

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

TERRELL K. RALEY, individually, and )  
on behalf of 4 POINTS HOSPITALITY, )  
LLC, )

Plaintiffs, )

VS. )

CEES BRINKMAN and BRINKMAN )  
HOLDINGS, LLC, )

Defendants, )

AND )

CEES BRINKMAN, individually, and )  
on behalf of 4 POINTS HOSPITALITY, )  
LLC, )

Counterclaimant, )

VS. )

TERRELL K. RALEY, AMARANTH )  
HOSPITALITY GROUP, LLC, )

Counterdefendants. )

NF  
NO. 16-196-BC

2016 JUN 28 PM 4:02  
FILED  
CLEM. & HARRIS  
DAVIDSON CO. CHANCERY CT.  
D.C. & M.

**MEMORANDUM AND ORDER: (1) DENYING DEFENDANT BRINKMAN'S  
MOTION TO REVISE AND (2) DENYING COUNTERDEFENDANTS'  
MOTION TO DISMISS AND GRANTING LEAVE TO AMEND**

It is ORDERED that the June 9, 2016 Defendant's Motion to Revise is denied. This ruling is based upon the authorities cited in the June 2, 2016 *Memorandum and Order* which is also incorporated herein by reference. In that ruling the Court concluded that this case fits

the closely held LLC exception to derivative claims. Under that exception, where there are only two 50/50 members, Plaintiff Raley, in his own name, is permitted to directly assert claims on behalf of the LLC, in addition to his individual claims. Plaintiff Raley is not required to bring a derivative claim and is not required to follow the statutory requirements for a derivative claim. Plaintiff Raley is permitted under this exception to assert claims on behalf of the LLC in his own name. The foregoing is what the Court meant in the June 2, 2016 ruling when it used the term “direct” claim.

Applying this law to the *Verified Complaint*, and applying Tennessee’s liberal pleading standard, which gives latitude and does not require precision in labeling the legal theories as long as there are “direct allegations on every material point necessary to sustain recovery on any legal theory even though it may not be the theory suggested by the pleader,” *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426-27, 437 (Tenn. 2011) (citations omitted), claims by the LLC contained in the *Verified Complaint* cannot be dismissed.

For clarity, however, the Court ORDERS that the caption of the *Verified Complaint* shall be modified to “Terrell K. Raley, individually, and on behalf of 4 Points Hospitality, LLC.” As to the other references of the February 26, 2016 *Verified Complaint* to claims of the LLC: first sentence; and paragraphs 76, 78, 80, 83, 84, 86, 87, 89, 90, 95, 96, they require no amendment. Those references adequately convey that some of the claims asserted are for Raley, individually, and some also seek recovery for the LLC. These references are


consistent with the June 2, 2016 *Memorandum and Order* that in this closely held LLC Plaintiff Raley is permitted to assert claims for himself and on behalf of the LLC.

As to the June 9, 2016 Counterdefendants' Motion to Dismiss, for the reasons stated in the June 2, 2016 *Memorandum and Order*, incorporated above, this case fits the exception to bringing a derivative claim: The reasons for filing a derivative suit in a closely-held entity are (1) to prevent multiple lawsuits, (2) protect corporate creditors, (3) protect multiple shareholders and (4) adequately compensate injured shareholders; if these reasons are not present, a direct action is a proper cause of action. *Thomas v. Dickson*, 250 Ga. 772, 774-775, 301 S.E.2d 49 (1983). Accordingly, the claims asserted by Defendant Brinkman, on behalf of the LLC, shall not be asserted derivatively on behalf of the LLC.

It is therefore ORDERED that by July 18, 2016, Defendant shall amend to eliminate references to derivative claims. As well, the caption of his *Counterclaim* shall be "Cees Brinkman, individually, and on behalf of 4 Points Hospitality, LLC." The parts of the April 18, 2016 *Counterclaim* which require amending to remove the derivative claim and use the method of Defendant Brinkman, himself, asserting claims on behalf of the LLC are these: the first sentence and paragraph 91. The Court concludes that the other references in the *Counterclaim* to the claims of the LLC: paragraphs 49-56, 61, 62, 72, 73, 77, 78 do not require amending. These paragraphs are consistent with the June 2, 2016 *Memorandum and Order* that in this closely held LLC Defendant Brinkman is permitted to assert claims for himself and on behalf of the LLC.

With respect to attorneys fees, neither Terrell Raley nor Cees Brinkman shall use funds of the LLC to pay attorneys fees for the claims asserted in this lawsuit by them on behalf of the LLC and/or by them individually. Any claim of the LLC to recover fees for prevailing in this lawsuit or otherwise shall be determined at the conclusion of the lawsuit.

Additionally, any recovery on claims of the LLC, asserted by either party, shall be paid to the LLC.

  
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ELLEN HOBBS LYLE  
CHANCELLOR  
TENNESSEE BUSINESS COURT  
PILOT PROJECT

cc: Robert G. McDowell  
James A. DeLanis  
TaCara D. Harris  
W. Scott Sims  
D. Gil Schuette

  
MAILED  
6/28/16