| | |
|---|---|
| Sharon V. Galloway, | ) Maryland Court of Appeals |
| Petitioner Pro Se | ) Petition docket No.: 383 |
| vs. | ) |
| J. Edward Martin et al., | ) September Term 2011 |
| Respondent | ) |

**PETITION FOR WRIT OF ERROR CORAM NOBIS**

As guaranteed by the Maryland Constitution, Article 24 of the Declaration of Rights, the Petitioner respectfully requests for leave to file Writ of Error Coram Nobis in The Maryland Court of Appeals to remedy the fraud perpetuated upon the Petitioner, fraud upon the courts, judicial error and indiscretion, and error by the clerk's office. The Petitioner asks the Maryland Court of Appeals to exercise its inherent equitable power to set aside its prior ruling and the erroneous ruling of the Court of Special Appeals, and allow the justice and due process as guaranteed by the Maryland Constitution Declaration of Rights Article 5, and the 5th and 14th amendments of the United States Constitution to the Petitioner. (1) *Frank Conaway, et al. v. Gitanjali Deane, et al., No. 44, Sept. Term 2007.*

As the Supreme Court of the United States observed in *United States v. Morgan,345 U.S. 502, 507-08 (1954)*, the writ of coram nobis is available at common law to correct errors of fact. It is allowed without limitation of time for facts that affect the "validity and regularity" of the judgment, and is used in both civil and criminal cases.

Maryland courts have express authority under the Maryland Rules. *Riffin v Circuit Court for Baltimore County et al* citing to; *Cf. In re. Petition for Writ of Prohibition, 312 Md. 280, 302 n.13 (1988).* (2) *Phillip Morris Inc. et al v the Honorable Edward J. Angeletti 2000.* A Maryland court has all the powers of the common law unless altered by statute. *See; Article 5 of the Maryland Declaration of Rights.* As this Court's decision making has been subverted by fraud, judicial error and clerical error as demonstrated by the record, there is no reason why the Court would refuse to grant this petition for writ of error coram nobis to accord the petitioners relief. (3) ( Md rule 2-535) This Court has the inherent equitable power to set aside fraudulently begotten judgments and restore the petitioner to the position she would have enjoyed in the absence of fraud and error, and the Petitioner has advanced a substantial and good faith basis for invoking this Court's jurisdiction.

The Petitioner submitted a Motion for Reconsideration, a Writ of Mandamus with Declaratory Complaint, and a Motion for Summary Judgment that the Court of Appeals has summarily ignored, denying only the Motion for Reconsideration. For these reasons, the Petitioner now must rely upon this Petition for Writ of Error Coram Nobis.

**INTRODUCTION :**

***All of the Petitioners appellate filings begin with the respondents trial court motion for summary judgment, the Petitioner pro se motion for reconsideration and all appellate filings regarding her physician who is also Petitioners medical expert. This is the only dispute as there has been no challenge to Petitioners injury ,other treating doctors, or Petitioners experts***

**The ONLY challenge by the respondent is to the same doctor/medical expert that the respondent relied upon in the underlying case for causation, damages, and medical expenses; et al.**

The respondent, J. Edward Martin Esquire represented the Petitioner, Sharon V. Galloway in the underlying legal malpractice case that is titled "Galloway v Goodman", and was case No. 03-C-00-001438 in the Balto. County Circuit Court. It is fact that the respondent lost that case due to not naming experts and refusal to respond to discovery ( E 171 ) and not answering the defendant Goodman's Motion for Summary Judgment. In a hearing before the Hon. Judge Cahill in the Baltimore County Circuit Court, on April 2, 2001, the court allowed the respondents oral request to dismiss without prejudice, and file the complaint again. It was recorded on the transcript during the April 2, 2001 hearing before Judge Cahill that the respondent admitted to negligence, and the judge told him he is negligent. It was recorded on the transcript of that April 2, 2001 hearing that the respondent J. Edward Martin Esquire stated to the record that he is using the medical expert, Grace Ziem, M.D. Dr. P.H. as the medical expert who will testify in the "Galloway v Goodman" case as to causation, medical expenses, future medical expenses, and lost wages.

The second case number is 03-C-02-001545 and is titled "Galloway v Goodman", and it was filed February 12, 2002, the respondent Martin *naming the same medical expert as before.*

Regarding the toxic injury of the Petitioner; It is known by mechanics reports that the propane furnace was malfunctioning, it is known by mechanic reports that the propane furnace had a cracked heat exchanger; it is known by mechanic reports that the propane furnace was full of soot that clogged the furnace so it could not vent and this furnace needed to be replaced as stated in the mechanics reports, but the landlord chose to repair it instead, forcing the mechanics to modify the

parts that were available, as this furnace was too old to find the appropriate parts. It is known by mechanic reports that the propane furnace had faulty switches, and that it literally emptied an entire 100# bottle of propane into the Petitioners apartment. It is known by mechanic, applicator and reports from Baltimore County that the well water was extremely infected with E. coli type bacteria, and it is known that that water also had"rainbow sheen" on all water that was standing, such as a cat dish. The carbon monoxide exposure, and the infected well water that resulted in the extraordinary illness of the Petitioner are fact. These facts have never been in dispute at any stage, and are supported by emergency room reports, doctor reports, testing, letters from the Petitioner to the landlord, by deposition of the furnace mechanic and by Plaintiff/Petitioners expert engineer deposition.

All support the foundation for a prima facie case regarding the Petitioners toxic injury to carbon monoxide, propane gas and infected well water. There were two applications of "Dursban" that was initially investigated by Roger Weinberg of Birrane Chartered, but this was eventually ignored by all lawyers. The respondent completely failed in his second bite at the apple, and forced the Petitioner into a settlement with threats of harm, manhandling, and sexual harassment, and then took more than half of that settlement resulting in not even enough money for the Petitioner to pay her medical bills. The respondent never did any investigation of the toxic exposures, choosing instead to state without foundation or investigation that the Petitioner had been exposed to petroleum products due to the possible existence of old underground storage tanks for gasoline on the property where the Petitioner had resided. The Petitioners legal expert, Phillip Feldman Esquire, in his affidavit states the negligence of the respondent *copy paste from E 185-185 below*:

| | | |
|---|---|---|
| GALLOWAY | * | IN THE |
| Plaintiffs | * | CIRCUIT COURT |
| v | * | FOR |
| MARTIN, et al | * | BALTIMORE COUNTY |
| Defendants | * | Case No. |

**AFFAIDAVIT OF PHILLIP FELDMAN, ESQ.**

1. I am over 18 years of age and competent to testify in this matter.

2. I hold a juris doctorate degree and I am licensed to practice law in the State of California and a member of good standing at the Bar. I have practiced law for over 40 years, with a primary focus in personal injury civil litigation representing Plaintiffs.

3. I have served as a legal expert in ~~hundreds of~~ many cases across the country and have litigated many toxic tort cases in my 40 years at the Bar.

4. I have reviewed the pleadings and material provided to me in the matter of Galloway v Goodman and I have reviewed the pertinent case law in the State of Maryland regarding standard of care for attorneys practicing in the area of legal malpractice and toxic tort litigation. The Standard of Care, accordingly to Maryland Case law, would have required Mr. Martin to investigate all possible claims Ms. Galloway had against all prior counsel. In this matter, the standard of care for attorney similarly situated, with similar education, training and experience, would have required Mr. Martin to make a reasonable investigation into the carbon monoxide claim, the petroleum claim and the Dursban claim. The Standard of Care in Maryland would have required Mr. Martin to secure ~~experts in the field of~~ technical consultants engineering, geology, hydrogeology

and toxicology, to either prove or rule out, Carbon Monoxide poisoning, petroleum contamination in the well water, and/or what effect, if any, the ~~Dursban that was applied~~ Toxic Contamination in the apartment had on Ms. Martin. Specifically, interviewing Barry Dubit, who was deposed on September 2, 2008, who testified that performed tests on the furnace in question which showed a crack in the heat exchanger and that the furnace was emitting carbon monoxide into the unit of 35 ppm and into the apartment, after the furnace being on for ten minute and a level of 3 or 4 ppm before turning of the furnace. Mr. Martin made no attempt to contact this witness before trial.

5. It is my opinion, based on my education, training and experience, and my review of all of the case material provided to me, Maryland Case Law regarding the Standard of Care for Attorneys in the State of Maryland, ~~jury verdict reporters for~~ of Baltimore County and the entire State for legal malpractice and toxic tort awards, that Edward Martin, Esq., breached the standard of care owed to Plaintiff by:

a. Failing to investigate the claim of petroleum well contamination before filing suit;
~~b. Failing to have the well water and ground water tested before naming experts;~~
c. Failing to have the well water and ground water tested before permitting experts to be deposed;
d. Failing to investigate the claim of Carbon Monoxide exposure before filing suit;
e. Failing to designate experts with respect to the claim of Carbon Monoxide exposure;
f. Failing to consider what effect, if any, Dursban had on Plaintiff;
~~g. Failing to include Dursban as a separate legal malpractice count against Goodman;~~
h. Causing the initial complaint to be dismissed because of lack of discovery;
i. Permitting a duplicate complaint to be filed, with the same allegations and the same experts, which performed no investigation;
j. Permitting experts to be named who performed no tests to determine whether or not ~~petroleum had contaminated the drinking water;~~ existed

(1073-001 / DD0011.DOC)

k. Permitting experts to be named who had no experience in Carbon Monoxide claims;

~~l. Permitting experts to be named who had no experience in Dursban cases;~~

m. And other breaches to be testified to at trial.

6. As a direct proximate and foreseeable result, the Plaintiff was forced to accept a Settlement, of $40,,000 which was unreasonable, given her damages FAR exceeded $4/5,000 ~~$1,000,000 dollars~~. My review of Maryland Case law reveals that the non-economic cap on pain and suffering to be $350,000 dollars, that Maryland recognizes lost wages as an element of damages, in this case $300,000 and Maryland recognizes medical expenses, which are estimated at over $400,000 as an element of damages.

I HEREBY DECLARE AND AFFIRM UNDER THE PENALITIES OF PERJURY THE FOREGOING IS TRUE AND CORRECT TO BEST OF MY KNOWLEDGE AND BELIEF.

9/3/08

Phillip Feldman, Esq.

The valid, reported and recorded by mechanic exposures to carbon monoxide, propane gas, and infected well water were never investigated by the respondent J. Edward Martin Esquire. Considering he has all of this information in his Bates numbered files, with contact information and medical reports that unequivocally support these exposures and resulting illness, this is bright line negligence.

The Petitioner has included a copy of the pro se Third Amended and the Petitioners represented by legal counsel Fourth Amended Complaint for better timeline purposes. *See DVD list of attachments*

The Petitioner filed suit against J. Edward Martin Esq, J. Edward Martin Esq."Chartered" and Lawrence Melfa Esquire in May of 2006. Melfa was later dropped from the suit, with the stipulation that Melfa testify as a fact witness for the Plaintiff – the Petitioner here.

The Petitioner was self represented until 2008, when A. Donald C. Discepolo Esquire entered his appearance on behalf of the Plaintiff/Petitioner.

It is a fact, as outlined in the Petitioners Brief for Appellant, that extensive discovery and hearings were conducted over many months directed at the Plaintiff pro se and the Plaintiffs long term treating physician and Medical Expert, Grace Ziem M.D. Dr. P.H., beginning in August 2006. As stated in the Brief for Appellant from Statement of the Case page 3;

**From Appellants brief p. 2, 3 ;**

The first Motion for Summary Judgment regarding the "preclusion" of Dr. Grace Ziem and all of Appellees experts is dated Dec. 31,2007 (0072000 to 0077000). A response was filed by the Appellant ( 0077001) A hearing on February 20, 2008 resulted in the Order of the Court stating that Appellees Motions for Summary Judgment were denied, the Appellees motions to preclude testimony of Dr. Grace Ziem are denied, and Appellee Martin must respond to Appellants Discovery. (0080000)

Numerous Motions For Summary Judgments ensued, again including the "preclusion" of Appellants medical expert, (0089000, 0092000, to 103000) ( E 160 -166 ) ( Plaintiffs opposition E 167 – E 209 ) and Appellees motions were denied September 17, 2008 (0107000) ( Trans E 52-69, Order E 210 ) The Appellee Martin filed another Motion for Summary Judgment to Exclude the Testimony of Dr. Grace Ziem "Due to Failure to Meet the Frye-Reed Standard or that of Maryland Rule 5-702," on March 6, 2009 (0110000) On March 13, 2009, the Appellee then filed a series of seven "Motions In Limine" that again, included another Motion to Preclude the Testimony of Dr Grace Ziem, only now upon the eve of trial, the Appellees Motion speciously alleges; "Because Dr. Ziems Opinion Based Upon Medical and Scientific Information and Knowledge Unknown At The Time Of The Underlying Case"w/ memorandum and exhibits. ( 0111000)( E 211 ) Appellants counsel answered with the legally prevailing opposition. (0111001)(E226 – 313) The Appellee had waited to file in March 2009, eight months after the scheduled deadline. ( admitted knowledge E-161 ) A hearing was held April 2, 2009, even though the deadline for dispositive motions was August 2008. ( E 71- 73)

The respondent, relied on concealed documents for his MSJ that he refused to provide as per discovery requests from the pro se Petitioner and later refused discovery to Petitioners attorney, and even refused as Order from the trial court to provide discovery. *See attach. P. 10, 11*

The Petitioners appeal is based upon the admitted negligence of J. Edward Martin Esquire before a trial court judge, and the fact that the respondent named the same expert he is now deceitfully disputing.

The Petitioners appeal is also based upon the fact, that the respondent with premeditated purpose and a deliberate and malicious intent, filed his latest Motion for Summary Judgment not only using the documents he refused to turn over regarding numerous discovery requests, but that

he used the exact same argument that the defendant Goodman used in the underlying case wherein he lost – twice – and admitted he was negligent and refused all discovery requests.

The Petitioner does not have the defendant Goodmans pleadings, as the respondent ignored the Petitioners and her attorneys requests, and he also ignored the Order of the court to turn over these documents. This seems to be his "M.O.", and the court supported and condoned this illegal behavior by the respondent and his legal team.

However, from the courts docket of the underlying "Galloway v Goodman cases, one can see the exact same argument that forced the respondent Martin into abject failure, *twice*, and this is the exact same argument he used as the defendant in the "Galloway v Martin" case, they are the same.

This fact alone shows the respondent had actual knowledge, refused to turn over this knowledge, and then sat on this knowledge until he knew the Petitioner had spent thousands of dollars on her experts. This was his and his legal team's plan. From E. 476 – 487 Copy-paste:

03-C-00-001438 Date: 12/22/09 Time: 11:37 Page: 5

| Num/Seq | Description | Filed | Entered | Party | Jdg | Ruling | Closed | User ID |
|---|---|---|---|---|---|---|---|---|
| 0021000 | *Motion in Limine precluding testimony from expert witnesses on issues relating to multiple chemical sensitivity; necessity of medical treatment; and causation of plantiffs alleged medical problems w/exhibit | 03/28/01 | 03/29/01 | DEF001 | TBA | | 05/26/04 | MRS PA |
| 0022000 | Open Court Proceeding<br>April 2, 2001 Hon. Robert E. Cahill, Sr. Hearing had in re: Motions. Defendant's Motions (pap#13000)- Denied, (pap#16000)- Denied without prejudice, (pap#17000)- Reserved, (pap#18000)- Denied,(pap#19000)- Denied without prejudice, (pap#20000)- Reserved, (pap#21000)- Reserved. Plaintff's Oral Motion to dismiss without prejudice- Reserved. Case continued until Friday 4/9/2001. | 04/02/01 | 04/02/01 | 000 | REC | | 05/26/04 | KD PA |
| 0023000 | Motion for Voluntary Dismissal WITHOUT PREJUDICE | 04/04/01 | 04/05/01 | PLT001 | TBA | | 05/26/04 | DR PA |

After all, the respondent did threaten the Petitioner, among other threats, telling her he would "bury" her if she sued him. And this is how he and the courts allowed this to happen.

**SUMMARY**

The Brief of the Appellant, the Appellants Reply brief and Record Extract cover in detail, the most flagrant violations of Maryland Rules and violations of judicial, ethical rules and values by the defendant/appellee/respondent, J. Edward Martin Esquire and an obvious disregard of United States Constitution guarantees of due process, Maryland State Constitutional guarantees of due process, Maryland law, precedent, and decisions/rule by the courts. These indiscretions based

upon fraud, deception and judicial autocracy, as declared in the Brief and Reply Brief of the Appellant/Petitioner were never denied - or answered – by the respondent, and the Court of Special Appeals lack of discretion towards these documented facts is prejudicial to the administration of justice, against Maryland law and case citation, and are in absolute error resulting in a total disregard of due process to the Petitioner. From; *Woodsen v Saldana Md. Court of Special Appeals No. 1150 Sept. Term 2000* ...( quote ) "This abrupt termination and finding denied Woodson her right to procedural due process under the *Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights."*

The Brief of the Appellant requested judicial notice, which was (not surprisingly) ignored.

The collateral consequences of this lack of discretion by the courts, judicial autocracy, judicial error and the in your face fraud by the respondent J. Edward Martin, Esquire, are far reaching and will affect all clients who are the victims of immoral unethical lawyers and their large corporate law firm insurance lawyers, and is a complete judicial disregard of procedure and precedent.

Accordingly, as the Maryland Court of Appeals has exclusive jurisdiction over all attorney misconduct of any kind, it is imperative that this writ be granted. Against all Maryland rule, precedent, and common sense, the respondent J. Edward Martin Esquire prevailed at Summary Judgment in the circuit court due to a dispute over the exact same medical expert that the respondent J. Edward Martin employed in the underlying case that is titled, "Galloway v Goodman" that he stated to the record in front of a trial court judge would testify as to "causation, medical expenses and damages". This fraud by the respondent who relied upon judicial errors and indiscretion of all the courts are fundamental to the validity of the judgment. (E. 75)

The denial of equal protection under the law, and the denial of due process to the Petitioner is clearly a product of bias and prejudice - though *Griffin v. Breckenridge, 403 U.S. 88 (1971)*, provides a remedy for the conspiracy for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the law. The courts have denied the Petitioner her right to be heard in their fanaticism to cover for their own. The public knows this, the Petitioner knows this.

As outlined by the docket it is obvious that the respondent J. Edward Martin, waited until eight months past the deadline for filing dispositive motions in a maneuver that was malicious, premeditated, and deliberate, as the motions filed by J. Edward Martin Esquire are based upon the

Discovery requests by the pro se litigant and later by her lawyer, that were concealed, refused and ignored while the respondent waited for the deadline for Discovery to pass. ( E. 115 line 20)

This is a premeditated and calculated action by the respondent and his legal counsel, and is a question for the jury to deliberate. ( E. 71-75 ; the trial court questions the timing of filing ) (E.186,187 - letter from Petitioners counsel stating that the respondent has not responded to Discovery)

It is also on the record and in transcript from the underlying "Galloway v Goodman" case that the respondent admitted to negligence, by again...not responding to discovery requests, not naming experts, E-205 From transcript: The Hon. Judge Cahill speaking *"I am not willing to sign an order of dismissal without prejudice that would allow him to go shop experts again. Hes' made a commitment in this case. He has said it to the record. He has said that he is negligent".*

It is legally imperative that the Maryland Court of Appeals review the fraud of the respondent, judicial indiscretion and error, procedural error and error of the clerk regarding the Petitioners writ of mandamus and motion for summary judgment to maintain integrity and so the public's right to rely on some semblance of justice - as guaranteed by the Maryland Constitution, and the U.S. Constitution can be restored.

The record reflects that the respondent J. Edward Martin, and the courts have shown contempt for Maryland law, the Maryland Rules, Maryland Code, the MLRPC, Maryland precedent, and the courts have condoned these actions by refusing the Petitioner at every single level, under no color of rule, law, or reason.

## PROCEDURAL HISTORY:RE; THE UNDERLYING CASE "GALLOWAY V GOODMAN"

**It is fact in the underlying *Galloway v Goodman* case that the respondent J. Edward Martin Esquire acting as the Petitioners lawyer;**

1- in the underlying "Galloway v Goodman" case, the respondent J. Edward Martin, relied upon the exact same medical expert and the exact same medical experts opinion regarding causation, opinion, and clinical notes that he now disputes. (E. 149-150 from transcript of the **May 20, 2009** hearing: Petitioners attorney Don Discepolo Esq. is speaking to the circuit court ( copy-paste below )

Petitioners attorney Don Discepolo Esq. speaking before the Court in May 2009

Galloway had. Now, it's interesting that we're here on a Summary Judgment Motion for damages because this case, your Honor, the sole crux of the malpractice was that Mr. Martin didn't pursue the liability aspect of the carbon monoxide exposure and your Honor can see from the file and the prior pleadings here, that we've established liability, a prime facie case, and there is an issue with respect to this furnace malfunctioning and producing carbon monoxide. We have an eyewitness, a fact witness, and we have an engineering expert. Now, the Court will remember that the Court didn't allow me to add any additional medical experts.

We were stuck with Dr. Zeim. Dr. Zeim was the physician that was designed by J. Edward Martin in the case below.

JUDGE COX: But it is what puts you where you are. You were allowed to designate and to do some other things in other areas and you shored up holes that had previously been there when Ms. Galloway was representing herself. But she designated a medical expert and I didn't allow, nor do I think she actually ever requested, that she had asked to rethink that. She designated who Mr. Martin had designated

***notice**; last line the court states "she designated who Mr. Martin designated"*

2- In the underlying case "Galloway v Goodman" the respondent testified at the defendant Goodmans 2001 Motion for Summary Judgment hearing before the Hon. Judge Cahill that the exact same medical expert he is now disputing will testify at the underlying "Galloway v Goodman " trial as to causation damages, future medical expenses and lost wages. ( **testimony: E 192, E 198, E199, E 207** ) ( **E 229, 237-239** ) On E. 198, from the underlying case, the **transcript before the Hon. Robert E. Cahill Sr. on April 2, 2001**, the respondent Martin clearly identifies the same

medical causation witness that he now illegally disputes . from E 198

**Respondent J. Edward Martin Esquire testifying before the Hon. Judge Cahill in the underlying "Galloway v Goodman" case : E. 198 on April 2, 2001**

THE COURT: Necessity of medical treatment, and causation, simple causation of Plaintiff's alleged medical problems.

Now, this morning Mr. Martin states that he has a causation witness -- namely Dr. Zeim, is that right?

MR. MARTIN: Yes, sir.

3 - In the underlying case "Galloway v Goodman" it is fact, that after this April 2, 2001 "warning notice" by summary judgment hearing regarding the Plaintiffs medical expert, the respondent J. Edward Martin Esquire was allowed by the court to re-file the Plaintiff Galloway's Complaint. But, he again *negligently used the exact same verbiage that was just disputed* in the defendant Goodman's summary judgment hearing in all answers to the defendant Goodman's pleadings – the respondent J. Edward Martin Esquire did not change the disputed words, or file new answers, or request a new medical expert, and by these actions, completely failed in his fiduciary duty to his client, the Petitioner here, and again, the respondent is a failure and is spitefully negligent, because he knew he had lost again due to his own sloth, mistakes, and failure. This is fact - that even after the Defendant Goodman's Motion For Summary Judgment, and during his entire representation of the Petitioner, extending from *the 2001 dismissal without prejudice of Petitioners case that was due to the failure of respondent J. Edward Martin Esquire to procure experts*, and *refusal to provide Discovery* , and **admission of negligence**, on to the second Complaint filed by the respondent J. Edward Martin Esquire in 2002. *"This deception by the Appellee is not only transparent, but outrageous, unethical, and must be estopped." ( Appellants brief p. 8-9 )*

5- From the "Plaintiffs Designation of Expert Witnesses" on page 5 ( E-298 ) respondent J. Edward Martin Esquire of behalf of the Plaintiff (the Petitioner here ) clearly designates the medical expert he now disputes to testify regarding the Petitioners toxic exposures. ( copy paste )