

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

PAMELA PERRY,)	
)	
Plaintiff,)	
)	
vs.)	No. 21-1177-III
)	
NASHVILLE CONVENTION &)	
VISITOR CORP., MARCUS LEMONIS)	
and CAMPING WORLD, INC.,)	
)	
Defendants.)	

**MEMORANDUM AND ORDERS RULING ON: (1) PLAINTIFF'S MOTION
FOR LEAVE TO AMEND; (2) DEFENDANTS' MOTIONS TO DISMISS; AND
(3) DEFENDANT CAMPING WORLD, INC.'S MOTION FOR SANCTIONS**

On February 16, 2022, oral argument was conducted on five motions filed in this case and ruled on as follows:

- Plaintiff's motion for leave to amend—**DENIED**;
- three Tennessee Civil Procedure Rule 12.02(6) motions to dismiss for failure to state a claim filed by each Defendant—**GRANTED**; and
- a motion for Tennessee Civil Procedure Rule 11 sanctions against the Plaintiff filed by Defendant Camping World, Inc.—**DENIED**.

The rulings on these motions stated from the bench are documented below with (1) a supplement on the motion to amend from research concluded subsequent to oral argument and (2) a modification concerning Defendants' filing fee applications under Tennessee Code Annotated section 20-12-119(c).

1. Plaintiff's Motion to Amend

a. *Rule 15 Procedure*

The Plaintiff filed on February 10, 2022, a *Motion for Leave to File Amended Complaint and Add Party*. The substantive change the Plaintiff asserts in the *Motion* that the amendment would make is to add to the *Complaint for Declaratory Relief and Breach of Contract with the Citizens of Davidson County*, filed November 18, 2021 (the “original *Complaint*”), more parties described by the Plaintiff as: “500+ Citizens Providing Information to Law Enforcement.”

Under Tennessee law the Plaintiff was not required to file a motion for leave to amend. Tennessee Civil Procedure Rule 15 provides that the Plaintiff has the right to amend as a matter of course and file an amended complaint without leave of court if no responsive pleading has been filed. The Defendants’ motions to dismiss in this case, under Tennessee law, do not constitute responsive pleadings, *Adams v. Carter County Memorial Hospital*, 548 S.W.2d 307 (Tenn. 1977); *Moseley v. State*, 475 S.W.3d 767, 773-74 (Tenn. Ct. App. 2015), and no answers have been filed. Thus, the amended complaint could have been filed by the Plaintiff to serve as the operative pleading in this case on which to judge the motions to dismiss and motion for sanctions.

During oral argument, however, Counsel for Defendant Lemonis cited Tennessee law that seeking leave to amend, where no responsive pleading is filed, waives the automatic right under Rule 15 to file the amended pleading without leave of court. *Hunter*

v. MTD Products, Inc., No. W2002-0005-COA-R3-CV, 2002 WL 31852863 *1 (May 19, 2003, Tenn. Ct. App) (quoting *Gribble v. Buckner*, 730 S.W.2d 630, 633 (Tenn. Ct. App. 1986)).

Based on this law, the Court concludes that the Plaintiff has waived her right to amend without leave of court, and the *Amended Complaint for Declaratory Relief and Breach of Contract With the Citizens of Davidson County*, filed February 10, 2022, as an attachment to the motion to amend, is not automatically the operative pleading in this case on which to judge the motions to dismiss and motion for sanctions. The requested amendment must be analyzed under the factors identified under Tennessee Civil Procedure Rule 15 to determine if the amendment is allowed.

b. *Futility*

Tennessee law provides that in deciding whether to grant leave to amend a court should assess the following factors: undue delay, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, and futility of the amendments. *Abdur' Rahman v. Parker*, 558 S.W.3d 606, 620 (Tenn. 2018).

Applying those factors to this case, the Court concludes that the Plaintiff's *Motion for Leave to File Amended Complaint and Add Party*, filed February 10, 2022, must be denied as futile. The reason is that the proposed addition of "500+ Citizens Providing Information to Law Enforcement" is an invalid pleading. The attempted addition of 500 plus unidentified parties does not provide the Defendants due process notice of the 500 plus persons suing the Defendants. Additionally, the 500 plus persons have not

authorized retention of Plaintiff's Counsel nor the filing of claims on their behalf. Further, the potential procedural mechanism of a class action to accomplish a distribution to a large group of persons has not been pleaded nor developed by Plaintiff's Counsel. In so ruling, the Court adopts Defendant Lemonis' analysis as follows.

Trial courts are not required to grant a motion to amend if the amendment would be futile." [*Runions v. Jackson-Madison Cty. Gen. Hosp. Dist.*, 549 S.W.3d 77, 84-85 (Tenn. 2018).] Plaintiff moves to amend the complaint, representing to the Court that "[t]he only substantive change to the pleading is [Plaintiff's] adding of the '500+ Citizens Providing Information to Law Enforcement' as a party." (Pl.'s Mot. for Leave to File Am. Compl. & Add Party 1.) This case is not presented as a "class action" under Tenn. R. Civ. P. 23 and Local Rule 26.14, and no set of circumstances would allow it to be so.

"Every action shall be prosecuted in the name of the real party in interest" Tenn. R. Civ. P. 17.01. Plaintiff's counsel has not identified any of the 500+ putative plaintiffs, nor has he demonstrated to the Court that he actually represents any of them or even has had any communication with them. Additionally, Plaintiff's attempt to add 500+ plaintiffs would undermine her own claim, subjecting it to dismissal. "[I]n order to become entitled to a reward the claimant must have furnished the first effective information which was the active and efficient means of apprehension or proximately resulted in the arrest of the criminal." *Stephens v. City of Memphis*, 565 S.W.2d 213, 216 (Tenn. Ct. App. 1977). If Plaintiff did not furnish the first effective information (but rather, any of the 500+ plaintiffs she seeks to add did), then she fails to state a claim for entitlement to any reward money. Plaintiff neither provided the "first effective information" nor did she satisfy the conditions of the offer.

Defendant Marcus Lemonis's Memorandum of Law in Support of Motion to Dismiss, Jan. 21, 2022, at 2.

For these reasons the amendment to add parties cannot be granted, and the motion for leave to amend is futile and must be denied. It is therefore ORDERED that Plaintiff's *Motion for Leave to File Amended Complaint and Add Party* is denied.

The significance of this ruling for the remaining motions is that the ruling leaves the original *Complaint* as the operative pleading to be used in deciding the Defendants' motion to dismiss and the motion for Rule 11 sanctions.

2. Defendants' Motions to Dismiss

It is ORDERED that *Defendant Marcus Lemonis' Motion to Dismiss*; *Defendant Camping World, Inc.'s Motion to Dismiss*; and *Defendant Nashville Convention & Visitor Corp.'s Motion to Dismiss* (referred to collectively as the "Motions to Dismiss") are granted.

a. *Applicable Law*

In so ruling, the Court has applied the standard stated in *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). "A Rule 12.02(6) motion challenges only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence," and "asserts that the allegations fail to establish a cause of action." *Id.* Under this standard the Court must assume the truth of all relevant and material allegations contained in the complaint. In ruling on a motion to dismiss, courts may consider exhibits attached to the complaint without converting the motion to dismiss to a motion for summary judgment. *See Burns v. State*, 601 S.W.3d 601, 606 (Tenn. Ct. App. 2019), *appeal denied* (Tenn. Mar. 26, 2020) (concluding that the Tennessee Claims Commission properly considered, among other things, exhibits attached to the complaint, and that "such

consideration did not necessitate converting the motion to dismiss to a motion for summary judgment”).

As cited in the briefing, in Tennessee, rewards are analyzed under the principles of contract law. *Stephens v. City of Memphis*, 565 S.W.2d 213, 216 (Tenn. Ct. App. 1977).

The same following principles of contract law apply in ascertaining the terms of a reward.

- When interpreting a contract, it is the Court’s role “to ascertain the intention of the parties.” *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999).
- “[T]he intention of the parties is based on the ordinary meaning of the language contained within the four corners of the contract.” 84 *Lumber Co. v. Smith*, 356 S.W.3d 380, 383 (Tenn. 2011) (citing *Kiser v. Wolfe*, 353 S.W.3d 741, 747 (Tenn. 2011); *Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885, 889-90 (Tenn. 2002)).
- “If the language used by the parties is plain, complete, and unambiguous, the intention of the parties must be gathered from that language, and from that language alone” A strained construction may not be placed on the language used to find ambiguity where none exists. *Empress Health & Beauty Spa, Inc. v. Turner*, 503 S.W.2d 188, 190-91 (Tenn.1973) (quoting 17 Am. Jur. 2d *Contracts* § 245).

b. *Analysis of Defendant Lemonis’ Reward*¹

Beginning with Defendant Lemonis’ reward and the Count III breach of contract claim of the original *Complaint*, the Court finds that the pleadings establish, through the attachments to the original *Complaint*, that this contract/reward was conditioned upon the

¹ The Plaintiff alleges that this reward is payable by Defendant Lemonis personally or, alternatively, by Defendant Camping World, Inc. (“Camping World”) if the reward was offered by Defendant Lemonis in his capacity as CEO of Camping World. For ease of reference this reward shall be identified herein as “Defendant Lemonis’ reward” or the “Lemonis reward.”

bomber being convicted and arrested. The wording is found in Exhibit A to the original *Complaint*² in a tweet issued by Defendant Lemonis, quoted as follows.

@MNPDNashville @JohnCooper4Nash I would like to put up a \$250,000 reward to anyone who provides information that leads to the arrest and conviction inside of your process, and the this [sic] Nashville incident. We can't have our streets terrorized like this. #horror

In addition, the original *Complaint* acknowledges in paragraph 66 that the Plaintiff was made and is aware that “the only person who could deserve any portion of the reward had to assist in the identification of the bomber, and the *arrest* of the bomber, and *conviction* of the bomber [emphasis added].” Those conditions did not and could not occur in this case because the bomber perished with the bombing. The Plaintiff, therefore, could not fulfill the conditions of the Lemonis reward to claim it and be paid.

As to the Plaintiff’s argument that the wording in the tweet of the reward with respect to “leads to” and “inside your process” somehow renders ambiguous “arrest and conviction,” that argument under the circumstances of this case fails. With the bomber perishing with the bombing, under no circumstances could “leading to” or “inside your process” make a difference because there being no arrest and conviction, the reward never got to the point of having to determine how remote and attenuated leads to arrest and conviction could be to qualify for the reward or whether the process used for arrest and conviction complied with the type of process stated in the reward. Absent an arrest and conviction such issues, and their alleged ambiguity, are moot.

² Exhibits attached under Rule 10.03 of the Tennessee Rules of Civil Procedure “shall be a part of the pleading for all purposes,” Tenn. R. Civ. P. 10.03.

As to the subsequent communications of Plaintiff's Counsel with Defendant Lemonis' Counsel and Camping World's Counsel asserted by the Plaintiff to vary the reward terms, the Court adopts the Defendants' following analysis that this cannot be considered. In *Stephens v. City of Memphis*, 565 S.W.2d 213, 216-17 (Tenn. 1977), the Court made clear that the acts performed for the reward must be made *after* the offer had been made.³ Thus the determinative conduct in obtaining the reward is the actions of the Plaintiff not the characterizations of the terms of the reward after performance by the Plaintiff. The Plaintiff's actions are that she appears to allege at paragraphs 6-11 of the original *Complaint* that, after she heard of Mr. Lemonis' offer on the news on December 25, 2020, she provided information to law enforcement on December 25-26, 2020. Thus, any communications her Counsel had with the parties or their representatives after that are irrelevant.

The Court therefore concludes that even assuming the truth of all relevant and material averments contained in the original *Complaint*, such facts do not constitute a legally cognizable cause of action for breach of contract against Defendant Lemonis nor

³ It was in the related context of holding that knowledge of the offer of the reward at the time of giving the information is a prerequisite to recovery that the Tennessee Supreme Court in *Stephens* stated that acceptance of the reward is by actions made after the reward offer, "In the case of *Stair v. Heska Amone Congregation* (1913), 128 Tenn. 190, 159 S.W. 840, our Tennessee Supreme Court said, 'The better rule is that he who is the active and efficient cause in securing the result described in an offer of reward is the one entitled to it. He is the one who accomplishes the result who brings it about.' Also, from 67 Am.Jur.2d 17, Section 22, we quote as follows: 'A reward offered for information leading to the arrest and conviction of an offender is earned by the person who first communicates the information that ultimately leads to both. In order to become entitled to the reward, the claimant must be the first person to give information to the proper authorities, and the information must be effective in leading to the arrest and conviction of the offender,' citing *Kincaid Trust & Savings Bank v. Hawkins*, 234 Ill. App. 64; *County Court of Braxton County v. Smith*, 110 W.Va. 392, 158 S.E. 377." *Stephens*, 565 S.W.2d at 616-17.

Camping World if it were determined to be the offeror of the reward. No other reasonable inference can be drawn from the original *Complaint* but that the reward offered by Defendant Lemonis was conditioned upon arrest and conviction and that did not and could not occur in this case.

Finally, there is the Plaintiff's argument that she is entitled to payment of the Lemonis reward because she substantially complied with the reward offer. The Plaintiff's source for this argument is one of Tennessee's primary case on rewards: *Stephens v. City of Memphis*, 545 S.W.2d 213 (Tenn. Ct. App. 1977). The Court concludes Plaintiff's argument lacks merit, adopting the analysis of Defendant Lemonis, quoting as follows.

Plaintiff takes one sentence from *Stephens v. City of Memphis*, out of context, specifically: "Generally, in order to recover a reward, all that is necessary is a substantial (rather than a literal) compliance with the reward offer." 565 S.W.2d 213, 216 (Tenn. Ct. App. 1977). From this, Plaintiff argues that her part in furnishing information to law enforcement that led to identification of the bomber was a "substantial compliance" of the reward offer. Plaintiff is mistaken. This part of the *Stephens* opinion quotes an annotation that is specific to reward cases involving "arrest and conviction" but does not abrogate the requirement that claimants of reward offers must satisfy the conditions attached to the offer in order to recover a reward. *See* 100 A.L.R.2d 573, text & n.15 (Originally published in 1965). Specifically, the annotation discussing the "substantive compliance" language cited cases where the offer was "for the arrest and conviction"³ of the criminal, and the issue in those cases was whether a claimant was entitled to the reward money **where the claimant did not literally take part in the arrest and conviction of the criminal.**⁴ In each of those cases, the criminal was arrested and convicted **but** the claimant did not personally take part in the arrest and conviction of the criminal. Thus, the one sentence that Plaintiff takes from *Stephens* out of context does not apply here where (1) there was no arrest and conviction, and (2) the offer was specifically for "**information that leads** to the arrest and conviction," not just "for the arrest and conviction." And Plaintiff conveniently ignores the holding of *Stephens*, requiring that the information furnished by Plaintiff after Plaintiff learned of the offer lead to both the arrest and conviction of the criminal: "We concur in the findings

of the Chancellor and in his application of the law. The information furnished by Plaintiff **did not lead to the identification and arrest** of James Earl Ray. The fingerprints and laundry marks did. The **information furnished by Plaintiff before the rewards were offered led to the conviction** of James Earl Ray.” *Stephens*, 565 S.W.2d at 217.

³ As Stephens acknowledges, “[a]lthough there appears to be considerable variation in the language of reward offers, it seems that, basically, there are two kinds: (1) rewards offered for the ‘arrest’ or ‘arrest and conviction,’ and the like; and (2) rewards which specifically allow recovery by a person ‘furnishing information leading to’ the arrest, conviction, and the like.” *Stephens v. City of Memphis*, 565 S.W.2d 213, 215-16 (Tenn. Ct. App. 1977) (quoting 100 A.L.R.2d, 577 page 577.)

⁴ See, e.g., *Burke v. Wells, Fargo & Co.*, 50 Cal. 218, 221 (1875) (“Neither of the interveners performed any further act with reference to the arrest or conviction”); *Elkins v. Bd. of Comm’rs of Wyandotte Cty.*, 120 P. 542, 543-44 (Kan. 1912) (“The appellant discovered the criminal. He was unauthorized either by himself or by his agent to arrest or to convict, but he did all that was possible for him legally to do. The officers of the law did their bounden duty, and the arrest and conviction followed. He caused both. This is all the contract contemplated any citizen could do.” (emphasis added)); *Haskell v. Davidson*, 40 A. 330, 331 (Me. 1898) (“An offer of a reward for ‘the arrest and conviction’ of an offender cannot be taken literally. The person who by reason of the offer is induced to make an investigation, and finally obtains possession of sufficient facts to authorize the arrest of an offender, and his subsequent conviction, for the crime referred to in the offer, certainly cannot himself convict the offender. The service contemplated by a person making such an offer, and which the proposal should be construed as meaning, must be the obtaining, and giving to some proper person interested, sufficient information in relation to the perpetrator of the crime, and his whereabouts, as to authorize and secure the arrest of the offender, and subsequently to procure his conviction by a court of competent jurisdiction.”); *Besse v. Dyer*, 91 Mass. (9 Allen) 151, 153 (1864) (“The plaintiff had pointed out the person to the police officers, stated circumstances tending to prove his guilt, and requested them to arrest him. He was accordingly arrested, and was convicted without further aid from the plaintiff. But it was held that the plaintiff had done enough to be entitled to the reward, and that the offer was not to be construed literally.”). As required by Local Rule 26.04(b), Defendant Lemonis is attaching as an Appendix to this Reply a “complete copy” of these “decision[s] from a court of another state” cited in this Reply.

Defendant Marcus Lemonis’s Reply in Support of Motion to Dismiss, Feb. 15, 2022 at 4-5.

c. *Analysis of Defendant Nashville Convention & Visitor Corp’s (“NCVC”) Reward*

With respect to the NCVC reward, it differs from the Lemonis reward because it is not memorialized in a tweet. Instead the NCVC reward was expressed through media

reports. Nevertheless those media reports, attached by the Plaintiff to the original *Complaint*, are consistent in their reference, like the Lemonis reward, as conditioned upon arrest and conviction. The Court adopts NCVC’s analysis as follows.

Here, Plaintiff alleges that she provided information that aided the police in obtaining a search warrant which then led to the collection of evidence that assisted the identification of the bomber. (Compl. ¶¶ 10, 14, 15.) However, the alleged reward offers were contingent on the arrest and conviction of the bomber. The news article upon which Plaintiff relies explicitly states that “[o]ver \$300,000 has been raised as a reward for **information that leads to the arrest and conviction** of a suspect involved in an explosion in downtown Nashville on Christmas morning.” (*Id.* ¶ 2; Complaint Ex. A.) In her complaint, Plaintiff cites to a Tennessee caselaw providing that:

A reward offered for information leading to the arrest and conviction of an offender is earned by the person who first communicates the information that ultimately leads to both. In order to become entitled to the reward, the claimant must be the first person to give information to the proper authorities, **and the information must be effective in leading to the arrest and conviction of the offender**[.]

(Compl. ¶ 88 (quoting *Stephens*, 565 S.W.2d at 216)) (emphasis added). The *Stephens* court further provided that “he who is the **active and efficient cause in securing the result described in an offer of reward** is the one entitled to it. He is the one who **accomplishes the result** who brings it about.” *Stephens*, 565 S.W.2d at 216; *see also* 77 C.J.S. *Rewards and Bounties* § 31 (updated Nov. 2021 (stating that in order to receive the reward, the claimant must show that they “caused both the arrest and the subsequent conviction of the offender, since both are conditions precedent to a claimant’s recovery.”) Here, the complaint alleges that the bomber “perished in the blast.” (Compl. ¶ 1; *see also id.* ¶ 11.) Because the bomber perished before any arrest or conviction could occur, the condition precedent of Defendants’ alleged offers are impossible to meet. Therefore, Plaintiff’s breach of contract claim against NCVC must be dismissed for failure to state a claim.

Defendant Nashville Convention & Visitor Corp.’s Memorandum of Law in Support of Its Motion to Dismiss, Jan. 24, 2022, at 3-4.

Under Tennessee’s liberal pleading standard, the factual averments and undisputed facts of the *Complaint* establish that the conditions of the contracts in this case—rewards offered by Defendants Lemonis or Camping World, and NCVC—were not fulfilled to trigger payment of the rewards to the Plaintiff. Plaintiff’s Count III breach of contract claim against Defendants Lemonis, NCVC and Camping World for failing to pay their rewards to the Plaintiff must be dismissed under Tennessee Civil Procedure Rule 12.02(6) for failure to state a claim.

d. *Dismissal of Counts I and II Declaratory Judgment Claims*

Upon dismissal of Plaintiff’s Count III breach of contract claim, the Counts I and II declaratory judgment claims of the original *Complaint* can no longer proceed because there would be no justiciable controversy at issue. That is because both of Plaintiff’s declaratory judgment claims derive from the issue of Defendants’ payment of the reward money. *See UT Medical Grp., Inc. v. Vogt*, 235 S.W.3d 110, 119 (Tenn. 2007) (“A declaratory judgment case is not justiciable if it does not involve a genuine, existing controversy requiring the adjudication of presently existing rights.”). Thus all of the counts of the original *Complaint* must be dismissed.

e. *Additional Basis for Dismissal of Claims Against Camping World*

Finally, on the motion to dismiss filed by Defendant Camping World, there is an additional and separate basis for dismissal. This basis for dismissal derives from the

Plaintiff including Camping World as a party on the premise that because media coverage identified Defendant Lemonis as Camping World's Chief Executive Officer ("CEO") in reporting the reward, the Plaintiff was unable to discern whether the reward was made personally or on behalf of Camping World. For this reason the Plaintiff filed Count I in the original *Complaint* seeking a declaratory judgment on whether Defendant Lemonis or Camping World is the payor of the reward.

Applying the *Webb v. Nashville Habitat for Humanity* standard of assuming the facts alleged in the complaint to be true, the Court finds that the facts are insufficient in this case to establish that Defendant Lemonis was acting in his capacity as CEO of Camping World and/or acting on behalf of Camping World in connection with the reward. Only one conclusion can be drawn from the pleadings and that is that Mr. Lemonis offered the reward in his individual capacity.

The Court repeats herein the black letter law cited by Camping World that "The general rule is that corporate entities will be recognized as separate and distinct from their stockholders" *Continental Bankers Life Ins. Co. of the S. v. Bank of Alamo*, 578 S.W.2d 625, 631 (Tenn. 1979) (citing 18 Am. Jur.2d Corporations § 17, 564-65 (1965)). According to Fletcher Cyclopedia of the Law of Corporations: "It is generally accepted that the corporation is an entity distinct from its shareholders with rights and liabilities not the same as theirs individually and severally. The corporation and its directors and officers are similarly not the same personality." 1 Fletcher Cyc. Corp. § 25 (Sept. 2021 Update) (footnotes omitted). Similarly, Corpus Juris Secundum on Corporations provides:

The business of a corporation is separate and distinct from the business of its shareholders. . . . The rights and liabilities of corporations are distinct from the persons composing it. . . . Additionally, a corporation's assets are to be treated as separate and distinct from the debts of its individual shareholders, and an individual shareholder does not own the corporation's assets.

18 C.J.S. Corporations § 7 (November 2021 Update) (footnotes omitted); *see also* 12B Fletcher Cyc. Corp. § 5911 (footnotes omitted) (“It is generally accepted that the corporation is an entity distinct from its shareholders with rights and liabilities not the same as theirs individually and severally. The corporation and its directors and officers are similarly not the same personality.”). These “hornbook” principles have been routinely recognized in the State of Tennessee. *See, e.g., Cambio Health Solutions, LLC v. Reardon*, 213 S.W.3d 785, 790 (Tenn. 2006) (“Under Tennessee corporation law, a corporation and its shareholders are distinct entities.”); *Keller v. Est. of McRedmond*, 495 S.W.3d 852, 866 (Tenn. 2016) (holding that corporations and shareholders must be considered as separate and distinct legal entities); *Mudd v. Goostree*, 2013 WL 1402157, at *1 (Tenn. Ct. App. Apr. 5, 2013) (holding that the individual owner of a corporation who signed his individual name on a lease was personally liable).

In *Hight v. Tramel*, the Tennessee Court of Appeals considered the distinction between a corporate and an individual debt:

‘As its own legal entity,’ a corporation can sue and be sued and contract in its own name. ‘Whether or not a particular contract shows a clear intent that one of the parties was contracting as an individual or in a representative capacity, must be determined from the contract itself.’ Generally, ‘[a] corporate officer's signature, preceded by the corporation's name and followed by words denoting the officer's representative capacity, binds only the corporation.’ *On the other hand, the signature of an individual,*

‘without limiting or descriptive words before or after it, is the universal method of signing a contract to assume a personal obligation.’

Hight v. Tramel, 2020 WL 6748789, at *5 (Tenn. Ct. App. Nov. 17, 2020) (emphasis added) (citations omitted). In finding that the debt was an obligation of the individual, rather than for the corporation, the *Hight* Court held: “Considering the unequivocal language of the Settlement Agreement between Mr. Roberts and Mr. Hight, we conclude that Mr. Roberts was contracting only in his individual capacity. There is simply no language indicating that Action Security, the corporation, was a party to the Settlement Agreement.”.

Adopting the analysis of *Camping World*, the Court finds from the original *Complaint* that Mr. Lemonis’ tweet states, “I would like to put up a \$250,000 reward to anyone who provides information that leads to the arrest and conviction” of the Nashville Bomber (emphasis added). *See* original *Complaint*, Exhibit A. Although Mr. Lemonis is the CEO of *Camping World*, the reward offer came directly from Mr. Lemonis’ personal Twitter account, not a *Camping World* Twitter account. Mr. Lemonis’ tweet neither explicitly nor implicitly referenced *Camping World*. By using the term “I,” Mr. Lemonis’ reward offer expressly states that he personally was offering a reward. Based on Tennessee law, the unambiguous wording of Mr. Lemonis’ reward offer clearly and unambiguously establishes that despite being an officer of *Camping World*, Mr. Lemonis agreed to be personally responsible for the reward without any intent to bind *Camping World*. Mr. Lemonis made the offer in his individual capacity, and *Camping World* is not bound by Mr. Lemonis’ offer.

Additionally, in the face of the separateness under Tennessee law of a corporation from its officers and the explicit wording of the reward that is was offered by Defendant Lemonis personally, reports by independent media identifying Defendant Lemonis as the Camping World CEO are insufficient to transform Defendant Lemonis' personal reward into an action taken by Camping World. Plaintiff's claim that Camping World is bound by Mr. Lemonis' offer is not warranted by existing law.

Thus, the foregoing provides additional, independent grounds for dismissal of all the claims against Camping World.

f. *Recovery of Attorneys' Fees*

The dismissal of the original *Complaint* triggers the application of Tennessee Code Annotated section 20-12-119(c)(1). It provides that the Defendants are entitled to recover attorneys' fees from the Plaintiff, quoting the statute as follows.

(c)(1) Notwithstanding subsection (a) or (b), in a civil proceeding, where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure for failure to state a claim upon which relief may be granted, the court shall award the party or parties against whom the dismissed claims were pending at the time the successful motion to dismiss was granted the costs and reasonable and necessary attorney's fees incurred in the proceedings as a consequence of the dismissed claims by that party or parties. The awarded costs and fees shall be paid by the party or parties whose claim or claims were dismissed as a result of the granted motion to dismiss.

To implement this required award of attorneys' fees, from the bench the Court set a March 4, 2022 deadline for Defendants' Counsel to file Local Rule 5.05 attorneys' fees affidavits and fee itemization attachments, and to file motions and set those on a regular

motion docket for a determination of the amount of fees to award. This was to provide the Plaintiff notice and an opportunity to contest the amount sought.

In response Counsel for Defendant Lemonis inquired about certifying the rulings on the above motions as Tennessee Civil Procedure Rule 54.02 final rulings of fewer than all the claims in the lawsuit to avoid the costs of attorneys' fee applications until the dismissal ruling is determined on appeal. The Court on the spot denied the certification based upon its familiarity with Tennessee law that there are numerous factors to apply to decide whether to certify fewer than all claims as final, and that under the applicable abuse of discretion standard there could be a reversal of the Rule 54.02 certification and remand which runs counter to the cost efficiency sought by Counsel.⁴

In retrospect, this was too informal a way to proceed. All parties should be provided an opportunity to seek Rule 54.02 certification and to provide oral argument on their analysis to the Court on the particular circumstances of this case, and opportunity to oppose it. The Court therefore revises its ruling on the Rule 54.02 certification request as follows.

It is ORDERED that March 11, 2022 is the deadline for each Defendant to: (1) file a motion supported by Local Rule 5.05 documentation to recover attorneys' fees under Tennessee Code Annotated section 20-12-119(c)(1); or, alternatively (2) file a motion

⁴ See e.g. *E Solutions for Buildings, LLC v. Knestrick Contractor, Inc.*, No. M2017-00732-COA-R3-CV, 2018 WL 183116 *3 (March 17, 2018 Tenn. Ct. App.); *Newell v. ExitIn*, No. M2003-00434-COA-R3-CV, 2004 WL 746747 *1 (April 7, 2004 Tenn. Ct. App.).

under Rule 54.02 to (1) hold quantification of the attorneys' fees in abeyance in the event an appeal is filed and (2) certify the above rulings as final.

3. Camping World's Motion for Rule 11 Sanctions

Defendant Camping World has filed a motion to impose Tennessee Civil Procedure Rule 11 sanctions on Plaintiff's Counsel James D.R. Roberts. The motion derives from the provision in Rule 11 that an attorney's signature on a document filed with a court is certification that the attorney has read the filing, has reasonably inquired into the facts and law it asserts, that the attorney believes it is well-grounded in both fact and law, and that he is acting without improper motive. *Andrews v. Bible*, 812 S.W.2d 284, 287 (Tenn.1991). "Rule 11 establishes that an attorney who signs such a paper without the required belief is subject to appropriate sanction by the court." *Hooker v. Sundquist*, 107 S.W.3d 532, 535–36 (Tenn. Ct. App. 2002) (*citing Andrews*, 812 S.W.2d at 288).

The test to be applied in deciding whether an attorney's conduct is sanctionable is one of objective reasonableness under all the circumstances, and the reasonableness of the attorney's belief must be assessed in light of the circumstances existing at the time the document in question was signed. *Andrews*, 812 S.W.2d at 288.

Factors to consider when determining whether sanctions are appropriate under Rule 11 include "inexperience, incompetence, neglect, willfulness, or deliberate choice," as well as "the circumstances of the particular violation, but also the factors bearing on the

reasonableness of the conduct, such as experience and past performance of the attorney, as well as the general standards of conduct of the bar of the court.” *Id.* at 293 n.4.

Applying these factors to this case, the Court concludes, as supported by the above cited authorities, that it is clear as a matter of law that media statements of Defendant Lemonis’ position as CEO of Camping World to create reader interest and provide information are insufficient as a matter of black letter Tennessee law to state a claim that Camping World was a party to the reward contract in this case.

Nevertheless, Rule 11 sanctions shall not be imposed because the application of contract law to rewards is not a frequent fact pattern for Plaintiff’s Counsel to have gained experience in handling. In addition Camping World’s expenditure of attorneys’ fees is remedied by Tennessee Code Annotated section 20-12-119(c)(1). For these reasons it is ORDERED that Camping World’s motion to impose Rule 11 sanctions on Plaintiff’s Counsel is denied.

s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR

cc by U.S. Mail, fax, or efile as applicable to:
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