

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT, IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.:

ONDINA GUERRA, surviving daughter,
JESSICA GUERRA, and RACIEL D.
GUERRA, surviving grandchildren of
ONDINA TOLEDO, deceased, and
MIGUEL A. TOLEDO, deceased

Plaintiffs,

vs.

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

SCI FUNERAL SERVICES OF FLORIDA,
INC., a Florida Corporation d/b/a
MEMORIAL PLAN, INC. and SERVICE
CORPORATION INTERNATIONAL, a
Texas Corporation

Defendants.

Plaintiffs, ONDINA GUERRA, surviving daughter; JESSICA GUERRA, and RACIEL D. GUERRA, surviving grandchildren of ONDINA TOLEDO, deceased, and MIGUEL A. TOLEDO, deceased, hereby sue Defendants, SCI FUNERAL SERVICES OF FLORIDA, INC., a Florida corporation d/b/a MEMORIAL PLAN, INC., and SERVICE CORPORATION INTERNATIONAL, a Texas corporation and allege:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of \$15,000.00.
2. At all times relevant hereto, Plaintiff ONDINA GUERRA was and is a resident of Miami Dade County, Florida, and is the daughter of MIGUEL A. TOLEDO, deceased, and ONDINA TOLEDO, deceased.

3. At all times relevant hereto, Plaintiff JESSICA GUERRA was and is a resident of Miami Dade County, Florida, and is the grand-daughter of MIGUEL A. TOLEDO, deceased, and ONDINA TOLEDO, deceased.

4. At all times relevant hereto, Plaintiff RACIEL D. GUERRA was and is a resident of Miami Dade County, Florida, and is the grand-son of MIGUEL A. TOLEDO, deceased, and ONDINA TOLEDO, deceased.

5. At all times relevant hereto, Defendant SCI FUNERAL SERVICES OF FLORIDA, INC. (“SCI FLORIDA”), was a Florida corporation for profit authorized to do business and doing business in Miami-Dade County, Florida.

6. Defendant SCI FLORIDA maintains its principal place of business in Miami Dade County, Florida.

7. At all times relevant hereto, Defendant SERVICE CORPORATION INTERNATIONAL (“SCI”), was and is a Texas corporation.

8. This court has personal jurisdiction over Defendant SCI pursuant to the Florida Long-Arm Statute and due process because:

- a. Defendant has committed wrongful acts and omissions within the state and in Miami-Dade County by desecrating remains as described herein in Florida and committing the statutory violations described herein in Florida;
- b. Defendant has caused injury to Plaintiff in Florida that arose out of the acts or omissions that occurred inside and outside of the State of Florida during the relevant period of time, namely, the desecration of remains as described herein; and
- c. Defendant has engaged in substantial and not isolated activity with the state by maintaining offices, employees, and/or registered agents in Florida, selling numerous products and services in Florida, advertising products in Florida, or entering into contracts in Florida, and more particularly in Miami Dade County, Florida.

9. At all times relevant hereto, Defendants owned, operated, managed and were responsible for all business decisions of MEMORIAL PLAN, INC., the fictitiously named agent of SCI, Funeral Homes, including but not limited to: Dade South Memorial Park located at: 14200 S.W. 117 Avenue, Miami, Florida 33143.

10. On or about January 24, 1990, ONDINA TOLEDO, deceased, entered into a Pre-Need Burial Contract from Defendants to provide for the burial of two bodies at Dade South Memorial Park (hereinafter referred to as the "Pre-Need Burial Contract"). A true and correct copy of the Pre-Need Burial Contract dated January 24, 1990 between Memorial Sales, Inc., (a predecessor company who later merged with Defendants) and ONDINA TOLEDO, deceased, is attached hereto as Plaintiffs' Exhibit "A."

11. The remains of Plaintiffs' father and grandfather, MIGUEL TOLEDO, deceased, were buried at Dade South Memorial Park shortly after his death on December 23, 1990, pursuant to the Pre-Need Burial Contract.

12. Seventeen years later, shortly after the death of Plaintiffs' mother and grandmother, ONDINA TOLEDO which occurred on October 18, 2007, Plaintiffs were advised that the remains of MIGUEL TOLEDO, deceased, are missing from the plot for which the family has internment rights pursuant to the Pre-Need Burial Contract.

13. As a result of Defendants' actions or inactions as more particularly set forth herein, Plaintiffs have been unable to bury their mother and grandmother, ONDINA TOLEDO, with the remains of her husband, their father and grandfather, MIGUEL TOLEDO, as planned pursuant to the certificate of internment rights issued to the family as a result of the Pre-Need Burial Contract.

14. Defendants have woefully failed to properly handle the remains of Plaintiffs' relatives and Defendants have completely mishandled the cemetery in a number of ways, including but not limited to the following:

- a. Defendants have buried remains in the wrong location and buried remains in a manner that encroach on other plots;
- b. Defendants plotted and sold burial areas without sufficient documentation or management of the space;
- c. Defendants buried unrelated decedents together;
- d. Defendants mixed body parts of different individuals; and,
- e. Defendants otherwise failed to exercise reasonable care in handling the subject remains.

15. Each Defendant participated in the wrongful acts herein. Defendants also acted in joint enterprise, joint venture and as each other's agent within the course and scope of said agency.

16. At all times relevant hereto, Defendants acted by and through their employees, agents, apparent agents and representatives, who were acting within the course and scope of their employment, agency, apparent agency and representation relationship and in the furtherance of Defendants' interests.

17. Defendant SCI is the parent corporation of Defendant SCI FLORIDA. SCI individually participated, ratified, approved and directed the improper or illegal acts and omissions described herein.

18. Plaintiff has retained the undersigned counsel and is obligated to pay them reasonable attorneys' fees and costs.

19. Pursuant to Fla.Stat. § 497.169, Plaintiff, upon prevailing, may recover reasonable attorneys' fees and costs.

20. All conditions precedent to bringing this action has been met.

COUNT I
ONDINA GUERRA'S CLAIM FOR
TORTIOUS INTERFERENCE WITH DEAD BODIES

21. Plaintiff realleges and adopts paragraphs 1-20 as if fully set forth herein.

22. Defendants owed Plaintiff a duty to exercise reasonable and proper care when handling the remains of her family member, namely, her father, MIGUEL TOLEDO. That duty includes, but is not limited to the following:

- a. Not disturbing the remains without consent of the Plaintiff;
- b. Burying the remains in the proper location and orientation;
- c. Handling and burying the remains in a proper and dignified manner;
- d. Not removing, mishandling, mutilating or causing improper burial of the subject remains; and
- e. Otherwise not desecrating remains.

23. Defendants breached this duty because they intentionally did the following:

- a. Defendants have buried remains in the wrong location and buried remains in a manner that encroach on other plots;
- b. Defendants plotted and sold burial areas without sufficient documentation or management of the space;
- c. Defendants buried unrelated decedents together;
- d. Defendants mixed body parts of different individuals; and,
- e. Defendants otherwise failed to exercise reasonable care in handling the subject remains.

30. Defendants' conduct was malicious and intentional. Defendants' conduct demonstrates an entire want of care or attention to duty and great indifference to the remains, property and

property rights of others. Defendants' conduct is outrageous and goes beyond all bounds of decency in a civilized society.

31. Defendants' conduct has directly and proximately caused economic and non-economic damages to Plaintiff, ONDINA GUERRA. Plaintiff, ONDINA GUERRA has suffered in the past or will suffer in the future extreme mental anguish and distress.

32. Defendants could foresee that their wrongful acts and omissions would damage the Plaintiff in the manner set forth herein.

33. Plaintiff intends to seek amendment to add a claim for punitive damages pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiff, ONDINA GUERRA, respectfully requests an order awarding her compensatory damages, costs, and interest; and any and all such further relief that the Court deems just and proper.

COUNT II
JESSICA GUERRA'S CLAIM FOR
TORTIOUS INTERFERENCE WITH DEAD BODIES

34. Plaintiff realleges and adopts paragraphs 1-20 as if fully set forth herein.

35. Defendants owed Plaintiff a duty to exercise reasonable and proper care when handling the remains of her family member, namely, her father, MIGUEL TOLEDO. That duty includes, but is not limited to the following:

- f. Not disturbing the remains without consent of the Plaintiff;
- g. Burying the remains in the proper location and orientation;
- h. Handling and burying the remains in a proper and dignified manner;
- i. Not removing, mishandling, mutilating or causing improper burial of the subject remains; and
- j. Otherwise not desecrating remains.

31. Defendants breached this duty because they intentionally did the following:
 - a. Defendants have buried remains in the wrong location and buried remains in a manner that encroach on other plots;
 - b. Defendants plotted and sold burial areas without sufficient documentation or management of the space;
 - c. Defendants buried unrelated decedents together;
 - d. Defendants mixed body parts of different individuals; and,
 - e. Defendants otherwise failed to exercise reasonable care in handling the subject remains.
32. Defendants' conduct was malicious and intentional. Defendants' conduct demonstrates an entire want of care or attention to duty and great indifference to the remains, property and property rights of others. Defendants' conduct is outrageous and goes beyond all bounds of decency in a civilized society.
33. Defendants' conduct has directly and proximately caused economic and non-economic damages to Plaintiff, JESSICA GUERRA. Plaintiff, JESSICA GUERRA has suffered in the past or will suffer in the future extreme mental anguish and distress.
34. Defendants could foresee that their wrongful acts and omissions would damage the Plaintiff in the manner set forth herein.
35. Plaintiff intends to seek amendment to add a claim for punitive damages pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiff JESSICA GUERRA respectfully requests an order awarding her compensatory damages, costs, and interest; and any and all such further relief that the Court deems just and proper.

COUNT III
RACIEL D. GUERRA'S CLAIM FOR
TORTIOUS INTERFERENCE WITH DEAD BODIES

36. Plaintiff realleges and adopts paragraphs 1-20 as if fully set forth herein.
37. Defendants owed Plaintiff a duty to exercise reasonable and proper care when handling the remains of his family member, namely, his grandfather, MIGUEL TOLEDO. That duty includes, but is not limited to the following:
- a. Not disturbing the remains without consent of the Plaintiff;
 - b. Burying the remains in the proper location and orientation;
 - c. Handling and burying the remains in a proper and dignified manner;
 - d. Not removing, mishandling, mutilating or causing improper burial of the subject remains; and
 - e. Otherwise not desecrating remains.
38. Defendants breached this duty because they intentionally did the following:
- a. Defendants have buried remains in the wrong location and buried remains in a manner that encroach on other plots;
 - b. Defendants plotted and sold burial areas without sufficient documentation or management of the space;
 - c. Defendants buried unrelated decedents together;
 - d. Defendants mixed body parts of different individuals; and,
 - e. Defendants otherwise failed to exercise reasonable care in handling the subject remains.
39. Defendants' conduct was malicious and intentional. Defendants' conduct demonstrates an entire want of care or attention to duty and great indifference to the remains, property and

property rights of others. Defendants' conduct is outrageous and goes beyond all bounds of decency in a civilized society.

40. Defendants' conduct has directly and proximately caused economic and non-economic damages to Plaintiff, RACIEL D. GUERRA. Plaintiff, RACIEL D. GUERRA has suffered in the past or will suffer in the future extreme mental anguish and distress.

41. Defendants could foresee that their wrongful acts and omissions would damage the Plaintiff in the manner set forth herein.

42. Plaintiff intends to seek amendment to add a claim for punitive damages pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiff, RACIEL D. GUERRA, respectfully requests an order awarding compensatory damages, costs, and interest; and any and all such further relief that the Court deems just and proper.

**COUNT IV
ONDINA GUERRA'S CLAIM FOR INTENTIONAL OR RECKLESS
INFLICTION OF EMOTIONAL DISTRESS**

43. Plaintiff realleges and adopts paragraphs 1 - 20 as if fully set forth herein.

44. Defendants have deliberately or recklessly inflicted mental suffering on Plaintiff, ONDINA GUERRA.

45. Defendants have intentionally engaged in outrageous conduct because they did the following:

- f. Defendants have buried remains in the wrong location and buried remains in a manner that encroach on other plots;
- g. Defendants plotted and sold burial areas without sufficient documentation or management of the space;
- h. Defendants buried unrelated decedents together;

- i. Defendants mixed body parts of different individuals; and,
- j. Defendants otherwise failed to exercise reasonable care in handling the subject remains.

46. Defendants' conduct was malicious and intentional. Defendants' conduct demonstrates an entire want of care or attention to duty and great indifference to the remains, property and property rights of others. Defendants' conduct is outrageous and goes beyond all bounds of decency in a civilized society.

47. Defendants' conduct was malicious because the aforementioned acts involved willful and wanton misconduct.

48. Defendants knew or should have known that severe emotional distress to the Plaintiff would follow from this conduct and Defendants acted with reckless disregard for the mental suffering that they could foresee their conduct was substantially certain to cause.

49. Plaintiff ONDINA GUERRA has suffered and will continue to suffer severe emotional distress.

50. The emotional distress was directly and proximately caused by Defendants' conduct.

51. Plaintiff intends to seek amendment to add a claim for punitive damages pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiff ONDINA GUERRA respectfully requests an awarding her compensatory damages, costs and interest and any and all such further relief that the Court deems just and proper.

COUNT V
JESSICA GUERRA'S CLAIM FOR INTENTIONAL OR RECKLESS
INFLICTION OF EMOTIONAL DISTRESS

52. Plaintiff realleges and adopts paragraphs 1 - 20 as if fully set forth herein.

53. Defendants have deliberately or recklessly inflicted mental suffering on Plaintiff, JESSICA GUERRA.

54. Defendants have intentionally engaged in outrageous conduct because they did the following:

- k. Defendants have buried remains in the wrong location and buried remains in a manner that encroach on other plots;
- l. Defendants plotted and sold burial areas without sufficient documentation or management of the space;
- m. Defendants buried unrelated decedents together;
- n. Defendants mixed body parts of different individuals; and,
- o. Defendants otherwise failed to exercise reasonable care in handling the subject remains.

55. Defendants' conduct was malicious and intentional. Defendants' conduct demonstrates an entire want of care or attention to duty and great indifference to the remains, property and property rights of others. Defendants' conduct is outrageous and goes beyond all bounds of decency in a civilized society.

56. Defendants' conduct was malicious because the aforementioned acts involved willful and wanton misconduct.

57. Defendants knew or should have known that severe emotional distress to the Plaintiff would follow from this conduct and Defendants acted with reckless disregard for the mental suffering that they could foresee their conduct was substantially certain to cause.

58. Plaintiff JESSICA GUERRA has suffered and will continue to suffer severe emotional distress.

59. The emotional distress was directly and proximately caused by Defendants' conduct.

60. Plaintiff intends to seek amendment to add a claim for punitive damages pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiff JESSICA GUERRA respectfully requests an awarding her compensatory damages, costs and interest and any and all such further relief that the Court deems just and proper.

COUNT VI
RACIEL D. GUERRA'S CLAIM FOR INTENTIONAL OR RECKLESS
INFLECTION OF EMOTIONAL DISTRESS

61. Plaintiff realleges and adopts paragraphs 1 - 20 as if fully set forth herein.

62. Defendants have deliberately or recklessly inflicted mental suffering on Plaintiff, RACIEL D. GUERRA.

63. Defendants have intentionally engaged in outrageous conduct because they did the following:

- p. Defendants have buried remains in the wrong location and buried remains in a manner that encroach on other plots;
- q. Defendants plotted and sold burial areas without sufficient documentation or management of the space;
- r. Defendants buried unrelated decedents together;
- s. Defendants mixed body parts of different individuals; and,
- t. Defendants otherwise failed to exercise reasonable care in handling the subject remains.

64. Defendants' conduct was malicious and intentional. Defendants' conduct demonstrates an entire want of care or attention to duty and great indifference to the remains, property and property rights of others. Defendants' conduct is outrageous and goes beyond all bounds of decency in a civilized society.

65. Defendants' conduct was malicious because the aforementioned acts involved willful and wanton misconduct.

66. Defendants knew or should have known that severe emotional distress to the Plaintiff would follow from this conduct and Defendants acted with reckless disregard for the mental suffering that they could foresee their conduct was substantially certain to cause.

67. Plaintiff RACIEL D. GUERRA has suffered and will continue to suffer severe emotional distress.

68. The emotional distress was directly and proximately caused by Defendants' conduct.

69. Plaintiff intends to seek amendment to add a claim for punitive damages pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiff RACIEL D. GUERRA respectfully requests an awarding her compensatory damages, costs and interest and any and all such further relief that the Court deems just and proper.

COUNT VII

ONDINA GUERRA'S CLAIMS FOR VIOLATION OF FLA. STAT. § 497, FALSE STATEMENTS AND REPRESENTATIONS CONCERNING A PRE-NEED CONTRACT

70. Plaintiff realleges and adopts paragraphs 1 thru 20 as if fully set forth herein.

71. This cause of action is brought pursuant to Fla.Stat. § 497 and for damages and equitable relief.

72. Defendants knowingly made, published, disseminated, circulated and placed before the public, either directly or indirectly, statements that were untrue, deceptive or misleading with respect to pre-need contracts it sold to Plaintiff.

73. Defendants represented to Plaintiff that the specifically identified burial plots at Dade South Memorial Park would be the final resting place for the remains of the Plaintiffs, and/or Plaintiffs'

relatives. Defendants further represented that they and the cemetery were well suited and prepared to properly maintain the remains of Plaintiff's loved ones.

74. These statements were untrue and in violation of Fla.Stat. § 497.

75. As a direct and proximate result of Defendants' untrue, deceptive or misleading statements concerning their pre-need contracts, Plaintiff has sustained or will sustain damages described in paragraph 23, and is unsure of the disposition of the subject remains.

WHEREFORE, Plaintiff demands damages in accordance with Fla.Stat. § 497;

**COUNT VIII
ONDINA GUERRA'S CLAIM FOR BREACH OF CONTRACT**

76. Plaintiff realleges and adopts paragraphs 1 – 20 as if fully set forth herein.

77. Plaintiff, ONDINA GUERRA, as survivor of ONDINA TOLEDO, deceased, entered into a contract for internment services pursuant to the Pre-Need Burial Contract with Defendants, and pursuant to the parties' agreement, the Defendants were to bury the remains of MIGUEL TOLEDO in a coffin, in a double vault, in a particular double plot in the cemetery and to maintain the grave in a proper and dignified condition.

78. Plaintiff's payments to the Defendant for the plots and services in question constitute sufficient and adequate consideration to support the parties' contract.

79. Plaintiff performed all conditions precedent to the enforcement of the contract.

80. Defendant breached the Pre-Need Burial Contract by failing to maintain the remains of MIGUEL TOLEDO, his coffin and vault in a proper and dignified condition and instead misplaced or moved the remains of MIGUEL TOLEDO and his coffin so as to make room for other burials.

81. As a direct and proximate result of Defendant's breach of contract, Plaintiff has sustained the following damages: the difference in value between the cemetery plot and services agreed to among the parties versus the goods, services, and treatment obtained.

WHEREFORE, Plaintiff ONDINA GUERRA, demands that the Court enter judgment for compensatory damages, interest, costs, and attorney fees pursuant to Fla.Stat. § 497.517; and whatever further relief the Court deems appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiff, ONDINA GUERRA, JESSICA GUERRA, and RACIEL D. GUERRA, hereby demand a trial by jury of all issues so triable as a matter of right.

DATED this ____ day of _____, 2007.

GREENBERG & STONE, P.A.
Counsel for Plaintiffs
Penthouse 400
11440 N. Kendall Drive
Miami, Florida 33176
(305) 595-2400 Main
(305) 595-5105 Fax

STEWART G. GREENBERG, ESQ.
FL Bar No.: 283967