

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
 20TH JUDICIAL DISTRICT
 AT NASHVILLE
 PART 2

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

v.)

No. 14-102-II

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.)

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 CLERK AND MASTER
 DAVIDSON CO. CHANCERY CT.
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VERIFIED PETITION FOR THE APPOINTMENT OF THE COMMISSIONER
 AS RECEIVER FOR GALILEE MEMORIAL GARDENS AND
 FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

The State of Tennessee, on relation of Julie Mix McPeak, solely in her official capacity as Commissioner of the Department of Commerce & Insurance of the State of Tennessee (Commissioner), through her counsel, the Attorney General and Reporter, pursuant to Tenn. Code Ann. §§ 46-1-301 and 46-1-312, petitions this Court for an Order appointing the Commissioner as receiver for Galilee Memorial

Gardens (Galilee) and for temporary and permanent injunctive relief. In support hereof, the Commissioner alleges as follows:

I
NATURE OF THIS ACTION

1. The Commissioner brings this action for her appointment as receiver of Galilee and for a restraining order and other injunctive relief to prevent further violations of the Cemetery Act of 2006, Tenn. Code Ann. Title 46, chapters 1 and 2, and the destruction or concealment of books and records and/or the sale, transfer, concealment or other disposition of cash and assets pending a hearing on this Petition. As alleged more fully below, such action is necessary and appropriate because there is reasonable cause to believe that since the end of 2010, Galilee has operated without a valid certificate of registration. In addition, one or more of the Defendants has engaged in fraudulent acts that have affected Galilee's ability to deliver merchandise or services. Furthermore, there is reason to believe that Galilee will not be able to meet all of its contractual obligations as they become due. Finally, there is reason to believe there is a deficiency in Galilee's improvement care trust fund.

II
PARTIES

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

2.2. Defendant Galilee Memorial Gardens (Galilee) is a cemetery that is located at 8283 Ellis Road, Memphis, TN, 38133, an address also shown as Bartlett, TN. It was established and opened in 1960. Until December 31, 2010, Galilee operated under a certificate of registration issued by the Commissioner.

2.3. Defendant JM&M Services, Inc. (JM&M) is a Tennessee corporation that does business under the name of Galilee Memorial Gardens. Its principal office is located at 8283 Ellis Road, Memphis, TN, 38133. Jemar Lambert is its registered agent for service of process and may be served at 8283 Ellis Rd., Memphis, TN 38133. Dedrick Brittenum, Jr. is the attorney for JM&M. His business address is 3385 Airways Blvd., Suite 229, Memphis, TN, 38116.

2.4. Defendant Lambert Memorial Co, aka Lambert Memorials Inc. (LMC) is a business name that has appeared on one or more bank accounts that have been used by Jemar Lambert in connection with the operation of Galilee. The address for LMC is also 8283 Ellis Road, Memphis, TN, 38133.

2.5. Defendant Lambert & Sons, Inc. is a business name that has appeared on one or more bank accounts that have been used by Jemar Lambert in connection with the operation of Galilee. The address for Lambert & Sons, Inc. is also 8283 Ellis Road, Memphis, TN, 38133.

2.6. 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. He maintains a business address and may be served with process at 8283 Ellis Road, Memphis, TN, 38133.

2.7. 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. She may be served with process at 8283 Ellis Road, Memphis, TN, 38133.

2.8. Defendant Mary H. 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. She may be served with process at 8283 Ellis Road, Memphis, TN, 38133.

III JURISDICTION AND VENUE

3.1 Pursuant to Tenn. Code Ann. §§ 46-1-301 and -312(a), this Court has jurisdiction over the subject matter of and parties to this action.

3.2. Since one of the remedies sought through this action is the appointment of the Commissioner to act as the receiver of Galilee, venue and exclusive jurisdiction properly lies in Davidson County. Tenn. Code Ann. § 46-1-312.

IV GENERAL ALLEGATIONS

4.1. The Cemetery Act of 2006 (Act), Tenn. Code Ann. Title 46, chapters 1 and 2, governs the operation of cemeteries in Tennessee. 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. In addition, the Act 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.

4.2. The duty and authority to administer and enforce the Act rests with the Commissioner. Tenn. Code Ann. § 46-1-301(a). The Commissioner's powers and duties under the Act include the power to promulgate rules to carry out the purposes of the Act, Tenn. Code Ann. § 46-1-301(b), to examine the books and records of cemeteries, Tenn. Code Ann. § 46-1-303, and to file suit to enforce the Act. Tenn. Code Ann. §§ 46-1-301(c) and -312.

4.3. Galilee has been owned and operated by one or more members of the Lambert family since February 1993. The individual Defendants' father, Jesse Lambert, through Lambert Memorials, Inc., purchased the cemetery from the bankruptcy estate of Ellis Road Gardens, Inc.

4.4. Under Tenn. Code Ann. § 46-1-103, a cemetery cannot lawfully operate unless it has a valid certificate of registration from the Commissioner. Cemetery registrations are valid for a period of one year. During the time Jesse Lambert operated Galilee, the cemetery maintained a valid certificate of registration as required by Tenn. Code Ann. § 46-1-103. When Jesse Lambert died on May 5, 2010, ownership of Galilee passed to his three children, Jemar, Marje and Mary Lambert. The certificate of registration that was issued for the operation of Galilee expired on December 31, 2010.

4.5. After ownership of the cemetery passed to Jesse Lambert's three children, Jemar Lambert assumed primary responsibility for the control of the operation of Galilee.

4.6. From the end of December 2010 until the present, Defendants submitted three applications for certificates of registration for Galilee. Two of those applications were denied and one is presently pending. The grounds for the Commissioner's denial of Galilee's applications included: Galilee's failure to provide the Commissioner with complete and accurate grid maps and charts showing the location and number of graves that were actually occupied and the location and number of graves that are available for sale; Galilee's failure to provide the Commissioner a complete and accurate set of records related to the sale of burial plots and services on a preneed basis; and Galilee's failure to provide sufficient information to enable the Commissioner to ascertain the status of Galilee's improvement care trust fund.

4.7. On December 12, 2012, the Commissioner issued a Final Order denying one of Galilee's applications. In that Order, the Commissioner also directed Defendants to cease operation of Galilee until a valid certificate of registration was obtained from the Commissioner.

4.8. From the time of Jesse Lambert's death in May 2010, and no later than December 31, 2010 until the present, Defendants have continued to operate Galilee without a valid certificate of registration. During that time, they continued to sell

burial plots and services on a pre-need and at-need basis and have continued to conduct burials at the cemetery.

4.9. In July 2013, the Commissioner authorized Galilee to operate on a limited basis. Under that authorization, Galilee was permitted to provide burial services to customers who had purchased burial plots on a pre-need basis but was prohibited from providing burial merchandise and services on an at-need basis. After receipt of that authorization, Defendants have continued to provide such merchandise and services on an at-need basis in violation of the limited authorization.

4.10. From the time it started operations in 1960 until sometime in 2010, Galilee developed 16,425 sites that were available for burials. According to recent information obtained by the Commissioner, by 2010, all of those sites had been taken and there were no additional sites available for at-need burials. Defendants continued to sell burial plots on an at-need basis from 2010 through late 2013. During that same period, Defendants improperly buried bodies at Galilee by placing two or more bodies in the same grave and by placing graves in such close proximity that caskets were damaged when new graves were dug right alongside existing ones. During that same period, Defendants buried bodies on an adjoining tract of land that is owned by a third party. Jemar Lambert is facing criminal charges and has been named as a defendant in a civil action stemming from the burials on such adjoining property.

4.11. In 2013, at least one family member who came to visit the grave of a loved one was unable to locate that grave. As of this date, that grave has not been located. When that family member visited the cemetery to try to locate the grave of her loved one, she found the grounds in a deplorable condition. In addition to finding damaged and toppled grave monuments, that individual noticed that large sections of the cemetery grounds had been damaged by mobile equipment that had been operated in the cemetery.

4.12. During the time Defendant Jemar Lambert has operated Galilee, he has used one or more bank accounts that are kept in the name of Lambert Memorial, Lambert Memorials, Inc. or Lambert & Sons, Inc. Defendant Jemar Lambert has deposited funds received from the sale of burial plots into such accounts. He has also disbursed or transferred funds from such accounts to cover deficiencies in Galilee's improvement care trust account.

4.13. Galilee has provided the Commissioner with information concerning the cemetery plots that Galilee sold on a pre-need basis. Based on the information, approximately 200 pre-need contracts that Galilee sold still remain to be fulfilled.

4.14 In September 2013, the Department performed an audit of the improvement care trust account maintained by Galilee. That audit report, issued on September 11, 2013, resulted in a finding that Galilee was required to deposit \$26,581.50 immediately, including applicable penalties, and that another \$4,951.00 would become due on September 30, 2013, for sales through August 25, 2013. That resulted in a total amount due of at least \$31,532.50 as of September 30, 2013. On

or about October 24, 2013, Galilee wired \$31,000.00 to the trust account. This amount did not cover the full amount of the deficiency, including penalties, found by the audit report. No additional deposits have been made to the improvement care trust account since that date, either to cover the remaining deficiency or any subsequent burials. Further, the Department located information which indicated that at least nineteen (19) interments occurred at Galilee between August 26, 2013 and October 30, 2013. However, no additional deposits have been made to the trust account regarding those interments.

V
APPOINTMENT OF COMMISSIONER AS RECEIVER
PURSUANT TO TENN. CODE ANN. § 46-1-312

5.1. The Commissioner realleges all matters set forth in paragraphs 1 through 4.14 and incorporates them by reference herein.

5.2. Tenn. Code Ann. § 46-1-312(a)(1)(A) states that the Chancery Court of Davidson County, upon the petition of the Commissioner may appoint the Commissioner as receiver of a cemetery registered with the Commissioner if the cemetery has not maintained trust funds in the manner required by this chapter. Galilee has repeatedly failed to timely make deposits to its improvement care trust account and has made no deposit since on or about October 24, 2013, despite information indicating that numerous interments have been held at Galilee since August 25, 2013, the last period for which deposits were made.

5.3. Tenn. Code Ann. § 46-1-312(a)(1)(B) states that the Chancery Court of Davidson County, upon the petition of the Commissioner may appoint the

Commissioner as receiver of a cemetery registered with the Commissioner if the cemetery has allowed its registration to lapse. Galilee allowed its registration to lapse and it would therefore be appropriate for the Court to appoint the Commissioner to act as receiver for Galilee.

5.4. Tenn. Code Ann. § 46-1-312(a)(1)(E) states that the Chancery Court of Davidson County, upon the petition of the Commissioner may appoint the Commissioner as receiver of a cemetery registered with the Commissioner if there has been fraud affecting the ability of the cemetery to deliver merchandise or services. Defendants fraudulently continued to sell burial plots and provide merchandise and services on a pre-need and at-need basis after the cemetery became full in 2010 and have attempted to conceal the fact that Galilee has exceeded its capacity by improperly burying bodies in the cemetery and by encroaching on the property of an adjoining landowner to bury other bodies. Because of such fraudulent sales and conduct, it is unlikely that the cemetery will be able to continue to provide merchandise and services.

5.5. Tenn. Code Ann. § 46-1-312(a)(1)(G) states that the Chancery Court of Davidson County, upon the petition of the Commissioner may appoint the Commissioner as receiver of a cemetery registered with the Commissioner if the cemetery cannot or will not be able to meet all of its contractual obligations when they become due. In 2010, Galilee reached full capacity and since that time, Defendants have continued to sell burial plots on an at-need basis. At present, Galilee is obligated to provide burial plots to 200 people. Since the cemetery is

already full, Galilee will not be able to meet its obligations to some or all of the 200 people who purchased burial plots on a pre-need basis.

5.6. Appointment of the Commissioner as receiver of Galilee is necessary to protect the public interest. Defendants by their conduct have demonstrated that they are either unwilling or unable to operate Galilee in a manner that complies with the requirements under the Act. As a result of Defendant's fraudulent and unlawful conduct, the Commissioner will not be able to ascertain whether Galilee can be revitalized and/or reformed without taking complete control of the cemetery pursuant to a receivership order from this Court. Appointing the Commissioner as receiver of Galilee with all of the authority set forth in Tenn. Code Ann. § 46-1-312 will enable her to determine whether Galilee can be effectively revitalized and reformed and to take effective and appropriate action based on her findings. If the cemetery is full or resources are unavailable for its continued operation, the Commissioner's determinations may involve proposed closure or sale of the cemetery.

VI
PETITION FOR TEMPORARY AND OTHER INJUNCTIVE OR
OTHER EQUITABLE RELIEF

6.1. The Commissioner realleges all matters set forth in paragraphs 1 through 5.6 and incorporates them herein by reference.

6.2. Tenn. Code Ann. § 46-1-301(c) states that the Commissioner may bring suit at law or equity to restrain or enjoin violations of the Act. Defendants by their acts have shown an inability or unwillingness to conduct the affairs of Galilee in a

lawful manner and that they will continue to violate the Act by operating the cemetery without a valid certificate of registration and engaging in fraudulent acts and practices unless enjoined by this Court.

6.3. In view of Defendants' unwillingness to conduct Galilee's business in compliance with the Act, the Court should enjoin them from any further operation or business of the cemetery, from sales of burial plots at the cemetery, from providing any other merchandise and services, from making any withdrawals or other disbursements from any bank or brokerage account they own or maintain with assets or proceeds of the cemetery operations, from destroying or concealing any books or records of the cemetery and from selling, transferring, concealing or disposing of any of the cemetery's assets.

6.4 As temporary relief, in aid of the request for receivership, the Court should also restrain the Defendants from these same activities in connection with the cemetery, so as to maintain the status quo and prevent further violations of the cemetery Act. The Commissioner will move for such orders by separate motion.

VII PRAYER


Premises considered, the Commissioner prays:


1. That pursuant to Tenn. Code Ann. § 46-1-312(a)(4), that the Court enter an Order directing Defendants to appear and show cause why the Commissioner should not be appointed as receiver for Galilee;
2. That the Court grant the petition and appoint the Commissioner receiver for Galilee Memorial Gardens and that the Court confer upon the Commissioner as

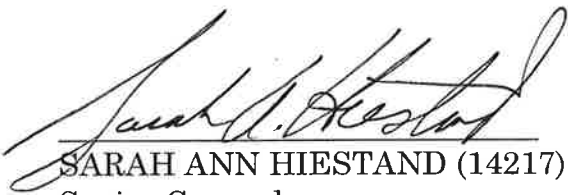
receiver all of the powers and authority that is provided for under Tenn. Code Ann. § 46-1-312;

3. For a temporary and permanent injunction;
4. For an award of costs;
5. For such other legal or equitable relief as may be necessary and appropriate.

Respectfully submitted,


ROBERT E. COOPER, JR. (10934)
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THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE

VERIFICATION OF PETITION

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

I, Julie Mix McPeak, being first duly sworn, hereby state as follows:

I am the duly appointed Commissioner of the Tennessee Department of Commerce and Insurance and in that capacity I am the person ultimately responsible for the enforcement of the Cemetery act, as amended, codified at Tenn. Code Ann. §§ 46-1-101, *et seq.* The performance of these duties has been delegated to my duly authorized representative, Robert Gribble, the Executive Director of the Funeral Board and Burial Services section of the Tennessee Department of Commerce and Insurance, and personnel employed by his section. I have reviewed the petition in this cause and know the contents thereof and have made the necessary investigation to verify the same is true in substance and fact.

Julie Mix McPeak
JULIE MIX MCPEAK

Sworn to and subscribed before me this 21st day of January, 2014.

Dennis M. Lewis
NOTARY PUBLIC

My Commission expires 2/15/2016

