

Sharma v Proper Puss NYC, Inc.
2020 NY Slip Op 33967(U)
December 2, 2020
Supreme Court, New York County
Docket Number: 156049/2018
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

<p>PRESENT: <u>HON. BARBARA JAFFE</u></p> <p style="text-align: right;"><i>Justice</i></p> <p>-----X</p> <p>PARUL SHARMA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p>	<p>PART</p> <p>INDEX NO. <u>156049/2018</u></p> <p>MOTION DATE _____</p> <p>MOTION SEQ. NO. <u>005</u></p>	<p>IAS MOTION 12</p>
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PROPER PUSS NYC, INC. and RACHAEL BROWN,

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 69-86, 88-99 were read on this motion for summary judgment.

In this action against defendants for personal injuries sustained by plaintiff as a result of an allegedly negligent laser hair removal procedure performed on her by defendants, by notice of motion, defendants move pursuant to CPLR 3212 for an order summarily and partially dismissing the complaint. Plaintiff opposes.

I. BACKGROUND

A. Plaintiff's deposition (NYSCEF 76)

Having frequently passed defendants' salon in her neighborhood, plaintiff stopped in for a consultation with defendant Brown, defendant Proper Puss's principal. She filled out a questionnaire about her skin color and tanning, which defendants used to calculate her skin as type IV. A brief medical history was also taken in which plaintiff included that she took a particular medication. Brown did not then alert her to the possible side effects of laser hair removal treatment.

Thereafter, in the spring of 2016, plaintiff received laser treatments from defendants to

remove hair from her legs. She returned six to eight weeks later for a second treatment to her legs and several other body parts, including her arms and underarms, and a Brazilian treatment. Between the spring of 2016 and April 2018, plaintiff underwent more than 10 laser hair removal treatments by defendants. Trusting that Brown would give her accurate advice, plaintiff discussed with her the dark spots that had appeared on her upper arms after one of her treatments. Brown told her that the hyperpigmentation would fade over time and provided plaintiff with a cream to lighten the spots.

Based on Brown's recommendation, plaintiff received two treatments every six to eight weeks, first on her upper body and then her lower body. The night before her last treatment, plaintiff received laser treatments to her face, upper arms, under arms, and stomach. "In retrospect," plaintiff alleges, Brown appeared to experience difficulty with the laser and that at times during the treatment, she felt none of the "usual heat sensation of the laser or hear the familiar sound of the laser being emitted." Brown "would apologize" and tell her that it was "air bubbles."

Plaintiff returned the following morning for laser hair removal treatments on her legs, buttocks, and upper thighs, along with a Brazilian treatment. In preparation for the treatment, plaintiff shaved those areas. Brown did not ask her if she was on medication or if she had been tanning. She told plaintiff that she would be starting late due to the need to replace a cannister in the laser machine and restart and recalibrate the machine.

The treatment lasted approximately 45 minutes beginning with plaintiff's legs, moving up to her buttocks, and ending with the Brazilian treatment. At the start, plaintiff told Brown that the laser felt hotter than usual on her legs, and when the laser reached her buttocks, plaintiff felt more pain and discomfort, and began to squirm and call out "ouch." When the bikini area was

reached, plaintiff perceived a “significant difference” in pain and discomfort she felt. She was complaining, squealing, whimpering, and moaning, calling out “ouch, ouch,” “I can’t do this,” “it’s too hot,” and “this doesn’t feel normal.” With each complaint, Brown would momentarily stop, verbally soothe plaintiff, and then continue with the lasering. Finally, plaintiff instructed Brown to stop, at which point, Brown informed plaintiff that she was “really red” and advised her to apply tea tree oil on the area as Brown had done in the past. Brown applied tree oil to plaintiff’s legs and had plaintiff apply it herself to her bikini area. At this point, plaintiff’s pain was excruciating and she could barely pull on her underwear and pants. After paying for the treatment, plaintiff went home, taking frequent breaks to relieve herself of the friction of the pants rubbing against her bikini area, buttocks, and upper thigh areas.

Upon arriving home, plaintiff removed her pants, took a cold shower, and saw grotesque burns to her pubic area. She immediately contacted Brown and accused her of burning her during the treatment. Brown responded by advising her to use moisturizer and ointment and told her that it is normal to have redness after treatment.

Realizing that she needed more than moisturizer and ointment, plaintiff went to an urgent care facility, where she complained of the pain and burning. There, a doctor diagnosed her with “multiple tender crescent shaped 1st degree burns to the BL medial thighs and pubic mound” resulting from laser hair removal. Plaintiff was given cream and told to follow up with a dermatologist, which plaintiff did two days later. The dermatologist confirmed that plaintiff was suffering from burns as a result of the laser hair removal treatment in issue.

Before her last treatment by defendants in April 2018, plaintiff had never experienced burns from laser hair removal.

B. Brown's deposition (NYSCEF 77)

Brown, licensed by New York State as an esthetician since 2002, testified that since 2015, she uses a particular machine for performing laser hair removal procedures, and that upon its installation, the manufacturer provided her with approximately 16 hours of on-site training on using it, after which she received training certificates for, among other things, hair removal. The machine she used is intended for laser hair removal of all skin types. In the owner's manual that came with the machine are listed possible side effects of laser treatments: hyper-pigmentation, hypo-pigmentation, purpura, scarring, textural changes, burns, blistering, pain and discomfort or erythema. (NYSCEF 78).

Brown had determined that plaintiff's skin type was a IV and she does not recall performing a spot test on plaintiff prior to the first treatment, nor was one performed before each succeeding treatment, although she acknowledges that the manual for the machine provides that spot testing be performed when a concern exists regarding the potential response to the treatment. Plaintiff had received laser hair removal to her arms, face, and underarms the evening before she was burned, and Brown allowed that the machine may have required recalibration based on the area of the body being treated.

Brown recounts that the following morning, when she performed the additional laser hair removal to the lower half of plaintiff's body, plaintiff complained of pain when Brown was lasering her Brazilian area, which encompasses the top of the pubic area, the sides of the bikini line "three fingers out," the top and the inner labia and around the anus and the groove between her buttocks, and that plaintiff did not typically complain of pain. As plaintiff told her that the laser was hotter than usual and burning, Brown stopped, turned down the laser, and continued the treatment without adjusting the cooling component. Whimpers emanated from plaintiff

throughout the Brazilian treatment which took approximately 10 minutes. On completion, Brown applied “product” to the lasered areas and noticed a dime-sized dark spot on plaintiff’s bikini line that was not present before the lasering began; she pointed it out to plaintiff.

Plaintiff called Brown that afternoon and complained about a burning and uncomfortable feeling in her bikini area. Brown advised her to wear light-weight loose clothing, take no hot showers, and apply hydrating nourishing replenishing ointments, creams or oils. Although Brown tried to contact plaintiff in the following days to check on her healing, plaintiff blocked such attempts.

C. The complaint

Plaintiff alleges in her complaint that defendants were conducting business as a clinic providing body hair removal and various cosmetic and medical procedures, and that their websites, advertisements, and representations, in conjunction with office staff attire, gave the false impression that their services were “medically supervised.” She also contends that in performing laser hair removal, defendants engaged in the unlicensed practice of medicine and that they misrepresented themselves as being licensed to perform intense pulse rejuvenation and laser procedures. In reliance on those misrepresentations, plaintiff agreed to the treatments.

According to plaintiff, defendants misidentified her skin tone classification and failed to perform the laser hair removal procedures consistent with the laser manufacturer’s instructions, recommendations, and warnings, failed to perform the procedures consistent with their own policies and procedures, failed to apply sufficient amounts of gel to her body, failed to insulate her skin and prevent direct contact with laser mechanisms, failed to assess whether plaintiff was in a condition that would render her more susceptible to burning and injury, failed to perform a test section on plaintiff to determine whether she was acceptable for the intense pulse light

rejuvenation and laser treatment, failed to warn her of the specific risks of performing the procedure on or about April 7, 2018, performed the laser procedure in a room which defendants knew or should have known lacked adequate lighting so as to allow for the safe administration of the procedures, failed to obtain from plaintiff a proper health and/or skin condition history, failed to perform the intense pulse light rejuvenation and laser procedure in the presence of skilled, qualified and capable personnel, and failed to care for plaintiff injuries timely after they were brought to their attention.

Based on these allegations, plaintiff advances the following causes of action:

In her first cause of action, for negligence, plaintiff advances a prolix list of allegations encompassing issues relating to the services rendered before, during, and after the treatment, defendants' licensing status, the adequacy of Brown's training, the physical conditions of the room where the services were provided, the maintenance of the laser, defendants' failure to consider plaintiff's medical history in treating her, and their obligation to warn her about the procedure, side effects, and risks thereof, etc.

Plaintiff advances a violation of Education Law § 6512 in her second cause of action, alleging that in performing the laser hair removal treatment on her, defendants practiced medicine without a license, causing her injury, permanent disfigurement, emotional distress, and monetary damages.

In her third cause of action, plaintiff alleges that defendants were negligent *per se* based on her allegation that defendants' violation Educ. L. § 6521 constitutes evidence of their negligence.

Plaintiff invokes as her fourth cause of action, *res ipsa loquitur*.

In plaintiff's fifth cause of action, for fraudulent misrepresentation, she claims that

defendants fraudulently misrepresented to her that they were authorized to perform laser hair removal services and seeks punitive damages therefor.

In support of her sixth cause of action, for breach of contract, plaintiff asserts that in exchange for good and valuable consideration, and in payment for their services, defendants agreed to provide her with safe laser hair removal procedures and instead, breached their agreement, engaged in the unauthorized practice of medicine, and rendered such unsafe, harmful, and negligent treatment, thereby causing her harm and serious injury. She seeks punitive damages.

Plaintiff alleges in support of her seventh cause of action that defendants committed deceptive business practices by regularly engaging in the unauthorized practice of medicine.

Plaintiff seeks compensatory damages, treble damages, an award of attorney fees, and an injunction permanently enjoining defendants from engaging in the unauthorized practice of medicine.

D. Plaintiff's January 14, 2019 bill of particulars (NYSCEF 73)

In a bill of particulars dated January 14, 2019, plaintiff alleges that, in addition to the regulatory and statutory violations set forth in the complaint, defendants violated Educ. L. §§ 6530 and 6522, General Business Law (GBL) §§ 401, 406, 407, and 349, and 19 NYCRR §§ 162.2 and 160.27. She adds that defendants misrepresented the laser procedure on the date of incident and knowingly allowed her to rely on Brown's expertise.

E. Notice to admit (NYSCEF 81, 82)

On January 19, 2019, in response to plaintiff's notice to admit, Brown swore, *inter alia*, that on April 7, 2018, she possessed a valid New York State license to operate an appearance enhancement business and a license to practice aesthetics.

F. Plaintiff's supplemental bill of particulars dated March 25, 2019 (NYSCEF 74)

In her supplemental bill of particulars, plaintiff alleges in support of her cause of action for fraudulent misrepresentation, that defendants represented a favorable outcome, that they were competent to perform hair removal, and that their website was consumer-oriented and misleading, impacting the public at large.

G. Licensing (NYSCEF 83, 84)

A license effective from June 17, 2015 to June 17, 2019, issued pursuant to GBL § 27, grants Brown permission to operate an appearance enhancement business.

H. Independent medical examination (IME) (NYSCEF 85)

On September 18, 2019, plaintiff underwent an independent medical examination (IME). On undated photographs furnished by plaintiff, the examining physician observed round circles with crescent-shaped epidermal necrosis on the mid-thigh portion of plaintiff's legs on either side of the crural folds, on the back of her thighs, and just beyond the top of her public area. Faint and lightly hyperpigmented circles appeared on her arms, two to four mm dark brown hyperpigmented round to irregular discolorations appeared on her face, and three to six mm almost round hyperpigmented discolorations formed a line over the right and left buttocks extending to the near posterior thighs in a "cephalic caudal distribution."

The physician presumes that the photographs relate to laser burns sustained by plaintiff, and recounts that plaintiff complained to him that the marks were ugly, dark, and not healed, with the worst being in the area of the bikini and posterior thighs. She reported no pain or symptoms in any of the areas except for the localized right groin patch of ingrown-like hairs, and had no medical interventions, consultations or treatment since she saw a dermatologist a few days after the treatment, except that for nine months commencing in May 2018, she received a

course of Accutane from a dermatologist.

The physician then examined plaintiff and observed that on both of her arms were faint and round areas of hyperpigmentation, whereas there were no pigmentary abnormalities under her arms or on her face, neck, chest, abdomen, breasts, back, or lower legs. On her stomach and over the right crural fold was a diffusely hyperpigmented and hairless area measuring three cm by two cm area with follicular plugging. The horizontal crease between the inferior buttocks and the posterior upper thigh was diffusely hyperpigmented, with between 12 and 15 two-mm to four-mm faint hyperpigmented round macules in a geometric pattern with irregular hair regrowth scattered over the area by the left buttock. There were fainter and less lesions on the right buttock.

The physician noted that the “history was consistent with thermal burns caused by the laser hair removal procedure on 4/7/2018,” and that the thermal burns had been “documented by two medical observers.” He concluded that the post inflammatory hyperpigmentation of the buttock is “a direct result of the laser procedure,” and that most of the areas of laser burn have resolved with faint to barely perceptible hyperpigmentation. He opined that post-inflammatory hyperpigmentation is a known risk of laser procedures.

I. Plaintiff's expert (NYSCEF 92)

Plaintiff was examined in August 2020 by her expert witness who opines that plaintiff's skin type in the area of the burns is a VI, not a IV, and that her burns were caused by the laser hair removal treatment administered by defendants on April 7, 2018. The expert observed a four-cm by three-cm area of severe pigmentary scarring crossing the crease between plaintiff's right thigh and pubis at the level of the upper portion of her vagina, a two-cm by three-cm area of moderate pigmentary scarring at the superior aspect of the crease between the pubis and thigh on

the left, and mild to moderate hyperpigmentation adjacent to the labia majora on both sides.

Based on his expertise, the expert claims that defendants failed to recognize that plaintiff's unusual pain indicated that the treatment should have been halted or significantly adjusted and that the cryogen system should have been checked for proper function. He also contends that defendants failed to warn plaintiff properly of pigmentary scarring and that the medication she had listed on her questionnaire is part of a class of drugs found to cause photosensitivity and would greatly increase her risk for adverse reactions to laser hair removal. Moreover, he maintains, Brown failed to operate the laser properly in the selection, setting/calibration, and method when performing the hair removal treatment in those areas, all of which caused plaintiff permanent scarring.

Given plaintiff's history of hyperpigmentation after laser hair removal, the expert asserts, she should have been warned by defendants that notwithstanding the most modern equipment, permanent pigmentary scarring is a significant risk with subsequent procedures.

According to the expert, an experienced practitioner would have realized that the skin in plaintiff's pubis area is thin and closer to a type VI. In combination with plaintiff's other risk factors, the expert opines that a significant adjustment of the treatment was warranted, and that defendants' failure to identify plaintiff's correct skin type and adjust the treatment for her other risk factors reflect a lack of training and experience. Thus, in the expert's opinion, defendants failed to adhere to the proper settings/calibration of the machine for plaintiff's skin type, thereby causing the burns.

The expert also opines, within a reasonable degree of medical certainty, that skin tests should have been performed before the laser treatment was begun on plaintiff given her skin type of between V and VI in her pubis area. While she had received laser hair removal treatment the

night before at the same facility with the same technician without adverse effect, the expert is certain that “the distinction lies in the fact that the technician failed to adjust the treatment for the different color and thinner skin on the treated area.” Thus, based on a reasonable degree of medical certainty, the expert opines that plaintiff’s scarring resulted from the laser burns received from defendants which are permanent and disfiguring. While he acknowledges that some laser treatments can mitigate hyperpigmentation/scarring, it is rare for it to be “completely normalized, even in the best of hands.” Thus, in his expert opinion within a reasonable degree of medical certainty, had the laser hair removal treatment been done properly there would be no burns.

II. CONTENTIONS

A. Defendants (NYSCEF 70)

1. Training

Defendants argue that absent the regulation by New York State of laser hair removal, it need not be performed by medical professionals, nor is it considered a medical procedure. Thus, they deny that Educ. L. § 6512 and 19 NYCRR § 160.27 are applicable here, citing a declaration by the New York State Department of State that laser hair removal is not a medical procedure (NYSCEF 80), and maintaining that the remaining provisions relied on by plaintiff of the Education Law are inapposite, thereby requiring the dismissal of all cited sections of the Education Law and 19 NYCRR § 160.27.

According to defendants, there is also no evidence that Brown was improperly trained or that she lacked experience in laser hair removal when she treated plaintiff. Rather, the evidence demonstrates, they claim, that Brown was trained to use the laser treatment machine by the company that manufactured it and has approximately nine years of experience in laser hair removal as a salon owner and operator.

2. Fraudulent misrepresentation

In moving to dismiss the cause of action for fraudulent misrepresentation, defendants assert that plaintiff's allegations in support thereof are insufficiently specific, as neither the complaint nor the bills of particulars provides detail as to the circumstances constituting the alleged misrepresentation. Consequently, defendants assert, plaintiff provides an insufficient factual basis from which a reasonable inference may be drawn that her allegations of fraud are true. Nor, defendants assert, does she plead how a favorable outcome was presented by Brown and does not set forth the allegedly fraudulent statements. Defendants also challenge plaintiff's basis for claiming a fraudulent misrepresentation of the laser procedure and Brown's experience, given plaintiff's preceding visits.

3. *Res ipsa loquitur*

Defendants observe that *res ipsa loquitur* is a kind of circumstantial evidence, not a theory of liability, and does not give rise to a presumption of liability. Moreover, they argue, the injuries plaintiff alleges constitute a risk of the laser procedure, as indicated in the manual that accompanies the laser machine (NYSCEF 78), and observe that on the questionnaire that plaintiff had read and completed at her first visit to the salon, it is stated that "burns" are a possible side effect of the treatment (NYSCEF 79). Additionally, plaintiff's expert dermatologist states that hyperpigmentation is a known risk of all laser procedures, as Brown had advised plaintiff with respect to her skin type. Defendants also observe that the evidence shows that plaintiff was aware that hyperpigmentation was a risk of the procedure before April 7, 2018. Not only had she sustained hyperpigmentation to her arms from laser hair removal treatments received at defendants' salon before April 7, 2018, but she testified that at some point she noticed after one of her appointments dark spots on her upper arms, and that Brown had assured

her that was normal for darker skin types like her and that they would fade over time. And, according to the IME physician, the hyperpigmentation was barely perceptible, and such post-inflammatory hyperpigmentation is a known risk of laser procedures. (NYSCEF 85).

Thus, as plaintiff's injuries are of a kind ordinarily occurring in the absence of negligence, defendants assert that plaintiff has no recourse to *res ipsa loquitor*.

B. Plaintiff (NYSCEF 91)

Plaintiff argues that defendants offer insufficient proof of an absence of material issues of fact as there exist issues as to the method, manner, and treatment administered by defendants, who breached their duty of care to her and caused her severe and permanent injury.

According to plaintiff, and in reliance on her medical expert, defendants breached their duty to her by failing to calibrate the laser device for her skin type, by failing to adjust the laser properly when she complained of extreme pain, by failing to warn her of the potential risks of the procedure, by failing to recognize and warn of the increased risk due to the medication she was taking, by failing to perform safe hair removal free of burns, by failing to identify the proper skin type for the area being treated, by failing to spot test, by failing to have a physician present to supervise this procedure, by failing to recognize that something was wrong when plaintiff complained of extreme pain, and by failing to provide reasonable care in treating her.

Plaintiff relies on the office notes of her treating dermatologist, who stated that Brown improperly used the laser so that on April 7, 2018, plaintiff was burned as a direct cause of defendants' negligence in performing the service on that date, which according to the IME physician, resulted in thermal burns and post inflammatory hyperpigmentation, although he offered no opinion that burns are a known risk of laser procedures. She also relies on her expert's opinions that the treatment performed by defendants was improperly performed and deviated

from the normal standard, custom and practice, causing her to sustain burns to her buttocks, upper thighs, and genital areas that have resulted in permanent scarring.

Plaintiff claims that a reasonable laser technician would have performed a spot test on her before commencing treatment, would have recognized that plaintiff was experiencing more pain than is normal from the procedure, would have stopped the procedure immediately, and would not have performed this procedure without the supervision of a physician. Plaintiff maintains that these breaches of duty proximately caused her injuries. She also argues that an inference of negligence may be drawn as her injuries would not have occurred absent negligence.

C. Defendants' reply (NYSCEF 99)

Defendants reiterate their arguments in support of their arguments concerning Educ. L. § 6512 and claim that as plaintiff offers no arguments against dismissing her causes of action for or relating to the unauthorized practice of medicine, improper licensing, fraudulent and deceptive business practices, hyperpigmentation, facial injuries, inadequate lighting, and machine maintenance, those causes of action and allegations need not be addressed.

Moreover, defendants note that the consultation form, which Brown reviewed with plaintiff who filled it out, contains her past or present illnesses/medical conditions, present medications, history of scarring, tanning history, and previous laser treatment (NYSCEF 79), and that the "skin typing questionnaire" required her to provide detailed information regarding her genetic disposition, reaction to sun exposure, and tanning habits. Based on the information she provided, defendants classified her as a skin type IV. Also contained on the consultation form are treatment options, client expectations, full treatment schedule, post-treatment sun exposure avoidance, and possible side effects including hyper-pigmentation, hypo-pigmentation, purpura, scarring, textural changes, burns, blistering, pain or discomfort and erythema.

In reliance on Brown's deposition, defendants argue that her conduct demonstrates that she did not breach her duty to plaintiff but went above and beyond that duty in treating plaintiff. They assert that the opinion of plaintiff's expert is fatally conclusory in that he fails to specify what factors Brown failed to address when calibrating the laser machine and provides no factual basis for concluding that defendants wrongly classified plaintiff's skin type.

Taken together, defendants maintain, the sworn expert opinion, manufacturer's manuals and consultation forms, establish that plaintiff's alleged injuries are a known risk of the procedure and that therefore, her reliance on *res ipsa loquitur* fails.

III. ANALYSIS

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact. (*Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 [2019]). If this burden is met, the opponent must offer evidence in admissible form demonstrating the existence of factual issues requiring a trial; "conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient." (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016], quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 [1988]). In deciding the motion, the evidence must be viewed in the "light most favorable to the opponent of the motion and [the court] must give that party the benefit of every favorable inference." (*O'Brien v Port Authority of New York and New Jersey*, 29 NY3d 27, 37 [2017]).

1. Violation of Educ. L. § 6512

Pursuant to the pertinent provisions of Educ. L. § 6512:

1. Anyone not authorized to practice under this title who practices or offers to practice or holds himself out as being able to practice in any profession in which a license is a prerequisite to the practice of the acts, . . . shall be guilty of a class E felony.

The practice of medicine is defined in Educ. L. § 6521 as “diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition.” And pursuant to Educ. L. § 6522, “[o]nly a person licensed or otherwise authorized under this article shall practice medicine or otherwise use the title ‘physician.’”

Having offered the pertinent law and evidence of defendants’ licensing, defendants demonstrate, *prima facie*, their right to dismissal of the causes of action sounding in the unauthorized practice of medicine and lack of a license.

To the extent that plaintiff opposes dismissal of these causes of action, she offers no contrary law or evidence to refute defendants’ assertion that laser hair removal is not considered a medical procedure. Nor does she raise an issue as to defendants’ licensing or compliance with GBL § §401, 406, and 407.

2. Negligence *per se*

Given the foregoing (III.B.2.), defendants demonstrate, *prima facie*, their entitlement to the dismissal of the cause of action for negligence *per se*, and plaintiff raises no issue in response.

3. *Res ipsa loquitur*

The common law permits an inference of negligence to be drawn where an injury-causing event (1) is of a kind which ordinarily does not occur in the absence of someone’s negligence; (2) was caused by an instrumentality within the exclusive control of the defendant; and (3) was not due to any voluntary action or contribution on the part of the plaintiff. (*Morejon v Rais Constr. Co.*, 7 NY3d 203 [2006]).

As defendants offer admissible evidence that plaintiff’s hyperpigmentation and burns are a known risk of the laser hair removal procedure performed by Brown, they sufficiently

demonstrate, *prima facie*, that negligence may not be inferred here based solely on the occurrence of such injuries. Plaintiff offers no opposing argument.

4. Fraudulent misrepresentation

Having demonstrated that plaintiff offers insufficient evidence as to how defendants misrepresented their services, defendants demonstrate, *prima facie*, their entitlement to dismissal of this cause of action, and plaintiff fails to raise an issue of fact in opposition thereto.

5. Deceptive business practices

Defendants demonstrate, as a matter of law, that defendants did not engage in the unauthorized practice of medicine (III.B.2.) and plaintiff offers no argument in opposition.

IV. CONCLUSION

For all of these reasons, it is hereby

ORDERED, that the motion of defendants Proper Puss and Rachael Brown for summary judgment is granted to the extent that the causes of action numbered two, three, four, five, and seven are dismissed and severed; it is further

ORDERED, that as to the remaining causes of action of negligence and breach of contract, plaintiff's allegations related to defendants' licensing status and the adequacy of Brown's training are dismissed; and it is further

ORDERED, that the parties are directed to contact the court jointly by email to cpaszko@nycourts.gov in order to schedule a virtual settlement conference with Justice Jaffe.

12/2/2020
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

