

**Ageoili v Eun Min**

2019 NY Slip Op 31602(U)

June 4, 2019

Supreme Court, New York County

Docket Number: 157841/2016

Judge: Arlene P. Bluth

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

**PRESENT:** HON. ARLENE P. BLUTH **PART** IAS MOTION 32

*Justice*

-----X  
JOSEPHINE AGEAOILI,

Plaintiff,

- v -

EUN MIN, EUN MIN d/b/a NAIL TIME,

Defendants.

**INDEX NO.** 157841/2016

**MOTION DATE** \_\_\_\_\_

**MOTION SEQ. NO.** 004

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 47, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for

SUMMARY JUDGMENT (AFTER JOINDER)

Defendant's motion for summary judgment is denied.

**Background**

This case is about personal injuries allegedly suffered by plaintiff at a nail salon owned by defendant Eun Min. Plaintiff went to the salon to get her nails done and to get a massage. She was massaged by a woman named Sunita, a former employee of the salon. Plaintiff claims that the massage was particularly vigorous and after a few minutes into it, she could hear a "clicking" noise coming from the massage chair. She stated that the chair's seat immediately collapsed, causing her to fall (NYSCEF Doc. No. 48 at pg.7). Plaintiff alleges that defendant was negligent in maintaining the subject massage chair and had actual or constructive notice of the defective condition of the chair.

In response, defendant denies that the chair collapsed and alleges that plaintiff fell due to her own negligence as she was getting up after the massage was completed. She also denies having

actual or constructive notice of any defects in the chair, testifying that she has given many massages on the subject chair and has never felt any portion of it move nor has she ever received complaints about it. She also testified that she inspects the massage chairs in the salon to see if they are safe.

### **Discussion**

To be entitled to the remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court’s task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d’Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

Defendant's motion is denied because issues of fact remain about whether the chair was defective and if defendant had actual or constructive notice of any purported defects. During defendant's deposition, she admits that she did not witness the accident (NYSCEF Doc. No. 52 at pg.46). When asked whether defendant inspects the massage chairs, she stated that she does sometimes (*id.* at 28). When asked what she looks for when inspecting the chairs, she stated that she looks "To see if there is any polish stain" (*id.* at 32). Defendant could not recall the last time the chair was inspected (*id.* at 34) and testified that no one keeps any logs or records about the inspection and maintenance of the chairs (*id.* at 78). She claimed that an investigator came to inspect the subject chair but no report is attached to the papers (*id.* at 68).

Defendant was also asked a series of questions about her role in inspecting the structural elements of the massage chairs in the salon. The questions and answers are as follows:

“Q: Do you look to see if any of the bolts are loose?

A: Not every day.

Q: How about ever?

A: Yes.

Q: When?

A: I don't know, but I looked at it because I usually take a look at them when a customer goes there and places oneself on the chair.

Q: Why did you look at to see [sic] if bolts are loose when a customer is on a chair?

A: No, I don't do that once the customer sits in it.

Q: Do you do it before the customer sits on it?

A: In general the chair is sturdy, I do not check.

Q: So, when you said you have looked in the past to see if bolts are loose, are you revising that answer to indicate that you do not look to see if the bolts are loose?

A: Speaking of correcting the bolts and nuts, I cannot do that. I just take a look.”

*id.* at 32-35

Defendant did not submit any evidence to show that the massage chair was inspected for defects. Based on her own testimony, defendant would sometimes check the chairs only for the purpose of ensuring that there were no nail polish stains, that is, to clean

it. Or sometimes she would look at the chairs to see if the bolts and nuts were loose. Simply looking at a chair occasionally does not constitute an inspection of its structural soundness. Defendant cannot show that the chair at issue was safe if she failed to routinely inspect it or just because she had not yet received complaints about it.

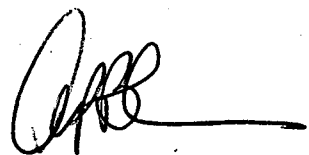
To be clear, this Court is not finding that the chair was safe or unsafe – this Court is only finding that defendant is not entitled to summary judgment based on the evidence submitted.

Accordingly, it is hereby

ORDERED that defendant’s motion for summary judgment is denied.

6/4/19

DATE



ARLENE P. BLUTH, J.S.C.

**HON. ARLENE P. BLUTH**

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED  DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE