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| <b>Conte v Clarins U.S.A., Inc.</b>                                                                                                                                                                                                                              |
| 2012 NY Slip Op 33516(U)                                                                                                                                                                                                                                         |
| June 6, 2012                                                                                                                                                                                                                                                     |
| Supreme Court, New York County                                                                                                                                                                                                                                   |
| Docket Number: 115817/10                                                                                                                                                                                                                                         |
| Judge: Milton A. Tingling                                                                                                                                                                                                                                        |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                                                           |

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING  
J.S.C.  
Justice

PART 44

Index Number : 115817/2010  
CONTE, LINDA  
vs.  
CLARINS, U.S.A., INC.  
SEQUENCE NUMBER : 002  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE 3/12/12  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is decided in accordance with  
the annexed decision.

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

FILED

JUN 17 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 6/6/12

Mat, J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 44

-----X  
LINDA CONTE AND GERALD CONTE,

Plaintiffs,

Index No. 115817/10

- against-

DECISION AND ORDER

CLARINS U.S.A., INC., CLARINS SA, CLARINS  
GROUP NORTH AMERICA INC., "CLARINS",  
MACY'S, INC. (formerly known as Federated  
Department Stores, Inc.), MACY'S REAL ESTATE,  
LLC, FEDERATED DEPARTMENT STORES, INC.,  
"MACY'S," and "JOHN DOE," as further described in  
the annexed complaint,

Defendants.

-----X  
Background

In this action for personal injury, Plaintiff Linda Conte alleges that she sustained injuries when a make-up chair located in a Macy's retail store broke and stuck her. Plaintiff alleges in her bill of particulars that, at the time of the accident, she was employed at this particular Macy's location. Plaintiff alleges that damages were the result of Defendants failure to keep customer make-up chairs in a safe, proper and secure manner.

Defendants Federated Department Stores, Inc., Macy's Inc., Macy's Corporate Services, Inc., Macy's Real Estate, LLC and Macy's (collectively referred to herein as "the Macy's Defendants") now moves, Pursuant to CPLR 3212 and Workers' Compensation Law §§ 11 and 29(6), to dismiss Plaintiff's complaint in its entirety. In their motion, the Macy's Defendants assert that Plaintiff's complaint should be dismissed because Macy's Retail Holdings, Inc., who was the direct employer of Plaintiff and was not party to this suit, and the Macy's Defendants are

under common ownership and therefore, pursuant to Workers' Compensation Law §§ 11 and 29(6), the exclusive remedies available to Plaintiff are those provided by Workers' Compensation. Furthermore, Defendants provide a Worker's Compensation Settlement which demonstrates that Plaintiff received Worker's Compensation benefits for her injury. In addition, the Macy's Defendants move to dismiss the cross claims of the non-Macy's co-defendants.

In opposition to Defendants' motion, Plaintiff argues that discovery is necessary on the issue of the relationship between the Macy's Defendants and the non-party Macy's Retail Holdings, Inc. Plaintiff asserts that Defendants must establish that they exercise complete domination and control of Macys' Retail Holdings in order to assert the Workers' Compensation defense. For the reasons stated herein, the Defendants' motion is denied in its entirety to allow for discovery exclusively limited to the issue of the relationship between the Macy's Defendants and the non-party entity, Macy's Retail Holdings, Inc.

### Discussion

New York Courts have held that "The remedies provided by Workers' Compensation Law are the exclusive remedies available to an employee injured during the course of her employment." *Croston v. Montefiore Hospital*, 229 A.D.2d 330, 645 N.Y.S.2d 471 (1996). Furthermore, New York Courts have also held that, "an employer's organization into separate legal entities does not preclude a finding that an employee is limited to benefits under the Workers' Compensation Law." *Ramnarine v. Memorial Ctr. for Cancer and Allied Diseases*, 281 A.D. 2d 218, 722 N.Y.S.2d 493 (2001). However, it has also be held that, in order to assert a Workers' Compensation defense, a "parent company must exercise complete domination and

control of the subsidiary's day-to-day operations. *Dennihi v. Episcopal Health Services*, 283 A.D.2d 542, 724 N.Y.S.2d 768 (2001). In *Dennihi*, the court held that even though the two entities in question were related and the plaintiff had received benefits under a joint Workers' Compensation insurance policy, there were "triable issues of fact as to whether the parent corporation exercised such control as to entitle it to raise the exclusivity of Workers' Compensation." *Id.* at 543. Thus, proper resolution of the case at bar requires a categorical understanding of the relationship between the non-party Macys' Retail Holdings, Inc. and the Macy's Defendants and the liabilities of the parties that result therefrom.

#### Conclusion

Accordingly, the Defendants' motion is denied in its entirety for the purpose of allowing further discovery exclusively limited to the issue of the relationship between the Macy's Defendants and Macy's Retail Holdings, Inc.

Dated: June 6, 2012

  
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**HON. MILTON A. TINGLING**  
**J.S.C.**