



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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PRESS RELEASE

Date: October 3, 2016

Department of Banking To Seek Appointment of Receiver For Lamesa Memorial Park, LLC Doing Business as Lamesa Memorial Park

On October 5, 2016 at 9:00 a.m., a hearing will be held before the Honorable Carter Tinsley Schildknecht in the 106th Judicial District Court, Lamesa, Texas to determine whether the court will enter a temporary injunction and appoint a temporary receiver for Lamesa Memorial Park, LLC, the company that owns Lamesa Memorial Park. The application for temporary injunction and the appointment of a receiver is brought by the Texas Attorney General at the request of the Texas Department of Banking. On September 23, 2016, Judge Schildknecht signed a temporary restraining order against the cemetery.

Inquiries regarding this matter should be directed to:

Texas Department of Banking
Special Audits Division
2601 N. Lamar Blvd.
Austin, Texas 78705-4294

Toll-free (877) 276-5554, at the menu prompt select “3” for Inquiries/Complaints, at the next prompt select “6” for Funeral Contracts/Cemeteries.

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Director of Strategic Support, 512-475-1320

CAUSE NO. 16-09-19874

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|------------------------------|---|--------------------------|
| TEXAS DEPARTMENT OF BANKING, | § | IN THE DISTRICT COURT OF |
| Plaintiff | § | |
| | § | |
| v. | § | DAWSON COUNTY, TEXAS |
| | § | |
| LAMESA MEMORIAL PARK, LLC | § | |
| Defendant. | § | ____ JUDICIAL DISTRICT |

**PLAINTIFF’S ORIGINAL PETITION AND APPLICATION
FOR REVOCATION OF CHARTER AND FOR
APPOINTMENT OF A RECEIVER; AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT
INJUNCTION**

NOW COMES, the Texas Department of Banking, by and through the Attorney General of Texas (“Plaintiff”), files this verified Original Petition, complaining of Lamesa Memorial Park, LLC, (“Lamesa”). Plaintiff files an Application for a Temporary Restraining Order, Temporary Injunction, and Permanent Injunction; Application for Forfeiture of the Corporate Charter and Dissolution of the Corporation; and an Application for Appointment of a Receiver, and in support thereof would show the Court the following:

**I.
Discovery Level**

1. Discovery in this case shall be conducted under Level 2 of Texas Rule of Civil Procedure 190.3. Plaintiff seeks non-monetary relief.

**II.
Nature of the Action**

2. This action is brought in the name of the Texas Department of Banking by the Attorney General of Texas, acting within the scope of his official duties under the authority granted him under the Constitution and the Laws of Texas, including Chapters 711 and 712 of the Texas Health and Safety Code. Plaintiff seeks injunctive relief pursuant to Section 712.0441(d) of the Texas Health and Safety Code and Section 65.011 of the Texas Civil Practice and Remedies Code in the forms of a Temporary Restraining Order, a Temporary Injunction, and a Permanent

Injunction against Lamesa, and its officers, directors, principals, partners, employees, salesmen, agents, and representatives, to enjoin further operation of a perpetual care cemetery by Lamesa without a Certificate of Authority; to prevent disposing of, concealing, or altering, in any manner, any property, assets, books and records; and to protect any funds obtained from consumers who have deposited funds with Lamesa or its employees or agents, and any funds and other assets derived therefrom, from loss, wasting, or dispersal. Plaintiff further seeks forfeiture of the corporate charter and dissolution of the corporation, and appointment of a Receiver.

III. Jurisdiction and Venue

3. This Court has jurisdiction over this suit under Section 712.0441(g) of the Texas Health and Safety Code and Chapters 64 and 66 of the Texas Civil Practice and Remedies Code.

4. Venue is proper in Dawson County, Texas, pursuant to Section 712.0441(g) of the Texas Health and Safety Code and Section 64.071 of the Texas Civil Practice and Remedies Code.

IV. Parties

5. Plaintiff, the Texas Department of Banking, at the request of the Texas Banking Commissioner, is authorized by Sections 711.051, 712.0441(d) and (g), and 712.0445 of the Texas Health and Safety Code to seek forfeiture of Lamesa's right to do business in Texas, a Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against operation of a perpetual care cemetery without a Certificate of Authority, and appointment of a Receiver. The Texas Department of Banking is located at 2601 N. Lamar Blvd. Austin, Texas 78705.

6. Defendant, Lamesa Memorial Park, LLC, d/b/a Lamesa Memorial Park ("Lamesa") is a Texas for-profit limited liability corporation. Lamesa operates a perpetual care cemetery ("the Cemetery") in Dawson County, Texas. According to the records of the Texas Secretary of State, the Registered Agent for service of process on Lamesa is Devin Avant, with an address of 1010

County Road 20, Lamesa, Texas, 79331. Devin Avant, registered agent, may be served with citation at the Concho Valley Male Community Corrections Facility, 3262 N. Hwy 277, San Angelo, Texas 76905, by the Dawson County Constable, or wherever defendant may be found.

V.
Factual Background

7. The facts stated herein are supported by the Affidavit of Russell Reese, Director of the Special Audits Division of the Texas Department of Banking, attached hereto as **Exhibit A**.

8. Lamesa operates a perpetual care cemetery (“PCC”) located at 1010 County Road 20, Dawson County, Lamesa, Texas 79331. Section 712.0032 of the Texas Health and Safety Code requires a corporation to hold a Certificate of Authority to operate a perpetual care cemetery. Lamesa’s Certificate of Authority (Number 292) expired on March 1, 2016, and is no longer in effect. Lamesa is currently operating the Cemetery without a valid Certificate of Authority.

9. Devin Avant and Jose Eleno Morales, Jr. are each fifty percent owners of Lamesa, and are its two managing members. Brenda Avant is the wife of Devin Avant.

10. The Texas Department of Banking regulates PCCs under the authority of Chapters 711 and 712 of the Texas Health and Safety Code. The Texas Finance Commission has also issued rules governing PCCs, which are located primarily in Chapter 26 of the Texas Administrative Code.

11. PCCs are required to deposit a certain amount from each sale of a plot or interment right into a perpetual care trust fund. Tex. Health & Safety Code Ann. § 712.028. The fund income is to be used to maintain the cemetery. Tex. Health & Safety Code Ann. § 712.021(f).

12. The Cemetery’s perpetual care fund account number xxxxxx7041, is located at Regions Bank, Houston, Texas, and as of September 14, 2016, has a balance in the amount of \$341,857.96.

13. Pursuant to § 712.0036 of the Tex. Health & Safety Code, the Certificate of Authority to operate the Cemetery expired on March 1, 2016, and could have been renewed at that time. However, Lamesa did not timely renew the Certificate of Authority, which has been lapsed since March 2016 as a result.

14. Pursuant to Section 712.041 of the Texas Health & Safety Code, the Cemetery was required to file in its office and with the Commissioner an annual statement of funds by March 1, 2016. The annual report is required to show the financial condition of the perpetual care fund, and is a necessary element of the renewal process for the Certificate of Authority. The Cemetery late submitted an Annual Statement and Renewal Application on June 28, 2016, but it was incomplete and not accepted for filing.

15. On June 13, 2016, a private citizen (“E.B.”) filed a complaint with the Department stating that in December 2015 she paid \$3,046.88 for a marker that was never delivered. The Department mailed the complaint to the Cemetery. *See **Exhibit 4 of Reese Affidavit, Exhibit A.*** The receipt for her check is signed by Morales. As of September 12, 2016, E.B. states that the marker has not been set and she has not been contacted by the Cemetery. Pursuant to Section 26.4 of the Texas Administrative Code, the marker should have been ordered 21 days after E.B. paid for the marker and approved the design. Pursuant to that same rule, the marker should have been set within 15 days of the marker’s delivery to the cemetery. Pursuant to Section 26.12(b)(3) of the Texas Administrative Code, the Cemetery should have responded to the complaint within 30 days of its receipt and have sent the Department a copy within 5 days of sending it to E.B. Lamesa has not complied with any of these requirements.

16. On June 27, 2016, a private citizen (“D.C.”) filed a complaint with the Department stating that she paid \$2,791.00 for a marker that was never delivered. The Department mailed the complaint to the Cemetery. *See **Exhibit 3 of Reese Affidavit, Exhibit A.*** Pursuant to 7

TAC § 26.12(b)(3), the Cemetery should have responded to the complaint within 30 days of its receipt and have sent the Department a copy within 5 days of sending it to D.C. The Department has not received a copy of any response to D.C.

17. On August 10, 2016, Morales was indicted by the Dawson County Grand Jury on three counts of theft of funds he allegedly received for the purchase of markers at the Cemetery. On August, 24, 2016, Morales was arrested and jailed in the Dawson County Jail. The persons whose funds are the subject of the indictments are E.B., D.C., and a third person. Morales remains in pre-trial confinement pending trial.

18. On April 16, 2016, Devin Avant was arrested and charged with possession with intent to deliver cocaine in a drug free zone. At that time, Devin Avant was still subject to an order for 10 years of community supervision from a previous drug charge.

19. On July 13, 2016, the 106th District Court of Dawson County, Texas issued an order modifying Avant's community supervision, committing him to Concho Valley Male Community Corrections Facility, a Court residential treatment facility in San Angelo, Texas, for a term up to 24 months. He remains incarcerated.

20. Pursuant to Section 712.044(a) of the Texas Health & Safety Code, the Commissioner may examine PCCs on a periodic basis as he reasonably considers necessary or appropriate to protect the interest of plot owners and efficiently administer and enforce Health Code Chapter 712. Because of the Cemetery's failure to timely renew its' Certificate of Authority, and because Lamesa did not respond to phone calls, the Department sent an examiner to the Cemetery on May 24, 2016. The examiner determined that it was being operated by Brenda Avant, the wife of Lamesa co-owner Devin Avant. Brenda Avant appears to have no formal relationship to Lamesa, either as an owner or as an employee.

21. Brenda Avant told the examiner the following:
 - a. Devin Avant was arrested for drug possession in February 2016 and spent several weeks in jail. He was arrested again in April 2016 and was still in jail as of May 24, 2016.
 - b. Morales was last seen regularly at the Cemetery in February or March 2016.
 - c. Brenda Avant returned to the Cemetery on April 19, 2016 and began operating it, including presiding over burials and opening and closing of graves. She discovered that the utilities had been cut off and the office was in disarray. She posted her cell phone number at the Cemetery so that she could be reached.
 - d. She is working to organize the cemetery records but she cannot locate the historical contract register.
 - e. She is not able to access Lamesa's post office box.
 - f. Lamesa's bank accounts have all been closed or are inaccessible.
 - g. She is depositing all the money she receives for the Cemetery's operations on a prepaid credit card.

22. The examiner reiterated to Brenda Avant the importance of making all perpetual care deposits that were due and to become due. After the visit, the examiner reconciled the PCC trust through February 2016 and determined there was a \$1,790 shortage as of December 31, 2015.

23. According to the trustee's records of the perpetual care fund, no deposits have been made from the perpetual care fund's inception on November 30, 2015, to September 9, 2016.

24. Brenda Avant has a general power of attorney from Devin Avant, but this power was granted by him in his personal capacity. It is not a power of attorney from Lamesa or the Cemetery.

25. On September 9, 2016, Brenda Avant informed the Department that she has the perpetual care funds on a prepaid credit card. She was directed to send the perpetual care funds to the trust and was given the trustee's contact information. She also informed the Department that the door to the cemetery office has been "kicked down," rendering the cemetery office insecure.

As of September 9, 2016, Brenda Avant continued to arrange for and to preside over opening and closing of graves at the Cemetery. The current location and amount of debit card and cash funds belonging to the Cemetery are unclear.

VI.

Lamesa's Continued Operation of the Cemetery is Unlawful

26. Lamesa is unlawfully operating the Cemetery. Specifically, Lamesa is in violation of the following sections of the Texas Health and Safety Code:

- (1) Section 712.0032 – A corporation must hold a valid Certificate of Authority issued by the Texas Banking Commissioner to operate a perpetual care cemetery; and
- (2) Section 711.021(a) – An individual, corporation, partnership, firm, trust, or association may not engage in a business for cemetery purposes in this state unless the person is a corporation organized for those purposes.
- (3) Section 712.028 – A PCC must deposit a specific share of each sale of an interment or plot in its perpetual care trust fund, maintain that fund separately from other funds, and properly use it to maintain its cemetery.

27. Lamesa continues to operate the Cemetery despite the suspension of its Certificate of Authority. It continues to be operated by persons not validly employed by or joined to its incorporation, and having no authority to engage in a cemetery business. And it continues to be derelict in its duty to fund, maintain, and properly administer its perpetual care trust fund. As a result of this unlawful operation, the Cemetery's business operations, records, accounts, and grounds are in disarray, and pose immediate financial, physical, and emotional dangers to the community.

28. The Department has warned Lamesa and demanded that it promptly comply with applicable law, to no avail. On March 3, 2016, the Department gave Lamesa written notice that its Certificate of Authority had expired and it was operating unlawfully. See **Exhibit 2 of Reese Affidavit, Exhibit A**. On July 6, 2016, the Department again gave Lamesa written notice that it

was operating the Cemetery unlawfully. The Department specifically notified Lamesa that its Annual Statement of Funds filing was deficient; that its Certificate of Authority had lapsed; and that its perpetual care fund had an unlawful shortfall. The Department explicitly warned Lamesa that, pursuant to the Texas Health and Safety Code, it had 30 days to cure all its violations. *See **Exhibit 2 of Reese Affidavit, Exhibit A.*** Lamesa did not update its filings or cure its violations, and since July 2016 additional violations have come to light. On September 13, 2016, the Texas Banking Commissioner issued an Emergency Order to Cease and Desist from Operating a Perpetual Care Cemetery without a Valid Certificate of Authority and from Violating Texas Health and Safety Code (“Emergency Cease and Desist Order”). *See **Exhibits 5 & 6 of Reese Affidavit, Exhibit A.***

29. Despite lacking a valid Certificate of Authority, Lamesa continued to receive and maintain money from the public for plots in the Cemetery. Lamesa has received much of this money in the form of cash and deposits on prepaid credit cards. The Plaintiff is uncertain at this juncture how much money Lamesa received in this manner, and precisely how much of the resulting funds remain.

VI. Request for Injunctive Relief

30. Plaintiffs re-allege the preceding paragraphs and incorporate them herein by reference.

31. The General Injunction Statute provides that a writ of injunction may be granted when, as here, the State is entitled to the relief, and the relief requires the restraint of some act or acts prejudicial to the applicant. Tex. Civ. Prac. & Rem. Code § 65.011(1) and (3). Sections 712.0441(a) and (d) of the Texas Health and Safety Code provide that, on a proper showing, the Department may bring a civil action against a corporation to enjoin a violation of chapter 712 of

the Texas Health and Safety Code when the corporation has not corrected the violation within 30 days of receiving notice.

32. A Temporary Restraining Order may be granted when the applicant (1) pleads for some permanent relief; (2) demonstrates a probable right to the permanent relief; and (3) demonstrates that injury is probable in the absence of immediate injunctive action. Tex. Civ. Prac. & Rem. Code § 65.011(1) and (3); *Butnaru v. Ford Motor Co.*, 84 S.W. 3d 198, 204 (Tex. 2002); *Walling v. Metcalfe*, 863 S.W. 2d 56, 57 (Tex. 1993). To show probable injury, the applicant must demonstrate that (1) the probable harm is imminent; (2) the probable injury will be irreparable; and (3) there is no adequate remedy at law to alleviate these dangers. *Butnaru*, 84 S.W. 3d at 204; *Operation Rescue–Nat’l v. Planned Parenthood*, 975 S.W. 2d 546, 554 (Tex. 1998); *Town of Palm Valley v. Johnson*, 87 S.W. 3d 110, 111 (Tex. 2001). When damages cannot be measured by any certain pecuniary standard, it is automatically established that there is no adequate remedy at law *and* the probable injury is irreparable. *Butnaru*, 84 S.W. 3d at 204. A Temporary Restraining Order may be issued without notice to the defendant if the applicant will suffer irreparable injury, loss, or damage should the Order not be granted; and if there is not sufficient time to serve notice on the respondent and hold a hearing. An Order issued on the basis of such *ex parte* assertions can remain in effect for up to fourteen days, by which time a hearing on plaintiffs’ motion for a Temporary Injunction must be held. Tex. R. Civ. P. 680.

33. The credible evidence cited herein of the above-described violations of the Texas Health and Safety Code is sufficient cause for issuance of a Temporary Restraining Order, a Temporary Injunction, and a Permanent Injunction against Lamesa, pursuant to Section 712.0441(d) of the Texas Health and Safety Code and Section 65.011 of the Texas Civil Practice and Remedies Code.

34. The evidence establishes that Lamesa is operating the Cemetery in violation of the law, meaning that the Texas Department of Banking will likely prevail on the merits on its request for permanent relief.

35. The other prerequisites for a Temporary Restraining Order are likewise met. At least until the Cease and Desist Order was issued, Lamesa continued to receive money from the public for plots in the Cemetery, while its perpetual care fund remains underfunded, its grounds and records are unmaintained, and its owners and operators are imprisoned. It continues to possess and maintain the funds that should be dedicated to these necessary activities in an insecure environment. The neglected and decayed state of Lamesa's records, accounts, and physical grounds exacerbate these fiscal shortcomings.

36. These facts on the ground—coupled with the possible future acceptance of money from the public, without the protections afforded by chapter 712 of the Texas Health and Safety Code (including a minimum net worth requirement and regular examination by the Texas Department of Banking)—pose a threat of imminent harm to the public. Once funds precariously maintained in cash and on prepaid debit cards are lost or dissipated, it is highly unlikely that they will be recouped. Once an unwary new customer purchases a plot or contract from a company that lacks the organization and resources to honor its commitments, that customer will be hard pressed to collect damages. In the absence of immediate injunctive relief, these dangers can occur at any time. *See Town of Palm Valley v. Johnson*, 87 S.W. 3d 110, 111 (Tex. 2001).

37. The imminent harm from the dissipation and loss of maintenance and client funds, the loss of burial and financial records, and the physical dangers resulting from the unkempt grounds, will be irreparable. *See id.*

38. The imminent harm cannot be measured by a certain pecuniary standard, and there will be no adequate remedy at law should family burial records be lost; should citizens be harmed

while trying to visit deceased relatives; should gravesites be desecrated through lack of upkeep; or should funds dedicated to the Cemetery and its patrons be squandered or lost. *See Butnaru*, 84 S.W. 3d at 204.

39. Temporary and permanent injunctive relief against Lamesa is necessary: (1) to prohibit Lamesa from unlawfully accepting money from the public; (2) to prohibit Lamesa from unlawfully operating an unauthorized perpetual care cemetery, (3) to restrain Lamesa from wasting, secreting, and otherwise dissipating customers' funds, revenues, records, and other assets acquired and held in connection with a cemetery business; and (4) to prevent the further degrading of the physical cemetery.

40. There is not sufficient time to serve notice on the defendant and to hold a hearing on the plaintiffs' application for a Temporary Restraining Order. Without an immediate Order restraining Lamesa, the funds precariously maintained in cash and on pre-paid debit cards by its current irregular operators may be dissipated or lost; while Lamesa may sell plots or contracts to unwary customers that it lacks the organization and resources to honor or maintain. Further, while the Department will endeavor to promptly serve the defendant's representatives with this lawsuit, their current incarceration means that the process of doing so may be delayed. A Temporary Restraining Order will freeze the *status quo*, including the maintenance of funds, pending a hearing on a Temporary Injunction within fourteen days.

41. To the Department's knowledge and belief, Lamesa is not represented by counsel.

42. A Temporary Restraining Order should therefore be immediately issued; and a Temporary Injunction issued after a hearing. After a final hearing on the merits of this lawsuit, Lamesa should be permanently enjoined from:

- a. Operating an unauthorized perpetual care cemetery;
- b. Accepting any further client funds;

- c. Transferring, moving, or handling any monies belonging to the Cemetery, to Lamesa, or to its clients, to include the physical movement and/or use of cash and/or prepaid debit cards; and
- d. Disposing of, concealing, or altering, in any manner, any property, assets, books and records.

43. All conditions precedent to Plaintiff's right to an injunction have occurred or have been waived.

44. All injunctive relief sought in this case is available to the Texas Department of Banking as Plaintiff without bond under section 6.001 of the Texas Civil Practice and Remedies Code.

**VII.
Forfeiture of Corporate Charter and Dissolution of Corporation and Appointment of Receiver**

45. Plaintiffs re-allege the preceding paragraphs and incorporate them herein by reference.

46. As provided in Sections 711.051, 712.0441(g), and 712.0445 of the Texas Health & Safety Code, this action is brought for the forfeiture of Lamesa's corporate charter and dissolution of the corporation, and for the appointment of a receiver. The Department seeks the Court's leave to bring this proceeding in the nature of *quo warranto*.

47. The charter of a private corporation may be forfeited for violation of any duty imposed by positive law or statute, and a receiver appointed upon final adjudication of forfeiture. *Trans-State Oil Co. v. State*, 66 S.W. 2d 384 (Tex. Civ. App.–Texarkana 1934). Section 712.0441(g) of the Texas Health & Safety Code provides that when a corporation operating a perpetual care ceremony fails to remedy its noticed violations within 30 days, a District Court in Travis County or the county in which the cemetery is located may forfeit the cemetery's corporate charter and/or dissolve the corporation upon the filing of an action by the Attorney General. Section 712.0445 of the Texas Health & Safety Code further provides that the Court may appoint

a receiver in conjunction with such forfeiture and dissolution, and that the receiver may be a State employee.

48. Accordingly, this action seeks the forfeiture of the corporate charter and dissolution of the corporation pursuant to section 712.0441(g) of the Texas Health & Safety Code; and appointment of a receiver, pursuant to section 712.0445 of the Texas Health & Safety Code, to determine, under this Court's supervision, the best course of action for the corporation and the perpetual care cemetery unlawfully operated by Lamesa.

49. After notice and hearing, the Plaintiff will ask this court to enter an order appointing a temporary receiver and giving the receiver the powers specified in chapter 64 of the Texas Civil Practice and Remedies Code, including, but not limited to the powers to:

- (1) take charge of the assets and properties of whatever kind and description of the corporation;
- (2) conduct the business affairs of the corporation;
- (3) take possession and control of all income payable to the corporation;
- (4) take possession of all financial records and other business records of the corporation;
- (5) enter, occupy and control the business premises of the corporation;
- (6) receive, collect and open all mail delivered or directed to any address or post office box used by the corporation;
- (7) sign checks or other instruments withdrawing, depositing or transferring funds or exercising any right over any account of the corporation, provided, however, that the principal of the perpetual care trust fund must be preserved and maintained in accordance with the provisions of chapter 712 of the Texas Health & Safety Code, specifically, section 712.021;
- (8) close and open accounts and transfer money from one financial institution to another, provided, however, that the principal of the perpetual care trust fund must be preserved and maintained in accordance with the provisions of chapter 712 of the Texas Health & Safety Code, specifically, section 712.021;

- (9) negotiate, transfer or redeem any deed, certificate, contract, lease, mortgage, instrument or security held in the name of the corporation;
- (10) hire, dismiss, direct, and control employees, agents, landlords, tenants, and independent contractors of the corporation;
- (11) retain professional service providers;
- (12) file, prosecute or defend any suit that may be deemed necessary by the receiver, including filing a request for relief in bankruptcy court;
- (13) arrange for the correction of the deficiencies identified by the Texas Department of Banking; and
- (14) recommend a course of action for the corporation, and its property, the perpetual care cemetery, as the facts and circumstances may require, including, but not limited to, liquidation, rehabilitation, or reorganization.

**VIII.
Prayer**

50. For the reasons stated herein, Plaintiff asks that Defendant be cited to appear and answer and, after notice and hearing, that Plaintiff be awarded a judgment against Defendants for the following:

- (1) Temporary Restraining Order;
- (2) Temporary Injunction
- (3) Permanent Injunction;
- (4) Forfeiture of Lamesa's corporate charter and dissolution of the corporation; and
- (5) Appointment of a temporary receiver to manage the operations of the Defendant, and grant the receiver the authority to take all necessary action with respect to the cemetery and land on which the Cemetery is located.

Plaintiff further prays that the Defendant be ordered to pay the costs of this proceeding, including the costs of the receiver and attorney fees.

Respectfully submitted.

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*Attorneys representing Plaintiff Texas Department of
Banking*

CAUSE NO. 16-09-19874

TEXAS DEPARTMENT OF BANKING,
Plaintiff

v.

LAMESA MEMORIAL PARK, LLC
Defendant.

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IN THE DISTRICT COURT OF

DAWSON COUNTY, TEXAS

106th JUDICIAL DISTRICT

**TEMPORARY RESTRAINING ORDER AND ORDER SETTING
HEARING FOR TEMPORARY INJUNCTION**

After considering Plaintiff Texas Department of Banking’s Application for Temporary Restraining Order, the pleadings, the affidavits, and arguments of counsel, the Court finds there is evidence that harm is imminent to Plaintiff, and if the Court does not issue a Temporary Restraining Order, Plaintiff will be irreparably injured because funds belonging to the Defendant Lamesa, and crucial to the maintenance of the cemetery grounds and to the honoring of contracts with customers, may be dissipated or lost; the cemetery grounds may fall into further disrepair; and the public may purchase cemetery plots or contracts that will not be honored or maintained.


An *ex parte* order, without notice to Defendant Lamesa, is necessary because there was not enough time to give notice to Defendant Lamesa, hold a hearing, and issue a restraining order before the irreparable injury, loss, or damage would occur. Specifically, the owners and operators of the limited liability corporation are incarcerated, and the corporation is not represented by counsel; and the harm to the public is ongoing.

THEREFORE, IT IS HEREBY ORDERED, the Court does the following:

- A. Immediately restrain Defendant Lamesa, from:
 1. Operating a perpetual care cemetery;
 2. Accepting any further client funds, in any form, including but not limited to cash and/or debit card and/or credit card payments;

3. Transferring, moving, or handling any monies belonging to the cemetery, to Lamesa, or to its clients, to include the physical movement and/or use of cash belonging to Lamesa or to the Cemetery and/or prepaid debit cards containing funds belong to Lamesa or to the Cemetery; and
 4. Disposing of, concealing, or altering, in any manner, any property, assets, books and records belonging to or associated with Lamesa, the Cemetery, or their operations.
- B.** Orders the clerk to issue notice to Defendant Lamesa that Plaintiff's Application for Temporary Injunction is **set for hearing on Wednesday, October 5, 2016, commencing at 9:00 o'clock a.m.** The purpose of the hearing will be to determine whether this Temporary Restraining Order should be made a Temporary Injunction pending a full trial on the merits.
- C.** As an Agency of the State of Texas, the Department of Banking is exempt from posting bond.
- D.** This order expires on October 7, 2016.

SIGNED on September 23, 2016, at 4:37~~a.m.~~/p.m.


HONORABLE CARTER TINSLEY SCHILDKNECHT
PRESIDING JUDGE