

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

TODD B. SCOBEY, CYNTHIA KING,)	
and JACKSON SCOBEY, by his next)	
friend TODD B. SCOBEY, and)	
STRONG WATERPROOFING, LLC,)	
)	
Plaintiffs,)	
)	
VS.)	NO. 17-691-BC
)	
JOE STRONG,)	
)	
Defendant.)	

**MEMORANDUM AND ORDER: (1) DENYING PLAINTIFFS’
MOTION FOR APPOINTMENT OF A CUSTODIAN AND RESERVE FUND
AND (2) SETTING TRIAL AND TRIAL PREPARATION DEADLINES**

It is ORDERED that the motion of the individual Plaintiffs for the appointment of a fiscal agent or custodian or other third-party neutral to oversee the financials of Strong Waterproofing, LLC (the “Plaintiff LLC”) and for the creation of a reserve fund to ensure payment of LLC liabilities is denied for the following reasons.

1. The Defendant’s analysis of the law in its February 16, 2018 *Response* is correct. In this case there are not present the three grounds required by Tennessee law for the Court to intervene in the financial operations of the Plaintiff LLC.

Two bases for court intervention on financial operations are derivative actions, Tennessee Code Annotated section 48-249-805, or dissolution proceedings, Tennessee

Code Annotated section 48-249-616. Neither of these statutory proceedings are present in this case.

The third basis is the equitable power of the Chancery Court, Tennessee Code Annotated section 16-11-101. This power, however, is rightfully constrained to be exercised in the most egregious of cases of fraud or other grave wrongdoing and is subject to the Tennessee Civil Procedure Rule 65 procedure. In this case, the Individual Plaintiffs have failed to demonstrate fraud or extreme wrongful conduct.

With the exception of the salary of Mrs. Strong, which is analyzed separately below, all of the Plaintiffs' claims that "unless prompt action is taken to stop the continued bleeding of cash, there will be no business to maintain and move forward," *Plaintiffs' Memorandum*, filed February 5, 2018, at 8, are rebutted by the Defendant's *Response*. In his *Response*, the Defendant explains

- late fees were Plaintiffs' fault;
- mileage of Mr. Hunter and Mrs. Strong are work-related and consistent with the nature of the LLC's business;
- Mr. Hunter's compensation is for performing the work of the Chief Operating Officer and second-in-command of the LLC, and is commensurate with his industry experience;
- "Todd Scobey Litigation" entries in QuickBooks are tracking;
- overlapping reports by Plaintiffs inflate LLC expenses.

With respect to the payments to Mrs. Strong, the amount of the compensation for her position of administrative assistant (\$2,500 weekly since July 2017) appears, on its

face, excessive. Yet, under the Business Judgment Rule the Court can not intervene to adjust an excessive salary.

Moreover, a salary of Mrs. Strong, which should potentially be decreased from \$2,500 a week by 50% to \$1,250 a week, amounts to about \$60,000 of excess salary for July 2017 through July 2018. Mrs. Strong's salary is not bankrupting the LLC or putting it at such financial risk as to authorize this Court under Tennessee law to intervene.

Lastly, Counsel for the LLC, Mr. McMillan, has filed expert accounting analyses, which opine that on a global level the Plaintiffs have engaged in fraud and conversion to an extent that is much greater than any excessive salary being paid to Mrs. Strong. The Individual Plaintiffs, however, have furnished no countervailing expert analysis. The \$60,000 alleged excessive salary of Mrs. Strong is much less than the alleged amounts attributable to the claimed fraud and conversion of the Individual Plaintiffs asserted by the expert.

For these reasons, Plaintiffs' motion is denied.

There is, however, a remedy the Court shall provide for the Plaintiffs' claims that they are owed money and the LLC is being misoperated, and that is a speedy trial. This remedy was suggested by Defendant's Counsel, and it is a means to provide the parties permanent relief.

Based on the April 20, 2018 date set by the Court as the last date for amendments to pleadings to be docketed for hearing, the following deadlines are ORDERED for the disposition of this case.

1. By May 11, 2018, the parties shall designate the expert witnesses they shall have testify at trial and shall provide their opinions and reports to opposing Counsel.

2. All discovery, including rulings on motions related to discovery, shall be completed by June 22, 2018.

3. A 4-day bench trial is set to begin July 30, 2018, at 9:00 a.m.

/s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

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

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