held, in trust to meet the obligations under pre-need cemetery merchandise and services contracts, and/ or maintenance, improvement and care of its cemeteries and mausoleums;
- 3) from doing any act or thing whatsoever to interfere with the taking control, possession and administration by the Receiver of the receivership properties or to in any way interfere with the Receiver, or to harass or interfere with the Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the receivership properties;
- 4) from the institution or further prosecution of any actions or proceedings, except within this receivership itself;
- 5) from the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the Cemetery;
- 6) from the withholding from the Receiver of books, accounts, documents or the records relating to the business of the Cemetery;
- 7) from any other threatened or contemplated action that might lessen the value of the Cemetery's assets or prejudice the rights of investors, creditors or any proceeding under the Receivership;
- 8) or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the Cemetery or against its assets or any party thereof or from enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, any receivership property or attempting to foreclose, forfeit, alter or terminate any interests of the Cemetery, in any property, whether such acts are part of a judicial proceeding or otherwise, until further order of this Court;
- 9) from accelerating the due date of any obligation or claimed obligation;

This Court further authorizes the Receiver to apply outside of Tennessee for the relief above described if need arises to protect the Cemetery or the efficacy of this receivership.

F. COOPERATION WITH RECEIVER. That the officers, managers, directors, trustees, owners, employees or agents of the Cemetery, and all Defendants named in this matter and any other persons with authority over or in charge of any segment of the Cemetery's affairs and persons in control of assets, books and records of the Cemetery, or its physical locations, including but not limited to any offices of the Cemetery, are required to cooperate with the Receiver in the carrying out of the Receivership. The term "person" shall include any person who exercises control directly or indirectly over activities of the Cemetery, individually or through any other entity, intermediary, holding company or other affiliate of the Cemetery. Without limitation, "person" shall include all Defendants named in this case: Jemar Lambert, Marje Lambert, Mary H. Lambert, JM&M Services, Inc., JM&M Services d/b/a Galilee Memorial Gardens, Lambert Memorial Co., Lambert Memorials, Inc., Lambert & Sons, Inc. or any other business entity through which these may have conducted any segment of the Cemetery's affairs. "To cooperate" shall include, but shall not be limited to, the following: (1) to reply promptly in writing to any inquiry from the Receiver requesting such a reply; (2) to make available to the Receiver any books, bank and investment accounts, documents or other records or information or property of or pertaining to the Cemetery and/or in possession, custody or control of the Cemetery. No person shall obstruct or interfere with the Receiver in the conduct of this Receivership.

To the extent that any governmental or criminal investigative authority may have custody or control of such records or assets, the Receiver is directed to work with that governmental agency or appear in such Court as may have jurisdiction to obtain access to these records or assets for the Cemetery, and may enter into such agreements as may be required with the governmental agency. The Receiver shall seek access to records or information of the Cemetery (or copies of such documents) in the custody or control of the Shelby County district attorney's office, and shall provide copies thereof to the Defendants' counsel no later than ten (10) days after receiving such records and information.

G. That, in accordance with powers granted under Tenn. Code Ann. § 46-1-312(a) and (b), the Receiver may take such action as she deems necessary or appropriate to reform and revitalize the Cemetery. The Receiver has all the powers of the owners and directors, **whose authority shall be suspended**, except as they are re delegated by the Receiver. The Receiver has full power to direct and manage, to hire and discharge any employees subject to any contractual rights they may have, and to deal with the property and business of the Cemetery. She shall have power to make such payments and disbursements from the receivership properties

and incur such expenses as may be necessary and advisable in discharging her duties as Receiver, or for the proper conduct of any usual and lawful business of the Cemetery. The Receiver may consult and cooperate with other state and federal authorities who may have jurisdiction over any parts of the property and business of the Cemetery. The Receiver has power to pursue legal remedies on behalf of the cemetery. The Receiver may prepare and submit for the Court's approval a plan to reorganize, consolidate, convert, merge, or otherwise transform the Cemetery. In addition, the Receiver shall have any other powers given her by state law.

H. That there shall be no complaint, counter-complaint or similar action initiated or continued against the Cemetery, the property of the receivership, the Receiver or those of the Receiver's agents, in connection with this receivership otherwise than by appearing in this cause and with the permission of this Court.

I. That no bond shall be required of the Commissioner as Receiver, per Tenn. Code Ann. § 20-13-101, and per Tenn. Code Ann. § 46-1-301(c) for the injunctions contained herein.

J. That any modifications or clarifications of the Receiver's duties be filed with this Court on motion.

K. **REPORTING TO COURT:** That the Receiver shall report to Court as soon as feasible and thereafter on a periodic basis as directed by the Court to account for all funds and property that come into her possession and to obtain instructions from the Court with respect to any claims procedures or other additional authority deemed necessary.

The Court's initial orders with respect to Reports and Activities of the Receiver are as follows:

1. Within ten (10) days of entry of this Order, the Receiver shall determine who owns or has an ownership interest in any vehicles that are situated on the property of the cemetery or at the business premises of the cemetery, and shall permit the return of private vehicles to their owners, subject to any legal limitations that may prevent their removal established by any governmental authority.

2. Within thirty (30) days of entry of this Order, the Receiver shall make an initial report to the court describing all the assets and what is known or determined about the source of ownership of those assets and properties that have been located and/or pertain to the Cemetery. Assets or accounts to which Defendants seek access remain frozen until this Report to allow the Receiver to conduct this assessment, and if it appears that any assets should be released to any Defendant, the Defendant shall make application to the Court for this relief.

3. At or about four (4) months after entry of this Order, the Receiver shall file a report to the Court on the plan and efforts taken to identify decedents buried in, and establish the accurate grid of, all burial sites in the Cemetery. Acting on behalf of the Cemetery, the Receiver is empowered to take such remedial action consistent with the law as the Cemetery would have to remedy any mis-interments that may be identified. If the Receiver requires additional approvals from the Court, the Receiver shall apply to the Court.

4. The Receiver shall give priority to making a determination of the financial status of the Cemetery, its assets and liabilities and obligations to pre-need sales, and to whether the activities of the monument and merchandise sales of the Defendants can be resumed for the benefit of the Cemetery or on some other basis separate from the Cemetery operations. Any recommendation as to whether pre-need contracts may be honored or any burials resumed must be brought to the Court for approval.

5. The Receiver shall seek access to records or information of the Cemetery (or copies of such documents) in the custody or control of the Shelby County district attorney's office, and shall set up a mechanism whereby the Defendants/Defendants' counsel would receive copies thereof at any time no later than ten (10) days after the date the Receiver or the Department of Commerce and Insurance comes into possession of such records and information.

6. The Receiver promptly shall bring to the Court's notice matters that would affect the feasibility of these directives, and if any facts develop that would interfere with the receivership or the accomplishment of the duties of the Receiver.

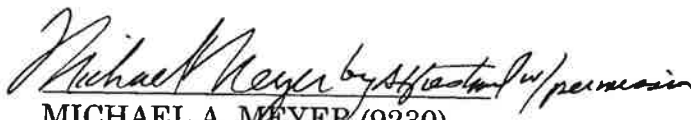
L. Costs of this action are taxed to Defendants and the Cemetery property for which execution may issue, if necessary. This Court retains jurisdiction for all matters, and all matters not set forth herein are reserved.

IT IS SO ORDERED:


CHANCELLOR

APPROVED FOR ENTRY:

ROBERT E. COOPER, JR.
Attorney General and Reporter


MICHAEL A. MEYER (9230)
Deputy Attorney General
Special Litigation Division


SARAH A. HIESTAND (14217)

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Nashville, TN 37202
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order has been mailed First Class Postage prepaid to the following Defendants this 14th day of February, 2014:

William J. Haynes, III
Bone McAllester Norton PLLC
511 Union Street, Suite 1600
Nashville, TN 37219

Via email to whaynes@bonelaw.com


SARAH A. HIESTAND