

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/Counter-Defendants,)

VS.)

DEWAYNE COLLIER,)

Defendant/Counter-Plaintiff/
Cross-Plaintiff.)

VS.)

DARYL J. MOORE,)

Cross-Defendant.)

NO. 15-1385-BC

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**MEMORANDUM AND ORDER GRANTING PLAINTIFFS' MOTION
FOR RULE 37.02(B) SANCTION OF REMOVAL OF
DEFENDANT COLLIER AS OPERATOR OF THE BUSINESS
AND AWARDED ATTORNEYS' FEES**

It is ORDERED that Plaintiffs' *Emergency Motion for Sanctions* filed May 31, 2016 is granted. With the authority provided in Tennessee Civil Procedure Rule 37.02(B), the Court sanctions Defendant Collier by refusing to allow him to oppose Plaintiffs' motion to modify a December 9, 2015 temporary injunction: to remove Defendant Collier as operator of the Plaintiff LLC's business, The Germantown Pub, and put in place the Plaintiffs as operators. The Court also ORDERS as a sanction for Defendant Collier to pay \$1,000 in attorneys' fees. The cause for the sanctions is Defendant Collier's disobedience of a May 19,

2016 order compelling the Defendant, for a second time, to produce documents. The findings on which the Court bases the sanctions are as follows.

1. The discovery in issue is Plaintiffs Second Set of Requests for Production of Documents propounded on February 29, 2016. Defendant failed to respond to these. Plaintiffs filed a Motion to Compel on April 9, 2016. The motion was granted. The Court gave the Defendant a deadline to produce the documents. The day following the deadline and thirty-five (35) minutes prior to a teleconference with the Court regarding the sufficiency of the production, only two-thirds of the documents were provided and these were deficient.

2. The Plaintiffs then filed a Second Motion to Compel to obtain the documents, which was granted. The Court gave the Defendant until May 26 to produce the documents. The deadline was to assure production prior to a June 2, 2016 hearing on Plaintiffs' motion to modify a December 9, 2015 temporary injunction. The modification the Plaintiffs sought was concerning removal of Defendant Collier as the operator of the Business. The Defendant failed to comply with the May 26, 2016 deadline, and Plaintiffs' motion for sanctions was filed and heard on June 2, 2016. Accordingly, the Defendant has now failed twice to comply with orders compelling production.

3. In addition to Defendant's noncompliance with discovery orders, the documents in issue are significant. They provide the Court with particular information about the financial status and operation of the Business. This information is time critical because there are unpaid bills, in particular the priority bill of an expert retained by the parties and

approved by the Court, Impact Hospitality/Dynamic Hospitality, as well as allegations that the Defendant is misusing and diverting funds of the Business for personal use. The documents are needed for an accurate evaluation and planning for the Business.

4. Also present besides the Defendant's noncompliance and the need for the documents is the Defendant's motivation in delaying and not producing the documents. They are potentially adverse to the Defendant and may show commingling and misuse of funds by him.

5. Another factor is the waste of time and attorneys' fees. Counsel for the Defendant admitted at the June 2, 2016 hearing that some of the information requested the Defendant does not have. If the absence of this information had been stated at the outset in March 2016 when the production was first due, numerous hearings and attorneys fees could have been avoided.

Tennessee Civil Procedure Rule 37.02(B) vests a court with power to sanction a party for failure to comply with a discovery order by refusing to allow the disobedient party to support or oppose designated claims or defenses.

Before the Court is the Plaintiff's renewed motion to alter and amend the December 9, 2015 temporary injunction by removing Defendant Collier as the operator of the Business. Based upon the facts stated above, the Court concludes that it is appropriate to refuse to

allow Defendant Collier to oppose the Plaintiff's motion to alter the December 9, 2015 injunction and, therefore, Defendant Collier shall be removed as operator of the Business.


In taking this action, the Court reasons that the Defendant's failure to respond to discovery, despite two motions to compel, and his failure to give access to the Court and the Plaintiffs to information about the financial status of the Business not only constitute a discovery sanction but also are grounds for altering the temporary injunction that has been put in place to protect the Business. The Defendant's conduct, in not being forthright and transparent with the Plaintiffs and the Court about the financial status of the Business and giving access to records about the same, places the Plaintiff investors and shareholder at risk. Defendant's conduct is also prejudicial to creditors and, in particular, the expert, Impact Hospitality/Dynamic Hospitality, who has assisted the parties with the Business.

Lastly, the Defendant is not without a remedy and recourse. Under the Tennessee Rules of Civil Procedure, if there are changed circumstances, the Defendant can file an application with the Court to either dissolve the December 9, 2015 injunction as modified and seek to be reinstated as the operator of the Business. Under these circumstances, the burden would be properly placed upon the Defendant to provide verified proof that during the pendency of this litigation it is more appropriate for him to operate the Business. Given, however, Defendant Collier's continued disobedience to orders in responding to discovery to provide necessary access and information about finances, at this juncture he must be

removed as operator and the burden placed upon him, going forward, to demonstrate his entitlement to operating the Business.

The above findings of fact and foregoing analysis also are the justification for the award of \$1,000 in attorneys' fees to the Plaintiffs.

The sanctions ordered herein pertain to the modification of the December 9, 2015 injunction to remove Defendant Collier as the operator of the Business and do not have anything to do with the Plaintiffs' petition to hold the Defendant in civil contempt and will not be used as an adverse inference by the Court deciding the contempt petition.



ELLEN HOBBS LYLE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

cc: Anne C. Martin
Mandy Strickland Floyd
William Cheek III
Lorraine Wade
Daryl Moore

COPIES TO ATTORNEYS AND PRO SE LITIGANTS
AT THE ABOVE ADDRESSES

DATE 6-7-16 CLERK CS