

95-013

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FILED  
DISTRICT COURT  
MAY 17 4 04 PM '96  
SUMNER COUNTY, KS.  
BY: wt

**IN THE DISTRICT COURT OF SUMNER COUNTY, KANSAS**

STATE OF KANSAS, *ex rel.* )  
CARLA J. STOVALL, Attorney General, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LARRY FOX, d/b/a SUMNER MEMORIAL )  
GARDENS, INC.; CLYDE E. and )  
REVA I. MARTIN; BOARD OF COUNTY )  
COMMISSIONERS OF SUMNER COUNTY )  
and the UNKNOWN OFFICERS, TRUSTEES, )  
SUCCESSORS, CREDITORS, and ASSIGNS )  
OF SUMNER MEMORIAL GARDENS )  
Defendants. )

Case No. 95C76

Pursuant to K.S.A. Chapter 60

**JOURNAL ENTRY**

NOW ON THIS 17th day of May, 1996, the Plaintiff's Motion for Summary Judgment comes before the Court for its consideration, the Honorable R. Scott McQuin presiding. The State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through C. Steven Rarrick, Deputy Attorney General. The Board of County Commissioners of Sumner County appears by and through John A. Potucek II, attorney for the Board of Commissioners of Sumner County. Defendants Clyde E. and Reva I. Martin and the unknown defendants do not appear.

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WHEREUPON, Plaintiff filed its Motion for Summary Judgment and Memorandum in Support on November 13, 1995, and Defendants have failed to respond to said motion within the time allowed per Kansas Supreme Court Rule 141. The Court hereby finds and concludes the following:

1. This action was brought by the Attorney General of Kansas, Carla J. Stovall, as part of her enforcement duties under the Kansas Cemetery Corporations Act, K.S.A. 17-1366 and K.S.A. 17-1367.

2. The defendant, Larry Fox, D/b/a Sumner Memorial Gardens, Inc., is the last known owner of record of Sumner Memorial Gardens.

3. Defendant, Larry Fox, d/b/a Sumner Memorial Gardens, Inc., is a cemetery corporation as defined by K.S.A. 17-1312(f).

4. Defendant, Larry Fox, d/b/a Sumner Memorial Gardens, Inc., has, for a period of at least one year, failed to care for graves, grave markers, driveways and buildings.

5. Defendant, Larry Fox, d/b/a Sumner Memorial Gardens, Inc., has not made annual reports to the Secretary of State pursuant to the provisions of K.S.A. 17-1312(a) *et seq.* and amendments thereto.

6. The uncontroverted facts set forth in the Plaintiff's Motion and Memorandum for Summary Judgment are adopted and incorporated by the Court as its controlling findings of facts as though fully set forth herein.

7. The legal arguments and authorities set forth in Plaintiff's Motion and Memorandum for Summary Judgment are adopted as the Court's conclusions of law as though fully set forth herein.

8. The legal description of Sumner Memorial Gardens Cemetery is:

A tract of land beginning at the Southwest corner of the East Half of the Northwest quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$ ) of Section 13, Township 32 South, Range one (1) West of the 6th P.M., thence North at an interior angle of 90 degrees and 50 minutes, a distance of 495 feet to a point, thence East parallel to the South line of the Northwest quarter aforesaid 440 feet to a point, thence Southerly at an interior angle of 90 degrees 50 minute, a distance of 495 feet to the South line of said Northwest Quarter aforesaid, thence West 440 feet along said South line of said Northwest Quarter to the point of beginning. containing 5.00 acres.

Recorded in deed book 69, page 297, in the Register of Deeds Office in Sumner County, Kansas.

AND

A tract of land described as follows: Beginning at a point 660.0 ft. west of the southeast corner of the Northwest Quarter of Section 13, Township 32 South, Range 1 West of the 6th P.M., thence West 230.5 ft. along the South line of said quarter Section, to a point 444.0 ft. East of the Southwest corner of the East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$ ) of Section 13 aforesaid, thence running in a northerly direction 495.0 ft. along the East side of the tract heretofore deeded to Sumner Memorial Gardens, Inc. to a point 893.37 ft. west of the east line of the aforesaid quarter section, thence East parallel to the South line of the Northwest Quarter aforesaid 233.7 ft. to a point 660.0 ft. west of the east line of said quarter section, thence running in a southerly direction parallel to the East line of said quarter section 495.0 ft. to the place of beginning; containing 2.5 acres more or less.

Recorded in deed book 107, page 119, in the Register of Deeds Office in Sumner County, Kansas.

AND

A tract of land described as beginning at the Southwest Corner of the East Half of the Northwest Quarter of Section 13, Township 32 South, Range 1 west of the 6th P.M., Sumner County, Kansas, thence West 259.67 feet on the South line of said Quarter, thence North, an interior angle of 90 degrees and 50 minutes, a distance of 503.25 feet, to a point, thence East parallel to the South line of said Quarter 933.04 feet to a point, thence south, an interior angle of 90 degrees 50 minutes, a

distance of 8.25 feet to a point, thence West parallel to the South line of said quarter 673.37 feet to a point, thence South 495 feet to the point of beginning; said tract containing 3.128 acres.

Recorded in deed book 153, page 110, in the Register of Deeds Office, Sumner County, Kansas.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

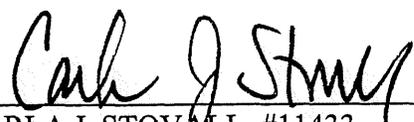
- (1) Plaintiff's motion for summary judgment should be and is hereby granted.
- (2) Judgment is hereby entered in favor of Plaintiff and against Defendants on all counts of the petition and relief on each count shall be afforded to Plaintiff by Defendants.
- (3) All real and personal property commonly referred to as Sumner Memorial Gardens Cemetery are deemed abandoned pursuant to K.S.A. 17-1366(a).
- (4) Sumner Memorial Gardens, Inc., and any other cemetery corporation holding title and interest in the real and personal property commonly referred to as Sumner Memorial Cemetery, are hereby dissolved by Order of this Court pursuant to K.S.A. 17-1367.
- (5) Free and clear title in the real and personal property commonly referred to as Sumner Memorial Gardens is hereby granted to the Board of Commissioners of Sumner County and the Municipality of Sumner County, Kansas, pursuant to K.S.A. 17-1367 and 17-1366(b).
- (6) Defendant Ray Fox, d/b/a Sumner Memorial Gardens, Inc., and any person or entity with records or funds of Sumner Memorial Gardens shall transfer ownership and possession of all books, accounts, receivables, funds, etc., to the Board of Commissioners of Sumner County.
- (7) The Board of Commissioners of Sumner County and the Municipality of Sumner County, Kansas, shall be responsible for maintenance of said cemetery.

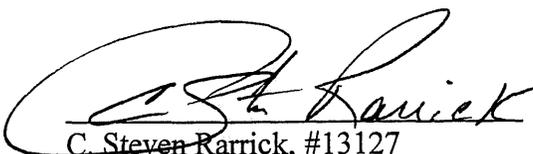
(8) This Journal Entry and grant of Summary Judgment shall become effective upon final approval of the receivership report by the Court.

IT IS SO ORDERED.

  
JUDGE OF THE DISTRICT COURT

Prepared and approved by:

  
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Attorney General

  
C. Steven Rarrick, #13127  
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Attorney for Plaintiff

Approved by:



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Attorney for Defendant  
Board of County commissioners of Sumner County