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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD PART 35

Index Number : 106728/2007
GRAHAM, SOMER
VS.
BLISSWORLD
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion of defendants Blissworld, LLC d/b/a Bliss Spa ("Blissworld") and "Bella" (a name intended to represent the employee, agent, servant or representative of Blissworld who performed the treatment) for an order, pursuant to CPLR §3212, granting them summary judgment against plaintiff Somer Graham is denied; and it is further

ORDERED that defendants serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

FILED
AUG 25 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/21/09

HON. CAROL EDMEAD J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

----------x

SOMER GRAHAM,

Index No. 106728/07

Plaintiff,

-against-

DECISION/ORDER

BLISSWORLD, LLC d/b/a BLISS SPA and "Bella" (a name intended to represent the employee, agent, servant or representative of defendant, BLISSWORLD, LLC who performed the treatment),

Defendants.

----------x

HON. CAROL ROBINSON EDMEAD, J.S.C.

MEMORANDUM DECISION

In this personal injury action, plaintiff Somer Graham ("plaintiff") seeks to recover damages for negligence from defendants Blissworld, LLC d/b/a Bliss Spa ("Blissworld") and "Bella" (a name intended to represent the employee, agent, servant or representative of Blissworld who performed the treatment) ("Bella") (collectively "defendants").

Defendants now move for an order, pursuant to CPLR §3212, granting them summary judgment.

Plaintiff's Complaint[1]

On July 12, 2006, plaintiff appeared at Bliss Spa, a New York beauty salon operated by Blissworld, to receive a Brazilian bikini wax (the "bikini wax"). The bikini wax was performed by Bella Normatov ("Ms. Normatov"), an employee of Bliss Spa. Plaintiff alleges, *inter alia*, that Ms. Normatov was careless, reckless and negligent in the administration of the bikini wax, and that Blissworld was negligent for failing to properly train Ms. Normatov and failing to warn plaintiff of possible injury.

[1]Information is taken from plaintiff's Complaint and Bill of Particulars.

Plaintiff alleges that as a result of defendants' negligence, plaintiff suffered serious injuries to her genitalia, causing her pain, mental anguish, and the inability to attend to her occupation and activities. Plaintiff alleges that she has had to undergo medical care and treatment, and she is seeking a judgment awarding damages.

Defendants' Motion

First, defendants argue that plaintiff has failed to provide any medically documented proof of injury. Defendants contend that a cognizable injury is a necessary element in an action to recover for personal injuries. An independent medical examination of plaintiff conducted on October 14, 2008 (the "Oct. 14, 2008 IME") reveals a lack of injury to satisfy the damages prong of a negligence action, defendants argue. Defendants further contend that if there is no evidence of an underlying injury, any allegations of resulting sequela, be they subjective complaints of pain or emotional issues, would not be actionable, as well.

Defendants contend Dr. Robert Rho ("Dr. Rho"), a board certified cosmetic and gynecological surgeon, conducted the Oct. 14, 2008 IME (see "Dr. Rho's Oct. 14, 2008 Notes"). Dr. Rho was unable to find any physical evidence of trauma, lesions, lacerations, or inflammation, defendants contend, citing the Notes. Further, in an affirmation, Dr. Rho reiterates his negative physical findings (see the "Rho Aff."). Moreover, Dr. Rho states that his review of the records from the plaintiff's health care providers (the "Medical Records"), specifically the records of Drs. Farzad Nabatian ("Dr. Nabatian"), Orit Beitner ("Dr. Beitner"), and Monica Peacocke ("Dr. Peacocke") also failed to reveal abnormal findings to correlate to plaintiff's purported complaints.

Defendants argue that according to the Medical Records, plaintiff's first visit after the alleged incident was with her gynecologist, Dr. Nabatian, on August 7, 2006. "Curiously, omitted from that

packet but subsequently provided by Dr. Nabatian's office is the chart entry of a week earlier on 8/1/06," defendants' contend (see "Dr. Nabatian's Aug. 1 Notes"). This was plaintiff's first documented visit after her purported injury, defendants contend. During her July 24, 2008 deposition (the "Graham EBT"), plaintiff testified that Dr. Nabatian found a cut during his initial examination (Graham EBT, p. 70). However, Dr. Nabatian's Aug. 1 Notes reveal not only that did plaintiff fail to make any complaint of a vaginal injury, but also that a physical examination was performed of the external genitalia and the vagina, both of which were found to be normal, defendants contend. Dr. Nabatian later provided an affirmation wherein he attests that his chart does not reveal any complaint by plaintiff and indicates that she had a normal genital/vaginal examination (see the "Nabatian Aff.").

Plaintiff testified that she later came under the care of Dr. Beitner (Graham EBT, p. 85). Defendants argue that although plaintiff again complained of tenderness to the right labia minora, a tear that was not healing, and vulva irritation, Dr. Beitner's physical examination on August 17, 2006 revealed negative lesions, no ulcer, no burn, no scar and no erythema. Although plaintiff continued to make complaints during subsequent medical visits, the Medical Records reflect that as of the last documented visit with Dr. Beitner (October 3, 2006), no objective physical finding was documented, and plaintiff was advised that no pathology was seen, defendants argue; this is despite plaintiff's testimony that Dr. Beitner advised her that she had an injury that would need to be sewn back together (Graham EBT, p. 101).

Plaintiff later was seen by Dr. Peacocke, whose initial examination report also failed to indicate a finding, defendants contend.

Second, defendants argue that plaintiff has failed to demonstrate that defendants' acts proximately caused an injury. The fact that no trauma was noted during plaintiff's first medical visit on

August 1, 2006 breaks the required connection for proximate cause, defendants argue.

Plaintiff's Opposition

Plaintiff contends that the only basis for defendants' motion is that the physical examination performed by Dr. Nabatian on August 1, 2006, and the subsequent visits to Dr. Beitner and Dr. Peacocke did not result in a finding of a vaginal injury. Although Dr. Nabatian's Aug. 1 Notes did not indicate a finding of a vaginal injury, plaintiff explained during her deposition that she had been embarrassed to speak with Dr. Nabatian about her injury on the first day when he examined her, among other reasons because he is male, and that she was embarrassed about the nature of her injury. Therefore, Dr. Nabatian's failure to mention an injury in his Aug. 1 Notes is not indicative of anything, plaintiff argues.

Plaintiff further testified that she mentioned her injury to Dr. Nabatian after the Aug. 1, 2006 visit, and that Dr. Nabatian told her that since he was only scheduled to do a standard gynecological examination, she would have to reschedule and come back so he could take a look at that particular complaint. She came back for that follow-up examination just six days later on August 7, 2006. Plaintiff argues that there would be no reason for her to return for a further examination only six days later, if she had made no complaints at her August 1 examination.

Plaintiff argues that defendants refer to plaintiff's August 7, 2006 examination by Dr. Nabatian without actually discussing Dr. Nabatian's notes from that examination. After plaintiff stated her complaint to Dr. Nabatian and he conducted a further examination on August 7, 2006, Dr. Nabatian not only noted her complaints but also a finding of a "vaginal rash" in his records, plaintiff argues (see "Dr. Nabatian's Aug. 7 Notes"). Dr. Nabatian also makes reference to an "injury," plaintiff contends. Plaintiff further contends that, while the writing "then becomes somewhat more difficult to read," Dr.

Nabatian's notes appear to state "s/p injury [status post injury]; c/o [complaints of] [illegible]. The remainder of the report is illegible, although it does appear to make a reference to "[illegible] on the fold of [illegible]," plaintiff contends.

Plaintiff further contends that Dr. Beitner's records of September 5, 2006 reflect her complaints about the waxing incident and specifically the impact that the incident had upon her sex life. Plaintiff's complaints of irritation persisting at her right inter-labial fold are reflected in the Medical Records (see "Dr. Beitner's Sept. 5 Notes"). Dr. Beitner's Sept. 5 Notes also describe plaintiff's status as post-trauma and indicate that plaintiff complained of vulvar discomfort. Plaintiff's persistent complaints of discomfort resulted in her being referred to Dr. Peacocke for further evaluation, plaintiff contends.

On October 3, 2006, plaintiff saw Dr. Beitner again. Dr. Beitner's notes from that visit indicate tenderness at the right anterior labial edge extending to the clitoris, plaintiff contends ("Dr. Beitner's Oct. 3 Notes"). It is also noted that the plaintiff was still having painful sexual relations and could not have sex. T he reason for the visit is noted as being "painful labia from wax." At that point, plaintiff contends that she was referred to a "vulvar expert"[2].

Plaintiff also argues that defendants refer to Dr. Peacocke's August 17, 2006 exam without discussing Dr. Peacocke's notes from that exam ("Dr. Peacocke's Aug. 17 Notes"). Indeed, Dr. Peacocke's Aug. 17 Notes reflect the plaintiff's complaints of vulvar irritation following a waxing four weeks earlier, a tear that was not healing, tenderness of the right labia minora, and an assessment of labia trauma, plaintiff argues.

Plaintiff argues that all of the Medical Records document her ongoing consistent complaints

[2]Upon examination of the Medical Records, the Court finds an entry in Dr. Beitner's Sept. 5 Notes dated September 11, 2006 that indicates that plaintiff was referred to Dr. Peacocke for evaluation.

following her injury. She further argues that the findings of a tear are supported by the records of Dr. Peacocke, as well as plaintiff's ongoing complaints.

Plaintiff further argues that Dr. Rho's report from the Oct. 14, 2008 IME is not affirmed; Dr. Rho only mentions that he reviewed medical records, but not what they contained, let alone the significance of any such findings. Further, Dr. Rho's Oct. 14, 2008 Notes say nothing about a causal relationship between the incident and plaintiff's injuries.

Plaintiff argues that the Court is obligated to view the parties' conflicting contentions and proofs in a light most favorable to the party opposing the motion. The records and plaintiff's testimony neatly coincide, plaintiff argues. Plaintiff's records clearly establish the causal relation of plaintiff's injury to the bikini waxing. Finally, based on that alone, the question of causal relation between an accident and a plaintiff's injury is a question of fact for the jury.

Defendants' Reply

Defendants argue that the omission from the plaintiff's opposition papers (to wit, an affirmation or other statement in admissible form from any physician who either treated the plaintiff or examined her in furtherance of the instant lawsuit) not only renders those papers procedurally defective, but also further supports the basis for granting summary judgment. Defendants contend that they submitted proof in admissible form to demonstrate that there is no causal connection between the purported negligence and the alleged injury and to demonstrate that there, in fact, is no injury.

In response to plaintiff's argument that Dr. Rho's Oct. 14, 2008 Notes were not affirmed nor referenced specific records or a causal connection, defendants contend that plaintiff overlooked the Rho Aff. Defendants argue that Dr. Rho attests, as a board certified cosmetic and

gynecological surgeon, that his review of the plaintiff's treating records are "the kind generally reliable to the issue of diagnosis and treatment." Therefore, Dr. Rho's opinions are in admissible form under the "professional reliability" exception, defendants argue. Dr. Rho further attests that the Medical Records did not reveal any objective proof of injury.

Defendants contend that, contrary to plaintiff's arguments, Dr. Rho also addressed the issue of a causal relationship.

Defendants also argue that Dr. Nabatian attests that during plaintiff's first visit after the purported injury, plaintiff did not make any complaints of a vaginal injury and, most significant, his vaginal examination of the external genital was normal (Nabatian Aff., ¶ 3). According to plaintiff's testimony, Dr. Nabatian had been plaintiff's gynecologist for six years preceding the purported injury, defendants argue. The uncontested facts that plaintiff did not complain of a vaginal injury during her first visit to Dr. Nabatian and that Dr. Nabatian found no injury during that first visit are proof of the breaking of the causal connection, defendants argue.

Defendants contend that plaintiff's failure to come forward with evidence on the issue of causation in opposition to defendant's motion requires that summary judgment be granted and the complaint dismissed. Defendants go on to distinguish the caselaw plaintiff cites. Plaintiff failed to come forward with evidentiary proof in admissible form to establish the existence of material issues of fact which require a trial. Instead, plaintiff's counsel makes his own readings and opinions (as opposed to a physician's) regarding the hearsay medical records in this case; such statements have no probative weight, defendants argue.

As for plaintiff's attempt to cure this omission (to wit, plaintiff's deposition testimony and the "self-serving affidavit wherein she conjures an explanation for the doctor's failure to

document any complaint of injury"), plaintiff remains unable to offer any probative proof to contest the results of the examinations and the breaking of the causal connection. Moreover, the interpretation of the Medical Records by plaintiff, who has no medical qualifications, is as irrelevant as that of her attorney. Submissions by a plaintiff that are unaffirmed and unsworn, even when accompanied by the plaintiff's own affidavit, are without probative value in opposing a motion for summary judgment, defendants contend.

Analysis

Summary Judgment

It is well settled that where a defendant is the proponent of a motion for summary judgment, the defendant must establish that the "cause of action . . . has no merit" (CPLR §3212[b]) sufficient to warrant the court as a matter of law to direct judgment in his or her favor (*Bush v St. Claire's Hosp.*, 82 NY2d 738, 739 [1993]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Wright v National Amusements, Inc.*, 2003 NY Slip Op 51390 [U] [Sup Ct New York, 2003]). Thus, the proponent of a motion for summary judgment make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact (*Winegrad v New York Univ. Med. Ctr.*; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Silverman v Perlbinder*, 307 AD2d 230, 762 NYS2d 386 [1st Dept 2003]; *Thomas v Holzberg*, 300 AD2d 10, 11 [1st Dept 2002]). A party can prove a *prima facie* entitlement to summary judgment through the affirmation of its attorney based upon documentary evidence (Zuckerman; *Prudential Securities Inc. v Rovello*, 262 AD2d 172 [1st Dept 1999]).

Alternatively, to defeat a motion for summary judgment, the opposing party must show

facts sufficient to require a trial of any issue of fact (CPLR §3212[b]). Thus, where the proponent of the motion makes a *prima facie* showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for his or her failure to do so (*Vermette v Kenworth Truck Co.*, 68 NY2d 714, 717 [1986]; *Zuckerman* at 560, 562; *Forrest v Jewish Guild for the Blind*, 309 AD2d 546 [1st Dept 2003]). Like the proponent of the motion, the party opposing the motion must set forth evidentiary proof in admissible form in support of his or her claim that material triable issues of fact exist (*Zuckerman* at 562). The opponent "must assemble and lay bare [its] affirmative proof to demonstrate that genuine issues of fact exist" and "the issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief" (*Kornfeld v NRX Technologies, Inc.*, 93 AD2d 772 [1st Dept 1983], *affd*, 62 NY2d 686 [1984]).

Negligence

To establish a negligence cause of action, a plaintiff must demonstrate (1) a duty of care owed to the plaintiff; (2) a breach of that duty; (3) that the breach is a proximate cause of plaintiff's injury or damages; and (4) that the plaintiff suffered a legally cognizable injury or damages (*see Akins v Glens Falls City School District*, 53 NY2d 325, 333 [1981]). Here, defendants only dispute that plaintiff suffered a cognizable injury and that any breach on defendants' part was a proximate cause of plaintiff's alleged injury. However, defendants fail to establish that plaintiff did not suffer a cognizable injury, or that defendants' breach of their duty to plaintiff was not a proximate cause of plaintiff's injury. Therefore, defendants have failed to make a *prima facie* showing of entitlement to judgment as a matter of law.

Cognizable Injury

A review of the evidence in the record, including the Medical Records that defendants provided, establishes that at least three physicians indicated that plaintiff suffered an injury.

It is undisputed that plaintiff's first visit to a physician after the July 12, 2006 waxing incident was on August 1, 2006 with Dr. Nabatian. Plaintiff testified that the August 1 visit was a regularly scheduled gynecological examination (Graham EBT, p. 72; see also Graham Aff., ¶ 3). The evidence in the record establishes that plaintiff did not mention the waxing incident during the August 1 visit, and Dr. Nabatian found no injury related to the waxing incident. Dr. Nabatian states in his affirmation:

> According to my office chart and the notes which I authored, I saw the patient Somer Graham . . . My chart entry for that day does not indicate, under the "chief complaint" or "change in medical status" sections, a complaint of vaginal injury. I performed a physical/pelvic examination of the patient that day. My chart entry indicates normal external genital and normal vaginal examinations.
> (Nabatian Aff., ¶ 3)

Plaintiff explains that she "felt uncomfortable with Dr. Nabatian" because he was a male physician (Graham EBT, p. 72; Graham Aff., ¶ 3). Plaintiff further attests that she was "highly embarrassed about discussing the situation in light of how the injury had occurred, and therefore did not mention it to Dr. Nabatian" (Graham Aff., ¶ 3).

However, the record also establishes that plaintiff later told Dr. Nabatian about the waxing incident and that she underwent a second examination by Dr. Nabatian six days later on August 7, 2006[3]. Although Dr. Nabatian's Aug. 7 Notes are mostly illegible, the words "vaginal rash" are clearly indicated.

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[3]Plaintiff explained that she decided that the waxing incident was "something that I need to address, despite my embarrassment, so I mentioned it to him at the end of the [Aug. 1] examination" (Graham Aff., ¶ 3).

Plaintiff was next seen by Dr. Beitner on August 17, 2006. According to Dr. Beitner's Aug. 17 Notes, plaintiff complained of vulvar irritation, a "tear which is not healing," and a waxing four weeks ago. Beside the word "Assessment" are the words "Irreg menses [*sic*]" and "*labial trauma*" (*emphasis added*).

Plaintiff also saw Dr. Beitner on September 5, 2006. According to Dr. Beitner's Sept. 5 Notes, plaintiff indicated that she was concerned about stress and her sex life "due to my injuries [and] not working, also, that waxing accident that happened." Dr. Beitner's Sept. 5 Notes go on to state "trauma" and "vulv. discomfort [*sic*]"[4] The Notes also indicates that Dr. Beitner referred plaintiff to Dr. Peacocke.

The Medical Records indicate that plaintiff saw Dr. Peacocke on October 23, 2006, January 18, 2007, February 5, 2007, March 5, 2007, June 18, 2007, and September 17, 2007. The Court observes that while plaintiff argues that Dr. Peacocke's notes that plaintiff had an injury (opp., ¶ 10), in support of her argument, plaintiff refers to a document dated August 17, 2006 that was previously offered as *Dr. Beitner's* Aug. 17 Notes, and the notes that contain Dr. Peacocke's name and address are illegible.

Further, while defendants argue that the Medical Records indicate that Dr. Peacocke did not find that plaintiff had an injury, defendants do not cite any specific statements in Dr. Peacocke's notes to support its conclusion.[5] Dr. Rho also fails to cite to any statements in Dr. Peacocke's notes or any of the previous doctors' notes to support his conclusion that plaintiff

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[4]The Court notes that much of the writing on the notes is illegible.

[5]Actually, defendants stated: "The patient was then seen by Peacocke, whose initial examination report contained at p. 11 of Exhibit M" also does indicate [*sic*] a finding" (motion, p.7). Based on the context of the statement, the Court determined that the word "not" was mistakenly omitted.

suffered no injury (Rho Aff., ¶¶ 3-4). Further, Dr. Rho states that "in his opinion," plaintiff did not sustain any injury and that "there is no injury which is causally related to the alleged act of negligence" (Rho Aff., ¶ 4). However, in Dr. Rho's October 14, 2008 letter to defendants' counsel, Dr. Rho noted that plaintiff "had equivocal tenderness of the upper right labia minora."

The Court also notes that in response to plaintiff's argument that Dr. Rho's Oct. 14, 2008 Notes were not affirmed, defendants argue that Dr. Rho attests that his review of the plaintiff's treating records are "the kind generally reliable to the issue of diagnosis and treatment." Upon a review of the Rho Aff., the Court observes that Dr. Rho actually states: "Moreover, I have reviewed the plaintiff's medical records for those providers who examined her shortly after the purported trauma, *which are* of the kind generally reliable to the issue of diagnosis and treatment" (Rho Aff., ¶ 6) (*emphasis added*). It appears from the grammatical construction of the statement that Dr. Rho is referring to the Medical Records as "of the kind generally reliable to the issue of diagnosis and treatment," not his review of the records.

Therefore, the record indicates that an issue of fact exists as to whether plaintiff suffered a cognizable injury.

Proximate Cause

Defendants' argument that plaintiff failed to demonstrate that defendants' acts proximately caused an injury also lacks merit. According to the First Department, proximate cause "is almost invariably a factual issue. As a general proposition only extraordinary intervening acts which are not foreseeable in the normal course of events may serve as a basis for ruling as a matter of law that the chain of causation has been broken" (*Monell v City of New York*, 84 AD2d 717, 718 [1st Dept 1981]).

Here, plaintiff's papers sufficiently put into issue that Blissworld's negligence in training and equipping Ms. Normatov and Ms. Normatov's negligence in performing the bikini wax caused plaintiff's injury (see plaintiff's Complaint and Bill of Particulars). Further, it is clear from the Medical Records that plaintiff sought medical treatment because of the injury she allegedly suffered as a result of the bikini wax. The Notes of Drs. Nabatian and Beitner contain references to the July 12, 2006 incident.

The Court observes that, contrary to plaintiff's arguments, Dr. Rho addressed the issue of a causal relationship in his affirmation, if only briefly. Dr. Rho states: "It is my opinion . . . that there is no injury which is causally related to the alleged act of negligence" (Rho Aff., ¶ 4). However, Dr. Rho does not provide any facts to support his conclusion. Further, defendants cite no caselaw to support their proposition that the fact that no trauma was noted at the plaintiffs first medical visit on August 1, 2006 breaks the required connection for proximate cause; nor do defendants offer any arguments or evidence that "extraordinary intervening acts which are not foreseeable in the normal course of events" actually caused plaintiff's injury (*Monell v City of New York*).

Therefore, an issue of fact also exists as to whether defendants' alleged negligence was a proximate cause of plaintiff's injury.

Considering that the evidence in the record does not support defendants' claim that plaintiff suffered no injury as a result of the waxing incident or that plaintiff failed to demonstrate proximate cause, defendants have failed to establish a *prima facie* showing of entitlement to summary judgment. It is well settled that the failure to make such a showing will result in the denial of the motion, regardless of the sufficiency of the opposing papers

(*Pappalardo v New York Health & Racquet Club*, 279 AD2d 134 [1st Dept 2000] *citing Lesocovich v 180 Madison Ave. Corp.*, 81 NY2d 982, 985 [1993]; *Winegrad v New York Univ. Med. Ctr.* at 853). The failure of defendants to establish its right to summary judgment as a matter of law requires the denial of their motion in this regard, regardless of the sufficiency of plaintiff's opposition (*see Diaz v Nunez*, 5 AD3d 302 [1st Dept 2004] [motion for summary judgment should have been denied regardless of the sufficiency of plaintiff's opposing papers]). Therefore, the Court does not reach the merits of plaintiff's opposing contentions.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the motion of defendants Blissworld, LLC d/b/a Bliss Spa ("Blissworld") and "Bella" (a name intended to represent the employee, agent, servant or representative of Blissworld who performed the treatment) for an order, pursuant to CPLR §3212, granting them summary judgment against plaintiff Somer Graham is denied; and it is further

ORDERED that defendants serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: August 21, 2009

Hon. Carol R. Edmead, J.S.C.