

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

CAITLIN BRUCE

Plaintiff,

v

ABRAHAM A. HODARI, M.D., Dr. Hodari's Assistant, "VICTOR" (last name unknown), WOMANCARE OF FLINT, P.C., and/or WOMANCARE OF FLINT, INC., and/or FEMININE HEALTHCARE CENTER, and/or FEMININE HEALTHCARE CLINIC, P.C., and/or FEMININE HEALTHCARE CLINIC, INC. Defendants.

00-91566

CASE NO: 09- -NH

JGBOFFREY L. NEITHERCUT P-25466

TOM R. PABST (P27872) Representing Plaintiff 2503 S. Linden Road Flint, MI 48532 (810) 732-6792

NOV 17 A 6 21

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court. nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge. I do not know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

COMPLAINT AND JURY DEMAND

NOW COMES Tom R. Pabst, representing Caitlin Bruce, Plaintiff, and shows unto this Honorable Court as follows:

COMMON ALLEGATIONS

- (1) That at all times pertinent hereto, Caitlin Bruce, was/is a resident of Genesee County, Michigan.
(2) That Defendant Abraham A. Hodari, M.D., (hereinafter "Defendant Doctor") holds himself out to the public as a licensed doctor of some sort doing business in Genesee County, Michigan.

(3) That upon information and belief, Defendant "Victor" was Defendant Doctor's assistant, and a resident of Genesee County, Michigan, at all times pertinent hereto.

(4) That upon information and belief, Defendant Womancare of Flint, P.C. and/or Womancare of Flint, Inc. and/or Feminine Healthcare Center and/or Feminine Healthcare Clinic, P.C. and/or Feminine Healthcare Clinic, Inc. (hereinafter "Defendant Employer") is some sort of Michigan corporation located and doing business in Genesee County, Michigan. Upon further information and belief, Defendant Employer is the employer of Defendant Doctor and Defendant Victor.

(5) That at all times pertinent hereto, Defendant Doctor was/is an employee of Defendant Employer, and further, was, upon information and belief, acting within the scope and course of his employment with Defendant Employer.

(6) That at all times pertinent hereto, Defendant Victor was/is an employee of Defendant Employer, and upon information and belief, was acting within the scope and course of his employment with Defendant Employer.

(7) That upon information and belief, some type of symbiotic/financial/business relationship existed in April 2008 amongst Defendant Doctor, Defendant "Victor" and Defendant Employer, which symbiotic relationship is well known to Defendants herein but currently unknown to Plaintiff. That in any event, Defendant Employer chose Defendant Doctor and/or Defendant "Victor" to treat Caitlin Bruce, Plaintiff, and/or in any event held out Defendant Doctor and/or Defendant "Victor" as competent and/or able to treat and care for Caitlin Bruce, Plaintiff.

(8) That on or about April 2008, Caitlin Bruce, Plaintiff, employed the services of Defendants herein to perform an abortion procedure.

(9) That when Caitlin Bruce employed the services of Defendants herein, the agreement was that she had an absolute right to withdraw consent to the procedure at any time prior to the performance of said procedure.

(10) That on or about April 9, 2008, Defendants proceeded to do an abortion procedure after she had told them to stop.

(11) That at the above time and place, and after Defendant Doctor had not yet started the abortion procedure, Defendant Doctor had his assistant, Defendant Victor, restrain Caitlin Bruce and cover her mouth, and it was at this time that he began the abortion procedure, despite Caitlin Bruce's objecting and screaming, "Stop, stop, I don't want this," and despite her desire not to undergo the procedure.

(12) That as a direct and proximate result of Defendants' tortious misconduct and/or negligence and/or malpractice and/or broken promises, Caitlin Bruce sustained damages including, but not by way of limitation:

(a) The abortion of a fetus that Caitlin decided she wanted to keep; and

- (b) Additional medical treatment which was a direct result of Dr. Hodari's gross misconduct; and
- (c) Pain and suffering, past and future; and
- (d) Severe emotional stress and mental anguish, past and future; and
- (e) Hospital, medical, and pharmaceutical expenses, past and future; and
- (f) Lost wages/salary, past and future; and
- (g) Loss of earning capacity; and
- (h) Economic losses associated with having to retain an expert medical doctor to receive justice; and
- (i) Outrage; and
- (j) Other injuries, the exact nature and extent of which are not now known.

#### **COUNT I—LACK OF INFORMED CONSENT/MEDICAL MALPRACTICE**

(13) That we repeat paragraphs 1-12.

(14) That when Caitlin Bruce employed the services of Defendants herein, and paid Defendants therefore, they owed her a duty, under the applicable standard of care, to use due care, and reasonable and proper skill in the care, diagnosis and treatment of her, and further, they did then and there impliedly and expressly represent and agree they would do so.

(15) That when Caitlin Bruce employed the services of Defendants herein, they owed her a duty to obtain informed consent.

(16) That Defendant Doctor and/or Defendant "Victor", and vicariously, Defendant Employer, breached the aforesaid duties to Plaintiff, Caitlin Bruce.

(17) That in accordance with the professional opinion, and medical training of Plaintiff's expert—

- (a) That if a doctor represents and/or promises that the patient can withdraw her authorization at any time, he should do what he has represented and/or promised to his patient;
- (b) That Defendants should not have touched and/or invaded Caitlin Bruce's body without her authorization and/or consent; and/or after said authorization and/or consent has been rescinded and/or revoked;

- (c) That when Defendants represented and/or promised Caitlin Bruce that she could withdraw her authorization at any time, they should have abided by and/or followed these representations and/or promises that they themselves made to her; and
- (d) That Defendants should not have threatened and/or intimidated Caitlin Bruce and/or touched her if they did so because she is a woman or African American.

(18) That additionally, in the professional opinion, belief and expert training of Plaintiff's expert—

- (a) There was a failure to do those things required hereinabove set forth in ¶17, and as set forth in Plaintiff's MCLA §2912(b) Affidavit of Merit, and an inappropriate failure to stop the procedure upon revocation of the authorized consent.

See Ex. 2, Affidavit of Merit.

(19) That in the professional opinion, belief and medical training of Plaintiff's expert, if Defendant Doctor had simply done what he claimed and promised to Caitlin Bruce, namely, to stop the medical procedure/abortion at the very instant consent was waived, and thereby effectively revoked, Caitlin Bruce would not have suffered the injuries that she did.

(20) That in the professional opinion, belief, and medical training of Plaintiff's expert, if good and proper care had been administered to Caitlin Bruce, then she would not have suffered the injuries and damages that she did.

(21) That Defendants herein breached their contract and promises to Caitlin Bruce and were negligent in that they failed to properly care for and/or treat her, as aforesaid, each or all of which acts/omissions violated the applicable standard of care under like and similar circumstances. See Ex. 2, Affidavit of Merit.

(22) That an appropriate "Section 2912(b) Notice of Intent to File Claim" was sent to Defendants herein, a copy of which is attached hereto as Exhibit 1 and by this reference incorporated herein.

(23) That this complaint is supported by, based on, and corroborated by the MCLA §2912(b) Affidavit of Merit of Plaintiff's expert, a copy of which is attached hereto as Exhibit 2 and by this reference incorporated herein.

(24) That Defendant Employer is responsible for the aforesaid breach of the standard of care, and/or broken promises, on the part of its employees, Defendant Doctor and/or Defendant "Victor", done during the scope and course of his or their employment.

(25) That Defendants are directly and/or vicariously liable for the acts and/or omissions and/or misrepresentations and/or tortious misconduct committed by persons who were then and there agents and/or employees and/or officers of theirs, and acting within the course and scope of said employment and/or agency by reason of the facts hereinabove stated or otherwise known to Defendants herein; or acting in such a way as to bind Defendants pursuant to the Restatement Second Agency, Section 219 (1 & 2).

(26) That as a direct and proximate result of Defendants' aforesaid misconduct, negligence, medical malpractice and broken promises, Caitlin Bruce suffered the serious injuries and damages set forth in ¶12, above.

(27) That the damages attributable to the aforesaid injuries far exceed Twenty-Five Thousand (\$25,000.00) Dollars.

WHEREFORE, for all of which damages, Plaintiff, Caitlin Bruce, demands judgment against Defendants herein in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) the trier of fact finds to be fair and just, in accordance with the law and evidence, together with interest, costs and attorney fees allowed by law.

#### **COUNT II—BATTERY**

(28) That we repeat paragraphs 1-28.

(29) That Defendants herein engaged in the willful, intentional, and unprivileged touching of Caitlin Bruce against Caitlin Bruce's will and without her lawful consent.

(30) That as a direct and proximate result of the aforesaid battery, Caitlin Bruce suffered the serious injuries and damages set forth in ¶12, above.

(31) That the damages attributable to the aforesaid injuries far exceed Twenty-Five Thousand (\$25,000.00) Dollars.

WHEREFORE, for all of which damages, Plaintiff, Caitlin Bruce, demands judgment against Defendants herein in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) the trier of fact finds to be fair and just, in accordance with the law and evidence, together with interest, costs and attorney fees allowed by law.

#### **COUNT III—MISREPRESENTATION/FRAUD**

(32) That we repeat paragraphs 1-31.

(33) That Defendants herein made false representations of material facts to Caitlin Bruce, Plaintiff, regarding her right to withdraw her authorization to do the abortion procedure at any time.

(34) That Defendants' representations were false when they were made.

(35) That Defendants herein knew that the representations were false when they were made, which is what really believe; or, at the very least, they made them recklessly without knowing whether they were true or not.

(36) That Defendants herein intended for Caitlin Bruce to rely on their false representation, and Caitlin Bruce did.

(37) That in fact, Caitlin Bruce relied upon Defendants' false representations when entering into this medical and/or business relationship.

(38) That as a result of Defendants' fraudulent misrepresentations and/or conduct, Plaintiff has suffered substantial economic and other losses as hereinbefore set forth with particularity in ¶12.

(39) That the damages attributable to the aforesaid injuries far exceed Twenty-Five Thousand (\$25,000.00) Dollars.

(40) That Defendants herein are directly and/or vicariously liable for the acts and/or omissions and/or misrepresentations and/or tortious misconduct committed by persons who were then and there agents and/or employees and/or officers of theirs, and acting within the course and scope of said employment and/or agency by reason of the facts hereinabove stated or otherwise known to Defendants herein; or acting in such a way as to bind Defendants pursuant to the Restatement Second Agency, Section 219 (1 & 2).

WHEREFORE, for all of which damages, Plaintiff, Caitlin Bruce, demands judgment against Defendants herein in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) the trier of fact finds to be fair and just, in accordance with the law and evidence, together with interest, costs and attorney fees allowed by law.

#### **COUNT IV—INNOCENT MISREPRESENTATION**

(41) That we repeat paragraphs 1-40.

(42) That Defendants' representations, as set forth hereinabove, were made in connection with the making of a contract between Defendants and Plaintiff herein.

(43) That Plaintiff herein would not have entered into the contractual agreement forming this business/medical treatment arrangement if Defendants had not made the representations.

(44) That Plaintiff herein suffered substantial economic and other losses as the result of entering into these contractual relationships, and her losses benefited Defendants herein. See ¶12, above.

(45) That the damages attributable to the aforesaid injuries far exceed Twenty-Five Thousand (\$25,000.00) Dollars.

(46) That Defendants herein are directly and/or vicariously liable for the acts and/or omissions and/or misrepresentations and/or tortious misconduct committed by persons who

were then and there agents and/or employees and/or officers of theirs, and acting within the course and scope of said employment and/or agency by reason of the facts hereinabove stated or otherwise known to Defendants herein; or acting in such a way as to bind Defendants pursuant to the Restatement Second Agency, Section 219 (1 & 2).

WHEREFORE, for all of which damages, Plaintiff, Caitlin Bruce, demands judgment against Defendants herein in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) the trier of fact finds to be fair and just, in accordance with the law and evidence, together with interest, costs and attorney fees allowed by law.

#### **COUNT V—INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

(47) That we repeat paragraphs 1-46.

(48) That the Defendants herein had a unique/special relationship/position vis a vie Caitlin Bruce, Plaintiff, because of the medical and/or business relationship forming the basis of this lawsuit, and the unique circumstances set forth hereinabove.

(49) That with full knowledge of the devastating emotional consequences it would cause Caitlin Bruce, Plaintiff, the Defendants herein wrongfully chose to perform an abortion procedure despite her screaming, "Stop, stop, I don't want this" before they began said abortion procedure.

(50) That this callous and indifferent conduct by the Defendants herein constituted an abuse of the unique/special relationship/position they enjoyed vis a vie Caitlin Bruce, Plaintiff, and constituted the tort of "Intentional Inflection of Emotional Distress" as defined under Michigan law, especially the case of *Margita v Diamond Mortgage Corporation*, 159 Mich App 181 (1987).

(51) That as a direct and proximate result of the individual Defendants' aforesaid wrongful conduct, Caitlin Bruce suffered the serious injuries and damages hereinabove set forth with particularity in ¶12.

(52) That the damages attributable to the aforesaid injuries far exceed Twenty-Five Thousand (\$25,000.00) Dollars.

WHEREFORE, for all of which damages, Plaintiff, Caitlin Bruce, demands judgment against Defendants herein in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) the trier of fact finds to be fair and just, in accordance with the law and evidence, together with interest, costs and attorney fees allowed by law.

#### **COUNT VI—ETHNIC/GENDER INTIMIDATION**

(53) That we repeat paragraphs 1-52.

(54) That we have an anti-ethnic intimidation law in Michigan which protects victims such as Caitlin Bruce, Plaintiff, from exactly the type of harm inflicted upon her by Defendants herein. That law provides, in pertinent part:

**750.147b Ethnic intimidation; violation, penalty; civil action, damages, costs**

(1) A person is guilty of ethnic intimidation if that person maliciously, and with specific intent to intimidate or harass another person because of that person's race, color, religion, gender or national origin, does any of the following:

(a) Causes physical contact with another person.

\* \* \*

(c) Threatens, by word or action, to do an act described in subdivision (a) or (b), if there is reasonable cause to believe that an act described in subdivision (a) or (b) will occur.

\* \* \*

(3) Regardless of the existence of outcome of any criminal prosecution, a person who suffers injury to his or her person or damage to his or her property as a result of ethnic intimidation may bring a civil cause of action against the person who commits the offense to secure an injunction, actual damages, including damages for emotional distress, or other appropriate relief. A plaintiff who prevails in a civil action brought pursuant to this section may recover **both** of the following:

(a) Damages in the amount of 3 times the actual damages described in this subsection or \$2,000,000, whichever is greater.

(b) *Reasonable attorney fees and costs.*

See MCLA § 750.147b (emphasis added).

(55) That Defendant Doctor and/or Defendant "Victor" herein had malicious and specific intent to intimidate or harass Caitlin Bruce, Plaintiff, because she was a woman.

(56) That Defendant Doctor and/or Defendant "Victor" herein had malicious and specific intent to intimidate or harass Caitlin Bruce, Plaintiff, because she was a black person.

(57) That upon information and belief, Defendant Doctor and/or Defendant "Victor" never ever similarly mistreated women of Caucasian, and/or Asian and/or Indian and/or non-African-American race and/or national origin.



(58) That the wrongful conduct of Defendant Doctor and/or Defendant "Victor" and/or agents, servants or employees of Defendant Employer, as set forth hereinabove with particularity, was aided, abetted and assisted by each other, and/or other agents, servants and/or employees, and eventually Defendants herein acted in concert with one another, to one extent or another, thereby ratifying and adopting one another's wrongful misconduct as their own.

(59) That in any event Defendant Employer is vicariously and/or otherwise liable for the acts/misconduct of its supervisors, agents, servants and/or employees, including Defendant Doctor and/or Defendant "Victor", who aided, abetted and assisted one another to affect the wrongs done to Caitlin Bruce, Plaintiff, as set forth hereinabove with particularity.

(60) That as a direct and proximate result of the individual Defendants' aforesaid discriminatory misconduct, Caitlin Bruce suffered the serious injuries and damages hereinabove set forth with particularity in ¶12, and further, according to MCLA §750.147(b-3a), Caitlin Bruce is entitled to three times the actual damage a jury decides she is entitled to.

(61) That the damages attributable to the aforesaid injuries far exceed Twenty-Five Thousand (\$25,000.00) Dollars.

WHEREFORE, for all of which damages, Plaintiff, Caitlin Bruce, demands judgment against Defendants herein in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) the trier of fact finds to be fair and just, in accordance with the law and evidence, together with interest, costs and attorney fees allowed by law.

#### COUNT VII—ELCRA

(62) That we repeat paragraphs 1-61.

(63) That Defendants' conduct set forth hereinabove also violated MCLA §37.2101, et seq., a/k/a the Elliot Larson Civil Rights Act, in particular, but not by way of limitation, the "public accommodation" provisions thereof.

(64) That upon information and belief, Defendant Doctor and/or Defendant "Victor" never ever similarly mistreated women of Caucasian, and/or Asian and/or Indian and/or non-African-American race and/or national origin.

(65) That Defendant Employer, under the facts and circumstances in this case, is vicariously and otherwise responsible for the violations of ELCRA committed by Defendant Doctor and/or Defendant "Victor".

(66) That as a direct and proximate result of the individual Defendants' aforesaid discriminatory misconduct, Caitlin Bruce suffered the serious injuries and damages hereinabove set forth with particularity in ¶12.

(67) That the damages attributable to the aforesaid injuries far exceed Twenty-Five Thousand (\$25,000.00) Dollars.

WHEREFORE, for all of which damages, Plaintiff, Caitlin Bruce, demands judgment against Defendants herein in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) the trier of fact finds to be fair and just, in accordance with the law and evidence, together with interest, costs and attorney fees allowed by law.

Date: 6-16-09



TOM R. PABST (P27872)  
Representing Plaintiff

**JURY DEMAND**

Caitlin Bruce, Plaintiff, hereby demands trial by jury.

Date: 6-16-09



TOM R. PABST (P27872)  
Representing Plaintiff