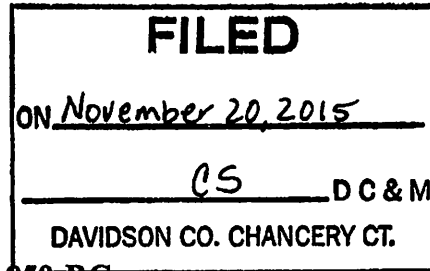


**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

**NASHVILLE LATINO TV  
BROADCAST GROUP LLC,** )  
 )  
 )  
**Plaintiff,** )  
 )  
 )  
**VS.** )  
 )  
 )  
**JKB ASSOCIATES, INC., and  
JAMES BAUMANN,** )  
 )  
 )  
**Defendants.** )



NO. 15-~~859~~-BC

**ORDER APPOINTING A RECEIVER AND GRANTING  
ATTORNEY DANIEL MARSHALL'S MOTION TO WITHDRAW**

This matter came before the Court for a hearing on November 19, 2015, on Plaintiff Nashville Latino TV Broadcast Group LLC ("Plaintiff" or "NLTV")'s Emergency Motion to Appoint a Receiver, set against the backdrop of NLTV's still-pending Motion to Compel Compliance with Temporary Injunction Order and for Civil Contempt, Damages and Attorneys' Fees and Costs ("Motion to Compel"). Based upon Plaintiff's Motion, the pleadings, the evidence and arguments offered at both the November 19 hearing and the November 9, 2015 hearing on Plaintiff's Motion to Compel, and evidence offered in NLTV's post-hearing memorandum in support of the Motion to Compel, the Court finds that NLTV's motion is well taken and should be GRANTED.

From the pleadings and the evidence, the Court finds that, as it exists now, the record establishes that JKB obligated itself to perform the following and induced NLTV to enter

into the Airtime Lease Agreement (“Agreement”) and reasonably rely upon the following material representations from JKB, among others:

Defendants made the following material representations, among others:

§ 2.1 . . . [JKB will provide] all the capacity on Channel 42 . . . at better than prevailing industry standards of quality and broadcast reliability.

....

§ 3.1 . . . [JKB is] solely responsible for installing and maintaining, at its sole cost and expense, a transmitter . . . and all cabling necessary to deliver the signal . . . in accordance with then-prevailing industry standards . . . [including] . . . the broadcast antenna and transmitter . . . and any required recording and advertising insertion equipment necessary to enable the signal to be transmitted on the cable systems [including Comcast] and necessary to insert paid advertising. . . . [JKB] . . . warrants that it shall perform all such installation work in a good and workmanlike manner and that all installed equipment shall be fully functional and shall be adequate to enable receipt of the Programming at any designated sites.

....

§ 3.5 . . . [JKB] shall provide the necessary labor and equipment capabilities to transmit on Channel 42, programming received from [NLTv]

....

....

§ 3.8 . . . [JKB] shall at all times retain ultimate and exclusive responsibility for the operation and control of the broadcast signal.

....

§ 19. COOPERATION. Lessor and Lessee each warrant that it will take no action that will unreasonably interfere, threaten or frustrate the other’s purposes or business activities.

(Copy of Agreement introduced as Exhibit 1 at the November 9 hearing). Taken together, the above representations indicated that JKB would ensure NLTv’s programming and advertising were available for viewing on all platforms, including Comcast. The Court finds that JKB’s authorized representative, Jim Baumann, conceded on cross examination at the November 9 hearing that the Agreement provides no exceptions for Comcast. Further,

undisputed testimony at the hearing showed that the Agreement is authentic, that it was executed by both Mr. Baumann and NLTV's authorized representative, Dave Carter, and that it was prepared by Defendants. The Court finds that at this time the record establishes that the Defendants' representations were material and they induced NLTV to enter into the Agreement.

It is undisputed that JKB's primary responsibility under the Agreement is to ensure NLTV's programming and advertisements reach the air on all platforms, including Comcast. As it exists now, the record establishes that Defendants have breached and continue to breach this obligation.

On July 23, 2015, the Honorable Ben Cantrell, sitting as Chancellor for Part I Chancery Court, issued a Temporary Injunction Order ("Order"), essentially ordering Defendants to maintain the status quo as it existed before the transmission problems of Channel 42 emerged, enjoining Defendants from blocking NLTV's ability to transmit both local programming and advertising on Channel 42 and from disrupting and/or weakening the transmission of Channel 42. (Order at p. 2).

At the November 9 and November 19 hearings conducted by this Court, the following unrefuted proof was entered in the record. Since date of the Temporary Injunction Order, NLTV has experienced numerous outages and transmission problems on Channel 42 for sustained periods of time. Collectively, Channel 42 has been off the air for the entire month of November, which collectively totals 32 days and counting since September 11, 2015. Due

to the weak transmission of Channel 42, NLTV has lost, and continues to lose, paying advertisers. See Declaration of Dave Carter, attached as **Exhibit C** to NLTV's post-November 9 hearing brief. NLTV has lost multiple clients as a result of JKB's breaches and contemptuous conduct. It is also undisputed that Comcast has switched to a national feed for Channel 42 and is not airing NLTV's local content. These performance issues come within Defendant's contractual duties and obligations, found in paragraph 3.1 of the Agreement, to provide equipment and installation to "enable receipt of the Programming at any designated sites."

All of the aforementioned problems associated with Channel 42 continued to persist as of the date of the Hearing and as of the date of this Order. The poor signal quality of Channel 42 has resulted in a substantial downturn in paid advertisements, threatening the ability of NLTV to continue its business operations.

The Court also finds that, as it exists now, the record establishes NLTV loses approximately \$2,000 per day each day it is unable to broadcast advertising on Comcast: \$1,000 in hard costs and another \$1,000 in lost revenue from identifiable potential clients. Nevertheless, Plaintiffs continue to perform under the Agreement, paying Defendants \$7,500 per week. NLTV also paid Defendants \$31,000 to address transmitter and receiver issues potentially attributable to Channel 42's transmission problems, as evidenced in the checks admitted as Exhibit 4 at the Hearing.<sup>1</sup>

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<sup>1</sup> Despite requests, the Defendants have refused to produce evidence demonstrating that these funds were used to correct the transmitter and receiver problems. Given the continued problems with Channel 42,

It is also undisputed that Comcast disconnected JKB's fiber line for Channel 42 for nonpayment on July 28, 2015, after JKB failed to pay its outstanding balance of \$13,663.94.

Further, the Court finds that NLTV loaned \$31,000 to Defendants, and that the explicit notes on the checks included notations of the purpose of the checks to go toward fiber, receiver and transmitter. Defendants have not offered any satisfactory explanation for what they did with the \$31,000 loaned to JKB; and they have refused to provide NLTV copies of receipts or access to inspect the goods allegedly purchased or leased.

The record establishes that JKB and/or Baumann still own at least one valuable asset, the FCC license.

As it exists now, the record establishes that the Defendants have not only breached the Agreement, but they have repeatedly disobeyed the Orders of this Court, as set forth in NLTV's filings in connection with its motion for an order to compel compliance with the Temporary Injunction and for civil contempt. Disobedience of court orders is sufficient grounds for appointment of a receiver. See PNC Multifamily Capital Institutional Fund XXVI Ltd. Ptsp. V. Bluff City Comm. Dev. Corp., No. W2012-01611-COA-R3-CV, 2013 WL 3806345, at \*4 (Tenn. Ct. App. July 13, 2013) (explaining that appointment of a receiver "is the necessary and appropriate remedy to ensure . . . compliance with this Court's prior and subsequent Order") (unpublished) and see legal authorities listed by the Court in its November 18, 2015 Notice.

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it is likely that Defendants used the funds for purposes unrelated to fixing the transmission problems of Channel 42.

The above facts justify the appointment of a receiver to, among other things, (a) take over JKB's operations; (b) audit JKB's books and records; (c) conduct a forensic exam of JKB's books and records, to the extent deemed necessary and financially prudent; and (d) marshal JKB's assets. The Court finds that NLTV has an interest in the preservation of JKB's assets and that it is necessary to appoint a receiver over the business operations of JKB, to, among other matters, insure there are funds and assets to pay compensatory damages, attorneys' fees and costs awarded in connection with NLTV's motion for civil contempt, as well as any outstanding debts connected with its obligations to NLTV (i.e., the outstanding Comcast invoice), and the Receiver's invoices.

ACCORDINGLY, it is ORDERED that Phillip G. Young, Jr. is hereby appointed receiver of JKB through January 29, 2016 unless extended by the Court. In connection therewith, he shall have all of the duties and powers provided herein. The appointment is intended to grant exclusive supervision over the financial and technical affairs of JKB through 1/29/16 unless extended by Court order, including the right of control over the accounts, materials, ledgers, books, records, contracts, computers, data, and all other information necessary to enable the Receiver to obtain and exercise control of JKB.

The Receiver should seek clarification or amendment of this Order as needed.

The Receiver shall have the full authority to take actions necessary to operate JKB and conserve assets of JKB. The Receiver shall duly account to the Court for all monies and

property that come into his possession or control and shall abide by and perform all duties and obligations described in T.C.A. § 29-1-103 *et seq.* and as directed by the Court; and

It is further ORDERED that Receiver shall be empowered, through January 29, 2016, unless extended by the Court, to take the following actions:

(a) Take control over all operations of JKB;

(b) Take custody, control and possession of all bank accounts, escrow accounts, goods, chattels, causes of action, credits, monies, effects, books and records of account, computer data or other electronically maintained or stored information and other papers and property or interest owned or held by JKB or placed under control of JKB with full power to collect, receive, and take possession of such properties of JKB;

(c) Audit JKB's books and records and conduct a forensic accounting if the Receiver deems it is in the best interest of the Court and parties, and economically prudent;

(d) Provide the Court and NLTV with the Receiver's findings in connection with how JKB has used the \$31,000 NLTV loaned JKB and NLTV's monthly payments of \$7,500 to JKB, including receipts if available;

(e) Conserve all assets of JKB in order for JKB to pay its outstanding debts related to this matter including, but not limited to: (1) Payment of any compensatory damages and attorneys' fees and costs of NLTV if awarded pursuant to NLTV's Motion to Compel Compliance with Injunction and for Civil Contempt and Sanctions; (2) repayment of any and

all loans to NLTV; (3) the Receiver's invoices; and (4) JKB's Comcast bills, before payment is made on these the Receiver must obtain Court approval.

(f) Enter premises occupied by JKB, whether owned or leased, for the purpose of carrying out the duties and obligations herein and as set forth in the Agreement;

(g) Contact all financial trust or depository institutions maintaining accounts on behalf of JKB and amend the respective signature cards to require that the Receiver have the sole authority to write checks and direct transfers;

(i) [sic] Make such payments and disbursements for JKB, and incur such duties and obligations as Receiver, as needed for the proper conduct of any usual and lawful business of JKB and to present to this Court by December 11, 2015<sup>\*\*</sup> and thereafter on a monthly basis as long as the receivership exists an accounting of all such payments, disbursements, and expenses;

(j) Prepare a written inventory of all receivership assets and file it with the Court;

(k) Obtain by presentation of this Order, tangible and intangible assets as well as information in the custody or control of any person, firm or entity sufficient to identify the accounts, employees, properties, or other assets or obligations of JKB;

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\* The proposed original order contained no paragraph (h).

\*\* This date was incorrectly stated as "2016" and is corrected herein.



(l) Make periodic reports, observations, and recommendations to this Court, as the Receiver deems appropriate, including conflict of interest issues, if any arise;

(m) The Receiver shall seek authority from the Court to prepare, or cause to be prepared, all necessary tax returns and/or amended tax returns on behalf of JKB if that is needed to conduct the usual and lawful business during the time the receivership is in existence.

(n) The Receiver shall present to this Court by December 11, 2015\*\* a written report reflecting the existence and estimated value of all properties of JKB, the extent of its liabilities, both those claimed by others to exist and those which the Receiver believes to be the legal obligations of JKB, and any further information the Receiver believes may assist the Court; and

(o) If needed to comply with the above Orders, at the next hearing the Receiver shall provide estimated values for all the non-cash assets of JKB, so that the Court may, if deemed appropriate, order the sale and disposition of such assets.

All persons and entities to whom the Receiver makes request in carrying out his duties and obligations set forth herein shall cooperate with the Receiver in the conduct of his receivership duties and obligations.

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\*\* This date was incorrectly stated as "2016" and is corrected herein.

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The Receiver shall file within seven (7) days of entry of this Order with the Chancery Court Clerk & Master a bond in the sum of \$50,000.00, conditioned that Receiver will well and truly perform the duties of the office and duly account for all money and property that comes into the custody or control of the Receiver.

The Receiver shall not wind up JKB and/or liquidate JKB without express order of the Court.

The Receiver shall assure that all other clients/customers of JKB, including, but not limited to Bounce TV, shall have their contracts performed and services performed.

The Receiver shall pay the \$750 court reporter bill for the Comcast telephone conference and the court reporter bill for the 11/18/15 hearing with JKB funds.

It is further ORDERED that the November 19, 2015 motion of Attorney Daniel Marshall to withdraw as counsel for Defendants is granted for the reasons stated in the motion. A copy of this Order shall be provided to Attorney Marshall and the Defendants. Thereafter, service shall be made on the Defendants until an appearance of counsel is entered. Defendants' address is listed in the certificate of service of the motion to withdraw.


It is additionally ORDERED that on or before December 7, 2015, the Defendant Corporation shall file a notice of appearance of counsel. The Individual Defendant shall file a notice of appearance of counsel or that the Defendant is representing himself.

As to the Plaintiff's Motion To Compel and for Civil Contempt, Damages and Attorneys' Fees and Costs, the Court shall issue an Order on that Motion the week of November 23, 2015.

The Receiver serves as an officer of the Court solely in a representative capacity and is not personally liable for any actions taken in conformity with the duties and responsibilities set forth herein or pursuant to any statute, regulation, or other legal authority.

The Receiver shall devote such time to the management of the financial affairs of JKB as deemed reasonably prudent, and shall be compensated at a reasonable rate to be determined by the Court. Furthermore, the Receiver, his attorney, accountant and agents shall be entitled to reasonable compensation for the services they render to the receivership estate, from the unencumbered assets now held by, in possession or control of, or which may be received by JKB. The Receiver shall file with the Court and serve on all parties a motion for payment, outlining the services rendered, the related fees and expenses, and the source of expected payments, with notice to all parties and an opportunity to be heard.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

  
\_\_\_\_\_  
ELLEN HOBBS LYLE  
CHANCELLOR  
TENNESSEE BUSINESS COURT  
PILOT PROJECT

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cc: Stephen Zralek  
Thomas R. Frazer III  
Daniel Marshall  
Jim Baumann  
JKB Associates

 **MAILED**  
11-20-15