

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS IA Part 2
Justice

	x	
CLAUDETTE BECKFORD,		Index Number <u>12434</u> 1995
Plaintiff,		Motion Date <u>September 27,</u> 2006
- against -		Motion Cal. Number <u>3</u>
PANTRESSE, INC., NADINE BROWN and NEW PEOPLE BEAUTY,		
Defendants.		
	x	

The following papers numbered 1 to 10 read on this motion by defendant Pantresse, Inc. (Pantresse) for summary judgment dismissing the complaint insofar as it is asserted against it.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1-4
Answering Affidavits - Exhibits.....	5-8
Reply Affidavits.....	9-10

Upon the foregoing papers it is ordered that the motion is granted, the complaint as to Pantresse, Inc. is dismissed and the remainder of the action is severed.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of the use of a hair product manufactured by defendant Pantresse. It is alleged that defendant Nadine Brown, a licensed beautician, applied the conditioner or treatment to plaintiff's hair at the New People Beauty Salon. The complaint pleads causes of action for negligence, strict liability and breach of implied warranty.

To prevail in a products liability action, whether pleaded in strict products liability, breach of warranty or negligence, a plaintiff must show that the product was defective and that the defect in the product was a substantial factor in causing the injury. (See, Clarke v Helene Curtis, Inc., 293 AD2d 701 [2002].) A product may be defective by reason of a manufacturing flaw, improper design or failure to warn. (See, Sprung v MTR Ravensburg,

Inc., 99 NY2d 468, 472 [2003]; Liriano v Hobart Corp., 92 NY2d 232 [1998].) Where, as here, a plaintiff has not identified a specific flaw in the product, liability in a products liability case may be imposed only upon proof that the product did not perform as intended together with proof that excludes all other causes for the product's failure that are not attributable to the defendant. (See, Speller v Sears, Roebuck & Co., 100 NY2d 38, 41 [2003]; Clarke v Helene Curtis, Inc., supra.)

The evidence before the court demonstrates, at best, that plaintiff suffered an allergic reaction after Pantresse's product had been applied to her hair. Mere proof of injury furnishes no rational basis for inferring that the product was defective for its intended use. (See, Clarke v Helene Curtis, Inc., supra.) Defendant Pantresse has presented proof that no other consumer has complained of the same reaction to the product as plaintiff, and has established that the hair product was reasonably safe for its intended use as designed and performed as intended. (See, Pai v Springs Indus., 18 AD3d 529 [2005]; Rutherford v Signode Corp., 11 AD3d 922 [2004].) This proof defeats not only the strict liability claims predicated on a design or manufacturing defect but also the cause of action for breach of implied warranty. (See, Pai v Springs Indus., supra.; Clarke v Helene Curtis, Inc., supra.) Furthermore, the absence of proof that an appreciable number of users of the product ever experienced a similar reaction to it negates the claim that Pantresse had a duty to warn. (See, Kaempfe v Lehn & Fink Prods. Corp., 21 AD2d 197 [1964], affd 20 NY2d 818 [1967]; Smallwood v Clairol, Inc., 2005 US Dist LEXIS 2726.) In addition, the element of foreseeability necessary to succeed on a negligence cause of action is missing where an injury is due to some allergy or other personal idiosyncrasy of a plaintiff not shared by a substantial number of the possible users of a product. (See, Pai v Spring Indus., supra.; Kaempfe v Lehn & Fink Prods. Corp., supra.)

Plaintiff has failed to submit evidence sufficient to raise a triable issue of fact regarding the existence of a defect in the product. Moreover, the conclusory medical proof relied upon by plaintiff fails to raise an issue of fact on the causal relationship between the hair product and plaintiff's condition. (See, Clarke v Helene Curtis, Inc., supra.; Villariny v Aveda Corp., 264 AD2d 415 [1999].) The lack of proof that plaintiff's injuries are the direct result of Pantresse's hair product and that the product is the sole possible cause of those injuries warrants an award of summary judgment to defendant Pantresse. (See, Clarke v Helene Curtis, supra.; Villariny v Aveda Corp., supra.)

Dated: December 1, 2006

J.S.C.