

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

AMERICAN MOSLEM SOCIETY,
Plaintiff,

v

MIDWEST MEMORIAL GROUP LLC
d/b/a WOODMERE CEMETERY,
Defendant.

Case No. 20-006690-CB

Hon. Muriel D. Hughes

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**PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION
OF COUNT I OF THE COMPLAINT
WITH INTEGRATED BRIEF IN SUPPORT**

MOTION

Plaintiff hereby moves for summary disposition of Count I of the Complaint. Count I asserts that the parties hereto entered into an agreement for the purchase of 1000 graves in Woodmere Cemetery. To date, Plaintiff has paid the amount of \$406,250.00 for 650 of the graves. However, Defendant has refused to allow the use of any of these graves until it receives payment in full for all 1000 graves governed by the purchase agreement. Because there is no factual dispute concerning Plaintiff's entitlement to use the graves it has already paid for, issuance of summary disposition in favor of Plaintiff is appropriate at this time. Plaintiff relies on the following facts in support of this motion:

1. Plaintiff, American Moslem Society (referred to herein as the "Mosque" or "Plaintiff"), is a Michigan nonprofit corporation which operates a mosque in Wayne County, Michigan at 9945 Vernor Highway, Dearborn, Michigan.

2. Defendant, Midwest Memorial Group LLC, is a Delaware limited liability company which operates as a holding company for 13 cemeteries, including Woodmere Cemetery located adjacent to the Plaintiff at 9400 West Fort St, Detroit, Michigan. Defendant is itself a wholly owned subsidiary of a publicly listed, multinational cemetery holding company called Park Lawn Corporation, which owns over 200 cemeteries.

3. Plaintiff has entered into a series of bulk grave purchases with Woodmere Cemetery (at times under different ownership) spanning almost 30 years. In these transactions, the Plaintiff purchases hundreds of grave spaces in advance and, with the cemetery's explicit knowledge and approval, passes them on to its members at cost as needed for the burial of family members.

4. The arrangement is mutually beneficial. The Mosque obtains a bulk discount for the grave spaces and also negotiates favorable prices for burial related products and services for its members (such as opening and closing grave services, burial vault, headstone). The cemetery acquires a significant cash flow from the Mosque and a large pool of families consuming the grave spaces and burial related products and services. Over the decades, this arrangement has generated over 2000 burials at the cemetery and an estimated \$5,000,000.00 in revenue for the cemetery

5. Attached hereto as Exhibit 1 is a copy of the original 1991 contract between the Mosque and Woodmere Cemetery for the purchase of 50 graves in a special section (AMS I) to be established at the cemetery. Plaintiff purchased over 500 additional graves in this section over the course of ten years. Exhibit 2. In 2002, the parties entered into an option contract for the purchase of an additional 1522 graves in a new section of the cemetery to be designated as AMS II.

6. By 2017, Woodmere Cemetery was under the new ownership of the Defendant herein, and Plaintiff and its members had consumed all 590 graves in AMS I and the great majority of the 1522 graves reserved in AMS II.

7. Plaintiff and Defendant began contract negotiations on June 29, 2017 for a purchase of 1000 graves in a new section of the cemetery designated as AMS III. The negotiations were conducted almost exclusively by email communication between Plaintiff's counsel (who was out of the country at the time) and representatives of the cemetery. Negotiations were completed the next day, June 30, 2017. All of the written communications leading to the execution of the purchase contract are contained in Exhibits 3 through 6 hereto. Here are the key exchanges:

a. The negotiations were begun on the morning of June 29, 2017 when Terrence Sims from the cemetery faxed a set of documents to Plaintiff's counsel's office. The last 2 pages of the fax contain the Defendant's proposed one-page Cemetery Protection Agreement (for the purchase of 1000 graves at a total price of \$625,000.00) and proposed one-page Retail Installment Agreement (calling for

a downpayment of \$100,000.00 and 60 monthly installment payments in the amount of \$8,750.00). Exhibit 3.

b. Later that day, Plaintiff's counsel and Kent Elkins from the cemetery exchanged emails discussing the price of the graves in AMS III and the number of remaining graves in AMS II. Exhibit 4.

c. On June 30, 2017, counsel and Elkins exchanged emails primarily discussing the price of burial related products and services. In the final email, counsel stated, "Thanks, Kent. We have a deal. My client plans to be at the cemetery before 5pm with a check for \$100,000.00 as a down payment on the purchase of 1000 grave spaces at the rate of \$625.00 per grave." Counsel advised that the parties would formalize their arrangements for burial related products and services at a later time and requested a return email containing the executed Cemetery Protection Agreement and Retail Installment Agreement. Exhibit 5.

d. Elkins forwarded an email later that day containing the executed Cemetery Protection Agreement and the Retail Installment Agreement. Exhibit 6.

8. Months later (on or about October 2, 2017), the parties finalized an addendum confirming the earlier agreed-upon rates for discounted burial related products and services (the "Addendum"). Exhibit 7. For clarity, paragraph one of the Addendum ties the separately executed contract documents together, expressly stating that the sole governing documents of the transaction are the two-page Addendum itself and the two form documents executed on June 30, 2017. These four pages comprise the 2017 Contract. Exhibit 8.

9. Even though it was obvious from the 30-year history of the transactions between the parties and the context of the 2017 contract negotiation itself, Plaintiff was careful to explicitly and repeatedly document the fact that the grave purchases were being made for the benefit of the members of the Mosque, who were to be the ultimate consumers of the graves. The Cemetery Protection Agreement (Exhibit 8) explicitly states that the intended **beneficiaries** of the agreement are the "American Moslem Society Members". Page one of the Addendum (Exhibit 8) states that, "Woodmere acknowledges and understands that AMS is purchasing burial rights for the **benefit** of its members."

10. On or about April 12, 2020, Plaintiff gave notice that it intended to begin consuming graves in AMS III, as the 1522 spaces in AMS II were almost exhausted. As of that date, Plaintiff had paid Defendant the amount of \$380,000.00 in advance of consuming a single grave in AMS III. This figure equates to 608 spaces of the total 1000 reserved under the 2017 Contract.

11. Defendant announced in a letter dated April 14, 2020 (Exhibit 9) that it would not permit Plaintiff to consume any of the graves in AMS III until payment in full was received for all 1000 graves under the 2017 Contract. This announcement comprised a shocking and unjustified breach of the 2017 Contract.

12. Defendant's letter asserts that the 2017 Contract includes an additional pre-printed form titled "Retail Installment and Cemetery Protection Agreement – Additional Benefits, Terms and Conditions" (referred to herein as the "Alleged Boilerplate") and that paragraph two thereof bars the use of a single grave in AMS III until all 1000 have been paid for. As the communications listed in

