

Final Examination

The Case of the Missing Ivy

Harold Richman has lived in California for the past 25 years. He grew up in Gritty City, a gruff but lovable metropolis located in the State of Susquehanna. His parents, Marvin and Shirley, shared an obsession with English Ivy. In 2010, they died in a tragic gardening accident, becoming ensnared and eventually suffocating in the thick shroud of ivy covering their house. Harold returned to Susquehanna for their funeral and arranged for their burial at Whispering Glades Cemetery, where he purchased two burial plots, at a cost of \$5000, as part of an “Eternal Rest Assured Plan”. The Plan also included a choice of ground cover planting to be maintained by Whispering Glades, for an additional annual fee of \$100. For the ground cover, Harold naturally selected his parent’s beloved English Ivy.

Recently, while on a business trip not far from Gritty City, Harold decided to pay a visit to his parents’ graves for the first time since their funeral 10 years ago. When he got there, he was shocked to discover that, while the gravesites were otherwise in excellent condition, there was not a trace of ivy. Although Harold was not the world’s most attentive son, he was well aware of his parents’ passion for ivy. Harold immediately marched to the Whispering Glades office and demanded to speak to the manager. When the manager, a Mr. Thanatogenos, appeared, Harold asked what happened to the ivy on his parents’ graves. Mr. Thanatogenos calmly explained that Whispering Glades had removed all the ivy five years ago, because “it’s gone out of fashion and it’s a real nuisance to maintain”. Incensed at this callous lack of respect for his deceased parents’ wishes, Harold sternly declared, “A contract is a contract. I’ll see you in court!”, and then departed in a huff.

Harold immediately contacted Waldorf T. Flywheel, a lawyer in Gritty City, and recounted his devastating experience. Fighting back the tears, he explained, “They loved the ivy so. It’s not about the money, it’s about justice.” Deeply moved, the lawyer agreed to represent Harold in a lawsuit against Whispering Glades. A week later, the lawyer filed a complaint (a copy of which has been provided to you along with the exam questions) in the U.S. District Court for the Eastern District of Susquehanna, asserting a claim under the Susquehanna Unfair Trade Practices Act (SUTPA) (the pertinent sections of which are reproduced below).

Susquehanna Unfair Trade Practice Act

Section 1. Unfair or Deceptive Acts or Practices.

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

Section 3. Private Actions.

Any person who purchases goods or services primarily for personal, family or household purposes and thereby suffers any loss of money or property as a result of an unfair or deceptive act or practice by the seller, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and in addition the court may award to the plaintiff costs and reasonable attorney fees.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF SUSQUEHANNA**

Harold Richman,	Plaintiff,
v.	
Whispering Glades, Inc.,	Defendant.

Civil Action No. 20-cv-1234

COMPLAINT

Plaintiff Harold Richman, by his undersigned attorney, alleges as follows:

The Parties

1. Plaintiff Harold Richman is an individual residing in California. He purchased goods and services from the Defendant, namely burial plots with planting and maintenance of English Ivy ground covering, for his deceased parents.

2. Defendant Whispering Glades, Inc. is a business corporation, incorporated and having its principal place of business in Susquehanna. Defendant owns and operates Whispering Glades Cemetery in Gritty City.

Jurisdiction and Venue

3. This court has subject matter jurisdiction over the claims herein under 28 U.S.C. § 1332, because Plaintiff and Defendant are citizens of different states and the amount in controversy between Plaintiff and Defendant, without interest and costs, exceeds the sum or value of \$75,000.

4. Venue is proper in this district under 28 U.S.C. § 1331(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

Factual Background

5. Plaintiff's parents, Marvin and Shirley Richman, shared a devotion to English Ivy. They were active members of the Susquehanna State Chapter of the English Ivy Fanciers Association, earned numerous prizes for the English Ivy garden at their Gritty City home, and were internationally recognized as leading authorities on the history and cultivation of English Ivy. Countless times over the years, Plaintiff's parents reminded him of their wish to "spend eternity under the ivy that we love so dearly."

6. In October 2010, Plaintiff's parents passed away and their remains were interred at Whispering Glades Cemetery.

7. Plaintiff purchased the burial plots at Whispering Glades for his parents at a cost of \$5000, as part of an Eternal Rest Assured Plan ("the Plan"). The Plan also included a choice of ground cover planting on the gravesites, to be maintained by Whispering Glades for an additional annual fee of \$100. At the time of purchase, Plaintiff selected English Ivy as the ground covering, stressing that this was his parents' express desire.

8. Plaintiff has paid the annual \$100 maintenance fee each year since 2010.

9. In October 2020, the tenth anniversary of his parent's passing, Plaintiff visited Whispering Glades Cemetery to pay his respects. Plaintiff was shocked and horrified to discover that there was no ivy growing on his parents' gravesites.

10. On information and belief, despite Plaintiff's payment of the annual maintenance fee, Whispering Glades, unilaterally, without justification or excuse, and without notice to Plaintiff, removed the ivy ground covering from his parents' gravesites in or around October 2015 and has never replaced it since.

Count I

Violation of the Susquehanna Unfair Trade Practices Act

11. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

12. Defendant advertised goods and services under the Eternal Rest Assured Plan with intent not to sell them as advertised.

13. As a result of Defendant's unfair and deceptive acts and practices, Plaintiff has suffered monetary loss in the amount of \$500, representing the annual maintenance fees that Plaintiff has paid since October 2015, when Defendant removed the ivy ground covering from his parents' gravesites.

14. As a further result of Defendant's unlawful conduct, Plaintiff has suffered severe mental and emotional distress over the betrayal of his parents' wish to be buried beneath the English Ivy that they so dearly loved.

Request For Relief

Wherefore, Plaintiff requests that the Court enter judgment in his favor and award the following relief:

- (a) Damages in an amount equal to three times the monetary loss sustained by Plaintiff as a result of Defendant's violation;
- (b) Damages for mental and emotional distress;
- (c) Costs, expenses, and reasonable attorney's fees incurred by Plaintiff in bringing this action; and
- (d) Such other and further relief as the Court may deem necessary, just, and proper.

Dated: November 16, 2020

Respectfully submitted,

Waldorf T. Flywheel

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