

No. 067 250449 11

ROBERT EDWARD LEE OSWALD,
plaintiff,

vs.

**BAUMGARDNER FUNERAL
HOME, INC.;**
**ALLEN S. BAUMGARDNER, SR.; &
NATE D. SANDERS, INC.,**
defendants.

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IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

____ JUDICIAL DISTRICT

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FILED
TARRANT COUNTY
JUL 14 11 10:06
THOMAS A. WILDER
DISTRICT CLERK

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Robert Edward Lee Oswald, plaintiff, and files his Original Petition complaining of Baumgardner Funeral Home, Inc. Allen S. Baumgardner, Sr., and Nate D. Sanders, Inc. and for cause of action, would respectfully show the Court as follows.

Discovery

1. Plaintiff intends on conducting discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

Parties

2. Plaintiff, Robert Edward Oswald (sometimes known as Robert Edward Oswald, Jr.) is an individual and resident of Wichita County, Texas.

3. Defendant, Baumgardner Funeral Home, Inc. ("Baumgardner, Inc.") is a domestic corporation with its principal office in Tarrant County, Texas. Baumgardner, Inc. may be served with process by serving its registered agent for service, president and director, Allen S.

Baumgardner, Sr. at 3704 Benbrook (Hwy. 377 South), Fort Worth, Tarrant County, Texas 76119.

4. Defendant, Allen S. Baumgardner, Sr. ("Baumgardner") is an individual and resident of Tarrant County, Texas. Baumgardner may be served with process at his place of business at 3704 Benbrook (Hwy. 377 South), Fort Worth, Tarrant County, Texas 76119 or at his residence of 3601 Ridge Lea Country Club Drive, Apt. CC, Fort Worth, Tarrant County, Texas 76114.

5. Defendant, Nate D. Sanders, Inc. ("Sanders Inc.") is foreign corporation, organized and existing under the laws of the State of California with its principal place of business at 11901 Santa Monica Boulevard, Suite 555, Los Angeles, Los Angeles County, California, 90025. Sanders Inc. may be served with process through the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service, because Sanders Inc. engages in business in Texas but does not maintain a regular place of business in Texas or a designated agent for service of process, and this suit arose from Sanders Inc.'s business in Texas.

Jurisdiction

6. The Court has jurisdiction over the lawsuit because the amount in controversy exceeds this court's minimum jurisdictional requirements.

7. The Court has jurisdiction over Sanders Inc., a nonresident, because Sanders, Inc. purposefully availed itself of the privileges and benefits of conducting business in Texas by engaging in business and contracting with Baumgardner and/or Baumgardner Inc., Texas residents. The contract by and between Defendants was to be performed in whole or part in Texas.

Venue

8. Venue is proper in Tarrant County under the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions occurred in Tarrant County.. In addition, defendant Baumgardner Inc., a corporation, maintains its principal office in Tarrant County and defendant Baumgardner, a natural person resides in Tarrant County.

Facts

9. Plaintiff is the brother of Lee Harvey Oswald, deceased. On November 22, 1963, in Dallas, Texas, Lee Harvey Oswald assassinated President John F. Kennedy. On that same day and following the assassination of President Kennedy, Lee Harvey Oswald was captured and arrested for the murder of Dallas Police Officer J.D. Tippit. Thereafter and on November 24, 1963, Lee Harvey Oswald was shot and killed by Jack Ruby while Lee Harvey Oswald was being transferred to Dallas County Jail.

10. On November 24, 1963, Plaintiff made arrangements with Miller's Funeral Home in Tarrant County, Texas for the funeral and burial of Lee Harvey Oswald ("Plaintiff's Brother"). More specifically, Plaintiff, in one part, and Miller's Funeral Home, in the other part, executed a "Funeral Service Order and Agreement." ("Lee's Funeral Agreement"). Pursuant to Lee's Funeral Agreement, Plaintiff purchased a #31 Pine Bluff Casket from Miller's Funeral Home and Miller's Funeral Home agreed to prepare and care for the body of Plaintiff's Brother for interment and to conduct the funeral of Plaintiff's Brother at Miller's Funeral Home. In exchange, Plaintiff paid Miller's the contract amount.

11. Paul J. Groody was the director of Miller's Funeral Home and performed the embalming and preparation of the body of Plaintiff's Brother. Baumgardner assisted Goody in his work. After the funeral, Plaintiff's Brother was buried at Rose Hall Memorial Park in Fort

Worth, Tarrant County, Texas. Thereafter, Miller's Funeral Home and its assets were purchased by Baumgardner and/or Baumgardner, Inc. As such, Baumgardner and/or Baumgardner, Inc. are the successors in interest to Miller's Funeral Home.

12. Since the burial of Plaintiff's Brother, many have proffered various theories that Plaintiff's Brother was not the assassin of President Kennedy or, alternatively, acted in concert with others. One such theory was advanced by Michael Eddowes. Eddowes claimed that it was not Plaintiff's Brother buried in Rose Hall Memorial Park, but rather a Russian agent. In 1978, Eddowes initiated a legal and publicity campaign to exhume and examine the body of Plaintiff's Brother. Eddowes' campaign culminated in a 1981 exhumation of the body of Plaintiff's Brother.

13. During the 1981 exhumation, it was discovered that the #31 Pine Bluff casket originally purchased by Plaintiff had deteriorated. Authorities, including Paul Groody, examined the body, conducted various tests, and confirmed that the body was indeed that of Plaintiff's Brother. Thereafter, Oswald's body was placed in a new casket and reburied at Rose Hill Memorial Park.

14. Marguerite Oswald, the mother of Plaintiff's Brother and Plaintiff died on January 17, 1981. On January 17, 1981, Plaintiff engaged Baumgardner, Inc. to handle the preparation of the body, funeral, and burial of his mother at Rose Hill Memorial Park. Plaintiff, in one part, and Baumgardner Inc. in the other, executed a Funeral Service providing for such services in exchange for payment from Plaintiff. Plaintiff paid the agreed upon charges.

15. Paul Groody died on October 12, 2010. Until December 1, 2010, Plaintiff believed that the #31 Pine Bluff casket had been destroyed. Prior to such time Plaintiff did not know and could not have discovered the casket was actually in possession of Baumgardner and Baumgardner Inc. However, on December 1, 2010, Plaintiff was notified that #31 Pine Bluff casket along with

other related items being sold by Sanders Inc. According to sales literature on Sanders Inc.'s website <http://www.natedsanderson.com/>, Baumgardner and Baumgardner Inc. had stored numerous personal items relating to the burials of Marguerite Oswald and Plaintiff's Brother. At no time during the intervening three decades since the exhumation of Plaintiff's Brother or burial of Plaintiff's Mother, did Baumgardner or Baumgardner Inc. inform Plaintiff of their possession of any item incident to the burial of his family members.

16. Instead and on December 2010, Baumgardner and Baumgardner Inc. employed Sanders Inc. to sell numerous items related to the death of his family. These items were advertised on a public website on <http://www.natedsanderson.com/>, along with color photographs of the items (and photographs of the body of Plaintiff's Brother). Baumgardner also provided a certificate for each item attesting to the authenticity of the items. A listing of the items along with the price brought at sale is as follows:

Lot	Description	Sales Price
6	Lee Harvey Oswald Coffin	\$87,468.00
7	Lee Harvey Oswald Death Certificate	\$49,374.00
34	Lee Harvey Oswald Funeral Order	\$7,151.00
35	Lee Harvey Oswald Funeral Record (Logbook)	\$9,518.00
175	Marguerite Oswald Funeral Order	\$667.00
178	Marguerite Oswald Casket Order	\$120.00
179	Marguerite Oswald Death Certificate	\$734.00
180	Marguerite Oswald Funeral Record (Authorization for Embalming)	\$120.00
181	Marguerite Oswald Funeral Record (Receipt)	\$120.00

("Funeral Items").

17. In addition, other items of personal property relating to the embalming of Lee Harvey Oswald (but not originally purchased, owned or executed by Plaintiff) were sold:

Lot	Description	Sales Price
37	Lee Harvey Oswald Porcelain Embalming Table	\$2,507.00
38	Lot of Oswald Medical Instruments	\$4,037.00

("Embalming Items").

18. Each of the Funeral Items and Embalming Items was accompanied by "Letters of Authenticity for each item by Funeral Director [Baumgardner] who assisted in Oswald's embalming."

19. Upon discovery of the impending sale and on December 7, 2010, Plaintiff notified each of the Defendants of his objection to the sale of the casket (Plaintiff was unaware of the other items being sold). Attorneys for Sanders, Inc. acknowledged receipt of the letter, but stated that they would continue with the sale unless Plaintiff furnished them with "Evidence and/or authority establishing [Plaintiff's] ownership of the item." Plaintiff promptly responded by furnishing Sanders Inc. with copy of the funeral order specifying he was the purchaser of the casket and a copy of the cashier's check used to purchase the funerals services. In addition, Defendants were already aware of this fact because the Lee's Funeral Agreement was one of the Funeral Items in possession of Defendants. Notwithstanding, this proof of ownership, Defendants proceeded with the sale in full knowledge of Plaintiff's claim of ownership and ultimately received over \$160,000.00 for sale the Funeral Items and Embalming Items.

20. Further, the Funeral Items sold were of a personal and sentimental value. The damages suffered by Plaintiff as a result of the circulation of these confidential items far outweighs the market value brought at auction. Defendants Baumgardner and Baumgardner Inc. purposefully concealed their possession and the very existence of the Funeral Items for many years. In addition, Plaintiff has reason to believe that ultimate purchaser of #31 Pine Bluff Casket was on actual notice his claims and therefore, upon discovery of the purchaser's identity, will amend this petition to request recovery of the items.

Count One- Breach of Fiduciary Duty and Conspiracy to Breach Fiduciary Duty

21. Funeral directors, funeral homes, and embalmers necessarily have a confidential relationship with their clients by virtue of the sensitive nature of their business and the vulnerability of their clientele. As such, they owe a fiduciary duty to persons purchasing services from them. Such duties include but are not limited to:

- a. a duty of candor and full disclosure;
- b. a duty of loyalty and utmost good faith;
- c. a duty to refrain from self-dealing;
- d. a duty to preserve the dignity of the deceased;
- e. a duty to act with integrity of the strictest kind;
- f. a duty of fair and honest dealing;
- g. a duty to preserve the dignity of the burial process; and
- h. a duty of confidentiality.

22. Defendant's Baumgardner and Baumgardner Inc. breached these duties by, among other things:

- a. Failing to disclose the existence and their possession of the Funeral Items to Plaintiff, their client and party who purchased their services;

- b. Failing to adhere to Plaintiff's requests not to market the Funeral and Embalming Items;
- c. Publishing images of these sensitive Funeral and Embalming Items (including images of the body of Plaintiff's deceased brother in a casket);
- d. Failing to obtain Plaintiff's consent to market such items;
- e. Profiting and self-dealing in connection with such items; and
- f. Profiting and selling such items whose sole value was their affiliation with the death of Plaintiff's family members.

23. In addition Defendants intentionally and knowingly conspired to breach these fiduciary duties and aided and abetted the same. More specifically, Baumgardner, Baumgardner Inc., and Sanders Inc. were members of a combination whose object was to accomplish an unlawful purpose. All members of the combination were aware of the duties owed to Plaintiff and were also aware of Plaintiff's objections to the marketing and sale of the items. Further, each member of the combination each engaged in an overt act in furtherance of the course of action of preserving, disclosing, marketing, and/or selling the Funeral Items and Embalming Items.

24. The defendants' actions proximately caused Plaintiff injury and damages.

Count Two- Breach of Contract

25. Plaintiff contracted with Baumgardner Inc. (through its predecessor Miller Funeral Homes) to purchase prepare and care for the body and provide dignified funerals and burials of Plaintiff's Brother and Marguerite Oswald. In addition, Baumgardner Inc. (as successor to Miller Funeral Homes) contracted with Plaintiff to purchase the Pine Bluff #31 Casket. Plaintiff, owned the casket, subject to its original intended use of a final resting place for the body of his brother. However, when such casket was unearthed and rendered unsuitable for its original use, he had an unfettered right to possession of the same or the right to control its disposition. Prior to December 2010, Plaintiff believed that the casket was destroyed and was never advised by

Baumgardner or Baumgardner, Inc. that they were in possession of the same. In truth and in fact, Baumgardner and Baumgardner Inc. kept the casket so as to profit from it at a later date.

26. Plaintiff, fully performed all of his obligations under the contracts by paying the specified contractual charges. Baumgardner and Baumgardner Inc. breached this contract by selling the Funeral Items to the highest bidder in a public forum. This breach caused Plaintiff to suffer damages and injury.

Count Three- Tortuous Interference with Contract

27. Defendant's Baumgardner and Baumgardner, Inc. were aware of the valid contract by and between Miller Funeral Homes and Plaintiff. In fact, Plaintiff Baumgardner has executed certificates of authenticity attesting to his personal involvement with the embalming and burial of Plaintiff's Brother in connection with the sale of the Funeral Items and Embalming Items. Baumgardner and Baumgardner Inc. wilfully and intentionally interfered with the contract by selling the items almost immediately after the death of Paul Groody. Their actions were the proximate cause of injury and damages to Plaintiff.

Count Four-Conversion

28. Plaintiff was the purchaser of the casket for his deceased brother. He owned such casket or had a superior right to possession of Defendants, subject to its intended use of a final resting place for the body of his brother. However, when such casket was unearthed and rendered unsuitable for its original use, he had an unfettered right to possession of the same or the right to control its disposition. Plaintiff always believed that the casket was destroyed. In truth and in fact, Baumgardner and Baumgardner Inc. kept the casket so as to profit from it at a later date.

29. In addition, Plaintiff is the owner or has a superior right of possession to the Funeral Items.

30. The wrongful sale of the Funeral Items (including the #31 Pine Casket), concealment of such items, and failure to return the same to Plaintiff constitutes a wrongful exercise of dominion and control of Plaintiff's property which caused Plaintiff injury and damages.

Count Five – Invasion of Privacy by Public Disclosure of Private Facts

31. The details of the burial of Plaintiff's Brother and Plaintiff's Mother were private facts in Plaintiff's life. Nevertheless, Defendants' have published burial details for the entire world to view on a public website and sold items revealing these details. As a result, Plaintiff has been solicited by media and the general public seeking information regarding the burial of his family members. Publicity regarding these matters would be highly offensive to a reasonable person. These details are not matters of legitimate public concern. Defendants' disclosure of the burial and funeral details caused Plaintiff to suffer injury and damages as a result.

Count Six - Negligence

32. Baumgardner and Baumgardner Inc., owed Plaintiff a duty to preserve the dignity of the Plaintiff's deceased family members and to keep information and property regarding the funeral and burial of such family members confidential from unrelated third parties.

33. Baumgardner and Baumgardner Inc. breached this duty by disclosing such information without Plaintiff's consent and for the sole purpose of financial gain.

34. This negligence proximately caused Plaintiff injury and damages within the jurisdictional limits of this court.

Count Seven-Gross Negligence

35. The negligence of Baumgardner and Baumgardner Inc. alleged herein was also gross negligence. More specifically, their acts and omissions, when viewed objectively from their view point involved an extreme degree of risk to Plaintiff, considering the probability and magnitude

of the potential harm to others. Further, Baumgardner and Baumgardner Inc. had actual subjective awareness of the risk to Plaintiff and others, but proceeded anyway with a conscious indifference to rights and welfare of Plaintiff.

36. This gross negligence proximately caused Plaintiff injury and damages within the jurisdictional limits of this court.

Constructive Trust

37. As a result of breaches of fiduciary duty herein described, Plaintiff is entitled to the imposition of a constructive trust for Plaintiff's benefit, upon:

- a. all items relating to funeral and burial of Plaintiff's Brother and Plaintiff's Mother in the hands of Defendants; and
- b. all proceeds from the sale by Defendants of any item relating to funeral and burial of Plaintiff's Brother and Plaintiff's Mother in the hands of Defendants.

Fee Forfeiture

38. As a result of Baumgardner and Baumgardner Inc's breaches of fiduciary duty, Plaintiff is entitled to a forfeiture of a funeral and burial service fees paid by Plaintiff.

Profit Disgorgement

39. As a result of Baumgardner and Baumgardner Inc's breaches of fiduciary duty and self-dealing, they should be required to disgorge any profits from the sale of items

Actual and Economic Damages

40. Plaintiff has suffered and is entitled from Defendants, jointly and severally, actual damages within the jurisdictional limits of this court.

Mental Anguish Damages

41. Plaintiff has suffered and is entitled from Defendants, jointly and severally mental anguish damages within the jurisdictional limits of this court.

Exemplary Damages

42. Defendants' actions and omissions were aggravated, malicious, egregious, unconscionable, deliberate, and offensive conduct and thus, justify an award of exemplary damages as a result of Defendants' breaches of fiduciary duty, gross negligence and the other causes of action asserted herein.

Attorneys Fees

43. As a result of Defendants' actions, Plaintiff has been required to retain the undersigned attorneys to prosecute this suit and therefore is entitled to recover reasonable and necessary attorneys fees incurred in prosecution of this suit with contingent amounts on appeal pursuant to Tex. Civ. Prac. & Rem. Code §38.001 *et. seq.* and because of their breaches of fiduciary duty and outrageous conduct.

Conditions Precedent

44. All conditions precedent to suit have been performed, have occurred or both.

Prayer

45. Wherefore premises considered, Plaintiff prays that upon notice and final hearing, he recover judgment against Defendants, jointly and severally, for:

- a. A constructive trust upon all items relating to the funeral and burial of Lee Harvey Oswald and Marguerite Oswald still in possession of Defendants;
- b. A constructive trust upon all proceeds from the sale of items relating to the funeral and burial of Lee Harvey Oswald and Marguerite Oswald;

- c. Disgorgement to Plaintiff of all profits received by Defendants for the from the sale of items relating to the funeral and burial of Lee Harvey Oswald and Marguerite Oswald;
- d. Forfeiture of all fees by paid by Plaintiff for funeral and burial services for Lee Harvey Oswald and Marguerite Oswald;
- e. Actual damages;
- f. Mental anguish damages;
- g. Exemplary damages;
- h. Attorneys fees;
- i. Costs of court;
- j. Prejudgment and Postjudgment interest at the lawful rate; and
- k. All other relief at law or in equity to which plaintiff is justly entitled.

Respectfully submitted,

GIBSON|DAVENPORT|ANDERSON

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