

CASE NUMBER: 527173/2023

EXHIBIT(S) - 5 (Motion #1) - Surgical Funding Agreement

Document prepared for:
Attorney Daniel Johnston

CASE NAME

Law Offices of Michael S. Lamonsoff, PLLC. v. Law Offices of
Dominick W. Lavelle et al

DOCUMENT FILED DATE

Jan. 18th, 2024

CASE FILING DATE

Sept. 19th, 2023

COUNTY

Kings county, NY

JUDGE

Rivera, Hon. Francois A.

CATEGORY

Special Proceedings - Other (Attorneys' lien)

STATUS

Disposed

ATTN: Janine

Fax to: (516)
739-3917.

CASE CASH GP, LLC
ATTORNEY SECURITY INTEREST AND PAYMENT
ACKNOWLEDGEMENT

Case Cash GP, LLC
520 Eighth Avenue, Suite 1001
New York, NY 10018

21st Day of July, 2015

Re: The cause of action arising from the injuries sustained in the accident which occurred on or about June 12, 2014, involving Janine Gaskin

Gentlemen:

The undersigned is the attorney of record in the above-referenced matter (the "Lawsuit") representing Janine Gaskin (the "Client"). I/We understand that pursuant to the terms of a Funding Agreement dated July 23, 2015 entered into between the Client and Case Cash GP, LLC, a copy of which is attached hereto (the "Funding Agreement"), Case Cash GP, LLC is making an Legal Funding (the "Legal Funding") to the Client, who is the plaintiff in the Lawsuit, and that the Legal Funding will be satisfied solely from any money payable to the Client as a consequence of the Lawsuit, whether by settlement, judgment or otherwise, after deduction of any attorney's fees and costs payable to the undersigned (the "Client Recovery"). I/We further understand that Case Cash GP, LLC will rely on this letter in making the Legal Funding.

To induce Case Cash GP, LLC to make the Legal Funding, the undersigned acknowledges that pursuant to the Funding Agreement the Client has granted to Case Cash GP, LLC a first priority lien and security interest in and to the first \$48,796.08, plus the monthly compounded funded rate of 3.50% of the Client Recovery (the "Security Interest"). I/We understand that the Security Interest is greater than the amount of the Legal Funding and that it has been granted in such amount to secure the use and other fees that will be due to Case Cash GP, LLC at the time of the Client Recovery pursuant to the terms of the Funding Agreement.

The undersigned agrees to pay to Case Cash GP, LLC from the Client Recovery, and prior to making any payment or disbursement to the Client, an amount equal to the amount due to Case Cash GP, LLC on the date of such payment as calculated pursuant to the terms of the Funding Agreement. Prior to making any such payment, I/We will contact Case Cash GP, LLC to ascertain the exact amount owed and acknowledge and agree that as between the undersigned and Case Cash GP, LLC, the calculation of such amount by Case Cash GP, LLC will be final and binding and I/We will rely exclusively on such calculation in making the required payment to Case Cash GP, LLC.

X Client's Initials JG

To further induce Case Cash GP, LLC to make the Legal Funding, the undersigned represents and warrants that: (i) other than amounts due to the undersigned for professional services rendered in connection with the Lawsuit as set forth in the retainer agreement between the undersigned and the Client, I/We are not aware of any other lien on or security interest in any amount payable to the Client as a result of the Lawsuit; (ii) the undersigned is aware that the Funding Agreement prohibits the Client from granting any additional liens on or security interests in the Client Recovery; and (iii) the Lawsuit is still pending in active status and that there are presently no motions for final disposition, including, but not limited to, summary judgment. Notwithstanding clause (iii) above, nothing contained herein shall be deemed to be a guaranty by the undersigned that the Client will be successful in the Lawsuit or that the Client Recovery will be sufficient to satisfy the Legal Funding or any other amounts that may become due to Case Cash GP, LLC pursuant to the Funding Agreement.

I agree that any disputes that may arise out of this Funding Agreement shall be adjudicated in either the Supreme Court or the Civil Court State of New York in the County of Kings. This Funding Agreement will be construed in accordance with the laws of the State of New York, without giving effect to the principles thereof relating to conflict of laws, and may be executed in separate counterparts.

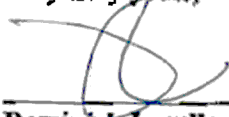
The undersigned specifically acknowledges that: Case Cash GP, LLC is in no way acquiring from the Client any right to sue, either in connection with the Lawsuit or otherwise and that the Client is not assigning his/her cause of action in the Lawsuit, but only a portion of the Client Recovery; that the Lawsuit absolutely belongs to the Client and no one else; and that Case Cash GP, LLC will in no way be involved, or have the right to be involved, in the decisions that the undersigned and/or the Client make in connection with the prosecution or settlement of the Lawsuit.

All payments and notices to Case Cash GP, LLC shall be sent by the undersigned to the Case Cash GP, LLC at the address set forth above unless Case Cash GP, LLC shall notify the undersigned in writing of a change of address.

The agreement and payment instructions set forth in this letter are irrevocable and are not subject to modification in any manner except in a writing signed by a duly authorized officer of Case Cash GP, LLC.

THE UNDERSIGNED ACKNOWLEDGES AND AGREES THAT NO PAYMENTS WILL BE MADE TO THE CLIENT FROM ANY SETTLEMENT, COLLECTION, JUDGMENT, COMPROMISE OR OTHER COLLECTION RESULTING FROM THE LAWSUIT OR THE MATTER THAT IS THE SUBJECT OF THE LAWSUIT UNLESS AND UNTIL THE FULL AMOUNT DUE AND OWING TO Case Cash GP, LLC IS PAID IN FULL AND THE SECURITY INTEREST IS RELEASED IN WRITING BY Case Cash GP, LLC.

Very truly yours,



Dominick Lavelle

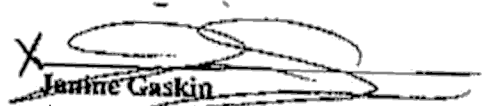
Dominick W. Lavelle, Esq.
100 Henricks Road, Suite 201
Mineola, New York 11501

By:
Name:
Title:

ACKNOWLEDGED AND AGREED:

Case Cash GP, LLC

By: _____
Name:
Title:
Dated: _____, 2012

X 
Janine Gaskin
(client signature)
21st Day of July, 2015

FUNDING AGREEMENT

21st Day of July, 2015

My name is Janine Gaskin and I reside at _____ NY.

1. **Legal Funding.** I am accepting the total sum of \$43,500.00 (the "Legal Funding") from Case Cash GP, LLC, a New York limited liability company, which I will use for my immediate economic needs. This funding, along with the \$5,296.08 currently owed by me to Case Cash GP, LLC, brings my total amount funded to \$48,796.08. I hereby understand and acknowledge that the sum of \$1,000.00, representing the Application Fee, shall be paid directly from the Funded Amount, leaving the sum of \$42,500.00 of the net proceeds to be paid in the following manner:
 - A. \$40,000.00 payable to NY Orthopedics, PC
 - B. \$1,000.00 payable to NY Orthopedics, PC
 - C. \$1,500.00 payable to Janine Gaskin post-surgery

2. **Use Fee.** In consideration of the Legal Funding to be made to me under this Funding Agreement and the substantial risk that Case Cash GP, LLC will assume, I am assigning an interest equal to the funded amount, together with accrued use fee, compounded monthly and other fees or costs, from the proceeds of my lawsuit to Case Cash GP, LLC. The monthly use fee shall be a charge in an amount equal to 3.50% monthly of the amount funded to me herein. This funded amount includes the Application Fee that I agreed to when first applying for this funding. **** Even if I repay this funding within the first Six (6) months from the date herein, the Use Fee will be for Six (6) months from the date of this funding and the payoff figure will be computed on this basis. If I repay this funding within any subsequent Three (3) month period, the Use Fee will continue to accrue until the end of such subsequent Three (3) month period and the payoff amount will be computed on this basis. These amounts will be deducted from the proceeds of my lawsuit. ****

3. **Obligation; Proceeds.** The Legal Funding, plus any accrued Use Fee, compounded monthly, and any other fees or costs disclosed in the Disclosure Statement are called the "Obligation". The term "proceeds" shall include any money paid as a consequence of the Lawsuit whether by settlement, judgment or otherwise.

4. **Payments to Case Cash GP, LLC Made Directly from Proceeds.** In consideration of the Legal Funding, in signing this Funding Agreement, I am assigning to Case Cash GP, LLC an interest in the proceeds of my Lawsuit in an amount equal to the Obligations. The Obligation will be deducted from the proceeds of my Lawsuit and paid directly and immediately to Case Cash GP, LLC after payment of the fees due to the attorney representing me in my Lawsuit and any future attorney representing me in my Lawsuit ("my Attorney") and any lien holders that may exist of record as of this date, but before any payment is made to me.


5. **Obligation to be paid only Out of Proceeds; No Personal Liability.** Until there are proceeds payable to me from my Lawsuit, I will not owe anything to Case Cash GP, LLC. If I do not recover any money from my Lawsuit, I will not owe Case Cash GP, LLC anything. If the proceeds payable to me from my Lawsuit are insufficient to pay the full amount of the Obligation, Case Cash GP, LLC's recovery will be limited to the proceeds of my Lawsuit and I will not have any obligation to pay the deficiency to Case Cash GP, LLC.

X Client's Initials JG

- 6. **Right to Pay Obligation at Any Time.** I understand that I will have the right, at any time upon three days' prior notice, to pay to Case Cash GP, LLC the full amount of the then outstanding Obligation (including the accrued Use Fee) and that upon making such payment the Security Interest (defined below) will terminate and Case Cash GP, LLC will have no further interest in the proceeds of my Lawsuit.
- 7. **Security Interest in Proceeds of Lawsuit.** To secure Case Cash GP, LLCs' interest in the proceeds of my Lawsuit, in signing this Funding Agreement I am hereby granting to Case Cash GP, LLC an irrevocable first priority security interest in, and lien upon, the first \$48,796.08, *plus the monthly compounded funded rate of 3.50%* of the proceeds of my Lawsuit (the "Security Interest"). I understand that this amount may be more than the total amount of the Obligation that I will owe Case Cash GP, LLC from the proceeds of my Lawsuit. However, I am granting Security Interest to Case Cash GP, LLC in this amount to protect Case Cash GP, LLC's interest in the assigned proceeds. At any time that the amount of the Obligation exceeds the Security Interest, Case Cash GP, LLC may send my Attorney notice of an additional lien upon the proceeds of my Lawsuit and the Security Interest will automatically be increased by such amount.
- 8. **Authorization to Attorney to Make Payment and Provide Information to Case Cash GP, LLC** I hereby direct my Attorney to honor the Security Interest and to make the payment to Case Cash GP, LLC set forth in paragraph 3 above. At the same time as I have signed this Funding Agreement I have also instructed my Attorney to cooperate with Case Cash GP, LLC and to give Case Cash GP, LLC periodic updates of the status of my Lawsuit as requested by Case Cash GP, LLC and to send all payments due to Case Cash GP, LLC under this Funding Agreement to the address first set forth above.
- 9. **Fees and Costs in the Event of a Dispute.** If Case Cash GP, LLC must retain an attorney to collect the sums due under this Funding Agreement, I agree to pay the reasonable fees and costs incurred by Case Cash GP, LLC in hiring such attorney. I further agree that a fee equal to one-third of the money due Case Cash GP, LLC will be a reasonable fee for such purpose.
- 10. **Notification of Change in Attorney.** If I change Attorneys I will notify Case Cash GP, LLC within 48 hours of the change, and provide Case Cash GP, LLC with the name, address and phone number of my new Attorney.
- 11. **Notification of Change in Address.** I will receive any notices required under this Funding Agreement at the address I have first set forth above. If I move, I will notify Case Cash GP, LLC within 72 hours of my new address.
- 12. **No Other Liens on Proceeds.** From and after today I will not knowingly grant any security interest or create any additional lien against the proceeds of my Lawsuit, specifically including any security interests or liens against the proceeds of my Lawsuit as a result of any funding or loans that I might receive after the date of this Funding Agreement, without the prior written consent of Case Cash GP, LLC (except those that may be necessary to the prosecution of my Lawsuit). The consent of Case Cash GP, LLC to any additional lien may be withheld for any reason. The company reserves the right to file a Uniform Commercial Code (U.C.C.) at its sole discretion to protect the litigation funding lien in this matter.

X Client's Initials: JK

13. **Lawsuit.** For all purposes of this Funding Agreement: the term "my Lawsuit" shall be for The cause of action arising from the injuries sustained in the accident which occurred on or about June 12, 2014, involving Janine Gaskin.
14. **Case Cash GP, LLCs' Interest is ONLY in the Proceeds.** New York State Judiciary Law §489 ("Champerty") prohibits any individual or company to acquire someone else's right to sue. In entering into this Funding Agreement, I specifically acknowledge that: Case Cash GP, LLC is in no way acquiring my right to sue, either in connection with the Lawsuit or otherwise and that I am not assigning my cause of action, but only a portion of the proceeds from my Lawsuit; that I have already commenced the Lawsuit with counsel of my own choosing; that the Lawsuit absolutely belongs to me and no one else; and that Case Cash GP, LLC will in no way be involved, or have the right to be involved, in the decisions that I and/or my Attorney make in connection with the prosecution or settlement of my Lawsuit.
15. **Waiver of Defenses Against Payment.** It is my desire that this Funding Agreement be enforced to the fullest extent permitted by law. I therefore waive any defense to payment of the sums due and promise not to seek to avoid payment of any sums due to Case Cash GP, LLC under this Funding Agreement. No failure on the part of Case Cash GP, LLC to exercise any right that it may have arising under this Funding Agreement shall be deemed to be a waiver of any such right.
16. **Complete Agreement; Changes Must be in Writing.** This Funding Agreement represents the entire agreement between Case Cash GP, LLC and me and takes precedence over any prior understandings, representations or agreements. This Funding Agreement may only be modified in writing.
17. **Severability.** If any provision of this Funding Agreement shall be deemed invalid or unenforceable, it shall not affect the validity or enforceability of any other provision hereof.
18. **Binding Agreement.** This Funding Agreement will be binding on me and on my heirs, executors and administrators.
19. **Governing Law.** I agree that any disputes that may arise out of this Funding Agreement shall be adjudicated in either the Supreme Court or the Civil Court in the State of New York County of Kings. This Funding Agreement will be construed in accordance with the laws of the State of New York, without giving effect to the principles thereof relating to conflict of laws, and may be executed in separate counterparts. A signature transmitted by telecopier (fax) shall be effective with the same force and effect as an original signature.
20. **Consider Other Sources of Funding.** I have been advised that I should not accept the Legal Funding, assign an interest in the proceeds of my Lawsuit or grant the Security Interest as set forth in this Funding Agreement if I have any other alternative to meet my immediate economic needs and that Case Cash GP, LLC is a source of capital of last resort. To compensate Case Cash GP, LLC for taking a substantial risk in providing me with the Legal Funding, I understand that Case Cash GP, LLC will also make a substantial profit. However, Case Cash GP, LLC will be paid only from the proceeds of my Lawsuit, and will not to seek to recover any money from me directly in the event that my Lawsuit is not successful or seek excess money from me if the proceeds of my Lawsuit are less than the Obligation.

X Client's Initials: 

- 21. **You Should have Your Attorney Review this Funding Agreement.** I acknowledge that Case Cash GP, LLC has advised me to seek legal counsel of my own choosing prior to signing this Funding Agreement. I have either received such counsel or expressly waive it. This Agreement has been fully explained to me, and all questions that I might have about this transaction have been explained to me fully. [This has been done both in English and _____ the language I speak best.]

- 22. **CONSUMER'S RIGHT TO CANCELLATION.** I understand that I may cancel this Funding Agreement for any reason within five (5) business days of the date I received the Legal Funding from Case Cash GP, LLC. I must deliver to Case Cash GP, LLC my cancellation notice together with the entire amount of the Legal Funding. I may do this by (a) making personal delivery to Case Cash GP, LLCs' offices of my cancellation notice and the entire amount of the Legal Funding or (b) mailing a notice of cancellation together with the entire amount of the Legal Funding by insured, registered or certified United States mail, postmarked within 5 business days of receiving the Legal Funding from Case Cash GP, LLC. I may return the Legal Funding by delivering the un-deposited check Case Cash GP, LLC gave me or a certified or bank check in the amount of the Legal Funding or a money order in the amount of the Legal Funding.

Remainder of this page intentionally left blank

X Client's Initials:

I hereby accept the Legal Funding to be made by Case Cash GP, LLC pursuant to this Funding Agreement, agree to be bound by all of the terms and conditions of this Funding Agreement, grant Case Cash GP, LLC the Security Interest described above and assign to Case Cash GP, LLC the proceeds of my Lawsuit to the extent specified in this Funding Agreement on this Wednesday, July 22, 2015.

DISCLOSURE STATEMENT

Legal Funding issued to Me	\$41,000.00
Application Fee	\$1,000
Monthly Compounded Use Fee	3.50%
Yearly Compounded Use Fee	51.11%
Funding Date	7/21/2015
Total (App Fee + Legal Funding)	\$42,000.00

Total amount which would be due from me to Case Cash GP, LLC
 ON THIS FUNDING ONLY assuming repayment of the Legal Funding on the following dates:

<u>Date of Payment</u>	<u>Amount Due</u>
ON OR BEFORE 10/21/2015	\$51,628.72
ON OR BEFORE 1/21/2016	\$51,628.72
ON OR BEFORE 4/21/2016	\$57,241.69
ON OR BEFORE 7/21/2016	\$63,464.88
ON OR BEFORE 10/21/2016	\$70,364.65
ON OR BEFORE 1/21/2017	\$78,014.55
ON OR BEFORE 4/21/2017	\$86,496.12
ON OR BEFORE 7/21/2017	\$95,899.80
ON OR BEFORE 10/21/2017 **	\$106,325.82

**After this date, fees continue to accrue until Case Cash GP, LLC is paid in full. This chart includes example dates only. Dates after those shown will reflect additional pay-off amounts. Always contact Case Cash GP, LLC for your exact pay-off amount.

X Client's Initials: LC

DO NOT SIGN THIS FUNDING AGREEMENT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. BEFORE YOU SIGN THIS FUNDING AGREEMENT YOU SHOULD OBTAIN THE ADVICE OF YOUR ATTORNEY. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS FUNDING AGREEMENT.


Client Signature

Janine Gaskin
Client's Name (please print)

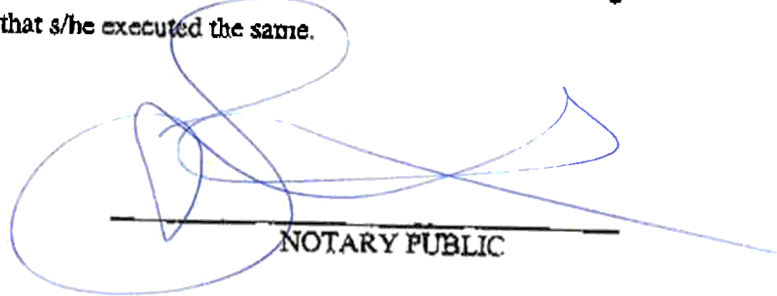
AGREED AND ACCEPTED:

Case Cash GP, LLC

By: _____
Name:
Title:

STATE OF NEW YORK)
) ss.:
COUNTY OF New York)

On the 23 day of July, 2015, before me personally came Janine Gaskin, known to me, and known to me to be the individual described in and who executed the within Funding Agreement and duly acknowledged to me that s/he executed the same.


NOTARY PUBLIC

LEONARD JAMES SPANO
Notary Public, State of New York
No. 01SP6264916
Qualified in New York County
Commission Expires July 02, 2016

Client's Initials: LG