

Palm Beach County Judge Certifies Class in Boca Raton Cemetery Dispute

By David H. Charlip
July 15, 2016

West Palm Beach, FL – Circuit Court Judge Catherine Brunson has just certified a class action filed by Mark S. Stern against DFG GROUP, LLC d/b/a “The Gardens of Boca Raton”. The action was brought by Mr. Stern and his Miami law firm Charlip Law Group, LC against the cemetery in 2012 contending that the cemetery owner utilized unfair and deceptive practices in selling crypts and niches at the cemetery. The specific misrepresentations alleged were that the North Sanctuary of The Gardens was and would remain as an area designated or dedicated to decedents of the Jewish faith; that the North Sanctuary of The Gardens was a sanctuary facility that would be designed and constructed using certain high quality materials and specific design elements; and that certain spaces sold preconstruction as having a “chapel view” would in fact retain such “chapel view”. Judge Brunson certified separate sub-classes for each of the putative class members suffering damages as a result of each of these alleged misrepresentations.

Both Mr. Stern and his counsel, David H. Charlip, B.C.S., a Florida Board Certified Civil Trial Law specialist were determined to be adequate as class representative and class counsel, respectively.

Charlip Law Group, LC will now be prosecuting the merits portion of this claim and will be seeking both witnesses as well as potential class members to provide further information or to discuss any issues they may have with the crypts or niches that they may own at “The Gardens of Boca Raton”.

Notice to all prospective class members is expected to be disseminated shortly.

About Charlip Law Group, LC

Charlip Law Group, LC is a North Miami based litigation boutique law firm concentrating its practice in the areas of personal injury, class and mass actions and complex commercial litigation. Its principal, is a Board Certified Civil Trial Lawyer with over 30 years of litigation experience. Mr. Charlip is also one of only 136 Florida Civil Law Notaries. He has managed and litigated cases across the country in over 20 different states.

Mr. Charlip received his Juris Doctor degree from the University of Florida with Honors where he was the Executive Editor of the University of Florida Law Review. He is admitted to both the Florida and New Jersey Bar, and is admitted to practice before the U.S. District Court, Southern District of Florida, including Trial Bar, Middle District of Florida, District of New Jersey, the Eighth Circuit U.S. Court of Appeals and the Eleventh Circuit U.S. Court of Appeals.

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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 2012 CA 018827 MB

MARK S. STERN,

Plaintiff,

vs.

DFG GROUP, LLC, etc.,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND
CONDITIONALLY CERTIFYING CLASS**

This matter came before the Court on the Putative Class Representative MARK S. STERN'S Motion for Class Certification filed against Defendant DFG GROUP, LLC ("DFG") pursuant to Rule 1.220 Fla. R. Civ. P. on August 10, 2015. After an evidentiary hearing was conducted on June 14, 2016, the Court having considered the Motion, DFG's Response and the evidence presented as well as the arguments of counsel, and being otherwise advised in this matter, does hereby make the following findings of fact and conclusions of law:

I. Introduction

1. This is a putative class action against the Defendant DFG GROUP, LLC pursuant to Florida Rules of Civil Procedure 1.220(b)(1), (2) and/or (3), filed by the Plaintiff, individually, and on the behalf of all those similarly situated purchasers of crypts and niches at the cemetery known as "The Gardens" in Boca Raton, Florida who were damaged as a result of DFG's violations of Florida's Deceptive Trade Practices Act, Florida Statute § 501.201, *et. seq.* claim and their violations of Florida's Funeral, Cemetery, and Consumer Services Act, Florida Statutes § 497.001, *et. seq.* which damages

arose out of three (3) categories of deceptive acts or practices employed by DFG or by its predecessor as ratified and endorsed by DFG in their sale of crypt or niche spaces at “The Gardens” to the Putative Class Representative and the Putative Class Members, including specifically: the misrepresentation that the North Sanctuary of The Gardens as an area designated or dedicated to the Jewish faith; the misrepresentation that the North Sanctuary of The Gardens was a sanctuary facility that would be designed and constructed using certain high quality materials and specific design elements; and that certain spaces sold preconstruction as having a “chapel view” would in fact retain such “chapel view”.

II. Class Certification

A. Purpose of Class Actions

2. "The very purpose of a class suit is to save a multiplicity of suits, to reduce the expense of litigation, to make legal processes more effective and expeditious, and to make available a remedy that would not otherwise exist." *Tenney v. City of Miami Beach*, 11 So. 2d 188, 189 (Fla. 1942). The Court has followed the analysis and procedures enunciated by the Florida Supreme Court in *Sosa v. Safeway Premium Finance Co.*, 73 So.3d 91, 105-107 (2011).

B. Plaintiff has Satisfied Class Certification Requirements

3. As explained below, the Court finds that the applicable requirements of Rule 1.220(a), (b)(1), (b)(2), and (b)(3) have been satisfied. Accordingly, the proposed subclasses should be certified as defined herein.

4. A review of the record in these proceedings and the evidence presented herein demonstrates that there are a sufficient number of putative class members to meet the “numerosity” requirement of Rule 1.220(a)(1), Fla.R.Civ.P. The testimony and evidence supports a determination that there are more than one hundred individuals who purchased crypt spaces from DFG or its predecessor based upon DFG’s acts, practices and omissions that were alleged to be unconscionable,

unfair and deceptive, in violation of the FDUTPA; in violation of Section 497.152(1)(b) of the Cemetery Act; in violation of Section 497.152(9)(e) of the Cemetery Act; in violation of Section 497.152(10)(d) of the Cemetery Act; and in violation of Section 497.273(4) of the Cemetery Act.

5. The Court credits the testimony and evidence introduced by the Plaintiff at the class certification hearing and for specific evidentiary findings incorporated by reference each of the 37 separate record facts detailed by the Plaintiff in pages 5-9 of his Memorandum of Law Supporting Motion for Class Certification.

6. Additionally, there are questions of both law and fact, required by Rule 1.220(a)(2), that are common to the claims of the putative class members, which questions of law and fact are detailed in paragraph 38 of Plaintiff's Amended Complaint, which the Court incorporates herein by reference.

7. The Plaintiff's claims herein are typical of the claims of the members of each of the putative sub-classes. All putative class members would seek the same relief based on the same underlying core of operative fact. The requirements of Rule 1.220(a)(3) are met.

8. The Plaintiff is an adequate class representative under Rule 1.220(a)(4). The Plaintiff has demonstrated his commitment to the vigorous prosecution of this action through almost 4 years of litigation and has retained competent counsel, experienced in complex litigation, mass and class action litigation, to represent him and the Class Members. There is no hostility of interest between the Plaintiff and any Class Member. The Plaintiff seeks no individual relief different from that sought on behalf of the class he seeks to represent.

9. Additionally, David H. Charlip, B.C.S., Esq. and Charlip Law Group, LC are adequate Class Counsel under Rule 1.220(a)(4) based upon the stipulation of counsel for DFG.

10. Further, the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact

affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy. The claims of the class arise from the same form of sales agreement, sales presentation and common core of operative fact. In point of fact, any putative class member could be representative of the putative class. Proof of the claim of any putative class member essentially proves the claim of all other members. Consequently, there is no particular interest of any member of the class in individually controlling the prosecution of separate claims or defenses. The Court has been made aware of no other pending litigation to which any member of the putative class is a party and in which any question of law or fact controverted in the subject action is to be adjudicated. The Gardens is located in Palm Beach County, so it is a desirable location for concentrating this litigation. Finally, DFG's business records of crypts and niches purchased would allow the parties to identify the entirety of the class for class notification purposes and DFG has not identified any anticipated difficulties likely to be encountered in the management of the claim or defense on behalf of a class. Accordingly, certification pursuant to Rule 1.220(b)(3) is appropriate.

11. Pursuant to Rule 1.220, Fla.R.Civ.P., this Court certifies 3 separate sub-classes class defined as:

a. "First Class": All natural persons and business entities who purchased a crypt or niche from DFG Group, LLC or its predecessor based upon deceptive or unfair representations that the North Sanctuary was designated and reserved only for the burial or encrypting of the remains of persons of the Jewish faith.

b. "Second Class": All natural persons and business entities who purchased a crypt or niche from DFG Group, LLC or its predecessor based upon deceptive or unfair representations that the North Sanctuary construction was to include certain materials, and/or design elements.

c. "Third Class": All natural persons and business entities who purchased a burial site or crypt from DFG Group, LLC or its predecessor based upon deceptive or unfair representations that the interior crypts and niches sold as "chapel view" in the North Sanctuary would remain as "chapel view" crypts and niches.

CONCLUSION

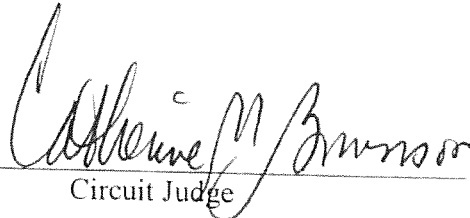
For all of the foregoing reasons, and based upon the parties' arguments and submissions, all filings to date, and the evidence presented,

IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The Plaintiff's Motion For Class Certification is hereby **GRANTED**.
2. The Classes defined in Paragraph 11 above are hereby **CERTIFIED**.
3. The Plaintiff is appointed and designated as the class representative for each of the Subclasses.
4. The law firm of Charlip Law Group, LC and David H. Charlip, B.C.S. is appointed as class counsel for each of the subclasses. The parties shall submit a proposed class notice and notice plan within forty-five (45) days for the Court's approval pursuant to Fla. R. Civ. P. 1.220(d)(2).
5. Notwithstanding any provision to the contrary herein, the findings of fact and conclusions of law contained in this Order are: (a) limited to the context of the Plaintiff's Motion for Class Certification, (b) without prejudice to the parties' presentation of the merits of their claims and defenses, and (c) without prejudice to this Court's authority to alter or amend this Order as may be appropriate pursuant to Rule 1.220(d)(1).

DONE AND ORDERED in the Chambers at West Palm Beach, Palm Beach County, Florida this

17th day of July, 2016.


Circuit Judge

Copies furnished to:

David H. Charlip, B.C.S., Esq.
Ian Koven, Esq.