

**In the Small Claims Court of Nova Scotia**  
Cite as: Memorial Gardens (Canada) Ltd. v. Ryan, 2007 NSSM 99

BETWEEN:

Name: Memorial Gardens (Canada) Ltd.

**CLAIMANT**

- and -

Name: Shirley Ryan and the Estate of Mary Elizabeth Sampson

**DEFENDANT**

**Revised Decision:** The text of the original decision has been revised to remove addresses of the parties on July 21, 2008. This decision replaces the previously distributed decision.

**Adjudicator:** J.W. Stephen Johnston

**Appearances:** Stephen Campbell, for the claimant  
Keith MacKay, for the defendants

**DECISION**

1. This matter came before me on September 11, 2007, which involved an action by the Claimants against both Shirley Ryan and the Estate of Mary E. Sampson.
2. Mr. Stephen Campbell represented the interest of Memorial Gardens (Canada) Ltd. and Mr. Keith MacKay represented the interests of the Defendants.
3. Initially there was some concern as it relates to the representation, as this original action had been amended, however, once adjourned it was determined that Mr. MacKay would proceed both in defending Shirley Ryan and the Estate of Mary Elizabeth Sampson.
4. The Claimants were suing on an agreement they had entered in to with Shirley Ryan in regards to services rendered arising out of the death of the late Mary E. Sampson.

5. The Claimants presented an agreement entitled the Funeral Service Agreement with Shirley Ryan noted as the purchaser and who signed in that capacity.
6. The amounts sought were \$1,105.80 and the itemization of that account was set to include \$700.00 for arranging the coordination of services with the crematorium, \$175.00 for the transfer of the vehicle and \$95.00 for a casket container noted as Model D.
7. Valerie Mattatall, coordinator for the Halifax Regional Crematorium gave evidence on behalf of the Claimant. It was noted in the argument that the original agreements that Mary E. Sampson had with respect to her death were all with Memorial Gardens (Atlantic) Limited. I was satisfied, through the evidence provided, that the Claimant Memorial Gardens (Canada) Limited assumed the assets and liabilities of that previous entity and in addition, were the limited company behind the Halifax Regional Crematorium which was simply the Claimant carrying on business under that name and style.
8. Mrs. Mattatall gave evidence that she met with Shirley Ryan and her family in September of 2006. She was not absolutely certain on the exact dates, however, it was very clear from the evidence that the meeting was shortly after Ms. Sampson's death, which though somewhat expected had been somewhat sooner than they anticipated. Ms. Mary Elisabeth Sampson died on September 3, 2006.
9. On cross-examination, the dates of the contact were made more clear. It appears that Ms. Mattatall contacted Shirley Ryan on Monday September 4, and told her she needed authorization to move the body for the cremation and they arranged to meet on September 5 at Oakridge Cemetery to obtain this authority.
10. They ultimately met, I understand, at Oakridge Cemetery along with Ms. Ryan's sister Ms. Evelyn Sampson. I believe Ms. Sampson had the power of attorney prior to her mom's death and that Shirley Ryan was one of the executrixes of the estate.
11. There was an issue as it relates to who was the properly and legally authorized person to confirm all the authority they needed. Ms. Mattatall said that she explained in detail to Ms. Sampson what they were going to do. Further to cross examination they had in fact started as the body had apparently been moved from the Northwood Nursing home where Ms. Sampson resided to a holding vault in one of the Claimant's properties.
12. In any event, Ms. Mattatall testified that she reviewed with Ms. Ryan the Funeral Service Agreement with the itemized areas and the total cost of \$1,105.80.
13. The last section of that Funeral Service Agreement says as follows:

"The purchaser acknowledges that he/she was offered a copy of the price list prior to selecting the services and merchandise which are the subject of this agreement  
\_\_\_\_\_ initials"
14. This section was not initialled, nor could Ms. Mattatall confirm that Ms. Ryan had

received such a price list.

15. According to Ms. Mattatall, once the document had been signed, Ms. Mattatall confirmed that Ms. Shirley Ryan had some concerns as it relates to the additional costs being requested by the Claimant. She in fact said something to the effect, I thought my mom had everything arranged. Ms. Mattatall was asked as to the tone of this inquiry, and she suggested that it wasn't quite a protest and could not remember whether Ms. Ryan further suggested that she would have to send this invoice to the rest of her family to consider whether they could make a contribution.

16. Ms. Shirley Ryan gave evidence confirming that she was the executrix of Mary E. Sampson's estate and confirmed that she signed the Funeral Service Agreement on the date noted. She said it was only a number of days after the death of her mother and she didn't really look closely at the Agreement until she noticed that there were amounts outstanding to be paid. This was after she had signed it. She confirmed that she expressed that concern to Mrs. Mattatall and specifically told her that it was her and her family's understanding that all of the funeral services had been bought and paid for. She also confirmed that she didn't receive a copy of the price list prior to selecting the services and merchandise which are the subject of this agreement.

17. Mrs. Sampson, her sister, also testified. Though there were some differences in her recollection of the exact events, such is not to be unexpected given the difficult times that family's face, shortly after the death of a loved one.

18. In closing, Mr. MacKay made extensive submissions in regards to the allegations of legal responsibility arising out of the noted Agreement signed by Ms. Sampson. He touched on numerous issues, both as it relates to the expectations of the late Mary Sampson in her original purchase of funeral services, to conditions under the original Agreement clarifying the extent of the services she purchased, to arguments as it relates to the most recent Funeral Service Agreement that Shirley Ryan signed in regard to who in fact took on that initial responsibility under that agreement and the fact that Ms. Ryan was unaware of what she was signing.

19. Mr. MacKay also talked about requirements under funeral home legislation in regards to placing money in the trust account when arrangements are paid well in advance. Mr. MacKay also referenced the concept of contra preferentem which essentially places the obligation to prove the clarity of the contract on that party who constructed the contract, without input from the opposing party. In addition, Mr. MacKay suggested that it would be unconscionable to allow the Claimant to totally deny the existence of the previous contract.

20. Mr. Campbell presented a straightforward approach in his submissions presenting the Funeral Service Agreement and the evidence confirming that Shirley Ryan had signed it in the presence of Ms. Mattatall. He took the position that notwithstanding the original funeral services arrangement by the late Mary Sampson, these additional costs were contracted for by Ms. Shirley Ryan and/or in the alternative, the Estate of Mary Sampson. Finally, Mr. Campbell made the attempt to qualify Ms. Shirley Ryan's evidence in regards to what she knew of the original contract between Mary E. Sampson and Memorial Gardens Atlantic Limited. Specifically, he suggested that as Ms. Ryan had nothing to do with the original contract, and she really could not speak to what the original intention included.

21. I understand that legislatively there is an obligation by funeral homes entering into pre-arranged funeral service agreements to place the money obtained in that contract in a trust account. I received no written legislation confirming that and I do not base my decision on whether that procedure was followed in this case.

22. In addition, I would agree with Mr. Campbell that Ms. Shirley Ryan's evidence in regard to what her mom's understanding of the services to be provided could not be given a significant amount of weight as she was not involved in the original arrangement. I therefore must look to the original contracts entered into by Ms. Mary Sampson to make the determination of what was considered to be included. There was presented to me, three separate documents on forms created by Memorial Gardens Atlantic Limited reflecting the contractual arrangements between Mary Elizabeth Sampson and Memorial Gardens Atlantic Limited. Those documents included a Purchase Agreement, a Pre-Need Cemetery Plan Agreement, and a Certificate of Entitlement.

23. The Purchase Agreement, dated June 20, 1984 signed by Mary Sampson, provided for the "Niche" opening for the placement of her and her husband's cremated remains, along with a wreath, two urns of a bronze construction, plus the additional cost of opening and closing, referred to normally as internment fees. The total amount, with tax was \$2,495.50, all of which I understand was confirmed paid.

24. The second document entitled Pre-Need Cemetery dated October 27, 1988, included two adult cremations at \$155.00 a piece for a total of \$310.00. The last document called the Certificate of Entitlement dated October 25, 1988, confirmed the size of the internment box, along with two urns and two internments.

25. No one gave evidence on behalf of the Claimants that was involved in these original contracts. I therefore determined these contracts must stand on their own and I heard evidence as it relates to the interpretation of the condition of those contracts.

26. Aside from a separate list of conditions, the only exception/conclusion that was evident on the front page of the original purchase agreement was the following reference:

Price of burial space does not include the opening and closing fee, the memorial price includes installation, standard lettering and emblems described on the inscription form.

27. It was very evident that this form was meant to include all those types of services required for such an event. Individuals could obviously pick and chose as to how much involvement Memorial Gardens Atlantic Limited was to have with respect to their death. Often times internment fees would not be included where there is an issue as to where the deceased will be buried. This obviously was not the case in this instance as she was being buried /interned locally. The Pre-Need Cemetery Plan Agreement then included the two cremations for both Ms. Sampson and her husband has the same exclusion on the front page with respect to the opening and closing fee.

28. Both forms had a set of conditions that were attached which I have reviewed completely.

29. I find nothing in the conditions set out that reference additional services that would not be included in what appeared to me, for all intents and purposes as a "turn key" contract with the Mary Sampson.

30. There was a section in both these list of conditions that appears to reference what the contract included. The subsequent Pre-Need Cemetery Agreement was slightly different than the original purchase agreement, however, in regard to the delivery section, the terminology was exactly the same. It essentially said as follows:

When full payment has been received, the company will deliver to the purchaser without further charge: the merchandise and services purchased, as and when needed during normal business hours.

31. As an exception to this, there was a further section that suggested that internments required by special arrangements to be made outside the normal business hours are subject to extra service charges as set forth in the approved tariff of rates. It goes on to indicate that all monies paid to the company pursuant to this agreement for merchandises and services to be delivered at the request of the purchaser that were transferred to Royal Trust in the manner prescribed in the act.

32. I assume this last reference, as it relates to the funeral homes responsibility to invest these monies in an interest bearing trust account, was the obligation referred to by counsel, however, I heard no evidence to confirm that such was the case.

33. From the perspective of the original agreement, and without the benefit of either one of the parties that were involved in the creation of this agreement, I have no difficulty coming to a determination that it was the intent of both of these parties that such arrangements, subject to anything extraordinary were to be complete, and all inclusive. I understand that all monies were paid as it relates to this contract and I find it binding on the Claimant under these circumstances.

34. The second leg of this argument is that Ms. Ryan entered into a separate agreement for the additional services to be rendered and therefore should be responsible to pay for those services after openly agreeing to do so.

35. I heard a significant amount of evidence on cross-examination of Ms. Mattatall as to what in fact were included in the new charges. There was references to the definition of cremation, and the additional arrangements with respect to the transfer to the crematorium and all these sundry and miscellaneous issues that took place as it relates to permits and otherwise.

36. I found that the flavour of this entire claim was reflected in this extraordinary attempt to rationalize this extra charge of \$1,105.80. Although I do not make my finding on the basis of what appears to be a extortionate-like contract, I find absolutely no support for the amount of money charged given the services that were suggested to be provided.

37. In addition, Mr. MacKay, through his cross-examination noted that it appeared that the Claimant took possession of the body prior to having written authority from the executor. I find

that funeral homes are required to act quickly under these circumstances to ensure discreetness, and protection for all and I find nothing untoward about their activity in this regard.

38. I do however find that their attempts to secure additional funds from a grieving family where services had been obviously paid for in advance to be highly questionable.

### **Discussion**

39. The reference at the bottom of the Funeral Service Agreement, signed by Ms. Shirley Ryan confirming receipt of a price list prior to selecting the services of merchandise, which are subject to this agreement, reflects the kind of onus and responsibility that a funeral home would have under these circumstances. This is clearly a difficult time for all and there clearly should be an added responsibility on the funeral homes behalf to make sure that these arrangements are crystal clear. Notwithstanding that Ms. Ryan explained that she had read the contract, I find that a thorough explanation against the background of such a prepaid arrangement was not sufficiently provided and therefore Ms. Ryan was not in fact aware of the obligations she created by signing this document. Under these circumstances, I find this document has no force or effect. In addition, should I be wrong in my determination, I find that this document has no force and effect as the services contracted for had previously been paid by Mary E. Sampson.

40. As indicated above, I find it absolutely clear that Ms. Sampson, in her wisdom, and her concern with respect to her family, made arrangements for the services required on her death without the need for any additional cost.

### **Order**

41. The Claimant's claim is hereby dismissed.

DATED at Halifax on this      day of October, 2007.

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J.W. Stephen Johnston  
Small Claims Court Adjudicator

Original Court File  
cc Claimant/Defendant