

<b>Pahng v Woori Sauna</b>
2019 NY Slip Op 32157(U)
May 23, 2019
Supreme Court, Queens County
Docket Number: 708806/16
Judge: Robert I. Caloras
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**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. ROBERT I. CALORAS**

**PART 36**

**Justice**

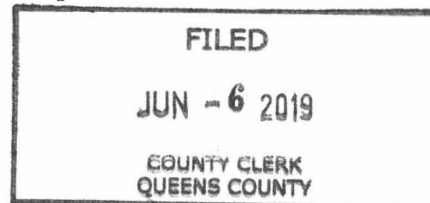
-----X  
**ALAN SUNG J. PAHNG, as Executor for the  
Estate of JUNG HYUN PAHNG,**

**Index No. 708806/16  
Motion Date: 3/28/19  
Motion Cal. No. 21  
Seq. No. 8**

**Plaintiff,**

**-against-**

**WOORI SAUNA and LEMON TREE PLAZA, LLC,  
Defendants**



-----X  
The following papers numbered E109-E151 read on this motion by defendant, Woori Sauna, for summary judgment pursuant to CPLR 3212.

**PAPERS  
NUMBERED**

Notice of Motion-Affirmation-	
Memorandum of Law-Exhibits.....	E109-E127
Affirmation in Opposition-Exhibits.....	E128-E144
Reply Affirmation-Exhibits.....	E145-E151

Upon the foregoing papers, it is ordered that defendants' motion is determined as follows:

This action was commenced by plaintiff Alan Sung J. Pahng, as executor of the estate of Jung Hyun Pahng ("decedent"), to recover for damages for injuries Ms. Pahng allegedly sustained on June 30, 2015, in the steam room at defendant Woori Sauna ("Woori"), located at 157-16B Northern Boulevard, Flushing, New York, when she allegedly sustained burns to her body, and was taken to New York Presbyterian Hospital / Weill Cornell Medical Burn Unit by ambulance. Plaintiff alleges that as a result of these injuries, the decedent died at the hospital on July 3, 2015.

Defendant Woori now moves, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's Verified Complaint in its entirety. In order to be entitled to summary judgment, the movant "must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). "It is a defendant's burden, when it is the party moving for summary judgment, to demonstrate affirmatively the merits of a defense, which cannot be sustained by pointing out gaps in the plaintiff's proof" (Quantum Corporate

Funding, Ltd. v Ellis, 126 AD3d 866, 871 [2d Dept. 2015]). Once a defendant makes a *prima facie* showing, the burden shifts to the plaintiff to raise a triable issue of fact requiring a trial (see Valley Ventures, LLC v Joseph Haspel, PLLC, 102 AD3d 955, 956 [2d Dept. 2013]).

Defendant Woori has submitted *inter alia* the following: the pleadings; the Verified Bill of Particulars; plaintiff's deposition transcript; Rachel Kang's (the owner of Woori) deposition transcript; certified business records from the New York City Department of Health and Mental Hygiene; photographs; affidavit from Ms. Kang; and an affidavit from Angela DiDomenico, Ph.D, CPE. Defendant Woori argues that there is no evidence that the subject steam room was in any way defective, or that it failed to adequately warn patrons of the dangers of using the steam room/sauna. In the Bill of Particulars, the plaintiff alleged that defendant Woori failed to inspect the premises prior to the time the incident occurred and thus due to this, Woori failed to observe and remedy a defect. Defendant Woori contends that it was not in violation of any provision of Article 165 of the New York City Department of Health and Mental Hygiene Code, which promulgates regulations for bathing establishments. 24 RCNY 165.63 "Sauna and Steam Rooms" provides in pertinent part that all sauna and steam rooms shall be designed and constructed in accordance with the following requirements:

- (a) Temperature control: A sauna or steam room temperature shall be thermostatically controlled and shall not exceed 194 degrees Fahrenheit for a sauna room and 120 degrees Fahrenheit for steam room as measured at eye height.
- (c) Safety: The facility shall provide a one hour timer to automatically disconnect all heating elements from the supply source at the end of one hour, or an attendant (meeting the definition of responsible person) who inspects the facility at a minimal interval of 15 minutes during all periods of operation of a sauna or steam room pursuant to §165.15(c), if the timer is not provided.
- (b) Timing device and temperature indicator: A time and temperature indicator shall be provided in each sauna or steam room and shall be so installed as to be clearly visible to the patron in the sauna or steam room.
- (e) Alarm system: An alarm system acceptable to the department shall be provided to indicate to the attendant and user any malfunction of the automatic temperature regulating control or of an electrical overloading of the equipment. The alarm system shall turn off the heat when the alarm sounds, and not allow it to be reset until the temperature has cooled to below the maximum allowable level. The operator shall be able to demonstrate the functioning of the alarm system to the department

during an inspection. The alarm shall be tamper proof. Patrons shall not be able to prevent the alarm from sounding, nor to prevent the heat from being cut off, nor to change the temperature set point of the alarm.

(h) Warning signs: A durable plate bearing the following wording, in 24 point type (letters 0.25 inches in height) or more, permanently marked thereon in colors contrasting with the background, shall be prominently affixed outside the doors of the sauna or steam room at eye level containing the following:

"Use of steam room or sauna should not exceed 30 minutes.

Excessive exposure can be harmful to health. The Department of Health and Mental Hygiene recommends that persons who:

- have poor health; or
- have high blood pressure or a heart or circulatory disease; or
- are using prescription medication; or
- are pregnant

not use this facility before consulting their physician. Persons under the influence of alcohol or drugs should not use this facility."

Defendant Woori argues that the testimonial and documentary evidence, including certified records from the City of New York's Department of Health and Mental Hygiene, demonstrate that Woori's sauna and steam room were inspected regularly, including its computerized temperature control alarm system. Ms. Kang testified that they have not had any violation up until the date of the incident. In the June 15, 2015 inspection report by the New York City Department of Health and Mental Hygiene, the inspector noted that ". . . that the set point for the steam room was 120 degrees Fahrenheit, all the required signs noted posted, time and temperature indicators noted inside [the] steam . . . room[ ]". In the June 18, 2015 inspection report, the inspector confirmed that there were no health hazards. In the July 2, 2015 inspection report, no violations were given after the inspection. In her affidavit, Angela DiDomenico, PhD, CPE opined that the Woori Sauna complied with all regulations for saunas and steam rooms promulgated by the City of New York

Defendant Woori also argues that no defective condition existed in its steam room. Defendant asserts that the plaintiff never made any complaints to it regarding the steam room, and that there is no evidence of any complaints made to defendant regarding the subject steam room prior to the alleged accident. Defendant further asserts that the photographs of the steam room show the following: it had an automatic temperature controlling system; the temperature was 119 Fahrenheit and an alarm system was activated should the temperature of the room reached 120 Fahrenheit; and additional warning sign was provided in Korean stating the same with an

additional statement stating patrons should not exceed 30 minutes of the use of the steam/sauna. The warning signs displayed specifically warn patrons who suffer from "high blood pressure or a heart or circulatory disease" and also prohibit those from using the sauna/steam room if they were in poor health. Significantly, at his deposition, plaintiff Alan Sung J. Pahng, decedent's son, testified that his mother suffered from hypertension and was taking medication for it

Defendant also argues that the alleged condition (steam) within was open, obvious, and therefore not inherently dangerous as a matter of law. At Mr. Sung's deposition, he admitted that his mother had frequently used saunas/steam rooms in the past. Defendant asserts that as a previous patron of saunas and steam rooms, the decedent was knowledgeable enough to have been aware, especially if she suffered from hypertension, of the hazards associated with using the steam room. Therefore, defendant Woori argues action alleging defendant failed to adequately warn the plaintiff must be dismissed because the risk of the use of the steam room was obvious to any and every patron that used the steam room including the decedent.

In opposition, plaintiff has submitted *inter alia* the following: the medical examiner's report; the death certificate; Helen Chung's affidavit; and an affidavit from Andrew R. Yarmus, P.E., F.NSPE, a Licensed Professional Engineer. Plaintiff argues that the motion should be denied because it is premature and issues of fact exist. Plaintiff also argues that defendant's own testimony, demonstrates that it violated the New York City Health Code and created an issue of fact on a material matter.

Plaintiff raises several issues with Ms. Kang's testimony. Ms. Kang testified that there was no time indicator inside the steam room nor one clearly visible to the patron in the steam room, and that the temperature indicator was difficult to figure out and see. Although Ms. Kang testified that a warning sign indicating "do not stay over 5-10 minutes in the steam room" was posted at the time of the incident, the pictures The New York City Office of Chief Medical Examiner ("OCME") investigating the scene, a few days after the incident, show that this warning was not posted. In addition, Ms. Kang's testimony regarding the instrument panel that controls the temperature and alarm settings, as well as the labels for the power switches as they existed on June 30, 2015 conflict with the OCME scene investigation photographs. However, the OCME photos show that the instrument panel controlling the temperature and alarm as well as the switches for the dry sauna and steam room are missing labels and the handwritten markings on the switch plates are faded and barely visible. Plaintiff argues that Ms. Kang's testimony regarding the instrument panel, power and alarm switches, and safety covers for the steam outlet in the steam room create, not only raise genuine issue of fact concerning material items, but also negligence in the operation of the steam room.

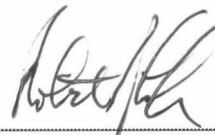
The Court finds that issues of fact exist, which preclude granting the defendant Woori summary judgment. Specifically, issues exist regarding whether on the date of the incident the

warnings defendant Woori posted, and the instrument panel and switches complied with the provisions set forth in 24 RCNY 165.63. Defendant Woori relies upon Caruso v John St. Fitness Club LLC, 2005 NY Misc. LEXIS 3283 (Supreme Court, New York County 2005) and Caruso v John St. Fitness Club, LL , 34 AD3d 296 [1<sup>st</sup> Dept. 2006]). The facts of that case reveal that the plaintiff conceded that the defendant complied with the warnings promulgated in Section 165.15 (g), and that plaintiff's alleged deficiencies were based upon its experts suggested warnings, which exceeded the requirements set forth by the Department of Health. Moreover, the evidence also demonstrated that the steam room the defendant operated complied with Section 165.15 (Caruso v John St. Fitness Club LLC, 2005 NY Misc. LEXIS 3283). The First Department affirmed the lower Court's determination regarding whether the steam and steam heads were open and obvious with respect to the products liability claim (Caruso v John St. Fitness Club, LL , 34 AD3d 296). Here, there is no concession regarding the warnings, and the instant matter does not involve a products liability claim. As such, the Caruso v John St. Fitness Club LLC case is not relevant to the instant matter. Therefore, the Court finds that the plaintiff has raised issues of fact pertaining to the defendant's duty to warn pursuant to 24 RCNY 165.63., which directly relate to the decedent's alleged medical condition. Consequently, the Court denies defendant's request for summary judgment.

Defendant Woori also requests that plaintiff's claim for punitive damages be dismissed, because its alleged conduct did rise to a high level of reckless misconduct. In his opposition, the plaintiff failed to address this issue. Therefore, defendant's request for summary judgment dismissing plaintiff's request for punitive damages is granted.

Accordingly, the motion is granted in part and denied in part as set forth above.

**Dated: May 23, 2019**



**ROBERT I. CALORAS, J.S.C.**

