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TABLE OF CASES, STATUES AND OTHER AUTHORITIES

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I. ARGUMENT

APPELLEES' ISSUE 1: THE INTERMENT ORDER DOES NOT CONSTITUTE A CONTRACT OF ADHESION.

The document in contention in this matter is the Legal Interment Order which was signed by Betty Arnold and the arbitration clause contained therein. [Appellants' Record Excerpt Page 22] The Legal Interment Order states in the last sentence of the paragraph found on the first page of the document "I also understand and agree that if this Interment Order is not completed and returned to said MEMORIAL PARK within twenty-four hours prior to funeral service, said MEMORIAL PARK reserves the right to delay the interment proceedings not less than ten hours or more than twenty-four hours." [Appellants' Record Excerpt Page 22]. The Appellees in this matter would have this Court believe that this is not a contract of adhesion even though it was executed at the funeral home, presented to a grieving widow by the funeral director, and was necessary to complete the proper and dignified burial of her husband of many years. The language of the document itself indicates that it was one of adhesion and thus unconscionable.

Looking further, in the Brief of the Appellees we find on page 12, section II, second paragraph, line five, the Appellees state as follows: "Had Betty objected to any part of the Interment Order, she could have contacted another cemetery, purchased new plots and had Ernest buried there, just as numerous persons purchase cemetery plots for the first time at the unexpected death of a loved one." In other words, Betty could either agree to sign the Interment Order and utilize the Lots and Vaults that she had previously purchased in 1983, [Appellants' Record Excerpt page 11] from the Defendant or she could go somewhere else. That sounds just like a contract that is on a take it or leave it basis by someone in a superior bargaining position.

The Appellees after having stated above that Betty could basically sign the Interment Order or go somewhere else, states in their Brief on page 13, first paragraph, line one “[w]ithout such evidence Plaintiffs cannot claim this was a ‘take it or leave it’ contract.” It seems bafflingly that on page 12 the Appellees say that the Appellants could take it or leave it or go somewhere else and then on page 13 that there is no such evidence that this was on a take it or leave it basis. Clearly, the Appellees make the Appellants’ case for them. This was a contract that was presented on a take it or leave it basis and is certainly unconscionable given the circumstances. No grieving widow or anyone should have to face this situation where the owner/operator of a cemetery can force upon them such a one sided agreement at a point and time in their the life which is the most emotional, heart wrenching experience that anyone can imagine and the grieving family is most vulnerable.

APPELLEES’ ISSUE 2: THE INTERMENT ORDER DOES NOT PERMIT AN ILLEGAL ACT.

The Appellees rely upon the language in the Legal Interment Order which says that Betty authorizes the Memorial Park to correct any mistakes that may occur concerning location, actual burial, etc. [Appellants’ Record Excerpts page 22]. It should be made extremely clear at this point that if the Legal Interment Order had said or it had at least been brought to the Appellant, Betty Arnold’s (widow) attention that she was giving permission to anyone to move the body of her husband without notice, and without going through any procedures of notice to the family, she would not have agreed. It is simply beyond the expectations of a reasonable person that the owner/operator of a cemetery would move the body of a loved one without giving notice to the family members and going through the proper procedures.

Therefore, the Appellees have not in any manner explained how that Forrest Memorial Park, Wayne Hight or any of the employees of Forrest Memorial Park do not fall within Mississippi Code of 1972, Annotated, § 97-29-19 and §97-29-25. Therein it states that “every person who shall” disturb a dead human body is guilty of a crime. This is an illegal act and should be dealt with as such. In the last sentence of page 15 and the first sentence of page 16 of the Appellees’ Brief they state as follows: “Plaintiffs’ argument that this language refers only to a single interment ignores the elementary fact that correcting a mistake in the location of the actual burial must necessarily involve a disinterment and re-interment as well.” To some degree the Appellant would agree with this argument but the Appellees ignore the fact that the proper procedures were not followed. Had the cemetery keeper and owner followed the proper procedures there is a great likelihood that the family would have understood and agreed to the process. But the Appellant, Mr. Hight, now seeks this Courts forgiveness instead of seeking the widow/families’ permission before hand. Such conduct can not be condoned.

APPELLEES’ ISSUE 3: THE PARTIES’ DISPUTE IS CLEARLY WITHIN THE SCOPE OF THE ARBITRATION AGREEMENT.

If the Appellees, Forrest Memorial Park/Wayne Hight, placed in clear and inconspicuous language in their Legal Interment Order that by signing this agreement Forrest Memorial Park and Wayne Hight is given the right to disinter and re-inter the body of a loved one buried in their facility, no reasonable person would agree.

In this section of the Appellee’s argument, they would have this Court believe that this widow had agreed in the Legal Interment Order, had a meeting of the minds, with Forrest Memorial Park and the Appellee that should her husband be buried in the wrong plot that she is giving them

permission to move his body, without notice, and without the proper procedures being followed. This flies in the face of what Justice Cardozo said “ the dead are to rest where they have been laid unless reason of substance is brought forward for disturbing their repose.” Yome v. Gorman, 152 N. E. 126, 129 (N. Y. 1926). There was no reason of substance to move the body of Earnest Eugene Arnold, and if such reason of substance surfaced then it should have been done with notice to the family, with the consent of the family and with the proper procedures being followed. The family should have been notified. Permission, not forgiveness.

There was no meeting of the minds between Betty Arnold and Wayne Hight/Forrest Memorial Park. The Legal Interment Order was signed at Magnolia Funeral Home and presented to Betty Arnold as part of the packet of paperwork that she had to sign to insure the orderly and dignified burial of her husband. Forrest Memorial Park did not have a representative there; Betty Arnold did not have an opportunity to speak with them. And even if she had, the contract made it overwhelmingly clear that if she did not return that Legal Interment Order that the funeral would be delayed, at best, and if funds were not received to open and close the grave then no services would be conducted at all. And that would force the Appellants, as the Appellees stated on page 12 of their Brief, to go somewhere else and buy other plots and vaults, delaying the dignified interment of her husband while she worked out a dispute between her and the owner/operator of a cemetery from which she had bought plots and vaults over twenty years ago.

II. CONCLUSION

Under the Appellees’ Conclusion contained within their Brief, they have made the argument that the Appellees have proven that this was not a contract of adhesion. How can it be otherwise? When the Appellees’ argue in their own Brief that Betty either could have signed the Legal Interment

Order, and complied with the unreasonable demands of the cemetery or she could have went somewhere else as is stated on page 12 Appellees' Brief. Clearly, this was a contract of adhesion, unconscionable and not enforceable. The conduct of the employees of Forrest Memorial Park fall within, § 97-29-19 and §97-29-25, Mississippi Code of 1972, Annotated, where it states that "[e]very person who shall...". It does not say that cemetery owners, or municipalities or persons with good intentions are exempted from the statute. It's simply a matter of such great importance that the dead should not be disturbed. No exceptions.

Finally, there was no meeting of the minds. Therefore, there was no contract as to the disinterment and re-interment of Earnest Eugene Arnold. Betty was not in a position to adequately defend herself from someone who would insist upon such an agreement. But this Court can be assured that if she had been informed by clear and conspicuous language that she was giving permission to the owner/operator of a cemetery to disinter and re-inter the body of her husband without notice to her or their family, without a dignified proceeding she, nor anyone, would have agreed. It is simply reprehensible conduct by someone who is seeking this Court's forgiveness for a mistake rather than facing the family and seeking their permission.

Respectfully submitted, this the 26th day of December, 2010.

GREG E. BEARD, P.A.

A handwritten signature in cursive script that reads "Greg Beard". The signature is written in dark ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I, Greg E. Beard, attorney for Appellants, do hereby certify that I have on this date _____ hand-delivered, _____ faxed, and/or X placed in the United States Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

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This the 20th day of December, 2010.

Greg Beard
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