

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE**

**NAIMA WALKER FIERCE and ROBERT)
ALLISON WALKER, IV, individually and)
on behalf of MC BUSINESS GROUP, LLC)**

Plaintiffs,

v.

DEWAYNE COLLIER,

Defendant.

Case No. 15-1385-IV

FILED
2015 DEC 16 PM 3:14
CLERK OF COURT
DAVIDSON COUNTY CHANCERY COURT
NASHVILLE, TENN.
J.C. & M.

**JOINT NOTICE OF FILING OF ENGAGEMENT OF SPECIALISTS FOR FINANCIAL
AND INVENTORY ACCOUNTING**

The parties give this joint notice to engage Impact Hospitality/Dynamic Hospitality as specialists for financial and inventory accounting and monitoring of the Germantown Pub. The specialists will provide the following services:

1. To accept a retainer in the amount of \$5,000.00 (Five Thousand Dollars) to initiate the review of the financial and operational condition of the Restaurant pursuant to the orders of this Honorable Court.
2. To bill against the retainer amount as follows: Bob Langford - \$500.00/hour; Craig Barber - \$500.00/hour; Kori Langford - \$200.00/hour; Tom Moore - \$175.00/hour; Pete Pradhan - \$100.00/hour; Mark G-Francisco - \$175.00/hour; Rusty Martin (IT) - \$175.00/hour; Mary Gore (clerical/organizational) - \$75.00/hour.
3. Should the retainer be depleted, to send an accounting of fees to the parties and propose terms for further services. The parties may pay for services without Court approval.
4. To make recommendations concerning management and operations.

5. To establish a financial procedure for the enterprise to ensure that all parties interest(s) are handled in a fiduciary manner.

Respectfully submitted,

LYONS KING, ATTORNEYS

BONE MCALLESTER NORTON PLLC

By: David L. King, by WTC

By: Anne C. Martin, by WTC

David L. King, #07311
Sais Phillips Finney, #028845
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Attorneys for Defendant

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Notice has been e-mailed and by US Mail, postage prepaid to:

Lyons King, Attorneys
David L. King, #07311
Sais Phillips Finney, #028845
1201A 7th Avenue North
Nashville, Tennessee 37208

on this the 16th day of December, 2015.

Anne C. Martin, by WTC
Anne C. Martin, Esq.

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

NAIMA WALKER FIERCE and)
ROBERT ALLISON WALKER IV,)
individually and on behalf of MC)
BUSINESS GROUP, LLC,)

Plaintiffs,)

VS.)

DEWAYNE COLLIER,)

Defendant.)

NF
NO. 15-1385-BC

FILED
2015 DEC 23 PM 2:50
DAVIDSON COUNTY CHANCERY CT
D. C. 21. H.

**MEMORANDUM AND ORDER: (1) DENYING MODIFICATION OF
TEMPORARY INJUNCTION; (2) SETTING 1/6/15 CONTEMPT HEARING;
(3) REQUIRING SPECIALIST TO BE RETAINED; AND (4) KEEPING IN
EFFECT ALL TERMS OF THE 12/9/15 TEMPORARY INJUNCTION**

The Court denies supplementing the provisions of the December 9, 2015 Temporary Injunction to order removal of Defendant Collier from operating the Business in issue. Removal of an operator of a business is a drastic remedy. That remedy is not authorized under Tennessee Civil Procedure Rule 65 unless the proof is clear. At this time, clear proof has not been established to authorize removal.

In so concluding, the Court finds that the record shows the Business is in arrears in the amount of \$5,928.27 on Local Sale and Use taxes. \$2,577.84 is attributable to the time the Defendant was operating the Business. Competing facts, however, are contained in the

December 21, 2015 Affidavit of the Defendant provided in his authoritative capacity and knowledge as the operator of the Business. The Defendant attests that the Sales and Use Taxes are being paid and are not in danger. The Defendant's affidavit also attests to facts which conflict and dispute vendor and other bill arrearages asserted by the Plaintiffs in support of removal.

To take action under Civil Procedure Rule 65, there must be clear proof. The foregoing findings show that the proof, at this juncture, is not clear.

It is therefore ORDERED that modifying the Temporary Injunction to add the relief of removing the Defendant as operator is denied but without prejudice to the Plaintiffs to reassert this relief as they uncover more information, particularly now that the Plaintiffs have access to the Bank of America account. Additionally, the Defendant acts at his own peril in operating the Business in the face of the Plaintiffs' allegations.


It is further ORDERED that on Wednesday, January 6, 2016, at 9:30 a.m. the Court shall conduct an evidentiary hearing on Plaintiff's Petition for Contempt. A total of two hours for both direct and cross examination is allocated to the Plaintiffs, and the same is allocated to the Defendants. The hearing is not a show cause, and the Plaintiff shall present its proof first.

It is additionally ORDERED that all of the requirements of the December 9, 2015 Temporary Injunction remain in effect. That includes, but is not limited to, that the Defendant was required, on page 6, to institute a "till" procedure and to also file a description

of the till procedure with the Court. As well, the \$20,000 deposit by the Defendant, into the Court's registry, remains in effect. Whether the Defendant has good cause not to be in compliance with the deposit requirement because of impecuniation and/or impossibility was alluded to at the December 22, 2015 hearing and perhaps will be asserted at the January 6, 2016 contempt hearing. No ruling on that defense is issued herein.

It is further ORDERED that Defendant Robert Walker shall forthwith retain and pay specialist Impact Hospitality/Dynamic Hospitality to perform the services listed in the parties' December 16, 2015 Joint Notice on the terms stated therein. Defendant Walker shall receive credit or an order of reimbursement regarding Defendant Collier's share of the fees for the specialist in a future order.

It is also ORDERED that at the January 6, 2016 hearing the Court shall conduct argument and rule on Plaintiffs' oral motion, made at the December 22, 2015 hearing, to refer this case to mediation.



ELLEN HOBBS LYLE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

cc: Anne C. Martin
Mandy Strickland Floyd
William Cheek III
David L. King
Sais Phillips Finney


MAILED
12/23/15