

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
SECOND JUDICIAL DISTRICT
2010 JAN -4 AM 10:04

M. R., V.D, P. R.,
and C. R.,

Juanita Duran

Valerie Begay

Plaintiffs,

v.

CV 2010 000 62

CANTRUP/De VARGAS CORP., d/b/a
De VARGAS FUNERAL HOME,
VINCENT R. SALAZAR,
INMAN SHIPPING, WORLDWIDE,
SERENICARE FUNERAL HOME, L.L.C.,
and JOHN DOES 1-5,

SUMMONS ISSUED

Defendants.

**COMPLAINT FOR DAMAGES RESULTING FROM ABUSE OF CORPSE,
NEGLIGENCE, BREACH OF CONTRACT AND UNFAIR PRACTICES**

COME NOW Plaintiffs M.R., V.D., P.R., and C. R., by and through their attorneys,
Carter & Valle Law Firm, P.C. (Richard J. Valle and Crios O'Cleireachain) and for their
Complaint against the Defendants, state as follows:

I. GENERAL ALLEGATIONS

1. Plaintiff M.R. is an individual who resides in New Mexico, and Plaintiff's identity is known to all Defendants. This Complaint is filed under Plaintiff's initials, to mitigate Plaintiff's damages and minimize the disruption of Plaintiff's life. This Plaintiff is a resident of Bernalillo County, and Plaintiff is the natural born child of Decedent M.F.R., an individual known to all Defendants.

2. Plaintiff V.D. is an individual who resides in New Mexico, and Plaintiff's identity is known to all Defendants. This Complaint is filed under Plaintiff's initials, to mitigate

Plaintiff's damages and minimize the disruption of Plaintiff's life. This Plaintiff is the natural born child of decedent M.F.R., an individual known to all Defendants.

3. Plaintiff P. R. is an individual who resides in Pennsylvania, and Plaintiff's identity is known to all Defendants. This Complaint is filed under Plaintiff's initials, to mitigate Plaintiff's damages and minimize the disruption of Plaintiff's life. This Plaintiff had a close relationship with M.F.R., an individual known to all Defendants.

4. Plaintiff C.R. is an individual who resides in New Mexico, and Plaintiff's identity is known to all Defendants. This Complaint is filed under Plaintiff's initials, to mitigate Plaintiff's damages and minimize the disruption of Plaintiff's life. This Plaintiff had a close relationship with M.F.R., an individual known to all Defendants.

5. Defendant Cantrup/De Vargas Corp., d/b/a De Vargas Funeral Home is upon information and belief a New Mexico business transacting business in Rio Arriba and Bernalillo County, New Mexico.

6. Defendant Vincent R. Salazar is a New Mexico resident and an employee and agent of De Vargas Funeral Home. At all material times hereto, Defendant Vincent R. Salazar acted in the course and scope of his employment.

7. Defendant Inman Shipping Worldwide is upon information and belief an unknown business entity doing business in New Mexico and all forty-nine other states in the United States.

8. Defendant Serenicare Funeral Home, L.L.C. is upon information and belief an unknown business entity doing business in New Mexico.

9. As to the incident giving rise to this suit, Defendant Serenicare Funeral Home, L.L.C. knew that the work it was performing was for the benefit of citizens of New Mexico.

10. Defendant Serenicare Funeral Home, L.L.C. knew that Decedent was going to be buried in New Mexico, and thus has sufficient minimum contacts with New Mexico such that New Mexico's exercise of jurisdiction over Serenicare is foreseeable and just.

11. This court has jurisdiction over the parties and subject matter herein, and venue is proper in Bernalillo County.

General Facts

12. Decedent M.F.R. was a remarkable mother, wife and friend to the various Plaintiffs herein.

13. On or about September 28, 2009, Decedent was traveling in Utah, when she died in the course of an accident.

14. Plaintiff M.R., after learning of decedent's death, contacted Defendant De Vargas Funeral Home, to make arrangements for the transport of decedent from Utah back to New Mexico.

15. Plaintiff M.R. was informed by Defendant De Vargas Funeral Home, that Defendant was not familiar with the required procedures to have the decedent transported back to New Mexico.

16. Defendant De Vargas Funeral Home told Plaintiff M.R. that they would handle the burial of decedent if Plaintiff M.R. could arrange for the transport.

17. Plaintiff M.R. contacted Goff Funeral Home in Utah, then again contacted Defendant De Vargas Funeral Home concerning the transfer of Decedent to New Mexico.

18. Plaintiff M.R. had Goff Funeral Home explain to Defendant De Vargas Funeral Home, how to arrange for Decedent's transfer through Defendant Inman.

19. On information and belief, Defendant Serenicare Funeral Home, L.L.C. after

coordinating with Defendant De Vargas Funeral Home, retrieved decedent from the office of the Utah Medical Examiner.

20. On information and belief, Defendant Serenicare Funeral Home, L.L.C., along with Defendant Inman, were responsible for the transportation of decedent to New Mexico for burial.

21. On information and belief, Defendant Serenicare Funeral Home, L.L.C., along with Defendant Inman, were responsible for the preparation of Decedent for transport to New Mexico for burial.

22. Defendant De Vargas received Decedent from the airport in New Mexico.

23. Plaintiff P.R. provided Defendant De Vargas with pictures of the Decedent, as well as her clothing for viewing and burial.

24. On information and belief, Defendant De Vargas prepared and dressed the decedent for a final viewing with close family members.

25. On information and belief, Defendant De Vargas provided Decedent's casket and made the final arrangements for Decedent's burial.

26. During decedent's viewing, Defendant De Vargas returned Decedent's personal belongings to Plaintiff M.R.. in an unsealed bag.

27. After receiving decedent's personal belongings, Plaintiff M.R. handed them to Plaintiff C.R.

28. After returning home, Plaintiff C.R. left the bag of personal belongings in his truck until after the burial.

29. The next day, after the burial, Plaintiffs C.R. P.R. and V.D. looked into the bag, smelled a foul odor coming from the bag and discovered along with decedent's belongings, a bag

labeled with Decedent's name and the word "brain."

30. On information and belief, after Decedent's death in Utah, the agents or employees of the Utah Medical Examiner's Officer retrieved Decedent's brain and placed the brain in a bag that was labeled "brain."

31. On information and belief, after Decedent's death in Utah, the agents or employees of the Utah Medical Examiner's Officer placed Decedent's brain between her legs and released Decedent to Defendant Serenicare.

32. One or more Defendants, by and through their agents placed or left decedent's brain in the bag of personal belongings that were returned to Plaintiffs.

33. Plaintiffs C.R. P.R. and V.D. experienced shock, horror and great fear upon learning that Decedent's entire body had not been buried.

34. Plaintiff M.R. also experienced shock, horror and great fear upon learning that Decedent's entire body had not been buried.

35. As a direct and proximate result of Defendants' actions, Plaintiffs sustained personal injuries, severe emotional distress and other damages as further set forth herein.

COUNT I NEGLIGENCE

36. Plaintiffs incorporate all prior allegations as if set forth herein in full.

37. Each Defendant had a duty to Plaintiff to exercise ordinary care, at all times, to prevent events such as this from occurring.

38. Plaintiffs placed the greatest of trust in Defendants.

39. At the time of Decedent's death, Plaintiffs were grieving over Decedent's death.

40. Defendants had a duty to competently and professionally:

a. Inventory decedent's personal belongings;

- b. Embalm decedent;
- c. Discover that decedent's brain had not been returned to her body;
- d. Return decedent's brain to her body or make arrangements for its final disposition;
- e. Inspect decedent's body prior to burial;
- f. Determine that decedent had not been autopsied, and that there was no "Y" shaped incision on Decedent and thus that Decedent's brain had not been returned to her body;
- g. Inspect decedent's personal belongings prior to returning them to Plaintiffs; and
- h. Avoid placing Plaintiffs in danger and to prevent an injury.

41. Defendants' breaches of their duties to Plaintiffs constitute negligence.

42. As a direct result of the Defendants' negligence, Plaintiffs have suffered damages, including but not limited to bodily injury, emotional distress, pain and suffering, loss of life's enjoyment, fear for themselves and decedent, and other compensatory damages.

43. Upon information and belief, Defendant Salazar and Defendants' unknown employees/agents were aware that they had failed to properly care for Decedent or take appropriate and timely action to prevent injury to others such as Plaintiffs.

44. Even after this incident, Defendants failed to take steps to minimize Plaintiffs' damages and bury decedent's brain.

COUNT II UNFAIR PRACTICES

45. Plaintiffs incorporate all prior allegations as if set forth herein in full.

46. After decedent's death, Plaintiffs relied on Defendants to perform their

professional obligations in a responsible, competent manner.

47. The acts and failures to act by Defendants, as enumerated above, constitute unfair and deceptive trade practices and unconscionable trade practices which are illegal and prohibited pursuant to the New Mexico Unfair Trade Practices Act, NMSA 1978, §§57-12-1.

48. Plaintiffs were deceived by the unfair and deceptive trade practices and unconscionable trade practices of Defendants, and would not have purchased services through Defendants if they had known that they were not going to fully perform the requested services.

49. As a direct result of Defendants' unfair and deceptive trade practices and unconscionable trade practices, Plaintiffs have suffered compensatory damages, incidental damages and consequential damages in a monetary amount to be determined at trial.

50. Plaintiffs are also entitled to attorney fees, statutory and treble damages for violations of the Unfair Trade Practices Act.

51. The acts and failures to act by Defendants were reckless, wanton, oppressive, in bad faith and/or fraudulent, entitling Plaintiffs to recover punitive damages in an amount to be determined at trial.

52. In the alternative, Defendants took advantage of Plaintiffs in their time of grief, and Defendants are liable for such damages.

**COUNT III
BREACH OF CONTRACT**

53. Plaintiffs incorporate all prior allegations as if set forth herein in full.

54. Plaintiffs directly contracted with Defendants or in the alternative, were third party beneficiaries of contracts with Defendants.

55. Plaintiffs fully complied with their contractual duties in that they promptly paid a large amount for the care and burial of Decedent.

56. Plaintiffs complied with all conditions precedent to their performance of the contract.

57. As a result of Defendants' reckless breach of contract, they are liable to plaintiffs for damages.

**COUNT IV
BREACH OF FIDUCIARY DUTY**

58. Plaintiffs incorporate all prior allegations as if set forth herein in full.

59. Plaintiffs placed the highest trust in Defendants to diligently and competently perform their duties.

60. Defendants each owed Plaintiffs fiduciary duties.

61. Defendants recklessly breached their fiduciary duties.

62. As a result of Defendants' reckless breach of their fiduciary duties, Plaintiffs have sustained damages.

**COUNT V
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

63. Plaintiffs incorporate all prior allegations as if set forth herein in full.

64. Decedent had a close family relationship with the Plaintiffs herein.

65. As a result of seeing or perceiving Defendants' failure to completely bury Decedent, Plaintiffs suffered severe emotional distress.

66. The occurrence herein resulted in injury to Plaintiffs.

**COUNT VI
OUTRAGE**

67. Plaintiffs incorporate all prior allegations as if set forth herein in full.

68. Defendants mishandled Decedent.

69. Defendants' conduct of mishandling Decedent was extreme and outrageous under

the circumstances.

70. Defendants acted intentionally or recklessly.

71. As a result of the conduct of Defendants, Plaintiffs experienced severe emotional distress.

**COUNT VII
MISHANDLING OF A BODY**

72. Plaintiffs incorporate all prior allegations as if set forth herein in full.

73. Defendants mishandled Decedent.

74. As a result of Defendants' misconduct, Plaintiffs have sustained damages.

**COUNT VIII
BREACH OF BAILMENT OBLIGATION**

75. Plaintiffs incorporate all prior allegations as if set forth herein in full.

76. Plaintiffs placed Decedent in Defendants' care, custody and control.

77. Defendants breached their bailment contract by failing to properly redeliver the bailed property at the termination of the bailment.

**COUNT IX
PROFESSIONAL NEGLIGENCE**

78. Plaintiffs incorporate all prior allegations as if set forth herein in full.

79. Defendants failed to provide Plaintiffs with the professional services in keeping with community and professional standards for providing similar services to avoid an unreasonable risk of injury to individuals such as Plaintiffs.

80. Plaintiffs suffered damages as a result of Defendants' breach of their professional duties.

**COUNT X
PRIMA FACIE TORT**

81. Plaintiffs incorporate all prior allegations as if set forth herein in full.

82. In the alternative, Defendant intentionally failed to inspect Decedent's belongings before returning them to Plaintiffs.

83. Defendants intended that their failure to act would cause harm to the Plaintiff or that Defendants knew with certainty that their failure to act would cause harm to the Plaintiffs

84. Defendants' failure to act was a cause of Plaintiff's harm.

85. Defendants' conduct was not justifiable under all the circumstances.

**COUNT XI
BREACH OF NONDELEGABLE DUTY**

86. Plaintiffs incorporate all prior allegations as if set forth herein in full.

87. The act of burying a person, if not done correctly, is such that it is likely to create a peculiar risk of harm to others unless reasonable precautions were taken.

88. Defendants each owe a nondelegable duty of care to Plaintiffs such that they are liable for the acts of others giving rise to injury to Plaintiffs.

**COUNT XII
PUNITIVE DAMAGES**

89. Plaintiffs incorporate all prior allegations as if set forth herein in full.

90. Defendants' actions were reckless, wanton, or willful requiring an award of punitive damages against the Defendants to deter such conduct in the future.

91. Even after learning of their incompetence in failing to bury all of Decedent, Defendants did nothing to assist Plaintiffs in their grief by taking steps to prevent this from happening again.

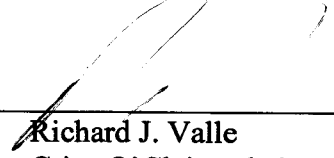
92. Even after learning of their incompetence in failing to bury all of Decedent, Defendants did nothing to assist Plaintiffs in completely burying Decedent.

93. The outrageous nature of Defendants' conduct is such that punitive damages should not be limited by a single digit multiplier of punitive damages.

WHEREFORE, Plaintiffs respectfully request this Court to enter judgment against the Defendants for damages including, but not limited to, any medical/therapy expenses, pain and suffering, loss of enjoyment of life, punitive damages, attorney fees, for costs of prosecuting this lawsuit as well as interest; as well as an early mediation at Defendants' expense as set forth in NMSA 1978 §57-12-1 et seq, and for such other and further relief that this Court deems fair and just.

CARTER & VALLE LAW FIRM, P.C.

By: _____


Richard J. Valle
Crios O'Cleireachain
Attorneys for Plaintiffs
8012 Pennsylvania Circle NE
Albuquerque, NM 87110
(505) 888-4357