

IN THE CIRCUIT COURT FOR  
BUTLER COUNTY, ALABAMA

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ALABAMA DEPT OF INSURANCE  
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WALTER A. BELL, in his official )  
Capacity as Commissioner of )  
Insurance for the State of )  
Alabama, )

Plaintiff, )

Civil Action No. CV-2007-900049

v. )

ROGERS MEMORIAL MANAGE- )  
MENT COMPANY, LLC; SUNRISE )  
MEMORIAL PARK, INC., )

Defendants. )

FILED IN OFFICE  
ALLEN STEPHENSON  
SEP 06 2007  
CIRCUIT CLERK  
BUTLER COUNTY

PRELIMINARY INJUNCTION

On August 28, 2007, the Court entered a temporary restraining order in this case and, in that order, scheduled a hearing on a preliminary injunction for 10:00 a.m. on September 6, 2007.

Through counsel, Plaintiff Bell, as Commissioner of Insurance, has shown that Defendants Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., by Donald Middleton, their common registered agent, have been furnished a copy of the Complaint, have waived service of a summons, and have consented to receivership as authorized under the Alabama Preneed Funeral and Cemetery Act, Ala. Code §§ 27-17A-1 *et seq.*, and the Alabama Insurance Code, Ala. Code §§ 27-32-1 *et seq.*

At the time of the hearing on September 6, present in Court were counsel for Plaintiff Bell, as Commissioner, representatives of the Receiver and the Alabama Department of Insurance, and other persons having an interest in this case. Plaintiff Bell has further shown that Defendants were given notice of the September 6 hearing date and time. No one appeared on behalf of Defendants.

The verified Complaint alleges that Defendants Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., owners and/or operators of, or otherwise having involvement in, Sunrise Memorial Park

cemetery in Greenville, Alabama, and several cemeteries in Mississippi have violated the Alabama Preneed Funeral and Cemetery Act, Ala. Code §§ 27-17A-1 *et seq.*, in various respects, with the results that their operations are insolvent, the Defendants have ceased doing business, and the cemeteries have been abandoned. Bell, as Commissioner of Insurance, requests appointment of a receiver for Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc. The temporary restraining order appointed Denise Azar, Chief of the Receivership Division of the Department of Insurance, as Receiver on an interim basis.

Having considered the verified allegations in the Complaint and other evidence submitted by Plaintiff, the Court finds as follows for purposes of this Injunction:

1. Bell is Commissioner of the Alabama Department of Insurance. Pursuant to §27-2-7(2) of the Alabama Code, Bell is authorized to enforce the provisions of the Alabama Insurance Code [Ala. Code Tit. 27], including the Alabama Preneed Funeral and Cemetery Act, Ala. Code §§ 27-17A-1 *et seq.* [the "Act"]. Ala. Code § 27-2-7(7) authorizes Bell to invoke any legal, equitable, or special remedy to enforce the Insurance Code.

2. This Court has subject matter jurisdiction over this action pursuant to Ala. Code §§27-17A-17 and 27-32-3. This Court can also properly exercise personal jurisdiction over each of the Defendants. Venue of this action is proper in Butler County, Alabama.

3. This Court finds that, at a trial on the merits, it is substantially likely Bell will be able to prove:

(a) The Defendants have engaged in a pattern and practice of violating the Act by failing to deposit into in excess of \$30,000 into a merchandise and services trust and approximately \$3,700 in a cemetery endowment care trust;

(b) The Defendants do not have the funds necessary to make the required deposits to their cemetery merchandise and services trusts and endowment care trusts and, due to inactivity, cannot comply with Ala. Code § 27-17A-16(b);

(c) The Defendants have violated the Act by misappropriating or misusing assets of a cemetery merchandise and services trust and a cemetery endowment care trust, and by entering into an unlawful scheme to "sell" preneed contracts to an unlicensed entity;

(d) The Defendants are in default of loans, including a loan secured by mortgages on the cemetery properties; have failed to pay taxes, resulting in the recording of one or more Internal Revenue Service tax liens; and otherwise do not have cash flow sufficient to fund their current business operations;

(e) The Defendants have ceased doing business and have abandoned the Sunrise Memorial Park cemetery in Greenville, Alabama, and four cemeteries in the State of Mississippi identified as Sunset Gardens Memorial Park in Laurel; Prentiss Memorial Park in Baldwin; Liberty Memorial Park in Booneville; and Pinecrest Memorial Park in Pittsboro. Cessation of business and abandonment has placed at serious risk the cemetery properties, the validity of preneed contracts for cemetery merchandise and services entered into by consumers, and the consumers' financial investments in those contracts;

(f) In general, the Defendants' business practices, including disregard of corporate forms, diverting business assets, misappropriating or converting funds paid by preneed contract buyers and/or cemetery merchandise purchased with such funds and designated for particular preneed contracts, evidence existence of a possible scheme to defraud;

(g) The Defendants' continued operation of cemeteries will be hazardous to purchasers, beneficiaries, and the people of Alabama, thus authorizing the appointment of a receiver for their businesses pursuant to Ala. Code §27-17A-17(b);

(f) The Defendants are insolvent, thus authorizing the appointment of a receiver for their businesses pursuant to Ala. Code §§27-17A-17(b) and 27-32-6(1); and

(g) The Defendants otherwise appear to have willfully violated the laws of Alabama, thus authorizing the appointment of a receiver for their businesses pursuant to Ala. Code §§27-17A-17(b) and 27-32-6(6).

(h) As related to the four Mississippi cemeteries, Defendants' acts or omissions may violate applicable Mississippi statutes concerning sale of preneed funeral or cemetery contracts.

4. The Court determines that the commonly accepted elements justifying a preliminary injunction<sup>1</sup> exist in this case: Bell has shown a reasonable chance of success on the merits; absent an injunction, Bell will suffer immediate and irreparable injury to his abilities to enforce the Alabama Insurance Code in general and the Act in particular; Bell has no adequate remedy at law (the law, instead, providing for receivership); and, to the extent the Defendants might be able to show some relative hardship due to issuance of an injunction (which Defendants have not shown), such hardship is not outweighed by the benefit to Bell and the public.

It is, therefore, **ORDERED, ADJUDGED, AND DECREED** that the August 28, 2007, temporary restraining order is hereby converted to a preliminary injunction providing as follows:

(A) Pursuant to Ala. Code §§27-17A-17(a) and 27-32-5, Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., and their respective officers, directors, managers, members, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby ENJOINED from taking, removing, concealing, selling, encumbering, lending, damaging, destroying, or otherwise disposing of any and all property, real, personal, and otherwise, owned, leased, or used by the Defendants in connection with the sale of funeral or cemetery merchandise or services as those terms are defined in the Act.

(B) Pursuant to Ala. Code §§27-17A-17(a) and 27-32-5, Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., and

<sup>1</sup> E.g., *SouthTrust Bank of Ala., N.A. v. Webb-Stiles Co., Inc.*, 931 So.2d 706, 709 (Ala.2005).

their respective officers, directors, managers, members, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby ENJOINED from receiving, collecting, taking, spending, transferring, concealing, lending, or otherwise disposing of any money or funds, whether in the form of cash, checks, debits to accounts, credit cards, lines of credit, loans, letters of credit, extensions of credit, accounts, obligations, debts, credits, proceeds from the sale of preneed contracts or other goods or services, or any other form whatsoever owned, claimed, or used by the Defendants in connection with the sale of funeral or cemetery merchandise or services as those terms are defined by the Act.

(C) Pursuant to Ala. Code §§27-17A-17(a) and 27-32-5, Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., and their respective officers, directors, managers, members, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby ENJOINED from concealing, hiding, transferring, altering, amending, removing, destroying, or otherwise disposing of any and all business and financial information, records, and documents pertaining to, relating to, or reflecting, in any way, the business and financial affairs of the Defendants with regard to sales of funeral or cemetery merchandise and services as those terms are defined in the Act.

(D) Pursuant to Ala. Code §§27-32-1 *et seq.* and 27-2-53, the appointment of Denise Azar, Chief of the Receivership Division of the Alabama Department of Insurance, as Receiver of Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., is continued. Azar is directed and is authorized to immediately take possession of the assets of Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., related to the sale of funeral or cemetery merchandise and services, and shall administer those assets under the orders of this Court for the purpose of attempting to dissolve, liquidate, and conserve them. Azar is further directed and authorized to investigate the business and

financial affairs of Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., as they relate to the sale of funeral or cemetery merchandise and services and to report the results of this investigation to this Court.

(E) Azar, as Receiver, is hereby authorized to enter into any agreements on such terms as she deems necessary so as to allow for management, operation, and preservation of the Sunrise Memorial Park cemetery and/or (with the concurrence and cooperation of the appropriate officials in the State of Mississippi) the four cemeteries in the State of Mississippi until such time as the cemeteries have been sold and/or otherwise liquidated in accordance with orders of this Court.

(F) Pursuant to Ala. Code §§27-17A-17(a) and 27-32-5, Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., and their respective officers, directors, managers, members, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby ENJOINED from interfering with, hampering, slowing, obstructing, or otherwise impeding Azar and her deputies, employees, agents, and others acting under her direction or control from discharging their duties and carrying out their responsibilities as receiver.

(G) Any and all banks, credit unions, brokerage firms, and any and all financial institutions of any kind, character, or nature whatsoever with which Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., or any officers, directors, managers, members, stockholder, agents, or employees thereof have or have had accounts of any form or type are hereby authorized and directed to provide Azar with any and all information she might request concerning such accounts for any period of time Azar deems necessary.

(H) Pursuant to Ala. Code §§27-17A-17(a) and 27-32-5, Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., and their respective officers, directors, managers, members, stockholders, agents, employees, and any and all other persons in active concert or

participation with them, and any and all other individuals and entities are hereby ENJOINED from withdrawing funds from, writing checks on, or otherwise spending, transferring, or drawing against funds located in any account for which Rogers Memorial Management Company, LLC, and/or Sunrise Memorial Park, Inc., are shown as owners and/or otherwise appear to have an interest in such account that are connected, in any way, with the sale of funeral or cemetery merchandise or services except in accordance with specific guidelines to be established by Azar in her discretion.

(I) Pursuant to Ala. Code §§27-17A-17(a) and 27-32-5, Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., and their respective officers, directors, managers, members, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby ENJOINED from drawing on, charging on, charging against, or otherwise utilizing any letter of credit, line of credit, credit account, credit card, or otherwise incurring either short term or long term debt that is, in any way, connected with the sale of funeral or cemetery merchandise or services except in accordance with specific guidelines to be established by Azar in her discretion.

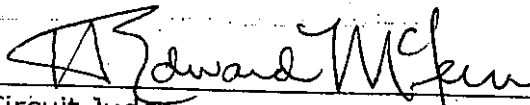
(J) Pursuant to Ala. Code §§27-17A-17(a) and 27-32-5, all persons and other legal entities, except Bell and Azar, are hereby ENJOINED from making claims or commencing or further prosecuting any actions in law or equity or administrative proceedings except in this Court; from obtaining any preferences, judgment, attachments, or other liens against any of the property, personal or real, of Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc.; from commencing or continuing any action in the nature of an attachment, garnishment or execution against any of the property, real or personal, of Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc.; or from making any levy, garnishment, or execution against any of the property, real or personal, of Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc.

(K) It is expressly provided that, to the extent the terms of this Injunction may be read as extending to cemeteries owned and/or operated by Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., or either of them, in the State of Mississippi, it is not the Court's intent to restrain, enjoin, or otherwise interfere with investigations and actions taken by officials of that State or local governmental entities pursuant to the laws of Mississippi and this Injunction does not affect such investigations or actions.

(L) It is further provided that nothing in this Injunction restrains, enjoins, or otherwise affects any criminal investigations or inquiries into the activities of Rogers Memorial Management Company, LLC, and Sunrise Memorial Park, Inc., or either of them, or any of their respective officers, directors, managers, members, stockholders, agents, and employees, by authorities of the States of Alabama and Mississippi, or otherwise, or by agencies of the United States government. Azar, as Receiver, is directed to fully cooperate with any such criminal investigations and inquiries.

(M) In accordance with Ala.R.Civ.P. 65(c), this Injunction is issued and is effective without the giving of security by Bell as an officer of the State of Alabama.

Entered at 10:20 a.m./~~PM~~ on this 6th day of September, 2007, at Greenville, Alabama, within the Second Judicial Circuit of Alabama.

  
Circuit Judge

cc: J. Fairley McDonald, III  
Alabama Dept. of Insurance  
Legal Division  
Post Office Box 303351  
Montgomery, Alabama 36130-3351

Rogers Memorial Management Co., LLC [pro se]  
Sunrise Memorial Park, Inc. [pro se]  
c/o Donald Middleton, registered agent  
38 Massey Road  
Hendersonville, NC 28792-9519