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

CONSUELO N. SOLIS-KING,	)	
individually and on behalf of	)	
KG HOSPITALITY GROUP LLC	)	
d/b/a FOO BAR,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	No. 16-70-BC
	)	
JOSHUA T. GOBLE, individually and	)	
as a member of KG HOSPITALITY	)	
GROUP LLC d/b/a FOO BAR,	)	
	)	
Defendant.	)	

## MEMORANDUM AND ORDER DENYING MOTION TO CONTINUE TRIAL AND HOLDING RULING ON MOTION TO AMEND IN ABEYANCE UNTIL CONCLUSION OF 4/2/18 TRIAL

Plaintiff Solis-King and Defendant Goble are the members of a two-person limited liability company; namely, KG hospitality Group LLC d/b/a Foo Bar, which is a bar and restaurant. They each own 50% interest in KG Hospitality Group LLC d/b/a Foo Bar. The business was formed in August 2012. Plaintiff Solis-King and Defendant Goble each allege that the other has engaged in impropriety concerning the business including, without limitation, breach of the oral operating agreement and fiduciary duties. On March 28, 2017, the Court entered separate Orders dissolving, winding up and liquidating the business and affairs of KG Hospitality Group LLC d/b/a Foo Bar. A three-day non-jury trial is scheduled to commence on April 2, 2018 at 9:00 a.m.

Only recently during the deposition of the Defendant in January 2018 did Plaintiff Solis-King discover that Defendant Goble, acting on behalf of KG Hospitality Group LLC d/b/a Foo Bar without the knowledge and consent of Plaintiff Solis-King, sold the business, it appears in August 2016, to an entity known as Three Point Five Star, LLC d/b/a Cobra. The Plaintiff asserts this entity was formed by a group of KG Hospitality Group LLC d/b/a Foo Bar employees. Three Point Five Star, LLC d/b/a Cobra consists of four members; namely, Samantha Barrett, Rebecca Cobb, Matt Gray and Nikolaos Gehrke.

The Plaintiff has filed a motion to continue the April 2, 2018 trial and to be granted leave to amend the *Verified Complaint* to join Three Point Five Star, LLC d/b/a Cobra asserting in connection with the sale conspiracy and fraudulent conveyance against Cobra.

Usually, in ruling on a motion to amend a complaint, a trial court is to consider (1) undue delay in filing; (2) lack of notice to the opposing party; (3) bad faith by the moving party; (4) repeated failure to cure deficiencies by previous amendments; (5) undue prejudice to the opposing party; and (6) futility of amendment. *Kincaid v. South Trust Bank*, 221 S.W.3d 32, 42 (Tenn. Ct. App. 2006).

These factors, however, are not truly applicable in this matter because the claims the Plaintiff seeks to add can be brought separately and independently against Defendant Goble and Cobra in a second phase of this lawsuit. Moreover, it would be a benefit to all the parties and nonparties if the present parties' claims of breach of contract, accounting,

breach of fiduciary duties and conversion were decided first before litigation about the

sale of the business to Cobra because trying the present claims would inform and

potentially narrow the issues for further claims against Defendant Goble and Cobra about

the sale.

It is therefore ORDERED that the Plaintiffs' motion to continue is denied, and the

trial shall proceed on April 2, 2018 on the claims of the Verified Complaint filed January

21, 2016 and the Verified Counter-Complaint filed April 21, 2016.

It is further ORDERED that a ruling on the Plaintiffs' motion to amend, filed

March 2, 2018, is held in abeyance until the conclusion of the April 2, 2018 trial.

s/ Ellen Hobbs Lyle

ELLEN HOBBS LYLE

CHANCELLOR

BUSINESS COURT DOCKET

PILOT PROJECT

cc by U.S. Mail, email, or efiling as applicable to:

M. Ben Moore, II

Colin B. Calhoun

Joshua T. Goble

Andrew A. Warth

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