

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE-19-001051 Division: 02

HARRY DAVILA, SR., MARIA RODRIGUEZ, LORNA GARCIA,
HARRY DAVILA, JR., and ARMANDO DAVILA,

Plaintiff(s),

vs.

STONEMOR FLORIDA SUBSIDIARY LLC
d/b/a CORAL SPRINGS FUNERAL HOME,

Defendant(s).

_____ /

COMPLAINT

Plaintiffs, HARRY DAVILA, SR., MARIA RODRIGUEZ, LORNA GARCIA,
HARRY DAVILA, JR., and ARMANDO DAVILA (hereinafter referred to as
“PLAINTIFFS”), sue Defendant, STONEMOR FLORIDA SUBSIDIARY LLC d/b/a
CORAL SPRINGS FUNERAL HOME (hereinafter referred to as “STONEMOR”), and
allege:

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action for damages in excess of \$15,000 and within the subject matter jurisdiction of this Court
2. Venue is proper in Broward County, Florida.
3. Defendant STONEMOR is a Florida Limited Liability Company with its principal place of business in Broward County, Florida.
4. Defendant is a licensed provider of Funeral and cremation services in the State of Florida, and its cremation service business is subject to the regulatory

requirements of Chapter 497 Fla. Stat. (Funeral, Cemetery and Consumer Services).

5. At all times material hereto, Plaintiff, HARRY DAVILA SR., was over 18 years old and is the surviving spouse of the decedent, Maria Gonzalez.

6. At all times material hereto, Plaintiff, MARIA RODRIGUEZ, was over 18 years old and the surviving adult child of the decedent, Maria Gonzalez.

7. At all times material hereto, Plaintiff, LORNA GARCIA, was over 18 years old and the surviving adult child of the decedent, Maria Gonzalez.

8. At all times material hereto, Plaintiff, HARRY DAVILA, JR., was over 18 years old and the surviving adult child of the decedent, Maria Gonzalez.

9. At all times material hereto, Plaintiff, ARMANDO DAVILA, was over 18 years old and the surviving adult child of the decedent, Maria Gonzalez.

10. On or about September 16, 2018, Maria Gonzalez, passed away from breast cancer.

11. On or about September 17, 2018, Plaintiff, HARRY DAVILA, SR., directed the Defendant, STONEMOR, to transport the decedent, Maria Gonzalez, to their funeral home located at 1420 North University Drive, in Coral Springs, Broward County, Florida.

12. On or about September 18, 2018, Plaintiff, HARRY DAVILA, SR., entered into a contract with Coral Springs Funeral Home (see Exhibit "A") for funeral and burial services, including cremation.

13. On or about September 18, 2018, Plaintiff, HARRY DAVILA, SR., had advised the Defendant, STONEMOR, that he wished to have his wife cremated following a viewing for his family and friends, which had been scheduled for September 20, 2018, at 10:00 a.m. This was to be a witnessed cremated by the PLAINTIFFS.

14. On or about September 19, 2018, Defendant, STONEMOR, notified, Plaintiff, HARRY DAVILA SR., via telephone, that his deceased wife's body was

wrongfully cremated.

15. PLAINTIFFS were never able to properly say goodbye to their loved one.

COUNT I-VIOLATION OF FLORIDA STATUTES CHAPTER 497

The PLAINTIFFS hereby reallege each and every allegation contained in Paragraphs 1 through 15, as if fully set forth herein, and further allege:

16. Defendant, STONEMOR, operates its company in the Florida funeral and cremation business.

17. Defendant, STONEMOR, is subject to Chapter 497 (Funeral, Cemetery and Consumer Services) of the Fla. Stat.

18. Defendant, STONEMOR, violated Section 497 Fla. Stat., by but not limited to, wrongfully cremating a deceased body including:

- (a) performing a cremation without having authorized written permission from a legally authorized person;
- (b) performing a cremation without having the consent from a legally authorized person;
- (c) failing to obtain proper permitting from the county medical examiner;
- (d) wrongfully cremating a body.

19. Defendant, STONEMOR's, violations of Chapter 497 Fla. Stat, caused PLAINTIFFS to suffer damages, including mental anguish and emotional distress.

WHEREFORE, PLAINTIFFS demand damages against Defendant, STONEMOR, for violations of Sections 497, and further demand trial by jury of all issues so triable.

COUNT II-NEGLIGENT HANDLING OF A DEAD BODY

The PLAINTIFFS hereby reallege each and every allegation contained in Paragraphs 1 through 15, as if fully set forth herein, and further allege:

20. Defendant, STONEMOR, owed a duty to follow the written and verbal wishes of Plaintiff, HARRY DAVILA, SR., by cremating his late spouse, subsequent to a viewing service for his family and friends.

21. Defendant, STONEMOR, also owed a duty to the PLAINTIFFS to handle, prepare and preserve the Decedent's body with a high standard of care by properly maintaining the body for identification and viewing.

22. Defendant, STONEMOR, breached this duty by wrongfully cremating Maria Gonzalez body prior to the agreed upon viewing.

23. As a direct and proximate result, PLAINTIFFS suffered damages, including mental anguish and emotional distress and loss of capacity for the enjoyment of life.

WHEREFORE, PLAINTIFFS, demand judgement for damages against Defendant, STONEMOR, and further demand trial by jury of all issues so triable.

COUNT III-BREACH OF CONTRACT

The Plaintiff, HARRY DAVILA, SR., hereby realleges each and every allegation contained in Paragraphs 1 through 15, as if fully set forth herein, and further allege:

24. Defendant, STONEMOR, entered into an agreement supported by consideration with the Plaintiff, HARRY DAVILA, SR., authorizing them to take possession of and make arrangements for the cremation of the remains of Maria Gonzalez at Coral Springs Funeral Home (See Exhibit "A").

25. Defendant, STONEMOR, breached this contract by wrongfully cremating the body of Maria Gonzalez prior to the agreed upon identification and viewing.

26. As a direct and proximate result, Plaintiff, HARRY DAVILA, SR., suffered damages, including mental anguish and emotional distress and loss of capacity for the enjoyment of life.

COUNT IV-NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

The PLAINTIFFS hereby reallege each and every allegation contained in Paragraphs 1 through 15, as if fully set forth herein, and further allege:

27. Defendant, STONEMOR, knew or under the exercise of reasonable care, should have known that the negligent mishandling of Decedent's body would result in serious emotional distress and suffering to the surviving family members such as the PLAINTIFFS, herein.

28. Defendant, STONEMOR, owed the Decedent's relatives, such as the PLAINTIFFS herein, a duty to refrain from and to reasonably prevent and rectify any such action, which might interfere with the proper preservation and preparation of the Decedent's body.

29. Defendant, STONEMOR, recklessly and negligently breached their duty as aforementioned by:

- (a) Failing to properly preserve and prepare the Decedent's body;
- (b) Failing to properly present the Decedent in a condition which would allow identification and viewing;
- (c) wrongfully cremating the body of Maria Gonzalez;
- (d) wrongfully cremating the wrong body;
- (e) failing to follow the wishes of the PLAINTIFFS;
- (f) failing to follow its own policy and procedures in the handling of a dead body.

Coral Springs Funeral Home

1420 N University Drive
Coral Springs, FL 33071
(954) 255-8411

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED CONTRACT #92218074

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

Arrangements for María Gisela Gonzalez

Date of Arrangement: 09/18/2018

Date of Death: September 16 2018,

| | | | |
|---|----|-----------------|---|
| SERVICES, FACILITIES, AUTOMOBILE, OTHER EQUIPMENT AND OTHER SERVICES: | | | MERCHANDISE: |
| Itemized General Price List: | | | Casket: _____ |
| Basic Professional Services of | | | Outer Burial Container: _____ |
| Funeral Director and Staff: | \$ | --- | Cremation Urn: _____ |
| Other Care of the Deceased: | | | <u>Honey Brown</u> _____ 195 00 |
| Embalming _____ | | --- | Cremation Container: _____ |
| Sanitary Care of the _____ | | --- | Alternative Cremation Container _____ 245 00 |
| Unembalmed Remains _____ | | --- | Clothing as Selected: _____ |
| Dressing, Casketing and Cosmetology _____ 690 00 | | --- | Grave Marker: _____ |
| Post Autopsy Care/Post Organ Donation _____ | | --- | Acknowledgment Cards as Selected _____ |
| Restoration Charge _____ | | --- | Memorial Register _____ |
| Refrigeration _____ | | --- | Memorial Folders/Prayer Cards _____ |
| Care and Custody While Sheltering Remains _____ | | --- | Combination Shipping Unit/Air Tray _____ |
| Other Care of the Deceased _____ | | --- | _____ |
| _____ | | --- | _____ |
| _____ | | --- | _____ |
| Total Care of the Deceased | \$ | <u>690 00</u> | Total Merchandise _____ \$ <u>440 00</u> |
| Directing of Services and Use of Facilities: | | | CASH ADVANCES: |
| Visitation _____ | | --- | Sales Tax: _____ \$ _____ |
| Funeral Ceremony _____ | | --- | Cemetery: _____ |
| Memorial Ceremony _____ | | --- | Death Certificates (No. <u>1</u> @ \$15.00) _____ 15 00 |
| Graveside _____ | | --- | Permit Disposition/Burial Permit _____ |
| Special Hrs. Charge _____ | | --- | Medical Examiner's Charge _____ 57 82 |
| _____ | | --- | Honorarium _____ |
| _____ | | --- | Musicians/Vocalist _____ |
| Total Directing of Services and Use of Facilities | \$ | --- | Air or Other Transport: _____ |
| Automotive, Other Equip., Other Services and Other Charges: | | | Out of Town Funeral Homes _____ |
| Transfer of Remains to Funeral Home _____ | | --- | Newspaper Notices _____ |
| Hearse/Coach and Driver _____ | | --- | Telephone/Telegraph/Fax: _____ |
| Limousine/Other Passenger Vehicle and Driver _____ | | --- | Motor Escort: _____ |
| Safety/Lead Vehicle and Driver _____ | | --- | _____ |
| Flower Van and Driver _____ | | --- | _____ |
| Utility Vehicle and Driver _____ | | --- | _____ |
| Cemetery tent and grave equipment _____ | | --- | _____ |
| Additional Transportation Charges: _____ | | --- | _____ |
| _____ | | --- | Total Cash Advances _____ \$ <u>72 82</u> |
| _____ | | --- | We charge you for our services in obtaining |
| _____ | | --- | Any Cash Advance Items marked |
| Total Auto, Other Equipment and Services \$ And/or | | --- | with an asterisk (*) |
| Personalized Service Program Package | | | SUMMARY: |
| <i>(a complete description of the package that you selected is in the General Price List provided you).</i> | \$ | --- | Basic Professional Services of |
| _____ | | --- | Funeral Director and Staff _____ \$ _____ |
| _____ | | --- | Other Care of the Deceased _____ 690 00 |
| _____ | | --- | Directing Services and Use of Facilities _____ |
| _____ | | --- | Automotive, Other Equip. and Services _____ |
| _____ | | --- | and/or _____ |
| _____ | | --- | Personalized Service Program Package _____ |
| _____ | | --- | Other Services _____ 2,195 00 |
| Other Services: | | | \$ <u>2 885 00</u> |
| See General Price List for complete description | | | Merchandise _____ 440 00 |
| Immediate Burial _____ \$ _____ | | --- | Cash Advances _____ 72 82 |
| Direct Cremation Without a Service _____ \$ <u>2195 00</u> | | --- | Total Charges _____ \$ <u>3,397 82</u> |
| Forwarding Remains to Another Funeral Home _____ \$ _____ | | --- | (Credits) to Account _____ |
| Receiving Remains from Another Funeral Home _____ \$ _____ | | --- | Payments (cash, check, or credit card) _____ |
| _____ \$ _____ | | --- | Service Discount _____ 945 00 |
| Total Service Charges with Personalized Packages | \$ | <u>2,885 00</u> | Balance due after credits _____ \$ <u>2,452 82</u> |

Coral Springs Funeral Home

CONTRACT FOR FUNERAL AND BURIAL SERVICES CONTRACT #92218074

For the Funeral of: Maria Gisela Gonzalez ("Deceased") Date 09/18/2018

The undersigned Buyer acknowledges that Buyer has the legal right to arrange the final services for the Deceased, and Buyer authorizes Coral Springs Funeral Home ("Funeral Home") to furnish the services, merchandise and accommodations described in this Contract, and in consideration thereof. Buyer promises to pay FUNERAL HOME the Balance Due set forth on the attached Statement of Funeral Goods and Services Selected (the "Statement of Goods and Services"), in the amount of \$ 2,452.82, and any items ordered subsequent to the execution of this Contract, on or before the date of the funeral service. Buyer acknowledges that Buyer has been given for retention a General Price List dated 04/01/2018 and has been offered for review a Casket Price List dated _____, and an Outer Burial Container Price List dated _____.

Embalming: If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

Reason for embalming: Embalming Declined Due to Services Selected

Purchase Requirements. Buyer acknowledges that the legal, cemetery, or crematory requirements that compelled purchase of certain items were: Crematory requires alternative container, Medical Examiner approve all cremation, Refrigeration required 24 hours after death

Terms of Payment: Payment is due in full before the time of service. Failure to render payment of the entire outstanding balance at the time of service provided herein shall constitute an act of default and an unanticipated late payment fee on the outstanding balance at a rate equal to the lesser of (a) 1.5% per month (18% per annum) or (b) the highest lawful rate of interest permitted under state law shall be added to the balance outstanding at the end of each month after the date of default.

In addition to the unanticipated late fee, FUNERAL HOME reserves any other remedy at law or equity necessary for the enforcement and collection of Buyer's obligations under this Contract. The obligation of the Buyer shall be a joint and several obligation with the estate of the Deceased, except that nothing shall require FUNERAL HOME to file a claim against the estate of the Deceased or wait for payment from the estate of Deceased prior to enforcing this Contract against any party executing this Contract as Buyer. Except where prohibited by law, in the event FUNERAL HOME employs an attorney to enforce, this Contract Buyer agrees to pay all costs of collection, including reasonable attorney's fees and costs of suit, but only to the extent that such payment is permitted by applicable law. The Buyer authorizes FUNERAL HOME to verify their credit status through any organization providing such credit verification services.

PAYMENTS ON BALANCE DUE:

- (1) Cash or Check (payment at time of service-saves you late penalties and documentation fees) \$ _____
 - (2) Credit Card - I authorize _____ to charge by credit card for 2452.82
 card # _____ Exp. Mo. _____ Yr. _____ Card Type _____
 Signature of Cardholder X _____
 - (3) Pre-Need Policy - _____
 - (4) Other (Describe) _____
- TOTAL** \$ 2,452.82

Disclaimer of Warranty: The only warranty on the casket or outer burial container, or both, sold in connection with this service is the express written warranty, if any, granted by the manufacturer. FUNERAL HOME MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CASKET OR OUTER BURIAL CONTAINER.

IF MORE THAN ONE BUYER IS EXECUTING THIS CONTRACT, EACH SUCH BUYER HEREBY ACKNOWLEDGES THAT HIS/HER OBLIGATIONS UNDER THIS CONTRACT ARE JOINT AND SEVERAL. EACH BUYER UNDER THIS CONTRACT IS OBLIGATED TO PAY THIS CONTRACT EVEN IF ANOTHER PERSON OR PERSON(S) HAS ALSO AGREED TO PAY IT.

Buyer acknowledges receipt of a completed copy of this Contract at the time of execution, and further acknowledges that Buyer has been given for retention the General Price List and has reviewed the Casket Price List and the Outer Burial Container Price List with certain disclosure concerning embalming, required purchase of caskets or outer burial containers and warranty disclaimer. Buyer accepts and approves the above.

Initials: X Initials: _____ Initials: _____

IN TESTIMONY WHEREOF, Buyer has caused this Contract to be properly executed as of the date written above. By signing this Contract, Buyer authorizes and directs the disposition of the remains of Deceased, using the services and merchandise described on the attached Statement of Goods and Services and is liable for the payment of the Balance Due.

Executed on 09/18/2018

FUNERAL HOME agrees to provide the services, merchandise (subject only to availability) and cash advances described above in consideration of the payment of the above stated cash price, or, if Payment (5) above has been chosen by Buyer, in consideration of the Cash Price described in the Retail Installment Contract marked "A" and attached hereto, and hereby reserves the right to assign this Contract in accordance with Funeral Home's assignment appearing on the reverse side of this Contract. This assignment is without recourse.

By: McClan, Tunisia
Authorized Agent

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT

| | |
|---|--|
| <p>1. BUYER <u>Harry Davila</u></p> <p>SIGNATURE _____</p> <p style="text-align: center;"><u>11001 NW 3rd Street</u> <u>Coral Springs, FL 33071</u></p> <p>S.S. NUMBER _____</p> <p>PHONE (HOME) <u>(954) 254-8776</u> (E-MAIL) _____</p> | <p>2 BUYER _____</p> <p>SIGNATURE _____</p> <p>BUYER'S ADDRESS _____</p> <p>S.S. NUMBER _____</p> <p>PHONE (HOME) _____ (WORK) _____</p> |
| <p>SELLER <u>Coral Springs Funeral Home</u></p> <p>By: <u>McClan, Tunisia</u> <small>Authorized Agent</small></p> <p><u>F042345</u> <small>Funeral License No.</small></p> | |
| <p>SELLER'S ADDRESS: <u>1420 N University Drive</u> <u>Coral Springs, FL 33071</u></p> <p>SELLER'S TELEPHONE NO. <u>(954) 255-8411</u></p> | |

NOTICE: THE SELLER MAY ASSIGN THIS CONTRACT WHICH, IF SO ASSIGNED, WILL BECOME THE PROPERTY OF THE ASSIGNEE, WHO WILL BE YOUR CREDITOR. AFTER THE ASSIGNMENT OF THIS CONTRACT, ALL QUESTIONS CONCERNING THE TERMS OF THIS CONTRACT OR PAYMENT SHOULD BE DIRECTED TO THE ASSIGNEE OF THIS CONTRACT AT THE ADDRESS INDICATED ON THE NOTE OF ASSIGNMENT.

CHARGES ARE ONLY FOR ITEMS THAT YOU SELECTED OR THAT ARE REQUIRED. IF WE ARE REQUIRED BY LAW OR BY A CEMETERY OR CREMATORY TO USE ANY ITEMS, WE WILL EXPLAIN THE REASONS IN WRITING ABOVE.

NOTICE OF RIGHT TO MODIFY OR CANCEL

IF ARRANGEMENT IS MADE IN THE FUNERAL HOME: THIS FUNERAL HOME'S POLICY IS TO OFFER A 24-HOUR PERIOD IN WHICH OUR CUSTOMERS MAY CANCEL OR MODIFY (ALL OR PART) OF THIS TRANSACTION ON ANY SERVICE OR MERCHANDISE NOT ALREADY PERFORMED OR USED AT THE TIME OF RESCISSION. WE ARE CONFIDENT WE OFFER THE BEST SERVICE AND QUALITY OF MERCHANDISE TO OUR CUSTOMER.

IF ARRANGEMENT IS MADE IN ANY LOCATION OTHER THAN THE FUNERAL HOME: YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR YOUR EXPLANATION OF THIS RIGHT.