

IN THE CHANCERY COURT OF LAUDERDALE COUNTY, MISSISSIPPI

**C. DELBERT HOSEMANN, Jr., *In his Official
Capacity as Secretary of State***

Petitioner

v.

Civil Action No. 16-537-M

**Magnolia Cemetery
(A Perpetual Care Cemetery)
2638 23rd Avenue
Meridian, MS 39305**

**Meridian Memorial Park
(A Perpetual Care Cemetery)
9590 Old Highway 80 West
Meridian, MS 39301**

**Greenscape Michigan, Inc.
(Administratively Dissolved 10-1-2013)
2638 23rd Avenue
Meridian, MS 39305**

**Greenscape Mississippi, Inc.
(Administratively Dissolved 12-20-2014)
2638 23rd Avenue
Meridian, MS 39305**

**William E. Arlinghaus, *individually*
2020 31st Street
Meridian, MS 39305**

Respondents

ORDER GRANTING PRELIMINARY INJUNCTION

This cause came before the Court for a hearing on August 23, 2016, upon application of the Mississippi Secretary of State, C. Delbert Hosemann, Jr., in his official capacity, for a Preliminary Injunction against the Respondents seeking relief requested in the Application for a Temporary Restraining Order; or Alternatively, Application for Preliminary Injunction, filed with

the Court on June 28, 2016. A Temporary Restraining Order was granted by the Court on June 28, 2016, and was subsequently extended on July 8, 2016, for expiration on August 23, 2016. On July 8, 2016, this Court's Order set a status conference for the case for August 23, 2016, and a hearing on Petitioner's Application for a Preliminary Injunction pursuant to Mississippi Rule of Civil Procedure 65(a). At the hearing set for the preliminary injunction, the parties agreed to the injunctive relief described in this Order. As such, the Court finds as follows:

1. This Court has jurisdiction over the matters asserted herein pursuant to Miss. Code Ann. § 41-43-38(7). Venue is proper in this Court as Magnolia Cemetery and Meridian Memorial Park are located in Lauderdale County, Mississippi.
2. Petitioner's Application for a Preliminary Injunction demonstrates a compelling need to preserve the status quo pending an adjudication on Petitioner's Verified Complaint and Motion for the Appointment of a Receiver and Other Relief for Magnolia Cemetery and Meridian Memorial Park.
3. Specifically, Petitioner alleges that the perpetual care trust deficiencies for Magnolia Cemetery and Meridian Memorial Park total \$33,349.83 (\$23,676.31 for Magnolia Cemetery and \$9,673.52 for Meridian Memorial Park). These deficiencies are owed to trust as of October 2015. These amounts do not include funds that Respondents failed to trust on collections from sales since October 2015. When Respondent Arlinghaus was presented with the deficiency reports in late January 2016 and again on March 4, 2016, he did not dispute the report findings.
4. Petitioner alleges that Respondents have not trusted any perpetual care collections from the sales of graves since their ownership began in the Fall of 2011. Lauderdale County

consumers who bought grave spaces with the expectation of perpetual care are not receiving the benefit of their perpetual care purchases. Each separate and distinct failure by the Respondents to remit the perpetual care collection to trust (15%/5%) by the fifth day of the month following collection is a blatant violation of Miss. Code Ann. § 41-43-37(1).

5. Petitioner alleges that its office has logged numerous consumer complaints, beginning in February 2016, wherein consumers have complained that they have paid Respondent Arlinghaus for memorial markers to be installed at the graves of loved ones that have not been installed. Currently, at least twenty-two (22) consumers have lodged complaints with Petitioner's office alleging undelivered markers that have been ordered and purchased. Some of the undelivered markers were paid for and ordered well over a year ago.

6. Petitioner alleges that beginning in June of this year, Petitioner's office began receiving consumer complaints that basic lawn care and road maintenance were not being performed at the cemeteries and that both cemeteries were blighted and overgrown. The neglectful maintenance has continued throughout the summer as demonstrated by the testimony presented at the hearing.

7. All of the factors cited above are certain indicators of a cemetery operation that is at risk of insolvency and potentially other reasons that result in the diversion of consumer purchases to unauthorized or unlawful purposes.

8. Until the Petitioner can be heard on his Motion for the Appointment of a Receiver, the Court has determined that the status quo must be preserved in the interim and to prevent additional consumers from placing their purchases at financial risk.

9. Consumers need to be protected from placing their savings into financial jeopardy with an order of injunctive relief halting cemetery ground interment sales, niche sales, and mausoleum sales on a preneed basis by Respondents Magnolia Cemetery, Meridian Memorial Park, Greenscape Michigan, Inc., Greenscape Mississippi, Inc., and William Arlinghaus. A **preneed** sale of a grave space is one in which the timing of the sale is discretionary with the purchaser. A preneed sale of a grave space is any sale or potential sale where a death has not occurred and there is no immediate need for an interment or entombment.

10. Petitioner has further demonstrated that consumers will be protected from placing their savings in financial jeopardy only with an Order halting preneed purchases of cemetery goods and services such as grave openings and closings, tent set-ups and related services for committal ceremonies, memorial markers – including all installation components of memorial markers, burial vaults, and grave liners – by Respondents Magnolia Cemetery, Meridian Memorial Park, Greenscape Michigan, Inc., Greenscape Mississippi, Inc., and William Arlinghaus.

11. This Court grants the requested relief as the risk of harm to consumers will otherwise be irreparable and considerable. Further, the threatened harm to the cemetery's consumers outweighs any harm that might be visited to the Respondents due to the injunctive relief requested by the Petitioner. There exists a substantial likelihood that the movant will prevail on the merits. It is in the public's best interest to properly maintain perpetual trust funds to help maintain the cemeteries and prevent blight. Therefore, an Order Granting a Preliminary Injunction against Respondents is consistent with the public interest as it is necessary to protect

consumers from further harm and the need to maintain the status quo of the cemeteries until the other relief sought in the Verified Complaint can be heard by the Court.

THEREFORE, IT IS **ORDERED** and **ADJUDGED** THAT:

(a.) With the exception of at-need sales of cemetery interment rights (grave spaces) to accommodate requests for immediate burials of deceased bodies, all other grave (ground interment), mausoleum, and niche sales shall immediately cease by Respondents Magnolia Cemetery, Meridian Memorial Park, Greenscape Michigan, Inc., Greenscape Mississippi, Inc., William Arlinghaus, and their officers, agents, servants, employees, attorneys, and upon those persons in active concert or participation with them who receive actual notice of the Order by personal service or otherwise;

(b.) All **pre**need sales of burial vaults, grave liners, memorial markers, grave openings/closings, committal ceremony services such as tent set-up and all other preneed burial services and merchandise shall immediately cease by Respondents Magnolia Cemetery, Meridian Memorial Park, Greenscape Michigan, Inc., Greenscape Mississippi, Inc., William Arlinghaus, and their officers, agents, servants, employees, attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise;

(c.) Respondents and any of their officers, agents, servants, employees, attorneys, and others in active concert or participating with them who receive notice of this Order by personal service or otherwise are hereby enjoined from withdrawing, issuing drafts, making payments by check, or transferring any monies in any of the trust or bank accounts of Magnolia Cemetery, Meridian Memorial Park, Greenscape Michigan, Inc., Greenscape Mississippi, Inc., or William

Arlinghaus, wherever the same may be located, or any trust or bank accounts that exist for the beneficial interest of Magnolia Cemetery, Meridian Memorial Park, Greenscape Michigan, Inc., Greenscape Mississippi, Inc., William Arlinghaus or any other entities that these entities own or control unless written approval is obtained in advance by the Assistant Secretary of State for Regulation and Enforcement or his designee. However, Respondents' bank account in the custody of Community Bank, styled "William Edward Arlinghaus" with account number XXXXXX8396 is not subject to the provisions of this Order.

(d.) Respondents and any of their officers, agents, servants, employees, attorneys, and others in active concert or participating with them who receive notice of this order by personal service or otherwise shall immediately preserve intact and without alteration the complete composition of all business and banking records, wherever the same may be found, of Respondents Magnolia Cemetery, Meridian Memorial Park, Greenscape Michigan, Inc., Greenscape Mississippi, Inc., and William Arlinghaus. By way of example only and not intended as a complete listing of records subject to this directive: all client files, client accounts, client receivables, account payables, bank and trust account statements and records, burial records and maps, client contracts, supplier contracts, registries of interments, cemetery maps, payroll records, and any other business record in paper or electronic format that directly or indirectly relates to the conduct of business affairs of Magnolia Cemetery and Meridian Memorial Park shall be preserved intact;

(e.) Respondents are hereby ordered to report on Friday of each week the weekly collections for previously sold cemetery goods and services and collections from previously sold interment and entombment sales to the Assistant Secretary of State for Regulation and

Enforcement in a format approved by the Secretary of State's Office. Additionally, Respondents are hereby ordered to report on Friday of each week the collections for at-need burial and entombment sales that may be required, if any, for grave purchases during the period of time covered by this Order.

So **ORDERED** and **ADJUDGED**, this the 23rd day of August, 2016.

Charles W. Wright, Jr.
CHANCELLOR

Agreed Order By:

Dave Scott, MSB #8765
Assistant Secretary of State
125 S. Congress Street, 17th Floor
Jackson, MS 39201

Dave Scott

Charles W. Wright, Jr., MSB# 7395
Charles W. Wright, Jr., PLLC
Post Office Box 1677
Meridian, MS 39302-1677

Charles W. Wright, Jr.

Lee D. Thames, Jr., MSB#10314
Special Assistant Attorney General
Civil Litigation Division
Mississippi Attorney General's Office
P. O. Box 220
Jackson, MS 39205

L. D. Thames, Jr.

Robert D. Jones, MSB#
Robert D. Jones, MSB#
P.O. Box 1205
Meridian, MS 39302
