

IN THE CIRCUIT COURT OF PEARL RIVER COUNTY, MISSISSIPPI

JOHN ZAWADSKI and JOHN GASPARI,)	
)	
Plaintiffs,)	
v.)	
)	CASE NO.: 55CI1-17-cv-00019-CM
BREWER FUNERAL SERVICES, INC.)	
d/b/a PICAYUNE FUNERAL HOME)	
TED BREWER and HENRIETTA BREWER,)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT

Jury Trial Demanded

COME NOW, JOHN ZAWADSKI and JOHN GASPARI (hereinafter “Plaintiffs”), by and through undersigned counsel and file this Complaint against BREWER FUNERAL SERVICES, INC. d/b/a PICAYUNE FUNERAL HOME, TED BREWER and HENRIETTA BREWER (hereinafter “Defendants”).

INTRODUCTION

This is an action to recover damages for Defendants’ intentional, malicious and outrageous actions in breaching their agreement to provide transportation and related cremation and funeral services for a grieving family’s departed loved one, knowingly leaving the decedent’s body without proper storage for hours while the family scrambled to find alternative arrangements. Defendants’ callous, reckless and shocking actions occurred despite having entered into an express agreement to provide these services, and despite repeatedly assuring Plaintiff Gaspari that Defendants would “take care of everything” upon notification of the passing of Plaintiffs’ beloved family member, Robert Huskey, who died three days after he

turned 86 years old. Notwithstanding these repeated assurances, Defendants abruptly refused to transport Mr. Huskey's body and otherwise breached their agreements upon learning that the deceased was a gay man whose next of kin was his lawful husband, communicating only that they did not "deal with their kind." As a result of Defendants' actions, Plaintiffs suffered profound and permanent emotional and dignitary harms for which they seek compensatory and punitive damages.

PARTIES

Plaintiffs:

1. Plaintiff John "Jack" Zawadski ("Jack" or "Zawadski") is 82 years old, a Mississippi resident and Robert Huskey's surviving spouse.
2. Plaintiff John Gaspari ("John" or "Gaspari") is a Colorado resident. He is the executor of the estate of Robert Huskey ("Bob") and nephew of Bob and Jack.

Defendants:

3. Brewer Funeral Services, Inc. is a for-profit business owned by spouses Defendant Ted Brewer and Defendant Henrietta Brewer.
4. Brewer Funeral Services, Inc. is an incorporated entity doing business as Picayune Funeral Home Inc. ("PFH") in Picayune, Mississippi. PFH is a funeral establishment licensed by the Mississippi State Board of Funeral Service.
5. Based on information and belief, Ted Brewer is a resident of Picayune, Mississippi and is an owner, the President and a Director of Brewer Funeral Services, Inc.
6. Based on information and belief, Henrietta Brewer is a resident of Picayune, Mississippi and is an owner, the Vice President, Treasurer and a Director of Picayune Funeral Home Inc.

7. Based on information and belief, Defendants Ted Brewer and Henrietta Brewer also work as agents and/or employees of PFH.

JURISDICTION AND VENUE

8. This Court has jurisdiction of the persons and subject matter of this civil action and all causes of action for damages listed herein. *See* Miss. Const. Art. 6, § 156.
9. Venue is proper in this Court because substantial acts and/or omissions causing the damages listed herein took place in Picayune, in Pearl River County, Mississippi.

FACTUAL BACKGROUND

10. Jack and Bob met in 1965 in Anaheim, California. They quickly fell in love and were a committed and loving couple for more than 52 years.
11. Bob and Jack moved from California to Colorado in 1968 to care for Bob's mother after his father passed. Seven years later, the couple moved to Wisconsin where Jack owned an apple tree farm. They taught special education classes until they retired and moved south. They settled in Picayune, Mississippi in 1997 because they loved the area and the climate.
12. On July 17, 2015, shortly after the U.S. Supreme Court struck down laws barring same-sex couples from marrying as unconstitutional in *Obergefell v. Hodges*, 135 S. Ct. 2071 (2015), Jack and Bob were finally able to and did wed in Mississippi.
13. From the time he was born, John has known Jack and Bob as his uncles, and John loves them both. As their closest family member, Jack and Bob both named John as executor of their respective estates.
14. Bob suffered from a heart condition that required bypass surgery several years prior to the events that gave rise to this action. As they had for each other throughout their lives,

Jack cared for Bob through his surgery, recovery and as his condition deteriorated. By August, 2015, Jack was helping Bob with all the daily functions of life, including eating, walking and personal hygiene.

15. Even with the help of hospice services, Bob's condition eventually exceeded Jack's ability to care for Bob's physical and medical needs. Bob entered the Driftwood Nursing Home, expected to expire within a week. Three months later, Bob was transferred to nearby Bedford Care Center of Picayune ("Nursing Home"), where Jack was able to visit more frequently.
16. By the end of April, 2016, it became clear that Bob's passing was imminent. John, who lives in Colorado, searched for a funeral home in the area with an on-site crematorium in order to make prearrangements for transportation and services after Bob passed away.
17. It was important to Plaintiffs that they locate a funeral home that had an on-site crematorium in order to ensure that Bob's body would not have to be moved any more than necessary. It was also important to them that the funeral home be near Bob and Jack's Picayune community so that friends could gather and console each other at a memorial luncheon after the cremation.
18. John researched available options for post-mortem transportation and cremation services on the internet. PFH advertises on the internet that:

We are a full service funeral home and we strive to meet the needs of the families we service. When you choose Picayune Funeral Home your loved one is with us the entire time, whether you choose burial or cremation. We own & operate the only Crematory in Pearl River County. We also own the only privately owned Perpetual Care Cemetery & Mausoleum in Pearl River County.

At Picayune Funeral Home we are committed to providing our community with the best possible service in their time of need.

19. PFH owns and operates the only on-site crematorium in Pearl River County.
20. On or about May 3, 2016, John contacted PFH by telephone and explained his family's approaching need for their services. The PFH representative who first spoke with John identified himself as "the owner" and assured John that their funeral home would be able to take care of all of their needs. Based on these assurances, John entered into an oral agreement with PHF for PFH to transport Bob's body from the Nursing Home to PFH funeral home and for cremation and related services.
21. The parties specifically agreed to the services to be provided and the price—*i.e.*, PFH agreed to provide transportation, cremation and related services upon notification that Bob had passed away and John agreed to pay \$1795 for those services.
22. After the parties reached this agreement, a PFH representative then told John that they would fax the necessary paperwork to the Nursing Home and instructed John to have the Nursing Home call PFH when his uncle passed, at which time they would send a vehicle to transport the body and begin cremation arrangements.
23. The day before Bob passed, on or about May 10, 2016, John called PFH to let them know Bob's passing was imminent, likely within the next 24 hours. Again, John was assured by a PFH representative that they would take care of everything; all that was needed was a call from the Nursing Home when Bob passed away.
24. Based on information and belief, PFH sent the Nursing Home the necessary paperwork to be signed by Bob's next of kin after his death in order to transport his body and for cremation services.
25. On or about May 11, 2016, the Nursing Home called John to let him know that Bob had died and that they had contacted PFH. John was told that PFH simply needed Bob's next

of kin to sign the paperwork in order for the body to be transported. Jack signed the paperwork and it was sent by facsimile to PFH.

26. Shortly after the Nursing Home sent the signed paperwork that identified Jack as Bob's surviving spouse, John was contacted by the Nursing Home and informed that PFH now adamantly refused to provide services. The Nursing Home relayed to John that once PFH received the paperwork indicating that Bob's spouse was male, PFH refused service because it did not "deal with their kind."
27. The Nursing Home representative further communicated to John that, because the Nursing Home did not have a morgue on site, Bob's body needed to be moved immediately. On information and belief, PFH regularly provided services to the Nursing Home and was aware that it lacked proper storage for deceased persons.
28. Based on the fact that the owner, Defendant Ted Brewer, answered the business line when John called to arrange services, and upon additional information and belief, the decision to refuse the services was made by one or both of the two owners of PFH.
29. The funeral home's cancellation of services came in the midst of John's grief, and after he had contracted with Defendants for pre-need services to ensure that Bob's body would be properly cared for and that Jack could be insulated from additional suffering and anxiety at the time of his husband's death.
30. John was outraged, horrified and distraught at this news. Sadly, he was forced to involve his grieving uncle in the crisis that ensued, notwithstanding his intentional prearrangement with Defendants to shield his octogenarian uncle from additional distress and suffering.

31. In the midst of John's grief and distress, and with the Nursing Home insisting that Bob's body had to be removed immediately, John was forced to begin a frantic search for another funeral home with an onsite crematorium that could accommodate their immediate need. He located what appeared to be a suitable funeral home with a crematorium, in Hattiesburg, Mississippi, approximately 90 miles away from the Nursing Home and Jack and Bob's home—far from where the family had intended final handling of Bob's body would take place.
32. Defendants' sudden refusal to provide the prearranged services created even more distress for Plaintiffs because Bob's body could not stay at the Nursing Home for the time it would take for the Hattiesburg funeral home to send transportation. As a result, yet another funeral home in Picayune needed to be secured in order to transport Bob's body from the Nursing Home to the Hattiesburg funeral home.
33. Because of the added distance of the alternative funeral home and the last minute rush to find alternate arrangements after Defendants left them in the lurch, John and Jack were unable to gather friends in the community, as had been their original plan, to honor Bob and support them in their grief.
34. The turmoil and exigency created by Defendants in causing Plaintiffs to find alternative arrangements, as described above, permanently marred the memory of Bob's otherwise peaceful passing. Having planned for Bob to be moved within minutes of his passing with simply a phone call to PFH from the Nursing Home, Plaintiffs were devastated and frantic for hours, having to locate and make substitute arrangements with two other funeral homes, and with the Nursing Home's insistence that Bob's body be removed imminently hanging over their heads.

35. Both John and Jack were devastated and outraged that they were treated so inhumanely and callously while they were in an extremely vulnerable state and that they were denied the services John had carefully arranged for and were led to rely upon by the assurances of the Defendants. They also were horrified that Bob had been so dishonored and treated with such indignity by Defendants immediately after his death.
36. Defendants added enormous suffering, anxiety, distress, anguish, humiliation and indignity to the Family's profound grief as a result of their reckless, outrageous and discriminatory actions.
37. Based on information and belief, Defendants Ted and Henrietta Brewer direct the activities of their small staff and were personally involved in the decision to deny Plaintiffs' services.

FIRST CAUSE OF ACTION

Intentional Infliction of Emotional Distress

(By all Plaintiffs against all Defendants)

38. Plaintiffs incorporate and reallege paragraphs 1 through 37.
39. Defendants acted willfully or wantonly in refusing to provide the prearranged contracted services to the Plaintiffs in their time of grief and need.
40. Defendants Ted Brewer and Henrietta Brewer authorized or directed the denial of services described herein, acting on their own behalf, with knowledge of or consent to the denial, or acquiescing in it when they knew or by the exercise of reasonable care should have known of the denial and should have objected and taken steps to prevent it.

41. Defendants' actions and inactions as outlined above were willful and wanton toward the Plaintiffs, evoke outrage or revulsion in civilized society and were directed at or intended to cause harm to the Plaintiffs.
42. Plaintiffs suffered severe emotional distress as a direct result of Defendants' actions and failure to act.
43. The resulting emotional distress suffered by Plaintiffs was reasonably foreseeable from Defendants' actions and failure to act.
44. Defendants are directly and vicariously liable for the actions and inactions described herein.

SECOND CAUSE OF ACTION

Negligent Infliction of Emotional Distress

(By all Plaintiffs against all Defendants)

45. Plaintiffs incorporate and reallege paragraphs 1 through 37.
46. Defendants owed Plaintiffs a duty to provide the transportation and cremation and related services agreed to, and their failure to do so created an unreasonable and foreseeable risk of causing Plaintiffs severe emotional distress.
47. Defendants breached the duty described in paragraph 47 above.
48. Defendants' actions and/or omissions are contrary to what a reasonably careful person operating a funeral home would do or not do under similar circumstances.
49. Defendants acted negligently and/or with gross carelessness, indifference or recklessness in refusing to provide the contracted services to Plaintiffs in their time of grief and need.

50. Defendants' actions and/or omissions proximately caused Plaintiffs to experience mental and emotional distress and anguish, which were reasonably foreseeable results of Defendants' conduct.
51. Defendants' actions and inactions as described herein were extreme and outrageous.
52. Plaintiffs suffered severe emotional distress as a direct result of Defendants' actions and failure to act.
53. The resulting emotional distress suffered by Plaintiffs was reasonably foreseeable from Defendants' actions and failure to act.
54. Defendants Ted Brewer and Henrietta Brewer authorized or directed the denial of services described herein acting on their own behalf, with knowledge of or consent to the denial, or acquiesced in it when they knew or by the exercise of reasonable care should have known of the denial and should have objected and taken steps to prevent it.
55. Defendants are directly and vicariously liable for the actions and inactions described above.

THIRD CAUSE OF ACTION

Breach of Contract

(By all Plaintiffs against Defendant PFH)

56. Plaintiffs incorporate and reallege paragraphs 1 through 37.
57. Defendant PFH entered into a valid and binding oral contract with Plaintiff Gaspari.
58. The terms of the agreement described herein were sufficiently definite.
59. Defendant PFH's failure to provide transportation, cremation and related services upon notification of Bob's death was a material breach of the contract.

60. The contract between Plaintiff Gaspari and Defendant PFH was entered for the benefit of the spouse of the deceased, Plaintiff Zawadski, and/or was contemplated to benefit him as a direct result of performance of the contract.
61. Defendant PFH owed a legal obligation or duty to Plaintiff Zawadski to provide the services contracted for by Plaintiff Gaspari.
62. Plaintiffs suffered damages, including monetary damages, as a result of Defendant PFH's breach of the contract.
63. All actions and inactions as described herein were taken through Defendant PFH's servants, agents, apparent agents, representatives and/or employees in the course and scope of their employment.
64. Plaintiffs' injuries and mental anguish were foreseeable consequences of the breach of contract.
65. Defendant PFH's breach of the contract resulted from an intentional wrong, insult, abuse and/or gross negligence.
66. Defendant PFH's breach was the result of actions and/or omissions that were grounded in willful malice, a malicious wrong, gross negligence and/or reckless disregard for the rights of others.
67. Defendant PFH is legally responsible for Plaintiffs' damages.

FOURTH CAUSE OF ACTION

Negligent Misrepresentation

(By all Plaintiffs against PFH)

68. Plaintiffs incorporate and reallege paragraphs 1 through 37.

69. At the time of the events giving rise to this action, Defendant PFH advertised on the public internet to all consumers of their services, without identifying classes of people to whom they refused their services, to “strive to meet the needs of the families we service” and claimed that when a consumer “choose[s] Picayune Funeral Home your loved one is with us the entire time, whether you choose burial or cremation.”
70. Defendant PFH’s advertisements as described in paragraph 70 above were intended to sell a service directly or indirectly to the public and to induce all members of the public to enter into an obligation for services relating to cremation services.
71. Defendant PFH’s advertisements as described in paragraph 70 above helped induce Plaintiffs to enter into an obligation for services relating to cremation services.
72. Defendant PFH’s advertisements described in paragraph 70 above contained assertions, representations and/or statements of fact which are untrue, deceptive and/or misleading.
73. Notwithstanding that Defendant PFH discriminates in provision of services to families headed by same-sex couples based on prejudice against “their kind,” Defendant PFH knew that the advertisements described in paragraph 70 above would serve as an inducement to all potential customers to engage their services based on the assurance that they would “strive to meet the needs” of the families who choose their funeral home and that once chosen, their loved one “would [stay] with Picayune Funeral Home the entire time.” In reality, Defendant PFH would not provide services to gay people and their families. Defendant PFH’s advertisements were untrue, deceptive or misleading as to some families.
74. As a result of the untrue, deceptive and/or misleading advertisements described above, Defendant PFH proximately caused damages to Plaintiffs.

WHEREFORE, Plaintiffs John Zawadski and John Gaspari respectfully demand a jury trial and request that they be awarded actual, compensatory, consequential and punitive damages and attorneys' fees, costs, expenses and all other sums to which Plaintiffs are entitled in law and in equity.

Dated: March 7, 2017.

Respectfully submitted,

/s/ Robert B. McDuff
ROBERT B. MCDUFF
Miss. Bar No. 2532
MCDUFF & BYRD
767 North Congress Street
Jackson, MS 39202
Telephone (601) 969-0802
Facsimile (601) 969-0804
rbm@mcdufflaw.com

Elizabeth Littrell
LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
Georgia Bar No. 454949*
730 Peachtree Street, NE, Suite 640
Atlanta, GA 30308
Telephone (404) 897-1880
Facsimile (404) 897-1884
blittrell@lambdalegal.org

Susan L. Sommer
LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
New York Bar No. 389476*
120 Wall Street, 19th Floor
New York, NY 10005
Telephone (212) 809-8585
Facsimile (212) 809-0055
ssommer@lambdalegal.org

Attorneys for Plaintiffs.

**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing First Amended Complaint and Demand for Jury Trial with the Clerk of the Court using the MEC system. Further, I hereby certify that I have served the foregoing to the following non-MEC participants by U.S. Mail:

Brewer Funeral Services, Inc.
d/b/a Picayune Funeral Home
ATTN: Registered Agent Ted Brewer
815 1/2 S. Haugh Ave
Picayune, MS 39466

Ted Brewer
4050 Victoria Street
Bay Saint Louis, MS 39520

Henrietta Brewer
4050 Victoria Street
Bay Saint Louis, MS 39520

This the 7th day of March, 2017.

/s Robert McDuff
Robert McDuff