

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

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.)

FILED
 2019 MAR 15 PM 2:06
 CLERK OF THE COURT
 DAVIDSON CO. CHANCERY CT.
 No. 14-102-II(III)
 D.C. &

RECEIVER’S WITNESS LIST, RECEIVER’S EXHIBIT LIST; and LIST OF STATUTES
 RELATED TO HEARING ON CORPORATE DISSOLUTION AND OTHER MATTERS

Julie Mix McPeak, Commissioner of the Department of Commerce & Insurance (Department), in her official capacity as Receiver of Galilee Memorial Gardens (and JM&M Services, Inc., Lambert Memorial Co., Lambert Memorials, Inc., and Lambert & Sons, Inc., the related entities through which it conducted its business), through counsel, hereby files the Receiver’s proposed lists of witnesses and exhibits to be submitted, and statutes relied upon, in support of the Receiver’s issues to be heard on March 25, 2019. The hearing to be held on that date or as it may be scheduled further concerning the Lambert Defendants was ordered by the

Court at the March 1, 2019 hearing, and is reflected in an “Order Setting Hearing on Receiver’s Requests to Dissolve Corporation and all Business Entities in Receivership . . .” Petitioner begs leave to supplement the following description or items if necessary, by leave of court.

RECEIVER’S WITNESS LIST

1. **Robert Gribble**, Executive Director for the Board of Funeral Directors and Embalmers and the Burial Services Section, Regulatory Boards Division (Burial Services Section) Tennessee Department of Commerce and Insurance
2. **Mark K. Green**, Deputy General Counsel, Regulatory Boards & Consumer Affairs, Tennessee Department of Commerce and Insurance
3. **Robert E. Moore, Jr.**, of Receivership Management, Inc., Special Deputy Receiver
4. **Carol Allsup**, Paralegal, Burch, Porter & Johnson, Special Counsel to the Receiver
5. **Gill Geldreich**, Deputy Attorney General, Bankruptcy Division, Tennessee Attorney General’s Office

And, any witness called by Defendants.

RECEIVER’S EXHIBIT LIST

Introduction: The Receiver will submit selected records of the Department’s Burial Services Section concerning the registration history and regulation of Galilee Memorial Gardens, including documents filed by representatives of these Defendants and others about Galilee, or developed by staff within the Department, or as a result of administrative proceedings. The Department records reflect business names used by the cemetery or cemetery companies operated by Defendants, and reflect other financial audits of Galilee, or other conditions of the cemetery. Additional sources will be records of Jesse Lambert’s bankruptcy case in which the Department filed a claim, and was represented by the Tennessee Attorney General’s office. Further records in

the possession of the Receiver are cemetery business records obtained by the Receiver following the filing of this action and the simultaneous service of search warrants by the Shelby County District Attorney General. Banking records obtained by subpoena for the Receiver's use, and extractions drawn from the Receiver's work at the cemetery, may also be submitted as exhibits pertinent to the topics for this hearing. There may also be submitted official Secretary of State's records and other documents regarding corporate names used by Defendants, and copies of official records of Shelby County concerning the ownership of the cemetery property.

Exhibits listed generally under one heading are intended to be used for any relevant topic. Any party that wishes to review the exhibits before the March 25, 2019 hearing may contact undersigned counsel.

I. THIS CASE: Exhibits and Orders from the Existing Record of this Case

Verified Petition for Appointment of Receiver Jan. 24, 2014 - and any exhibits thereto, especially the Eleven (11) Exhibits attached to Affidavit of Robert Gribble, from the records of the Burial Services Division (progress of registration status, applications for registration to Burial Services, administrative case)

Exhibit attached to Supplemental Affidavit of Robert Gribble, under Notice of Filing filed February 6, 2014 – website printout of Galilee/Lambert Memorials site

Response and Limited Objection to Application for Restraining Order and Temporary Injunction and Order to Show Cause Setting Hearing on Petition etc. by Defendants Galilee Memorial Gardens, JM&M Services, Inc., Lambert Memorial Company, Jemar Lambert, Marje Lambert, and Mary H. Lambert . . . ; with Affidavit of Marje Lambert, In Her Capacity as Vice-President of JM&M Services, Inc., a Tennessee Corporation filed Feb. 10, 2014

Order Appointing Commissioner as Receiver for Galilee Memorial Gardens Cemetery and Granting Temporary Injunction, entered February 21, 2014

Third Interim Report of the Special Deputy Receiver for Galilee Memorial Gardens filed Dec. 11, 2014. Appendix A. (Accounts list, with balances)

Agreed Order Permitting Receiver to Accept Deed of Adjoining Property for the Cemetery and for Cemetery Purposes, entered May 27, 2015

Order following Status Conference on Receivership, entered August 30, 2016

Receiver's Motion to Dispose of Stone Markers and Equipment on the Cemetery Premises, and To Approve Receiver's Procedure to Address other Remaining Carved Markers, filed Mar. 21, 2018

Order on Receiver's Motion to Dispose, entered April 6, 2018

Previously filed exhibits in this case from Reports of the Receiver. (Reports of receiving claims for lots and other outstanding cemetery obligations without capacity to fulfill them – generally)

II. Information in records of Burial Services

Jesse Lambert's Renewal Application for expired cemetery registration, correspondence and Department Receipt for Customer Galilee Memorial Gardens, dated March 22, 2010 to April 8, 2010

Trust Agreements Submitted to Burial Services –

June 6, 2012 dated Improvement Care Trust Agreement and Preneed Merchandise and Services Trust Agreement between JM&M Services, Inc. dba Galilee Memorial Gardens and Commercial Bank & Trust Co.

Packet of information from Commercial Bank, Trust Division to Burial Services, Sept. 30, 2011.

- June 10, 1993 Trust Agreement Galilee Memorial Gardens Improvement Care Trust Fund, between Lambert Memorial Gardens Incorporated d/b/a Galilee Memorial Gardens, a Tennessee Corporation, and Commercial Bank and Trust Company.
Certain attached account statements, September 2011.

- October 11, 2005 Preneed Merchandise and Services Trust Agreement between Galilee Memorial Gardens and Commercial Bank & Trust Company.
Certain attached account statements, September 2011.

III. Secretary of State – Records and Certifications

Records of the Secretary of State's Office with respect to corporation names used by or similar to those used by Defendants for doing business as Galilee Memorial Gardens, and showing current status, including but not limited to:

JM&M Services, Inc., formerly known as Lambert & Son, Inc., a Tennessee corporation
Lambert Memorial Gardens, Inc., a Tennessee corporation (incorporated in 1993)
Lambert and Son, Incorporated (incorporated)
Lambert & Son, Inc. of Memphis (incorporated)

JM&M, Inc. (none exist)

Lambert Memorials, Inc. (none exist)

Lambert Memorial Company or Lambert Memorials Company (none exist)

Lambert, Inc. (a Tennessee corporation but not one incorporated by Galilee Defendants)
Lambert, Inc. (an Alabama corporation authorized to do business in Tennessee, not incorporated by Galilee Defendants, that formerly used assumed name Lambert & Sons, Inc.)

Should any other names be uncovered, Secretary of State records for those entities may also be introduced.

Any additional Printouts or searches made from Tennessee Secretary of State's Business Information Website to show status, including no results

Secretary of State records on file on Ellis Road Gardens, Inc. (Pre 1993 owner)

IV. Bankruptcy Case Filings and Claim information

In re: Jesse Lambert. United States Bankruptcy Court, Western District of Tennessee, Western Division, Case No. 06-21285 – selected PACER electronic record documents:

Doc 1 - Voluntary Petition Chapter 13, entered 02/23/06 (4 pages)

Doc 24 – Sch A. Real Property thru Statement of Financial Affairs, entered 04/17/06 (25 pages)

Claim 9-1, filed 08/21/06 – TN Dept. of Commerce and Insurance on behalf of Galilee Memorial Gardens Improvement Care Trust, for IC Fund assessment (1 page)

Claim 6-1, filed 04/27/06 by N.I.M. Charitable Remainder Unitrust Agreement of Robert F. and Martha H. Fogelman, with Claim 6-1 Part 2 – Exhibit Judgment (6-page certified Consent order N.I.M. against list of Galilee and Lambert entities)

Doc 38 – Amended Objection to Confirmation by Tennessee Department of Commerce and Insurance, entered 05/02/06 (3 pages)

Doc 62 – Consent Order Resolving Tennessee Department of Commerce and Insurance Amended Objection to Confirmation, entered 08/14/06 (5 pages)

Doc 66 – Order Confirming Plan, entered 08/28/06 (4 pages)

Doc 120 – Order under 11 USC §1328(a) Discharging Debtor after Completion of All Payments Under Chapter 13 Plan etc., entered 08/29/12 (2 pages)

Doc 123 – Chapter 13 Standing Trustee's Final Report and Account, entered 11/28/12 (3 pages)

Claim Detail printout of paid-off Claim 9 of Tennessee Department of Commerce and Insurance, printed 4/13/2012, from AG Bankruptcy Division files (4 pages)

V. Deeds and Ownership Records

Receivership Case Order, entered May 27, 2015, Agreed Order Permitting Receiver to Accept Deed of Adjoining Property for the Cemetery and for Cemetery Purposes

Copies of Recorded Deeds relating to 8283 Ellis Road, Bartlett (or Memphis) Tennessee:

On the Original Cemetery Parcel of 8.95 acres:

1) Conveyance to Ellis Road Gardens, Inc. in the Final Decree of the Chancery Court of Shelby County, Tennessee, styled *Richard Block, et al. v. Sam Okeon, et al*, No **679593 R.D.**, of record in **Book 5879, Page 3**, in the Shelby County Register's Office in Memphis, Tennessee

2) Conveyance of Asset Purchase Agreement dated January 29, 1993 between Jeanne B. Bryant, Receiver in that capacity appointed by the Shelby County Chancery Court, of Ellis Road Gardens, Inc., owner of Galilee Memorial Gardens Cemetery and the buyer, Lambert Memorials, Inc., Recorded 1/22/2003, **Instrument #03015493** in the Shelby County Register's Office

On the Expansion Parcel of 3.597 acres:

3) Conveyance by Special Warranty Deed dated May 13, 2015, by Robert F. Fogelman and Martha H. Fogelman, Trustees of the N.I.M. Charitable Remainder Unitrust Agreement of Robert F. and Martha H. Fogelman under Trust Agreement dated September 14, 1996, to Julie Mix McPeak, Commissioner of Commerce & Insurance in her capacity as receiver for Galilee Memorial Gardens Cemetery in Cause No. 14-102-II(III) of the Chancery Court of Davidson County, Tennessee 20th Judicial District at Nashville, Part II (now III), Recorded 06/01/2015 in **Instrument #15051288** in the Shelby County Register's Office

Property Assessment Record As to Both Parcels:

4) Printouts from Assessor of Property for Shelby County, at property address of the cemetery, 8283 Ellis Road, Bartlett, with 12.5470 acres, known as Parcel ID B01 58 001 32C

VI. Records Regarding Cemetery Accounts, Financial Condition, and Interchangeable Use of Business Names

Receiver's disposition of cemetery equipment and stones

Receiver documents to show Auction, related expenses, and net amount of proceeds, deposit

Bank Account Materials Acquired by Receiver in 2014

Affidavit of Carol Allsup with listing, summary of balances, records of bank accounts received in 2014 response to receivership-court issued subpoenas – summarized backup to Third Interim Report of the Special Deputy Receiver

Exemplars of the Receipt books of Lambert Memorials, Inc. and Galilee Memorial Gardens, in period 2009 to 2014 given for various noted items, cemetery lots, services, markers, preneed payments

Exemplars of Purchase Agreements and other selected business forms in cemetery records or submitted by claimants to the receiver

Tax Return Information from Business Tax Returns

Outstanding Post-August 2013 Improvement Care Trust deficiencies and other deficiencies:
Receipt Book from cemetery - Lambert Memorials, Inc. – 7-22-13 to 1-22-14 pdf scan

Receiver's summary of interments made by or on behalf of Galilee Memorial Gardens after cutoff-date of last calculation of Improvement Care Trust Fund deficiency (after August 25, 2013). Extract from excel file, 2015 "GMG Logs – Final" – filed 6/17/2016 as Collective Exhibit I 2015 Interment Database (2016 Ninth Report Exhibit Disk)

Records of sales for burials and/or of interments made at Galilee Memorial Gardens after July 2013 when Department prohibited new business

Official Report of Examination TDCI Burial Services Letter to JM&M Services, Inc. dba Galilee Memorial Gardens Attn: Jemar Lambert, Mgr., dated September 10, 2013, to determine compliance of JM&M Services, Inc. -Delinquent and amounts due to ICTF tallied April through August 25, 2013

Exhibit- September 18, 2013 Galilee Memorial Gardens letter from Jemar Lambert, President to Robert Gribble. Required to deposit \$31,706.00 for the sales of graves dating from April through August

Obligations of the Cemetery Business

Lambert - Galilee Memorial Gardens Feb. 21, 2013 letter to Robert Gribble. Lists graves, occupied graves, count of 211 preneed spaces and available spaces

Special Deputy Receiver documents and information summaries reflecting types and extent of outstanding cemetery obligations and claims: Claims for Plots and Other Items – With the Receiver

Current Other Financial Information Relative to Galilee Memorial Gardens:

Improvement Care Trust Fund, and Pre-Need Merchandise & Services Trust Fund, annual reports of trustee Commercial Bank & Trust year end 2017. (Totals referred to in the Twelfth Interim Report of the Special Deputy Receiver June 6, 2018).

March 2019 Correspondence by Trustee to Burial Services, Mark Green re: lack of earmarks on M&S trust.

RECEIVER'S LIST OF STATUTES PERTINENT TO PROCEEDING

Statutes relied upon by the Receiver in seeking the relief for determination in the hearing, include but are not limited to the following, under Tennessee law and equity:

Statutes Pertaining to Cemetery Law:

Tennessee Code Annotated, Title 46, chapter 1 and 2, and other cemetery law provisions, including but not limited to the following sections:

46-1-102. Definitions.

46-1-103. Certificate of registration – Temporary permit.

46-1-104. Renewal of certificate.

46-1-107. Sale or transfer.

46-1-111. Records.

46-1-204. Improvement Care Trust fund.

46-1-206. Sales of pre-need merchandise and services.

46-1-207. Pre-need sales contracts – Pre-need trust accounts.

46-1-215 Financial reporting.

46-1-301. Powers and duties of commissioner.

46-1-307. Violations – Penalties – Enforcement.

46-1-309. Revocation of charter or certificate of authority.

46-1-310. Action by state for recovery of illegally paid dividends.

46-1-312. Requirements for appointing a receiver to manage a cemetery. (2010 and 2014).

And applicable administrative rules of the Department:

Tenn. Comp. Rules & Regs Chapter 0780-05-09. Cemeteries.

Chapter 0780-05-10. Pre-Need Funeral Contracts.

Statutes Pertaining to the Corporate Dissolution Proceeding

Corporate Dissolution Statutes – Title 48, parts 1, 2 and 3. Voluntary Dissolution, Administrative Dissolution, and Judicial Dissolution of For-Profit Business Corporations.

48-24-202. Procedure for and effect of administrative dissolution. (pre-2013 and post 2013)

48-24-205. Articles of termination following administrative dissolution or revocation.

48-24-301. Grounds for judicial dissolution.

48-24-302. Procedure for judicial dissolution.

48-24-303. Receivership or custodianship.

48-24-304. Decree of dissolution.

67-4-2116. Failure to file tax return – Revocation of charter or certificate – Reinstatement.

Respectfully submitted.



Sarah Ann Hiestand (BPR #014217)
Senior Ass't 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; 615-532-8223 facsimile
e-mail: Sarah.Hiestand@ag.tn.gov

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

Jef Feibelman (BPR # 7677)
Burch, Porter, and Johnson
130 North Court Avenue
Memphis, TN 38103
(901) 524-5109; 901-524-5024 facsimile
e-mail: jfeibelman@BPJLAW.com
Special Counsel to the Receiver

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Receiver's Witness List and Exhibit List and List of Statutes for Hearing on Corporate Dissolution and other Matters has been mailed First Class Postage prepaid to the following interested parties and attorneys requesting notice and transmitted via email this 15th day of March, 2019:

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@cbtnet.com
Trustee of Trusts for Galilee Memorial Gardens

Courtesy copy to:

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@cochranfirm-mid-south.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.


C. SCOTT JACKSON