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| SHIRLEY DICK | * | DOCKET NO.: 623,007 DIV. "C" |
| VERSUS | * | 1 ST JUDICIAL DISTRICT COURT |
| FOREST PARK WEST | * | PARISH OF CADDO |
| ASSOCIATION AND LETUM, INC. | * | STATE OF LOUISIANA |

**MEMORANDUM OF OPPOSITION TO FOREST PARK WEST ASSOCIATION
AND LETUM, INC.'S MOTION FOR SUMMARY JUDGMENT**

MAY IT PLEASE THE COURT:

Material issues of genuine fact exist as to whether Forest Park West Association ("Forest Park") and Letum, Inc. ("Letum") buried the deceased James Lee Dick in a sealed vault as set forth in the contract or a cheaper concrete unsealed box. The material issues of genuine fact that exist include whether Forest Park and Letum defrauded the plaintiffs by substituting a cheaper unsealed grave liner box rather than the sealed Wilburt Monticello or Oxford vault. Additionally, a disputed fact exist as to whether the defendants disturbed Mr. Dick's burial site and replaced the unsealed concrete box with an oxford vault after they were made aware of the dispute and after a similar lawsuit was filed against the "sister" company in order to hide their fraudulent activities.

FACTS

On September 26, 2019 James Lee Dick died. At the time of his death he was a resident of Homer, Louisiana. Mr. Dick was survived by his wife, Shirley Dick and his children, Tosha Dick Lester and Todd Dick. After Mr. Dick's death, Petitioners met with a Forest Park West Associates, Inc. ("Forest Park") employee, Walter Boone whose title is Family Service Manager, at Forest Park for the purpose of making burial arrangements. During that meeting, the subject of a burial vault was discussed. Petitioner informed Mr Boone that she discussed with the funeral director at Rose Neaths Funeral Home that they wanted a Wilbert Monticello sealed vault. Mr. Boone explained that Forest Park required a burial vault. During the meeting Mr. Boone showed the plaintiffs miniature samples of various vaults in the conference room where the meeting took

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place. Additionally, a video was playing on a television in the meeting room explaining the importance of sealed vaults.

During the meeting Mr. Boone explained that the lowest level basic vault was not sealed and that it would allow water intrusion in and around the coffin and the body of the deceased. Mr. Boone emphasized the importance of having a sealed vault. He explained that sealed vaults would keep water from intruding and thus protect the body of the deceased. Mr. Boone further explained that the sealed vaults had to be installed by Wilbert vault company to insure quality of installation and a proper seal. The petitioners expressed to Mr. Boone that it was very important to them to have their deceased husband's and father's body be sealed and protected from water intrusion. They did not want their loved one laid to rest in such a manner that his remains would be enveloped in water.

Based on the recommendations from the Rose Neath Funeral Director and Mr. Boone regarding the type of sealed vaults available, it was decided to purchase a Wilber Monticello Vault. Despite the request of a Wilbeurt Monticello Vault, Forest Park included in the contract that Mr. Dick would be buried in an Oxford Vault. Oxford vaults are sealed and are for all practical purposes the same as a Wilburt Monticello vault. Mr. Boone emphasized that this vault would be sealed and would not allow water intrusion. The total contract price including the Oxford vault was Three Thousand Eight Hundred Thirty Three dollars and 40/100 (\$3,833.40).

Petitioners were shocked to subsequently learn that Forest Park did not bury their loved one in a sealed vault as had been ordered. Instead, Forest Park buried their loved one in a much cheaper concrete "grave liner" box which is not sealed and allows water intrusion. The sealed vault which was contracted for and promised by Forest Park, is reinforced with plastic liner, sealed and carries a 50 year warranty against water intrusion. The "grave liner" concrete box is simply a concrete box with no sealing, no liner and no warranty against water intrusion. It is also much cheaper than the cost of the sealed vault that Forest Park charged the petitioners. Mr. Boone's representations to the petitioners regarding the vault purchased were completely false with the intent to defraud, mislead and take advantage of petitioners at a vulnerable time. Forest Park,

through its representative Mr. Boone, deliberately chose to use a cheaper, substandard concrete box rather than the sealed vault for the sole purpose of defrauding the petitioners for its financial gain.

Petitioners paid Forest Park the total sum of Three Thousand Eight Hundred Thirty Three dollars and 40/100 (\$3,833.40) for a sealed vault and for a proper and respectful burial service. Forest Park completely failed to provide the services and products contracted for. Instead Forest Park substituted inferior products.

On September 28, 2019, the funeral services for Mr. Dick occurred. Kilpatrick's Rose Neath Funeral Home located in Homer, Louisiana provided the funeral services. Mr. Mike Smith was the funeral director and Mr. Andrew Pilgreen was the morticians assistance. Mr. Smith and Mr. Pilgreen were present before and after the services at Forest Park West.

On the day of the service Mr. Smith and Mr. Pilgreen observed that that the grave did not have a sealed vault but contained a concrete unsealed box. Mr. Smith¹ confronted an employee of Forest park and asked why the grave contained an unsealed concrete box and not a sealed vault as per the contract. Mr. Pilgreen was present and heard the entire conversation. The employee stated, "Sorry, we had to many today and we had to put him in whatever we could." Mr. Andrew Pilgreen had very clear and unobstructed view of the grave and the unsealed concrete box that Mr. Dick was buried in.² Mr. Pilgreen observed Mr. Smith get very upset with the defendants' employee and insist that Mr. Dick be buried in a sealed vault.

On or about September 30, Ms. Shirley Dick was informed by Mr. Mike Smith that her husband was not buried in a sealed vault but an unsealed concrete box. She contacted the Defendant Forest Park and informed them that she wanted her husband buried in a sealed vault and not a concrete box. Defendants denied that Mr. Dick was buried in an unsealed concrete box and not a sealed vault.

¹ Mr. Mike Smith passed away in early 2021.

² Andrew Pilgreen Affidavit.

After Ms. Dick expressed her concern that her husband was not buried in the sealed vault and made the defendants aware that she was going to take whatever actions she needed to take to make sure that he was buried in a sealed vault the defendants did something to disturb the grave site. See Pictures attached hereto as Exhibit "A", which reflect the condition of the burial site on November 13, 2019, (the burial site is settled and compacted), compared to the picture taken on December 9, 2019, (reflecting a completely smooth new looking burial site).

On November 6, 2019, Michael Lattier and Christie Lattier McBride filed suit in Caddo Parish District Court Suit No. 620, 452 against Forest Park East and Letum, Inc., alleging among other things, that their father was not buried in a sealed vault but instead a concrete unsealed box. Forest Park East is a sister company to Forest Park West with the same ownership of Letum.

After Ms. Dick notified them of her concerns regarding the sealed vault and after the Lattier lawsuit was filed, Mr. Dick's burial site was disturbed. The defendants in their Motion for Summary Judgment assert, "On January 22, 2020, during a period of excessive rainfall in Shreveport, Louisiana, Mary Etta Dick requested dirt be added to the burial site of the deceased, James Lee Dick." The defendants attached the affidavit of Richard Winter (Exhibit D) to support that statement. The defendants attached a purported "work order" (Exhibit D-1) **dated April 8, 2021** showing a start date of January 22, 2020 and a finish date of May 11, 2020. The "work Order" reflects Mary Etta Dick as an "Associated Name". It also reflects that the completion date was May 11, 2020. The pictures attached as exhibit "A" clearly show that on May 4, 2020 grass had begun growing on the burial site and on June 17, 2020 the grass had expanded. There is no way that any work was performed on the burial site on May 11, 2020.

The sworn statement of Mr. Wright and the work order showing the request of Mary Etta Dick are completely fabricated and an outright lie. Ms. Mary Etta Dick, the person who allegedly called and requested that the dirt be added to the grave, was the mother of James Lee Dick. Ms. Mary Etta Dick died in 2015 and could not have called and made such a request. Additionally the photographs of the grave clearly show that the grave was disturbed shortly prior to December 9,

2019. Additionally, the photograph of the grave taken on February 3, 2020 shows significant settling and compaction that could not have occurred from January 22nd to February 3rd.

Summary Judgment Law

A summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B).

A genuine issue is one as to which reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. *Smith v. Our Lady of the Lake Hosp., Inc.*, 93-2512, p. 27 (La.7/5/94), 639 So.2d 730, 751. A fact is material when its existence or nonexistence may be essential to the plaintiff's cause of action under the applicable theory of recovery; a fact is material if it potentially insures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. *Hardy v. Bowie*, 98-2821, p. 6 (La.09/08/99), 744 So.2d 606, 610.

Even though summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion and all doubt must be resolved in the opponent's favor. *Willis v. Medders*, 2000-2507, p. 2 (La.12/08/00), 775 So.2d 1049, 1050. A court cannot make credibility determinations on a motion for summary judgment, and must assume that all of the affiants are credible. *Independent Fire Insurance Co. v. Sunbeam Corp.*, 99-2181, pp. 16-17, (La. 2/29/00), 755 So.2d 226 at 236.

“When considering a motion for summary judgment the court views the evidence in the light most favorable to the nonmoving party.” *Brookwood, LLC. Scottsdale Insurance Company*, 2009 WL2525756 (E.D.La.). The factual issues before this Court are whether Mr. James Lee Dick was buried in a sealed vault or an unsealed concrete box and whether the defendants in an effort to hide their fraudulent activities replaced the concrete box with a sealed box after Ms. Dick informed them that she was aware of their fraudulent activities.

CONCLUSION

The affidavits of Ms. Shirley Dick and Mr. Andrew Pilgreen, as well as, the photographs of the burial site clearly establish material issues of genuine fact exist. Mr. Pilgreen clearly saw a concrete box and not a sealed box in the grave of Mr. Dick at the time of the funeral service. Additionally, the Defendants' blatant lies regarding the request of Mr. Dick's deceased mother that dirt be added to the grave is clearly an issue of material fact. For the above stated reasons the defendants' Motion for Summary Judgment should be denied.

Respectfully submitted,
KENNETH ANTEE, JR. A P.L.C.

BY: 

Kenneth R. Antee, Jr. Bar # 18766

9335 Ellerbe Road

Shreveport, LA 71106

Telephone: 865-9253

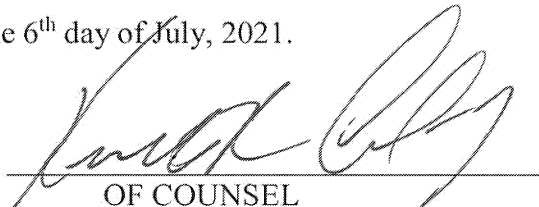
Telecopier: 865-9256

ATTORNEY FOR SHIRLEY CORELY DICK,
TODD DICK AND TOSHA DICK LESTER

CERTIFICATE

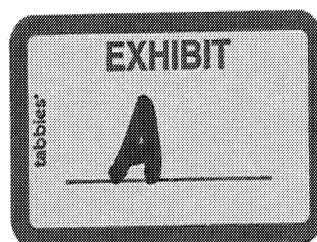
I HEREBY CERTIFY that a copy of the above and foregoing has this day been forwarded to all counsel of record, by email and placing same in the United States mail, with adequate postage paid thereon.

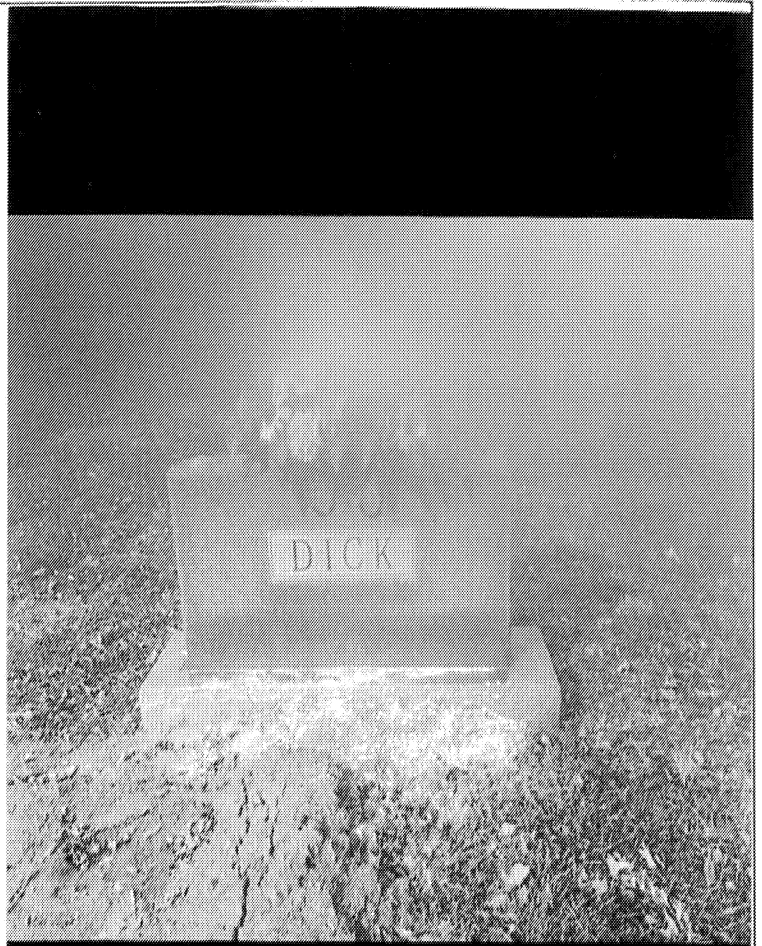
Shreveport, Louisiana, this the 6th day of July, 2021.


OF COUNSEL



Nov. 13, 2019





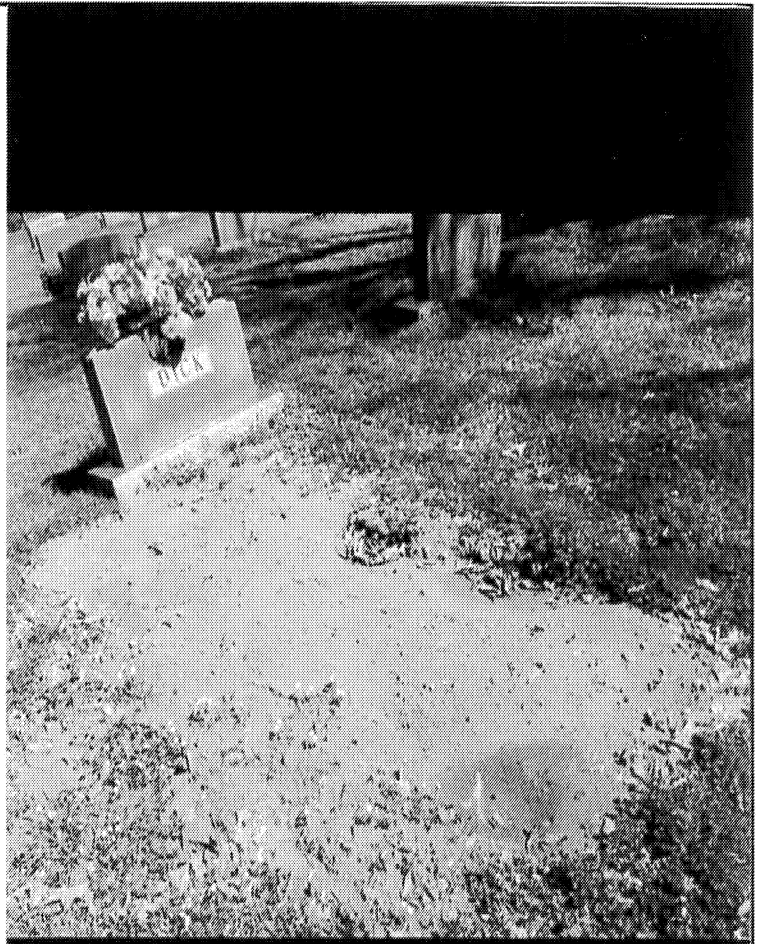
Nov. 13, 2019



Dec 9, 2019







Mar. 6, 2020



May 4, 2020



June 17, 2020



Dec 3, 2020

AFFIDAVIT OF SHIRLEY CORLEY DICK

STATE OF LOUISIANA)

PARISH OF CADDO)

BEFORE ME, the undersigned Notary Public, personally came and appeared SHIRLEY CORLEY DICK who, after first being duly sworn did depose and state:

1. She is a major resident of Claiborne Parish Louisiana with a mailing address of is domiciled at 192 Peaceful Bay, Homer, Louisiana
2. On September 26, 2019 my husband, James Lee Dick passed away.
3. After Mr. Dick's death, On September 27, 2019, I met with a Forest Park West Associates, Inc. ("Forest Park") employee, Walter Boone whose title is Family Service Manager, for the purpose of making burial arrangements for my husband
4. During that meeting, the subject of a burial vault was discussed. I informed Mr Boone that I had discussed with the funeral director at Rose Neaths Funeral Home that they wanted a Wilbert Monticello sealed vault. Mr. Boone explained that Forest Park required a burial vault.
5. At that meeting there were miniature samples of various vaults in the conference room where the meeting took place. Additionally, a video was playing which discussed the vaults.
6. Mr. Boone explained that the lowest level basic vault was not sealed which would allow water intrusion in and around the coffin and the body of the deceased. While recommending the sealed vault, he stated the importance of having a sealed vault. By contrast, he explained that sealed valuts would keep water from intruding and thus protect the body of the deceasedd. Mr. Boone further explained that the sealed vaults had to be installed by Wilbert vault company to insure quality of installation and proper seal.
7. I expressed to Mr. Boone that it was very important to ther and Mr. Dcik's children that they have her deceased husand's and father's body sealed and protected from water intrusion. They did not want their loved one laid to rest in such a manner that his remains would be enveloped in water.
8. Based on the recommendations from the Rose Neath Funeral Director and Mr. Boone regarding the type of sealed vaults available, it was decided to purchase a Wilber

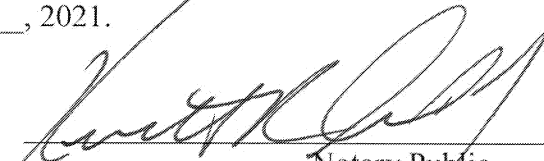


Monticello Vault. Mr. Boone emphasized that this vault would be sealed and would not allow water intrusion.

9. It was my understanding that we were contracting for a Wilbert Monticello vault but I later found out that the contract listed an Oxford vault which was of the same quality and likeness and provided the same protection from the elements of a Wilbert Monticello vault.
10. The total contract price including the Oxford vault was Three Thousand Eight Hundred Thirty Three dollars and 40/100 (\$3,833.40).
11. On September 30, 2019, I learned from Mr. Mike Smith that Forest Park did not bury my husband in a sealed Wilbert Monticello vault as had been ordered. Instead, Forest Park buried my husband in a much cheaper concrete box which is not sealed and allows water intrusion. the intent to defraud, mislead and take advantage of petitioners at a vulnerable time.


SHIRLEY CORLEY DICK

Sworn to and subscribed before me, Notary Public, on this the 15th day of July, 2021.


Notary Public

AFFIDAVIT OF JAMES ANDREW PILGREEN, SR.

STATE OF LOUISIANA)

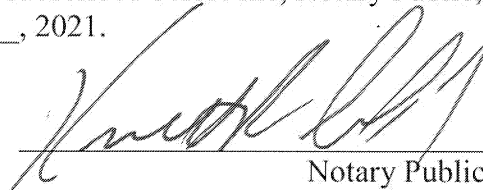
PARISH OF CADDO)

BEFORE ME, the undersigned Notary Public, personally came and appeared ANDREW PILGREEN who, after first being duly sworn did depose and state:

1. He is a major resident of Union Parish Louisiana with a mailing address of 378 Jimmy Bowen Rd., Bernice, La. 71222.
2. That in September 2019 he was employed as mortician's assistant with Kilpatrick's Rose-Neath Funeral Homes ("Roseneath").
3. In his position with Roseneath he attended the funeral services of James Lee Dick on or about September 28, 2019 at Forest Park West, Shreveport, Louisiana. ("Forest Park")
4. Mike Smith was an employee of Roseneath and was the funeral director for the services of James Dick. In my position with Roseneath I assisted Mike Smith with James Dick's services.
5. On or about September 28, 2019, I was present when Mr. Mike Smith stated to the Forest Park employee that Mr. Dick was to be buried in a vault and not a concrete box.
6. On or about September 28, 2019, I was present and I heard the conversation where, Mr. Mike Smith questioned the employee of Forest Park why Mr. Dick was not buried in a sealed vault. I personally heard the Forest Park employee say, "Sorry, we had too many today, we had to put him in whatever we could."
7. On or about September 28, 2019, I was present and I witnessed Mr. Mike Smith become irate and told the Forest Park employee that Mr. Dick was to be placed in a sealed vault and the Forest Park employee said, "I'm sorry that is what we had."
8. At the time of the services for Mr. Dick I had a very clear view of the outside burial container. I observed that it was a concrete box and it was not a sealed vault.


JAMES ANDREW PILGREEN, SR.

Sworn to and subscribed before me, Notary Public, on this the 1st day of July, 2021.


Notary Public

