2011 WL 7858779 (Mich.App.) (Appellate Brief)
Court of Appeals of Michigan.

Nancy SHANKS, Appellant,
v.
MORGAN & MEYERS, PLC, Jeffrey T. Meyers, and Scott W. Rooney, Jointly and severally, Appellees.

Nos. 302725, 302726.
August 1, 2011.

Lower Court:
Wayne County Circuit Court
Hon. Amy P. Hathaway
Case No. 10-000895-Nm
Case No. 10-008337-Nm

Appellant's Brief On Appeal

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***i** TABLE OF CONTENTS

***ii** INDEX OF AUTHORITIES

*iii STATEMENT OF JURISDICTION

Appellant states that the Court of Appeals has jurisdiction over this Claim of Appeal under MCR 7.203 (A).

STANDARD OF REVIEW

The Court of Appeals reviews a trial court's summary disposition rulings De Novo.

PRESERVATION OF ERROR

The trial court granted Defendant / Appellee's Motion for Summary Disposition pursuant to MCR 2.116 (C)(10) on January 27, 2011, and entered the Order on that date. *Appellant's Claim of Appeal from that Order was filed timely in this Court on February 17, 2001, as an Appeal as of Right.*

*iv STATEMENT OF QUESTIONS INVOLVED

I. Did the Trial Court Err in granting Defendants' Motion for Summary Disposition where genuine issues of material fact were presented to the trial court and the moving party was *not* therefore entitled to judgment as a matter of law. Judgment should have entered in favor of Appellant, the non-moving party pursuant to MCR 2.116(1)(2).

Appellant Says: Yes

Appellee Says: No

Trial Court Says: No

II. Did the Trial Court t Err in finding that it was apparent that Appellant, Nancy Shanks, *has a good understanding of her financial affairs... as well as Appellant having a reasonable perception of what the litigation funding agreements involved* where the only medical evidence presented was directly *contrary* to such finding by the trial court.

Appellant Says: Yes

Appellee Says: No

Trial Court Says: No

III. Did the Trial Court Err in finding, as a matter of law, that Defendants did not breach their fiduciary duties owing to Plaintiff/ Appellant.

Appellant Says: Yes

Appellee Says: No

Trial Court Says: No

*v LIST OF EXHIBITS

EXHIBIT 1 Affidavit of William Bucknam, MD, dated May 24, 2007

EXHIBIT 2 Appellant's Deposition Transcript, Vol. II, Page 182 Lines 11-25; Page 183 Lines 1-7

EXHIBIT 3 Transcript of 2007 Hearing on Motion for Default Judgment. Pages 5-9

EXHIBIT 4 Written report of changes believed to be attributed to motor vehicle accident used in Appellees' Motion for Entry of Default Judgment

EXHIBIT 5 Appellant's Deposition Transcript, Vol. II, Pages 197-200

EXHIBIT 6 Appellant's Deposition Transcript, Vol. II, Pages 15-16

EXHIBIT 7 Appellant's Deposition Transcript, Vol. II, Page 74

EXHIBIT 8 Appellant's Deposition Transcript, Vol. II, Page 30

EXHIBIT 9 Affidavit of Ethics Expert, Kenneth Mogill

EXHIBIT 10 Michigan Bar Journal- Article An Attorney's Obligations under Title III of the Americans with Disabilities Act

***1 STATEMENT OF FACTS**

ARGUMENT

STATEMENT OF FACTS

Appellant “Plaintiff” blow, brings this action against Appellees, “Defendants” below, her former attorneys and law firm, for numerous failures of their clear duties to adequately represent her, a mentally disadvantaged person and their client. The primary underlying claim is that Defendants, while acting as Plaintiff's counsel in an automobile accident case, where Plaintiff suffered significant brain injuries, both encouraged and assisted her in entering into several *litigation funding* contracts that resulted in an effective interest, ***exceeding 100%, per annum,*** as a result of monthly compounding. There is no question that the interest rates charged were usurious under Michigan's Usury Statute. At i. t the specific request of Defendants, to assure Appellant's ability to fund her underlying case, Plaintiff borrowed $125,000.00 from Cambridge Management Group, LLC, “CMG” hereafter. She was required to pay back $261,819.28, in principal and interest, within approximately one year's time of that loan. Plaintiff has testified, in her deposition, that Defendants urged her to obtain these loans for payment of expert witnesses and expenses. Defendants were intimately involved and participated in the transactions between Appellant and CMG in reviewing the financial documents, signing the documents and acknowledging UCC Liens. Around the same time, Defendants were asking Judge Neithercut, of the Genesee Circuit Court, to award Plaintiff $950,000.00, in damages, due completely to **traumatic brain *2 injuries and cognitive and functional losses.**

Defendants sought summary disposition, in the trial court, arguing (without any medical support) that Plaintiff was competent to understand and enter into the usurious litigation funding loan agreements and that, as a result, Defendants therefore owed no duty to her, their client. Defendants claim that the central issue presented is whether Plaintiff possessed the requisite mental competence to enter into such contracts and agreements.

Defendants ignore, however, that the real and central issue is whether Defendants, as Plaintiff's former attorneys and fiduciaries, were aware of, or should have been aware of her mental difficulties and took all reasonable precautions to protect her. **The record was replete with evidence which clearly showed that Plaintiff was not competent to understand the complicated financial transactions but also clearly showed that Defendants were clearly aware of her damaged mental condition.**

In defense of Defendant's Motion for Summary Disposition, Appellant submitted her doctor's affidavit to the trial court which clearly demonstrated that she was mentally disabled. Her doctor, William C. Bucknam, M.D., was Plaintiff's treating physician during the entire period of time that she was represented by Plaintiffs. Defendant's were well acquainted with Dr. Bucknam and used this same doctor's opinion to obtain the Default Judgment of almost $1,000.000.00. As her physician and board certified neuropsychiatrist, as well as her expert in the present action, Dr. Bucknam provided his Affidavit in the present case. In his Affidavit, he stated:

***3** 1. I am a board certified neuropsychiatrist.

2. In the normal and ordinary course of my profession, I am directly involved in the diagnosis, prognosis, care and treatment of individuals suffering from closed head injuries and its sequelae.

3. At the request of Owen Perlman, M.D., I was asked to examine, diagnose and render treatment to Nancy Shanks as a result of complaints made subsequent to an automobile accident in August 2004.

4. I have examined Nancy Shanks, reviewed medical records regarding her prior care and treatment and done a diagnostic evaluation of the patient, in accordance with generally accepted psychiatric standards and diagnostic tools.

5. I provided treatment to Nancy Shanks from March 19, 2007 until October 14, 2009

6. Nancy Shanks condition was summarized in my report sent to Dr. Owen Perlman on April 21, 2007.

7. Despite treatmen of Nancy Shanks, during the above period, her condition did not change nor improve.

8. As a result of said examinations and evaluation, I am of the opinion that to a reasonable degree of medical certainty, Nancy Shanks suffers the following injuries and damages from said accident;

a. A closed head injury and its sequelae;

b. Post Traumatic Stress disorder; and

***4** c. Exacerbation of her prior anxiety, and obsessive compulsive disorder.

9. Because of the above diagnosis and condition, and to a reasonable degree of medical certainty, I am of the opinion that, Nancy Shanks, because her condition is permanent, was not competent to make or understand major financial decisions and not competent to enter into legally binding contracts since the date of her accident and beyond. **SEE**

EXHIBIT "1".

ARGUMENT 1

The Trial Court Erred in granting Defendants' Motion for Summary Disposition where genuine issues of material fact were presented to the trial court and the *moving party* was *not* therefore entitled to judgment as a matter of law. Judgment *should have* been granted in favor of Appellant pursuant to MCR 2.116 (I)(2)

PLAINTIFF TESTIFIED THAT DEFENDANTS TOLD HER TO OBTAIN THE USURIOUS LOANS FROM CMG TO COVER LITIGATON EXPENSES

A. He (Attorney Rooney) arranged it.

Q. And you understood that when you signed the document?

A. I understood what? That he was telling me to take out 100,000.00?

A. ... and he told me that I had to take out 100,000.00, because if he ws to come to me - well, he said, if we were to come to you, speaking of Mr. Meyers too or the firm, if were to come to you to tell you that we would need $20,000 for an expert witness, you do understand that you'd have to be able to, you ***5** know, pay the money, ***or they would be off the case. It was his idea to have this 100,000.00 advance, it didn't -***

Q. And you agreed with his idea?

A. I have a closed-head injury, Mr. --

EXHIBIT "2" Appellant's deposition transcript, Vol. II, Page 182 Lines 11 - 25; Page 183 Lines 1-7.

PLAINTIFF WAS NOT COMPETENT TO UNDERSTAND CMG'S USURIOUS FINANCIAL TRANSACTIONS AND DEFENDANTS KNEW SHE WASN'T COMPETENT TO UNDERSTAND AND APPROVE OF SAME

It is undisputed that Defendants represented Plaintiff after she suffered a terrible rear end collision while stopped at a traffic signal. Prior to such accident Plaintiff had a multitude of mental problems as were well documented by her physicians. The subject auto accident exacerbated such prior condition ***as had been alleged and proven by Defendants at the time of their Motion for entry of Default Judgment,*** on her behalf.

After the vehicular accident, Plaintiff was instantly transported to E.R. and was evaluated at that time. The medical records showed that Appellant's only permanent injuries were ***mental injuries*** as a result of the damages to her brain as was sustained in the accident. Appellees, in the underlying action, represented Plaintiff against the at-fault driver. It was clear that Plaintiff had almost ***no physical damages*** to her body arising out of the accident, but did ***suffer severe aggravation of pre-existing mental conditions as well as new post-traumatic brain injuries.***

At the hearing on entry of Default Judgment, in the underlying action, ***6** Defendants representative and Appellant's Attorney, Scott Rooney, set forth the basis for Plaintiff's damages to Judge Geoffrey Neithercut, Genesee Circuit Court. On May 29, 2007, Defendant Rooney represented to the Court as follows:
Your Honor, at this time we have requested that a Judgment, based upon the information provided, the medical records provided, and the fact that a default was appropriately taken, be entered in the amount of $950,000.00. ***SEE EXHIBIT "3",*** *copy of Defendant Rooney's transcript of proceedings, pages 5-9.*

At that time, Mr. Rooney questioned his client, in support of such damages, as follows: [Nancy Shanks:]

Q. What type of difficulties did you have after the accident when your were at Hurley Medical Center?

A. Um, problems with my ***memory,*** *like* ***emotional outbursts,*** *um like* ***seizures,*** *um like of excruciating back pain, pain in my legs, my feet, um neck pain.*

Q. Okay. What type of Doctor do you understand Dr. Perlman to be:

A. Physical Medicine rehabilitation. He is a brain specialist-brain injury specialist.

Q. Do you recall Dr. Perlman referring you to another doctor?

A. Dr. um, Bucknam.

Q. Okay. Have you been treating with Dr. Bucknam for injuries in this accident?

***7** A. *Yes, I have.*

Q. Madam, I'm gonna show you a list of documents that were attached- a list that you had written... Do you see these different entries that are made into Exhibit 7?

A. *Yes, I do.*

Q. Is this a list of changes and difficulties that have endured since this accident of August 27, 2004?

A. *Yes, it is.*

In his report, dated April 21, 2007, Dr. Bucknam presented his expert diagnostic impressions, after examination of Plaintiff, as follows:

a. Organic affective disorder depressed;

b. Personality change secondary to traumatic brain injury;

c. Post traumatic stress disorder, possibly pre-motor vehicle accident but exacerbated by motor vehicle accident;

d. History of obsessive compulsive disorder;

e. Traumatic brain injury

f. Functional and occupational disability related to sequelae of motor vehicle accident.

SEE EXHIBIT "4", *copies of the above referenced list, as attached to Defendant's Motion in support of their request for entry of Default Judgment.*

A few of the medical notes are listed below:

● Confusion

● Emotional outbursts

***8** ● Difficulty with organization

● Following through on tasks

- Losing track of time
- Head shaking and spells
- Misplacing things
- A strange aura associated with sitting and staring
- Visual changes
- Further memory difficulties as exemplified by having left her laptop computer outside in a snowstorm
- Difficulty with reading, following directions, following a storyline and learning new information
- Feeling paranoid
- Difficulty with decisions
- Constantly having to re-write because of mistakes
- Panic episodes
- Difficulty remembering whether she has taken her medication
- Missed doc ors appointments
- Forgetting why she needed to go to the store
- Impatience

There is no question that Defendants, who consulted with Dr. Bucknam, drafted his original affidavit in support of their Motion for Default Judgment ($950,000.00) and who relied on Dr. Bucknam's diagnoses, and his reports, were well aware of Appellant's mental condition at the time of entering into her agreements with CMG.

Not only did Defendants make representations in open court about ***Plaintiff's permanent mental damages,*** and submit detailed medical records damaged mental state, ***but they also drafted the Affidavit of Dr. Bucknam and utilized his assessment of Plaintiff in support of their motion for entry of judgment for almost one million*** ****9*** ***dollars.***[1] Defendants were correct in asserting valid medical support as proof of Plaintiff's permanent damages to the trial court in the auto accident case. Had Plaintiff sustained only minor **physical damages,** as Defendants now allege, there would have been absolutely no documented support for the requested default judgment of almost one million dollars.

MCR 2.116 (I)(2) permits its the trial court to grant judgment to the opposing party where it appears that such party is entitled to judgment. The only medical evidence presented showed that Appellant suffered mental damages to an extent that she could not comprehend the complicated and usurious. Judgment should have entered in favor of Appellant, not Appellees.

ARGUMENT 2

The Trial Court Erred in find ing that it was *apparent* that Appellant, Nancy Shanks, *has a good understanding of her financial affairs...and had a reasonable perception of what the litigation funding agreements involved...* where the only medical evidence presented was directly *contrary* to such finding by the trial court

The record below was presented to the trial court and clearly demonstrated that Appellant was and is *not competent* to understand complicated financial transactions.

She clearly did not understand the difference between Judgment interest and the usurious compound interest charged by CMG, and testified to that in her deposition:

***10** *Q. You agreed to the-*

A. I just recently discovered that.

Q. You agreed to these loans because you knew that you were going to get something through the settlement of your automobile case, right?

A. Rooney was making it sound like -

Q. I didn't ask you about Mr. Rooney, I asked about you, what you knew.

A. Right, I knew I was going to get something, I just didn't know what.

Q. And you didn't want to wait until the defendant paid you, you wanted to take out the loan and get the money first?

A. No, that's not what it is. Mr. Rooney told me to take out this advance in the beginning, okay? So he planted the thought in my head repeatedly, okay? Because he said I had a $950,000.00 default judgment award and he said I was earning interest on it, a first he told me monthly, then he changed it to annually, 12 percent, well, in my mind I'm thinking, you know, only an annuity would earn 12 percent, so in my mind, I'm thinking, you know, the 12 percent interest that would be earned on them not paying the default judgment award, because it had gone to the appeals court, you know, I was sort of like in agreement with Mr. Rooney that, you know, with the interest on the CMG loan, the interest that they would have to pay on the default judgment award, if it was upheld at appellate level, would take care of a lot of the interest that his law firm would have to pay back-

Q. to CMG?

A. -- To cmG. I'M going by what my counsel (atTorney roOney) is telling me to ***11** *do. He told me it was 12 percent and then he said later, he said, yeah, maybe he told me wrong, that it was actually 12 percent annually that the default judgment would earn.*

Q. Why did you seek that loan?

A. Well, Mr. Rooney, once again, had encouraged me to take out as many advances as I wanted to because he said most of his clients had taken out three or four and, once again, it was hopeful that the case would be settled soon, actually with the default judgment award being upheld at the appellate level, and most of the money was gone from the December, 2007

Q. Loan?

A. The advance, loan. The loan.

Q. And the money was gone why?

A. Once again, because I believe someone was embezzling most of the money.

SEE EXHIBIT "5" Pages 197-200, Transcript Vol II. Appellant's deposition transcript.

AT HER DEPOSITION PLAINTIFF COMPLAINED THAT THE BANK STOLE MOST OF HER MONEY

During two days of her video deposition in *this* case, Plaintiff testified that her bank stole all of her (remaining) money, as follows:

Q.---

A. Yes, I was making payments on the mortgage and the lady at the bank stole ***12** *my money and I've been dealing with that.*

Q. Okay. You say someone stole money from you?

A. Yes, they were actually writing off my account. They illegally closed out accounts and they - it looks to be a case where they were transferring funds into dummy accounts and they were stealing money and I have seen documentation that proves that they were transferring-it looks like to be into this ***elderly*** *woman's account and then writing a starter check with no name or address in the upper left-hand corner for like, you know, large amounts.*

So they took my money, shot it into her account. It's an internal job taking place at the bank, so they take my money, put it into her account then steal the money that way, so at this time I will be pursuing her arrest. She is living in a $300,000.00 house and she told me she had a $55,000.00 house, so she will be eventually getting picked up.

So I was taken advantage of as a ***vulnerable*** *adult. My neuropsychiatrist, William Bucknam, made an affidavit in this case previously, put down that I have a closed head injury with seizures and that my condition was expected to get worse, praying on a* ***vulnerable*** *adult in the State of Michigan is a felony and I cannot be held responsible for anything I ever said to a prior lawyer or anything because I have a documented closed- head injury, okay?* ***SEE EXHIBIT "6",*** *Pages 15 & 16, Transcript of Plaintiff's deposition, Volume II.*

Other examples, of Appellant's lack of financial competence, were clearly shown at her video deposition:

***13 PLAINTIFF PAID MORE FOR HER USED VEHICLE THAN THE ASKING PRICE**

In her deposition, Plaintiff further testified that she purchased a vehicle, from a doctor, who owned a beautiful home, who was asking $13,500.00 for the purchase of a used Denali SUV. When asked what she paid for the vehicle, she stated that she gave the doctor $14,000.00 - because she thought he needed the extra $500.00.

Q. When did - okay. Three vehicles you said -

A. Over a period of time of my money being stolen in the bank

Q. Okay. One of the vehicles was a 2003 Denali.

A. I paid fourteen grand for it. I bought it off of Dr. Cantwil. Every damn vehicle I owned since 2005 was bought off a doctor or dentist coincidentally.

The Denali was offered for sale for $13,500.00, by Dr. Cantil. Plaintiff paid $14,000.00 for it. When asked why she paid more than the asking price of the vehicle, Plaintiff stated:

> A. Because I felt sorry for him (the doctor) I wanted him to have that other $500.00. ***SEE EXHIBIT "7",*** *Page 74, Transcript of Volume II, of Plaintiff's deposition.*

Further examples presented at her video deposition were, as follows:

AT HER DEPOSITION PLAINTIFF EXPLAINED THAT HER INVESTMENTS, HER HOME AND HER BUSINESS ALL FAILED

Finally, Plaintiff testified that every home that she purchased has been foreclosed upon since receiving her funds from Defendants. Defendant's attorney continued to question Plaintiff about her purchases after receiving ***14** funds from the settlement:

Q. So, do you believe that the other $94,000.00 was stolen?

A. A lot of it has been proven to be stolen

A. I have a record with me right now that she took out $10,000.00 out of my account and transferred it into a dummy account and told me they can't find that account starting with 87 and I didn't know that Bank of America did investments; they shot it into an investment.

SEE EXHIBIT "8", *Pag 30, Transcript of Plaintiff's deposition, Volume II.*

ARGUMENT 3

The Trial Court Erred in finding, as a matter of law, that Defendants did not breach their fiduciary duties owing to Plaintiff/ Appellant, their client and a mentally disabled person.

DEFENDANTS HAD FIDUCIARY DUTIES TO PROTECT PLAINTIFF

There is no question that Defendants owed fiduciary duties to Appellant as their client and as a mentally disabled and damaged person. The relationship between an attorney and the client is a fiduciary relationship, not measured by the rule of arm's length dealings. *Meyer & Anna Prentis Family Foundation, Inc., -v- Barbara Ann Karmanos Cancer Institute, 266 Mich App 39; 698 NW2d 900 (2005), quoting Rippey -v- Wilson, 280 Mich 233; 273 NW 552 (1937).* Appellant is entitled to damages for her former attorney's breaches of their fiduciary duties to her. *Alpha Capital Management, Inc. -v- Rentenbach 287 Mich App 589, 792 NW2d 344 (2010).*

A fiduciary relationship arises when one reposes faith, confidence, and ***15** *trust in another's judgment and advice. Where a confidence has been betrayed by the party in the position of influence, this betrayal is actionable, and the origin of the confidence is immaterial. Furthermore, whether there exists a confidential relationship apart from a well defined fiduciary category is a question of fact. Fassihi -v- Sommers, Schwartz, Silver, Schwartz & Tyler, PC, 107 Mich App 509, 515; 309 NW2d 645 (1981)*

There is no question that Appellant hired Defendants to assist her in all matters arising out of her automobile accident. There is no question that Appellant did not understand that the interest on the funds borrowed from CMG would dwarf any Judgment interest on the award. There is also no question that Appellant testified that Attorney Rooney told her that she would have to come up with $20,000.00 for expert witnesses.

DEFENDANTS HAD FURTHER DUTIES TO PROTECT PLAINTIFF A CLIENT UNDER A DISABILITY

Appellant argued below that, in addition to the fiduciary duties owed to her, she was owed further duties as a client under a mental disability. Michigan Rules of Professional Conduct - MRPC 1.14 provides the following:

CLIENT UNDER A DISABILITY

(a) When a client's a ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority or mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

***16** Attached hereto, as **EXHIBIT "9",** is an Affidavit from Plaintiff's ethics expert, Kenneth M. Mogill, a Michigan lawyer specializing in professional ethics and an adjunct professor responsibilities, at Wayne State University Law School. Mr Mogill's opinion is that because Defendant's knew of Plaintiff's brain injuries, they should have taken steps to protect her, including her financial interests. Mr. Mogill opined as follows:
In such circumstances, while it is incumbent on Ms. Shanks' attorney to continue to communicate with her regarding the matter being litigated, it was also her attorney's duty to protect her financial interests by taking reasonable steps toward that end. These steps might have included consultation with family members, seeking the appointment of a guardian ad litem or a conservator or other steps. While her attorney had substantial discretion to determine what steps were reasonable to take in order to protect Ms. Shanks' financial interests at the time, failing to take any steps at all was outside the range of ethically acceptable options.

For these reasons, if the facts of this matter establish that during the course of representing Ms. Shanks, her attorney became aware of her inability adequately to protect her own financial interests and further establish that the attorney failed to take reasonable steps to protect Ms. Shanks' financial interests, the failure to take reasonable steps in those circumstances would constitute a violation of the attorney's duty to Ms. Shanks as set out in MRPC 1.14(b), the Comment to MRPC 1.14(b) and other authorities cited above.

The duty to protect a disabled client is also imposed under the Americans with Disabilities Act:

ATTORNEYS OBLIGATIONS UNDER TITLE III AMERICANS WITH DISABILITIES ACT

A recent article in The Michigan Bar Journal (August 2010) provides that attorneys have a duty to clients with *disabilities of the mind:*
The ADA Amendments Act of 2008...confirms the intent of Congress - the appropriately broad coverage provided to individuals with disabilities, including of the mind. Page 42.

Under the ADA, *Attorneys* are regulated under the *Public Accommodations of the Act.*

***17** *Because of the stigmas attached, many clients will be reluctant to disclose mental disabilities... Observed client behaviors can prompt an attorney to follow up with his or her client. Some examples of client behaviors that may indicate a mental impairment include:*

#Difficulty in remembering times and dates or other simple information like addresses and telephone numbers

 # Repetitive Motion such as rocking, pinching or rubbing a point on the body or lack of eye contact

The article continues with the following recommendation:

> Nevertheless, the attorney needs to be sensitive for further investigating a client's background, with consent, to understand where any functional limitation of the client will interfere with effective representation. Page 43. ***Michigan Bar Journal, An Attorney's Obligations under Title III of the Americans with Disabilities Act, David A. Bulkowski and Donald P. Lawless, August, 2010, Pages 40-44. SEE EXHIBIT "10"***

DEFENDANTS ACTIONS VIOLATED MICHIGAN'S USURY LAWS, BOTH CIVIL AND CRIMINAL

While the underlying case was being appealed Plaintiff was requested to borrow money to cover expert witness fees. When she inquired about the interest rate she was told not to worry about the interest rate charged by CMG as the interest on the Judgment would **exceed** the interest charged by CMG. Not True! The borrowed funds had an interest rate of 100% per year, as compounded monthly for twelve months. Judgment interest was between 5% and 6% at that time.

There is no question that Plaintiff was unable to make a sound financial decision regarding borrowing money from CMG, who charged an annual interest rate, with all compounding, approaching or exceeding **100%,** all of which was made known to Defendants prior to the funding of such loans. **The legal limit for loans in the State of Michigan, is seven (7%) percent. See MCLA 438.31. Michigan law also provides that loans in excess of 25% are criminal and punishable as a crime. See MCLA 438.41, which provides that a person guilty of criminal usury may be imprisoned for five *18 (5) years and fined up to ten thousand ($10,000.00) dollars.** By participating with CMG,, Defendants involved themselves in illegal and usurious financial transactions.

CONCLUSION

A motion made under MCR 2.116 (C)(10) tests the factual support for a claim, and should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *The Healing Place at North Oakland Medical Center-v-Allstate Ins. Co., 277 Mich App 51, at 56; 744 NW2d 174 (2007).* ***A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the non-moving party, leaves open an issue upon which reasonable minds could differ.***

Here, Dr. Bucknam's Affidavits, first used in support of Defendants Motion for entry of Default Judgment and later used in the underlying opposition to summary disposition in the present case establish that Appellant did not have the requisite ability to understand the financial transactions that Defendants placed her in. Putting Appellant in such usurious transactions breached the fiduciary relationships between attorneys and clients.

RELIEF REQUESTED

Appellant requests that the trial court be reversed and that the trial court be directed, instead, to enter judgment in favor of Appellant.

Footnotes

1 A key question, therefore, is whether Defendants misrepresented Plaintiff's injuries and condition to the trial Court, in Genesee County, on June 4, 2007, seeking a $950,000.00 Default Judgment, or were misrepesenting the facts to the underlying Court.

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