

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

STATE OF TENNESSEE,)
ex rel. HODGEN MAINDA, solely in his)
official capacity as Commissioner of)
Commerce & Insurance,)

Plaintiff,)

v.)

No. 14-0102-II(III)

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.)

**PROPOSED ORDER FOR ENTRY AFTER HEARING
To Set Conditions for Liquidation of Galilee Memorial Gardens Cemetery;
Prohibiting Burials, Disinterments, or Activities other than Permanent Maintenance and
Limited Visitation of Graves; Finding the Cemetery Lacks Assets to Distribute and
Barring all Claims or Suits Against the Cemetery or Defendants in Receivership**

This Court is determining final matters leading to the termination of this receivership of Galilee Memorial Gardens, located at 8283 Ellis Road, Bartlett, Tennessee (the "Cemetery"). Hodgen Mainda, Commissioner of the Department of Commerce & Insurance, is the statutory Receiver in his official capacity for the Cemetery. The Receiver's appointed Special Deputy Receiver for the Cemetery is Receivership Management, Inc., ("RMI"), of which Robert E. Moore, Jr. is the president.

On November 8, 2019, the Receiver filed a Supplemental Statement of Pending Issues (“Supplemental Statement”), which sets forth the final matters for the Court to resolve incident to the termination of the receivership of the Cemetery. As part of the termination, the Receiver seeks to close the Cemetery to further burials and requests an Order that grants the relief set forth in paragraphs A through G of the Supplemental Statement:

A) Order affirming the Court’s earlier statement that the Cemetery is full, has no remaining useful grave spaces and should be closed to any future burials.

B) Order affirming that there are no assets available to compensate claimants including any aggrieved person who purchased a grave site, a pre-need cemetery contract or other services at Galilee Memorial Gardens or any of the Defendants.

C) Order foreclosing any rights that any such aggrieved persons may have against the grounds or other physical assets of Galilee Memorial Gardens and any of the Defendants.

D) Order confirming that the small amount of funds (approximately \$3000.00) currently in the Preneed Merchandise and Services Trust Fund is insufficient to make any meaningful restitution to anyone who may have purchased a pre-need services contract and foreclosing any such person from making a claim against that trust fund.

E) Order providing that the Preneed Merchandise and Services Trust fund, due to its small size, no longer serves the purpose for which it was created, and should be terminated with the assets in that Trust Fund deposited into the Improvement Care Trust Fund (ICTF) for the Cemetery.

F) Order recognizing that the deplorable state of the burial records at the Cemetery makes it impossible to know where any one person is buried, and further makes it impossible to know the identity of any other person or persons who might be buried in close proximity to any grave site.

G) Order that prohibits any disinterments (exhumations) from the Cemetery because it is impossible to give proper notice to the family or next-of-kin of other persons whose burial might be disturbed or affected by any attempted exhumation.

In considering the relief requested by the Receiver, the Court has undertaken an extensive review of the record and the fourteen reports made by the Receiver and Special Deputy Receivers in this proceeding. The Court finds the following especially compelling:

1. The Fourth Interim Report of the Special Deputy Receiver (filed 4/23/2015, corrected exhibit 4/29/2015). This report reveals extensive, irremediable problems with the Cemetery's burial records.

2. The Ninth Interim Report of the Special Deputy Receiver (filed 6/17/2016) [and August 17, 2016 transcript wherein Report was explained by Receiver]. This report confirms and expounds on the extensive, irremediable problems with the Cemetery's burial records. Based on the Cemetery's records, as well as the Receiver's efforts to detect gravesites by probing the physical grounds and using ground-penetrating radar, the report concludes that the Cemetery is full and lacks grave spaces suitable for burials. Further, the Cemetery has buried many more people than it has recorded and those persons cannot be identified. Moreover, the physical probes of gravesites and the radar study confirmed misburials and misalignments, and included some areas where graves were especially shallow and appeared to corroborate reports of stacked burials and mass grave areas.

3. Memorandum and Final Order from Hearing of 4/10/2019 to Dissolve Corporation and All Business Entities in Receivership; to Grant Receiver Exclusive Title to the Original Cemetery Parcel; to Permanently Enjoin Defendants from the Galilee Cemetery Business; and to Determine or Bar Claim of Defendants. (filed 6/12/2019). Following an evidentiary hearing, this Court entered an Order that dissolved all the Defendant entities that owned and operated the Cemetery, and ruled that the Cemetery is wholly without assets or monies and has no means to honor any claims or make refunds to customers who have outstanding and unused deeds that cannot be honored due to the Cemetery's lack of available grave sites.

4. Transcript from April 23, 2019 hearing in Memphis wherein the Court solicited comments on the Receiver's recommendations for closure of the Cemetery. (filed 5/2/2019). At

this hearing, the Court received comments from the public that included some objections to the Receiver's recommendations for closure. The Court thereafter entered an order on May 20, 2019, to permit interim limited visitation, with Conditions, to the Cemetery, pursuant to the Receiver's recommendation.

After having reviewed the entire record in this action, including the items specifically described above, the Court makes the following Findings and Orders:

The Court finds that Galilee Memorial Gardens Cemetery is full to capacity and that the grounds therein, including the additional land separately donated and made a part of the cemetery grounds, have no remaining useful grave spaces and therefore the Court HEREBY ORDERS that Galilee Memorial Gardens is closed to any future burials.

The Court finds that Galilee Memorial Gardens and the Receivership have no assets available to compensate any potential claimants, including any aggrieved persons who purchased a grave space, a pre-need burial contract or any other services at Galilee Memorial Gardens or from any of the Defendants in this action.

Because there are no assets available to compensate anyone harmed by the actions of the Defendants in this cause, having the receiver initiate a formal claims process would be futile and an unnecessary and wasteful expense to the Receiver and the State. In order to allow the Receivership to be concluded, it is necessary to finally adjudicate any and all such claims. Accordingly, the Court ORDERS that any and all claims by any persons having any grievance against the cemetery known as Galilee Memorial Gardens and any of the entities that operated it, are HEREBY TERMINATED, FORECLOSED, AND OF NO FURTHER EFFECT.

The Court finds that the Preneed Merchandise and Services Trust Fund for Galilee Memorial Gardens has a balance as of the last available report of only \$3019.75. This sum is insufficient to make any meaningful compensation to any person who purchased pre-need burial services, even if the Court could determine whose funds were placed in the trust account.

Because the sum available in the Preneed Merchandise and Services Trust Fund is insufficient to allow the trust to accomplish the purpose for which it was created, the Court finds that the trust should be TERMINATED and all money in the trust TRANSFERRED to the Improvement Care Trust Fund for Galilee Memorial Gardens so that it can be used for the perpetual care of the cemetery grounds.

The Court finds that even after the Receiver's extensive efforts to catalogue and cross-reference the burial records available to him, the state of those records makes it impossible to know with any degree of certainty where any specific person is buried at Galilee Memorial Gardens, and further whether any individual grave site contains more than one burial or is encroached upon by one or more other burials.

Because it is not possible to know with any certainty the whereabouts of any person buried at Galilee Memorial Gardens or the identity of any other persons who might be buried within the same grave space or in otherwise close proximity to any specific grave space, the Court finds that it is IMPOSSIBLE to ascertain and notify the next of kin of such persons as may be required by law.

Because it is impossible to identify and notify the next of kin of any person who might be buried in or affected by any individual grave space in Galilee Memorial Gardens, thereby making it impossible to satisfy the legal requirements that must be met before any buried body can be disinterred, the Court finds that there should be NO DISINTERMENTS, EXHUMATIONS or other disturbances of the final resting places of those buried at Galilee Memorial Gardens.

The foregoing terms are found and adjudged by the Court to be fair and equitable to all parties concerned, taking into consideration the overall operation of the Cemetery, and the interests of the lot owners, next of kin of lot owners, and descendants of lot owners and the general public.

The Court finds that all persons with a legal interest in the receivership for Galilee Memorial Gardens were given an opportunity to respond and object to this Order. Persons with an objection to this Order becoming the Final Order of the Court in this action were required to submit any such objection in writing to the Court by 4:30 pm on Friday, February 21, 2020, and the Court set a hearing on all such objections properly filed by that date on Tuesday, March 10, 2020, at 9:00 a.m. in Part III of this Court. The Court entered its separate Order Approving Notice of the foregoing required filing date and Hearing date and the Notice was served upon or published to any persons affected by this Order.


The Court finds that the Receiver, to take those actions needed to terminate the Cemetery receivership, must be able to rely upon the absolute claim bar and liquidation of claims established herein, and upon all the foregoing orders governing the Cemetery. To provide certainty to the actions taken by the Receiver in reliance on the orders herein, and there being no just reason for delay, the Court expressly instructs the Clerk and Master to enter this Order as a final order regarding all matters addressed herein. Rule 54.02 Tenn.R.Civ.P.

All other matters regarding the termination of the Receivership in this cause are reserved for a later date as reflected in the Scheduling Order previously entered.

IT IS SO ORDERED.

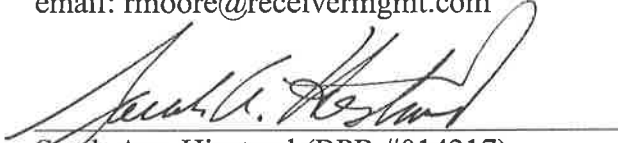
CHANCELLOR

Respectfully submitted by,

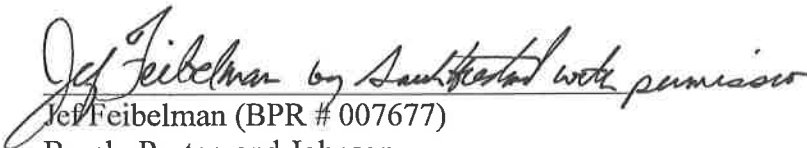

Robert E. Moore, Jr. (BPR# 013600)

President
Receivership Management, Inc.
Special Deputy Receiver

Galilee Memorial Gardens
510 Hospital Drive, Suite 490
Madison, TN 37115
(615) 370-0051 (phone); (615) 373-4336 (fax)
email: rmoore@receivermgmt.com



Sarah Ann Hiestand (BPR #014217)
Senior Assistant Attorney General, Financial Division
C. Scott Jackson, (BPR #011005)
Deputy Attorney General, Financial Division
Tennessee Attorney General's Office
P.O. Box 20207
Nashville, TN 37202
(615) 741-6035; fax (615) 532-8223
email: sarah.hiestand@ag.tn.gov; scott.jackson@ag.tn.gov



Jeff Feibelman (BPR # 007677)
Burch, Porter, and Johnson
130 North Court Avenue
Memphis, TN 38103
(901) 524-5109; fax 901-524-5024
e-mail: jfeibelman@BPJLAW.com
Special Counsel to the Receiver

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Proposed Order for Entry after Hearing has been mailed First Class Postage prepaid to the following interested persons and attorneys requesting notice and transmitted via email if indicated this 30th day of December, 2019:

Robert D. Meyers
Danielle Rassoul
Glankler Brown, PLLC
6000 Poplar Avenue, Suite 400
Memphis, TN 38119
Ph: 901-525-1322 fax 901-525-2389
Via email to rmeyers@glankler.com; drassoul@glankler.com

Attorneys for Intervenor, Shelby County, Tennessee

Jemar Lambert
3174 Ruby Cove
Memphis, TN 38111

Marje Lambert
3174 Ruby Cove
Memphis, TN 38111

Mary H. Lambert
3174 Ruby Cove
Memphis, TN 38111

Individual Defendants in Receivership case, pro se

Handel R. Durham, Jr.
Jonathan Mosley
22 North Front Street, Ste. 760
Memphis, TN 38103
ph: 901.543.0866 fax: 901.543.0865
Via email to hdurham@durhamslaw.com; jonathan.mosley@jtmosleylaw.com

Coleman Garrett
295 Washington Av, Suite 2
Memphis, TN 38103
Via email to cwgarrett@bellsouth.net

Counsel for Lamberts in Shelby County cases

Courtesy Copy to:

Emily Walker, CTFA, VP & Trust Officer
Commercial Bank & Trust Company
Trust Division
P.O. Box 1090
Paris, TN 38242
Via email to EWalker@cbttnet.com
Trustee of Trusts for Galilee Memorial Gardens

Kathryn E. Barnett
MORGAN & MORGAN-NASHVILLE, PLLC
810 Broadway Suite 105
Nashville, TN 37203
Phone: (615) 490-0943
Via email to kbarnett@forthepeople.com

Howard B. Manis
THE COCHRAN FIRM
One Commerce Square
40 South Main Ste. 1700
Memphis, TN 38103
Phone: (901) 523-1222
Via email to hmanis@cochranfirmidsouth.com

Class Counsel (Plaintiffs *Wofford* case-Shelby County)

John R. Branson
Jacob A. Dickerson
Baker, Donelson, Bearman, Caldwell & Berkowitz
First Tennessee Building
165 Madison Avenue, Suite 2000
Memphis, TN 38103
(901) 526-2000
Via email to jbranson@bakerdonelson.com
Defense Liaison for Funeral Homes in Shelby County Class cases

Brent M. Hays, Esq.
MerrittWebb
315 Centerview Drive, Suite 263,
Brentwood, TN 37027
Person requesting notice of proceedings.

Douglas Berry
Miller & Martin
401 Commerce Street, Suite 720
Nashville, TN 37219
615 744-8620; Doug.Berry@millermartin.com

For City of Bartlett, requesting notice of proceedings


SARAH ANN HIESTAND