MARY SUSAN DARNELL SMITH : NUMBER: 520,113

THROUGH HER AGENT SUZANNE

SMITH UPCHURCH

VERSUS : FIRST JUDICIAL DISTRICT COURT

MCGUIRE FUNERAL HOME, INC.,

WILLIAM J. MCGUIRE, CITIZENS BANK

& TRUST COMPANY OF VIVIAN,

LOUISIANA, INC., REGIONS BANK,

CAPITAL ONE, NATIONAL

ASSOCIATION, FIRST GUARANTY

BANK and AMERICAN BANK AND

TRUST COMPANY : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT ON MOTIONS**

**FOR SUMMARY JUDGMENT**

The Court has thoroughly considered the following motions, their exhibits and memoranda which were the subject of oral argument on November 4, 2013:

1. Motion for Partial Summary Judgment by Mary Susan Darnell Smith through her agent, Suzanne Smith Upchurch, Linda Wallace Hooper and Elbert Newman Graves, individually and as representatives of the certified class, filed August 21, 2013;
2. Motion for Partial Summary Judgment by Regions Bank (Regions), filed August 23, 2013; and
3. Motion for Partial Summary Judgment by First Guaranty Bank (FGB), filed September 6, 2013.

The motions invite the Court to rule once again on the applicability of R.S. 37:861 to the particular facts of this class action, with Regions and FGB submitting affidavits from bank officers that the respective licensed financial institutions are not engaged in embalming or funeral services nor the selling of pre-paid or pre-need burial or funeral services. Plaintiff counsel reminds the court of its previous rulings, in connection with the overruling of no cause of action exceptions as well as the rationale advanced by the Second Circuit Court of Appeal in *Smith v. McGuire Funeral Home, Inc.,* No. 46326, 70 So.3d 873 (La. App. 2 Cir. 2011). While the issues addressed by the Second Circuit Court of Appeal are different from the precise issue raised in these three motions, this Court focuses on Judge James Stewart’s opinion at page 885, as follows:

Here, the plaintiffs’ primary cause of action is centered on La. R.S. 37:861. They assert that the defendant banks are liable to them with McGuire for the conversion of their funds because they did not require him to present a death certificate or otherwise meet the statutory requirements before allowing him to withdraw their prepaid funeral funds. We disagree with the defendants’ argument that individual issues predominate because a determination of liability will require the court to consider their contracts, policies and procedures regarding each individual account. Having reviewed the exhibits offered in evidence, particularly the various bank records, we find the existence of individual issues concerning the banks’ contracts, policies, and procedures to be overstated. Each bank’s accounts, records, policies, and procedures will be substantially the same for the accounts opened or closed by each. The predominant issue will be whether the banks violated La. R.S. 37:861 and can be held liable to the individual plaintiffs on the basis of that provision.

Although, as the parties agree, there is no appellate case squarely on point as to the precise applicability of La. R.S. 37:861, the Second Circuit Court of Appeal opinion strongly supports the conclusion that R.S. 37:861, by its language[[1]](#footnote-1), imposes an obligation, a duty, on the bank to require presentation of a death certificate and a certified funeral statement for the amount to be withdrawn.

This Court concludes (again) that R.S. 37:861 does apply to Regions and FGB and it will be a jury question as to whether particular bank failed to comply with its obligation.

The solidariness, joint and divisible issues raised in the banks’ motions will be addressed in pre-jury trial motion practice.

In conclusion, the motion by plaintiffs is granted; the defendants’ motions are denied. Each counsel shall submit a formal Judgment regarding his/her client’s motion in accordance with this Court’s conclusion and La. D. Ct. R. 9.5.

Signed this \_\_\_\_ day of November, 2013 in Shreveport, Caddo Parish, Louisiana.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

J. Patrick Hennessy, Counsel for plaintiffs (Representative Plaintiffs)

Kristina B. Gustavson, Counsel for Regions Bank

Andre G. Coudrain, Counsel for American Bank and Trust Co.

1. The seller may withdraw the funds only at the death of the purchaser by presentation of a death certificate copy and a certified funeral statement for the amount to be withdrawn, together with other requirements of the financial institution. [↑](#footnote-ref-1)