

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

**FILED**  
2017 SEP 29 PM 2:17

CLERK & MASTER  
DAVIDSON COUNTY 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. )

No. 14-102-II

RECEIVER'S RESPONSE IN OPPOSITION TO MOTION BY WOFFORD PARTIES TO  
LIFT STAY FOR THE LIMITED PURPOSE OF AUTHORIZING A DEPOSITION OF  
ROBERT E. MOORE, JR. TO REQUEST POSTPONEMENT SO THAT IT BE CONSIDERED  
WITH MOTION TO INTERVENE TO LIFT STAY, FILED BY R.S. LEWIS AND SONS  
FUNERAL HOME, ET AL.

Julie Mix McPeak, in her official capacity as Commissioner of Commerce and Insurance for the State of Tennessee, appointed Receiver of the cemetery known as Galilee Memorial Gardens including the listed entities conducting the business of that cemetery ("Cemetery"), and her Special Deputy Receiver, through counsel, hereby responds with this Opposition to request a postponement to a later date of the hearing on the Motion to Lift Stay for the Limited Purpose of Deposing Robert E. Moore, Jr. (filed by "the Wofford Plaintiffs"), currently set for **October 4, 2017**, for the purpose of adequately addressing by further responses the several important issues

implicated by the two pending motions requesting lifting this Court's stay of litigation against the Cemetery. These motions involve interference with the Cemetery and this receivership, and are opposed by the Receiver, as they seek to various extents to draw the Receiver and Cemetery into certain Shelby County lawsuits in which the movants are parties, and it is apparent that the Receiver needs more specificity from some of the movants to prepare a comprehensive legal response. Accordingly the Receiver submits she cannot address these motions separately from each other, or take up just the one motion that remains on the October 4, 2017 1:30 hearing date (the Wofford Plaintiffs' motion, described below).

Counsel for the Wofford Plaintiffs has refused to consent to the requested postponement.

The postponement is needed to consider the entire context and potentially combine the Receiver's response to both motions, to be specially set for hearing in the future with sufficient time for the Receiver to brief and prepare timely and adequate responses to what are evidently more extensive purposes and demands on the receivership contemplated by some of these movants, and to allow for replies. The issues go much farther than a single deposition of the Special Deputy Receiver's representative, Mr. Robert E. Moore, Jr.

The two motions were:

- 1) A motion by Movants Akilah Louise Wofford and the other families who are named plaintiffs in a denominated class action, *Wofford et al. v. M.J. Edwards & Sons Funeral Home, Inc., etc.*, (Shelby County Chancery Court Case No. CH 14-0197), filed on September 15, 2017, through lead counsel, to lift the stay in this action, imposed by the Receivership orders, for the limited purpose of deposing Robert E. Moore, Jr., of Receivership Management, Inc., the Special Deputy Receiver, which was duly set for hearing in this Court and continued to a special setting of October 4, 2017 (the Wofford PL Motion), and
- 2) A motion filed on September 22, 2017, by a group of Funeral Homes that are some of the named defendants and participants in the *Wofford* or other Shelby County cases, *R.S. Lewis and Sons Funeral Home, et al.*, (the Funeral Homes' Motion). Although these entities have overlapping requests with the Wofford PL Motion, they separately filed

a collective “Rule 24 Motion and Memorandum to Intervene for the Limited Purpose of Lifting this Court’s Stay as to the Receivership and the ‘Galilee’ Defendants” and originally set it on the regular motion calendar for October 16, 2017. It was moved to be heard with the Wofford PL Motion on October 4, 2017, because their motion also sought potential deposition of Robert E. Moore, Jr., in the same *Wofford* case and certain other litigation. The Funeral Homes movants have now agreed their motion may be refiled or supplemented, and could be heard thereafter at a later date.

The Shelby County cases concerned are ones in which the plaintiffs (improperly) named the Cemetery and its entities as defendants – and this has been precisely stayed by this Court’s orders, namely in this Court’s Order of February 21, 2014 Appointing Commissioner as Receiver for Galilee Memorial Gardens Cemetery and Granting Temporary Injunction. This Order provides in part,

“H. That there 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.”

That stay and related injunctions against interference with the Receiver through discovery or other means has been reaffirmed through additional orders of this Court in light of the *Wofford* and other cases filed in Shelby County, Tennessee. Those Orders, entered on April 14, 2014 and May 11, 2015, respectively, arose out of hearings involving some of the same issues with some of these same Movants before Chancellor McCoy in March 2014 and March 2015. The orders have previously denied such intervention by the Shelby County parties, and lifting of the stay. The receivership case and these orders were granted under the sole jurisdiction of this Davidson County Chancery Court pursuant to Tenn. Code Ann. §46-1-312(a) and the Tennessee Cemetery Act, so that claims concerning the Cemetery, to the extent they are cognizable and allowed, are handled in this single court.

Attempts to Resolve the Instant Motions: The parties to these motions had been diligently pursuing first possible agreed terms and conditions for a deposition of Mr. Moore, that would obviate the need for a hearing, and to reduce to an acceptable level the burden on the receivership and confine the lifting of the stay to this single deposition as a non-party fact witness (as advocated by the Receiver). In this case, the Cemetery was found to be without available assets and has not been able to resume operation – accordingly every imposition on the receivership stresses the limited to nonexistent resources which were being directed to a wind-down.

However, the further discussions with the Funeral Home movants has revealed that there were additional actions they contemplated for the Receiver, that went beyond some of the general descriptions in the Funeral Home Motion. The Receiver seeks clarity from the Funeral Home Movants about that, and evidently will require a substantial response to some of the issues that will apparently be brought into focus. They agreed to postpone a hearing of the Funeral Homes' Motion and will file a supplemental Motion that the Receiver anticipates will articulate a far more expansive lifting of the stay, for extensive discovery and other requests upon the receiver relating to trial participation in their separate case in the Shelby County class action cases. The Funeral Home Motion is to be postponed by agreement, and refiled to supplement or clarify the intent of those parties, and this will dramatically affect the context of any deposition of Mr. Moore. Thus, the Wofford Plaintiff's motion cannot be argued in a vacuum, nor the deposition taken with these issues outstanding.

The Receiver's counsel has continued to work on resolving these issues, and they may be narrowed substantially for this Court's decision at an ultimate hearing on these interlinked motions. Therefore it may well be possible to articulate appropriate conditions and limitations on a deposition of Mr. Moore as sought by the Wofford Plaintiffs, if any, only in that broader context,

and with clarification of the extent of protections of the receivership court's orders, from the third party litigation.

In brief, the Receiver is still optimistic that an agreement is possible on a limited Order allowing the Deposition of Mr. Moore under very specific terms. However, until the larger issues raised by the Funeral Home defendants are resolved, no such agreement is possible. Accordingly, this Motion should be postponed.

This Opposition and response requesting postponement of the Wofford PL's Motion to be heard with the Funeral Homes' motion is without waiving additional responses and legal defenses to the issues as may be required to address the combined Motions to Lift Stay at such future hearing date.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Response has been mailed First Class Postage prepaid to the following interested parties and attorneys requesting notice and transmitted via email this 29<sup>th</sup> day of September, 2017:

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