STATE OF MICHIGAN

COURT OF APPEALS

CORTRAN GROUP, INC., CORTRAN INVESTMENTS, INC. and PETER SCHMITT,

Plaintiffs-Appellants,

v

MICHAEL R. DINNIN and DINNIN & DUNN, P.C.,

Defendants-Appellees.

UNPUBLISHED
March 9, 1999

No. 206681
Oakland Circuit Court
LC No. 96-525120 NM

Before: Markman, P.J., and Jansen and J.B. Sullivan*, JJ.

PER CURIAM.

In this legal malpractice action, plaintiffs appeal as of right the trial court's order granting summary disposition in favor of defendants. Following this grant of summary disposition, plaintiffs filed a motion, ostensibly for relief from judgment pursuant to MCR 2.612. The trial court denied this motion. Plaintiffs now appeal only the court's decision regarding summary disposition, not the decision regarding the motion for relief from judgment. We affirm in part and reverse and remand in part.

This action stems from a previous patent infringement case in which defendant Michael R. Dinnin was retained by CrimTec Corporation (CrimTec) to act as its attorney in 1990. CrimTec apparently developed and marketed a video incident capture system (VICS), aimed at aiding the capture and detention of criminals, and Vysion, Inc. was responsible for the actual manufacture of VICS. Plaintiff Peter Schmitt was the sole shareholder of Cortran Group, Inc., Cortran Investments, Inc.; and was the majority shareholder of CrimTec Systems, Inc. and the sole owner of Vysion, Inc. Plaintiffs alleged that in 1991, Dinnin made representations to them in order to induce them to invest money in CrimTec: Plaintiffs claimed that he advised them that marketing VICS did not infringe any valid patents, so plaintiffs invested approximately two million dollars into CrimTec. Around this same time, according to plaintiffs, Dinnin applied for a patent on VICS on behalf of CrimTec. Plaintiffs alleged that "thereafter, Dinnin entered into an attorney-client relationship with the plaintiffs."

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

In May 1992, P.A.T. Company (PATCO) accused CrimTec of infringing on its patents through the production and sale of the VICS product. On June 15, 1992, Dinnin advised plaintiffs by letter that PATCO's patents were invalid, unenforceable and were not infringed by CrimTec's manufacture and sale of the VICS product. In October 1992, PATCO brought suit in federal court charging CrimTec with patent infringement. On the advice of defendants who again insisted that PATCO's patents were unenforceable and perhaps obtained by fraud, plaintiffs[1] did not settle the dispute.

In February 1993, CrimTec was sold to CrimTec Systems, Inc. In November 1993, plaintiff Schmitt signed defendants' "engagement agreement" as chairman of both CrimTec Systems, Inc. and Cortran Group, Inc. That agreement stated in part:

> In performing our services, we will give you our best judgment in light of the law, and the information which you supply us. There are of course, no representations, guarantees or warranties as to the particular results we may be able to obtain, although we do believe that the two P.A.T. Co. U.S. patents involved will be held invalid or unenforceable by the Courts . . . Please acknowledge approval (by CrimTec Systems, Inc. & Cortran Group Inc.) to the terms of our engagement agreement by having an officer of each company sign the enclosed copy of this letter and returning it to me.

In February 1994, CrimTec Systems, Inc. and Vysion, Inc. were added as defendants to PATCO's suit. In June 1994, PATCO prevailed in the suit and was awarded damages of $409,000 and further sales of the VICS product were enjoined. Subsequently, CrimTec Systems, Inc. and Vysion, Inc. declared bankruptcy. PATCO attempted to have Schmitt and Cortran Group Inc. named as parties to the judgment and defendants wrote the brief opposing their addition. Before the motion to add parties could be decided, Schmitt agreed to pay a settlement amount to PATCO and relinquish CrimTec System's rights to the VICS patent, and was prohibited from entering the police video marketplace for ten years.

Thereafter, plaintiffs brought suit against Dinnin and his firm charging legal malpractice. Plaintiffs alleged that the attorney-client relationship between plaintiffs and defendants continued into the post-judgment proceedings that followed the PATCO litigation. Defendants have at all times denied that an enforceable attorney-client relationship existed between the parties, arguing that they entered an attorney-client relationship with CrimTec, but never specifically with plaintiffs. They argued further that Dinnin's representation of any party involved in the PATCO litigation ended June 21, 1994, directly following the entry of the judgment in PATCO's favor. The trial court granted defendants' motion on July 17, 1997, reasoning that there was no attorney-client relationship upon which plaintiffs could base their allegation of malpractice.

On July 28, 1997, plaintiffs filed a motion, ostensibly for relief from judgment pursuant to MCR 2.612, challenging the court's ruling on the motion for summary disposition. The trial court ruled that plaintiffs' motion was not properly brought before the court pursuant to MCR 2.612(C)(1)(f), stating: "But I'm going to deny the request because I think it should have been a motion for reconsideration, and I don't think it fits within 612." An order denying the motion was entered on September 22, 1997, and plaintiffs then filed their claim of appeal on October 3, 1997.

This Court reviews decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).

> MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to [judgment] as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Id.*]

Plaintiffs appeal the trial court's order granting defendants' motion for summary disposition in this case. However, as a preliminary matter, we must first address defendants' argument that plaintiffs failed to preserve the summary disposition issues for appeal because they failed to timely file their appeal. Generally, in order for an appeal in a civil action to be considered timely, a claim of appeal must be filed within twenty-one days after the entry of the final order or judgment appealed from. MCR 7.204(A)(1)(a). A motion for relief from judgment, pursuant to MCR 2.612, "does not affect the finality of a judgment or suspend its operation." MCR 2.612(C)(2); *Jachim v Coussens*, 88 Mich App 648, 652; 278 NW2d 708 (1979). If a motion for relief from judgment is denied after the expiration of the time allowed for an appeal from the underlying judgment or order, only the order denying the motion for relief can be properly preserved for this Court's review. See *Miller v Varilek*, 117 Mich App 165, 167-69; 323 NW2d 637 (1982); *Jachim, supra* at 651-52. However, an appeal may be filed "21 days after the entry of an order denying a motion for a new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period." MCL 7.204(A)(1)(b). Thus, "'[a] motion for relief from judgment is unlike a motion for new trial in that it does not affect the finality of a judgment and the running of the period allowed for appeal.'" *Jachim, supra* at 652, quoting 3 Honigman & Hawkins, Michigan Court Rules Annotated, at 173.

In the present case, the trial court's order granting defendants' motion for summary disposition was filed on July 17, 1997. On July 28, 1997, plaintiffs filed a motion entitled "plaintiffs' motion for relief from judgment," pursuant to MCR 2.612, which was denied by the court on September 22, 1997. Thereafter, plaintiffs filed their claim of appeal on October 3, 1997, challenging the propriety of the trial court's order granting summary disposition. Thus, if we accept plaintiffs' characterization of their motion as a motion for relief from judgment, it would not have affected the running of the time period allowed for filing a claim of appeal. Plaintiffs' appeal was filed over twenty-one days from the entry of final judgment-- the order granting summary disposition. Consequently, the appeal from summary disposition would not have been timely, and the scope of the instant appeal would be limited to review of the trial court's denial of plaintiffs' motion for relief from judgment, which was filed less than twenty-one days before the claim of appeal was filed on October 3, 1997.

However, this Court need not simply accept the parties' or the court's characterization of a motion without addressing its substance. While addressing a double jeopardy issue, the Supreme Court held that "the trial court's characterization of its ruling is not dispositive, and what constitutes an

'acquittal' is not controlled by the form of the action." *People v Mehall*, 454 Mich 1, 5; 557 NW2d 110 (1997); see also *Ahrenberg Mechanical Contracting, Inc v Howlett*, 451 Mich 74; 545 NW2d 4 (1996). Thus, the Supreme Court determined in *Mehall*, a reviewing court must look to the substance of a decision, regardless of the label, to determine what the ruling actually determined. *Mehall*, *supra* at 5. In our judgment, this holding is no less applicable in the case at hand, and we should look beyond mere form to the substance of the motion and the corresponding decision to determine the actual type of motion brought by plaintiffs in the court below.

Accordingly, we look to the treatment given the motion to determine its true character. First, in our judgment, the purpose of the motion raised by plaintiffs was to move for rehearing or reconsideration of the motion for summary disposition. A motion for rehearing or reconsideration specifically addresses "the decision on a *motion*," MCR 2.119(F)(1) (emphasis added), which is precisely what was at issue in the case at hand. While MCR 2.119(F)(3) states that a motion for rehearing or reconsideration "must demonstrate a palpable error by which the court and the parties have been misled an show that a different disposition of the motion must result from correction of the error," this Court has held that this language may be understood to simply be "an expression of great reluctance to entertain or grant motions for reconsideration." *Michigan Bank-Midwest v DJ Reynaert, Inc*, 165 Mich App 630, 645; 419 NW2d 439 (1988). In other words, this rule "does not prevent a court's exercise of discretion on when to give a party a 'second chance' on a motion it has previously denied." *Id.* at 646. Plaintiffs' motion here effectively asked for a second chance to present the evidence of an attorney-client relationship. Although plaintiffs' motion was entitled, "plaintiffs' motion for relief from judgment," and stated that it was pursuant to MCR 2.612, plaintiffs did not rely upon the grounds for relief from judgment contained in MCR 2.612(C) in their motion.[2] In addition, the motion was filed only eleven days after the trial court's order on the motion for summary disposition was filed, well within the fourteen-day limit for filing a motion for rehearing or reconsideration. MCR 2.119(F)(1). In contrast, a motion for relief from judgment need only be made "within a reasonable time, and . . . within one year after the judgment," MCR 2.612(C)(2), and thus is generally viewed as a means "to give relief from a judgment for circumstances or grounds that were not available in time for other post-judgment motions or, if available, where additional and compelling circumstances would excuse failure to raise such matters earlier," which does not apply in this case. Martin, Dean & Webster, Michigan Court Rules Practice, Rule 2.612, at 469. Thus, in our judgment, the arguments and actions of plaintiffs on the motion at issue were indistinguishable from those generally raised in a motion for rehearing or reconsideration.[3]

Second, we believe that the motion raised by plaintiffs was effectively treated as a motion for rehearing or reconsideration by the trial court. The trial court recognized explicitly that plaintiffs' motion "should have been a motion for reconsideration, and I don't think it fits within [MCR 2.612]." In contrast to defendants' argument on appeal that the trial court relied upon the title of the motion as a motion for relief from judgment and made its decision on this basis, the trial court in fact listened to the arguments of both parties that effectively argued for and against a "second chance." The court did not base its decision to deny the motion on specific grounds for relief from judgment contained in MCR 2.612(C), but instead on the basis of whether or not he made a mistake on the original motion for

summary disposition. Thus, in our judgment, the trial court would not have dealt any differently with plaintiffs' motion had it been entitled, "motion for rehearing or reconsideration."

In addition, and contrary to defendants' arguments, defendants did not detrimentally rely upon the title of plaintiffs' motion in this case. Defendants recognized explicitly at the hearing on the motion that the motion should have been a motion for rehearing or reconsideration, and they argued generally that the trial court's decision on the motion for summary disposition was correct, without relying exclusively upon the grounds for relief from judgment pursuant to MCR 2.612. Further, unlike in the case of *Lark v Detroit Edison Co,* 99 Mich App 280, 284; 297 NW2d 653 (1980), where the party in whose favor summary disposition was entered was prejudiced by the lapse of time between the summary disposition and the motion for relief from judgment because it gave information to its adversary, defendants here have made no real showing of prejudice.

On the basis of these factors, we conclude that plaintiffs' motion in this case was, in reality, a motion for rehearing or reconsideration. Although it was entitled, "plaintiffs' motion for relief from judgment," pursuant to MCR 2.612, plaintiffs and the trial court treated the motion indistinguishably from a motion for rehearing or reconsideration. Even defendants explicitly recognized that the motion should have been a motion for rehearing or reconsideration. Thus, looking beyond the form of the motion to the substance of the purpose of the motion as well as its treatment by the parties and the court, we conclude that plaintiffs' motion was a motion for rehearing or reconsideration pursuant to MCR 2.119(F). Consequently, since plaintiffs' motion for rehearing or reconsideration was filed within eleven days of the filing of the trial court's summary disposition decision, and their claim of appeal was filed less than twenty-one days from the trial court's decision on plaintiffs' motion for rehearing or reconsideration, plaintiffs' appeal of the summary disposition order was filed in a timely manner. *Nye v Gable, Nelson & Murphy,* 169 Mich App 411, 415; 425 NW2d 797 (1988).

Accordingly, we now address plaintiffs' claim on appeal: that the trial court's order granting defendants' motion for summary disposition on the basis that there was no attorney-client relationship was improper. In a legal malpractice action, the plaintiff has the burden of proving four elements of a prima facie case: "(1) the existence of the attorney-client relationship; (2) the acts which are alleged to have constituted the negligence; (3) that the negligence was the proximate cause of the injury; and (4) the fact and extent of the injury alleged." *Adell v Sommers, Schwartz, Silver and Schwartz, PC,* 170 Mich App 196, 204; 428 NW2d 26 (1988). "Generally, a legal malpractice action may be brought only by a client who feels that he has been damaged by retained counsel's negligence." *Beaty v Hertzberg & Golden, PC,* 456 Mich 247, 253; 571 NW2d 716 (1997).

In the case at hand, plaintiffs argue both that plaintiffs were in an attorney-client relationship with defendants, and that plaintiffs were the proper parties to sue for malpractice because, as shareholders in the corporations represented by defendants, defendants owed fiduciary duties even if there was no attorney-client relationship. Although the trial court found that there was no attorney-client relationship between any of the plaintiffs and Dinnin, it appears to this Court that such relationship is a factual question with regard to two plaintiffs. At the time that the trial court addressed defendants' motion for summary disposition and heard arguments on the motion, there was evidence before the court of a

November 15, 1993 "engagement agreement" addressed to Wyman Bolton, Esq., CrimTec Systems Inc., and Cortran Group, Inc. which began, "You have requested us to be your legal counsel . . ." The agreement was signed by Schmitt as the corporate officer of both CrimTec Systems, Inc. and Cortran Group, Inc., and by Dinnin. This agreement was similar to a November 2, 1992 "engagement agreement" regarding CrimTec and a May 16, 1994 "engagement agreement" signed by Dinnin and Schmitt as the corporate officer of Vysion, Inc. that defendants acknowledge established an attorney-client relationship between defendants and CrimTec and Vysion. Although defendants argue that the November 15, 1993 agreement was signed by the corporate officer of Cortran Group, Inc merely in its capacity of co-guarantor of payment of CrimTec's legal bills, we must view the evidence on the record at the time of summary disposition in the light most favorable to the non-moving party. In this light, we believe that the November 15, 1993 agreement raises an issue of fact as to whether plaintiff Cortran Group, Inc. and defendants had an attorney-client relationship.

At the time of the summary disposition motion, there was also evidence before the court of a brief filed by defendant law firm and signed by Dinnin's partner, Robert A. Dunn, in the underlying patent infringement suit, opposing the addition of two new parties to the suit, Peter Schmitt and Artek Industries, which the brief states is also known as Cortran Group, Inc. Again, defendants argue that they filed this brief only in their capacity as counsel for CrimTec and Vysion, and not as counsel for Schmitt and Cortran Group, Inc. However, under the standard of review that we must follow in reviewing a summary disposition decision, giving the benefit of the doubt to the non-moving party and making all reasonable inferences in their favor, *Bertrand v Alan Ford, Inc*, 449 Mich 606, 618; 537 NW2d 185 (1995), we believe that the evidence may show an attorney-client relationship between defendants and Schmitt, and between defendants and Cortran Group, Inc., since defendants filed a brief on their behalf. Thus, in our judgment, there was sufficient evidence before the trial court in this case to create an issue of fact regarding the existence of an attorney-client relationship between defendants and Schmitt, and between defendants and Cortran Group, Inc. However, we find no evidence that would lead us to conclude that Cortran Investments, Inc. may have had an actual attorney-client relationship with defendants.[4] Consequently, we conclude that the trial court improperly granted summary disposition to defendants in regard to plaintiffs Peter Schmitt and Cortran Group, Inc.

In addition to the actual attorney-client relationship, we must address plaintiffs' claim that they should be allowed to bring a legal malpractice claim as third-party non-clients. There has been a reluctance to permit a non-client to sue for malpractice because of the potential for conflicts of interests, *Beaty*, *supra* at 254; however, in certain, special circumstances, an attorney may be held liable to a third-party for legal malpractice, *Atlanta Int'l Ins Co v Bell*, 438 Mich 512, 518; 475 NW2d 294 (1991). In Michigan, the Supreme Court has allowed third-party claims based on the doctrine of equitable subrogation where an insurer is obligated to provide legal representation for an insured, *Atlanta*, *supra*, and based on third-party beneficiary status where the plaintiff is an intended beneficiary of the attorney's services, see *Beaty*, *supra* at 260; but has refused to extend malpractice liability against opposing counsel by a party-opponent, *Friedman v Dozorc*, 412 Mich 1, 24-5; 312 NW2d 585 (1981).[5]

Plaintiffs here argue for an additional third-party malpractice claim exception based upon the relationship of an attorney for a close corporation to the corporation's stockholders.[6] As a general tenet of corporate law, "[a] corporation exists as an entity apart from its shareholders, even where the corporation has but one shareholder." *Adell, supra* at 205; *Fassihi v Sommers, Schwartz, Silver, Schwartz & Tyler, PC*, 107 Mich App 509, 514; 309 NW2d 645 (1981). Therefore, generally, the client of an attorney representing a corporation is the corporate entity itself and not the shareholders. *Fassihi, supra* at 514. However, plaintiffs cite *Fassihi* for the proposition that the lack of an attorney-client relationship "does not necessarily mean that defendant had no fiduciary duty to plaintiff." *Id.* at 514. This Court in *Fassihi* stated that "[t]o claim breach of fiduciary duty, there must be a situation in which the non-client reasonably reposed faith, confidence, and trust in the attorney's advice." *Id.* at 515; see also *Beaty, supra* at 260. Further, this Court specifically discussed the issue of fiduciary duties as they relate to closely held corporations, stating:

> Instances in which the corporation attorneys stand in a fiduciary relationship to individual shareholders are obviously more likely to arise where the number of shareholders is small . . . the corporate attorneys, because of their close interaction with a shareholder or shareholders, simply stand in confidential relationships in respect to both the corporation and individual shareholders. [*Id.* at 516.]

However, upon close reading of *Fassihi, supra,* we find that this Court's analysis of a corporate attorney's possible fiduciary duties to the corporation's shareholders pertained only to the claim for breach of fiduciary duties in that case. This Court did not expressly extend this reasoning to the legal malpractice context or discuss how these possible fiduciary duties might impact upon the general requirement that malpractice plaintiffs be clients. In fact, a subsequent decision of this Court determined that, according to *Fassihi, supra,* an attorney could not represent both a corporation and an individual who represented the company at the same time, since a corporate attorney represented only the corporation. *Scott v Green,* 140 Mich App 384, 386, 400; 364 NW2d 709 (1985) (Kirwan, J., concurring in part) (the majority explicitly adopted Judge Kirwan's concurring opinion on this issue). Thus, this Court in *Scott* implicitly determined that *Fassihi* did not create an exception to the attorney-client relationship requirement in legal malpractice cases. See also *Beaty, supra* at 260 (applying *Fassihi, supra* only in the context of breach of fiduciary duty, not legal malpractice). In the absence of a clear mandate that an attorney's breach of a duty to his client's shareholder gives rise to a legal malpractice claim, and in the further absence of any argument by the parties regarding the policy considerations of such a holding, we will not expand the exception allowing third-parties to sue attorneys for malpractice here.

Although we do not decide here whether a duty to shareholders, as explained in *Fassihi,* could ever give rise to a third-party malpractice claim, we find no reason to apply this principle in this case. Plaintiffs argued merely that as shareholders in the corporations represented by defendants, defendants owed them fiduciary duties, and plaintiffs seemed to assume that this automatically allowed them to sue for malpractice under *Fassihi.* Even if we were to extend the third party malpractice claim to shareholders of close corporations, plaintiffs here did not make a credible showing that a fiduciary relationship was likely between defendants and plaintiffs in this case. *Fassihi* merely stated that a

fiduciary relationship was *more likely* between shareholders and a corporate attorney in a small, close corporation; not that there was a per se duty in every case. In the case at hand, it appears that in order for all three plaintiffs to have a fiduciary relationship with defendants pursuant to *Fassihi*, Schmitt would have had to have been representing not only CrimTec and Vysion during discussion with defendants, but also Cortran Group, Inc., Cortran Investments, Inc. and himself as an individual, because the relationship only arises out of the close contact between the attorney and the shareholder. In our judgment, it would not be logical or fair to expect a corporate attorney, who actually represents only the corporation, to consider the interests of every corporation represented by Schmitt, as well as Schmitt individually, especially since Schmitt was formally working closely with defendants as a representative of the actual clients. We believe that, absent extenuating circumstances that plaintiffs have not alleged, defendants were entitled to consider and deal with Schmitt only in his formal capacity as a corporate officer of their client corporations. Thus, we do not extend a third-party malpractice claim to shareholders of close corporations in this case, and find that the trial court's order granting summary disposition with regard to this issue, and therefore with regard to plaintiff Cortran Investments, Inc., was proper.

Finally, we address plaintiffs' claim that summary disposition was granted improperly because discovery had not yet been completed. Generally, a motion for summary disposition may be raised at any time, except that it is premature if granted before discovery on a disputed issue is complete. *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996). However, summary disposition may nevertheless be appropriate if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position. *Hasselbach v TG Canton, Inc*, 209 Mich App 475, 482; 531 NW2d 715 (1995). In the present case, plaintiffs stated that discovery was incomplete, but failed to show what new evidence was discoverable or how it would help plaintiffs prove their case. Thus, it appears that further discovery would not uncover factual support for plaintiffs' case and we find no error with regard to this issue. *Gara v Woodbridge Tavern*, 224 Mich App 63, 68; 568 NW2d 138 (1997).

For these reasons, we reverse the trial court's grant of summary disposition as to plaintiffs Peter Schmitt and Cortran Group, Inc. and remand for further proceedings consistent with this opinion. We affirm as to the remaining plaintiff, Cortran Investments, Inc.

Reversed and remanded in part and affirmed in part.

/s/ Stephen J. Markman
/s/ Kathleen Jansen
/s/ Joseph B. Sullivan

[1] Plaintiffs alleged in their complaint that "plaintiffs" talked to Dinnin regarding the patent infringement case and that "plaintiffs" relied on Dinnin's representations and thus did not settle the suit. We assume that, since Schmitt was the sole shareholder of both Cortran Group, Inc. and Cortran Investments, Inc, Schmitt would have represented all three plaintiff interests.

[2] Plaintiffs did refer specifically to MCR 2.612(C)(1)(f) in response to defendants' oral arguments.

[3] Defendants argue that plaintiffs had a strategic reason for bringing a motion for relief from judgment rather than a motion for rehearing or reconsideration. In particular, they refer to MCR 2.119(F)(2), which states that "there is no oral argument, unless the court otherwise directs." While such a consideration may well be relevant in some instances in evaluating whether to recharacterize a motion, we are not persuaded that it is germane in the instant case, even if it is an accurate description of plaintiff's reasons for filing its particular motion.

[4] While PATCO attempted to add both Schmitt and Cortran Group, Inc. to the underlying patent infringement suit, PATCO did not attempt to add Cortran Investments, Inc.

[5] Plaintiffs do not raise any of these third-party malpractice issues in the case at hand. Thus, we will not address them.

[6] Plaintiffs also argue that any cause of action which CrimTec or Vysion had against defendants was vested in or abandoned to Peter Schmitt as a result of the corporations' bankruptcy procedures. However, plaintiffs cite no law, nor do they advance any additional argument regarding this claim. "By failing to cite applicable case law or any policy considerations and by merely asserting a position," plaintiffs have abandoned this argument. *Smith v Saginaw Savings & Loan Assoc*, 94 Mich App 263, 274; 288 NW2d 613 (1978). Thus, we will not address this claim.