

Lalwani v Kaljic
2022 NY Slip Op 32742(U)
August 5, 2022
Supreme Court, New York County
Docket Number: Index No. 152597/2019
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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DARSHANA LALWANI,

Plaintiff

Index No. 152597/2019

-against-

DECISION AND ORDER

TIFFANY KALJIC and TN GROUP INC.
d/b/a L'APPARTEMENT HAIR BOUDOIR,

Defendants
-----x

LUCY BILLINGS, J.S.C.:

I. PLAINTIFF'S CLAIM

Plaintiff claims personal injuries caused by defendant hair stylist Tiffany Kaljic's negligent performance of a Brazilian Blowout hair treatment on plaintiff at defendant L'Appartement Hair Boudoir December 13, 2017. Kaljic placed a shower cap on plaintiff's head after applying the chemicals used in the Brazilian Blowout treatment to her hair. Plaintiff maintains that a shower cap was not normally used in a Brazilian Blowout and Kaljic's use of the shower cap on plaintiff caused a chemical burn and the medical condition lichen planopilaris, resulting in permanent hair loss. Plaintiff sues for negligence and negligent infliction of emotional distress.

II. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants move for summary judgment dismissing this action based on the absence of evidence that defendants were negligent or that their hair treatment caused plaintiff's condition.

C.P.L.R. § 3212(b). To obtain summary judgment, defendants must make a prima facie showing of entitlement to judgment as a matter of law through admissible evidence, eliminating all material factual issues. Id.; Friends of Thayer Lake LLC v. Brown, 27 N.Y.3d 1039, 1043 (2016); Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP, 26 N.Y.3d 40, 49 (2015); Voss v. Netherlands Ins. Co., 22 N.Y.3d 728, 734 (2014); Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012). If defendants fail to make this evidentiary showing, the court must deny their motion. Voss v. Netherlands Ins. Co., 22 N.Y.3d at 734; William J. Jenack Estate Appraisers & Auctioneers, Inc. v. Rabizadeh, 22 N.Y.3d 470, 475 (2013); Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Dorador v. Trump Palace Condo., 190 A.D.3d 479, 481 (1st Dep't 2021). Only if defendants meet their initial burden, does the burden shift to plaintiff to rebut that prima facie showing, by producing evidence, in admissible form, sufficient to require a trial of material factual issues. De Lourdes Torres v. Jones, 26 N.Y.3d 742, 763 (2016); Nomura Asset Capital Corp. v. Cadwalader Wickersham & Taft LLP, 26 N.Y.3d at 49; Morales v. D & A Food Serv., 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004). In evaluating the evidence for purposes of defendants' motion, the court construes the evidence in the light most favorable to plaintiff. Stonehill Capital Mgt. LLC v. Bank of the W., 28 N.Y.3d 439, 448 (2016); De Lourdes Torres v. Jones, 26 N.Y.3d at 763; William J. Jenack

Estate Appraisers & Auctioneers, Inc. v. Rabizadeh, 22 N.Y.3d at 475; Vega v. Restani Constr. Corp., 18 N.Y.3d at 503.

III. THE EVIDENCE

According to defendants, plaintiff presents no evidence that defendants' conduct was negligent, and several physicians who treated plaintiff after December 2017 attributed her hair loss to various causes other than defendants' hair treatment, including stress, iron deficiency, medications, diseases, and a genetic condition. Defendants never demonstrate affirmatively, through Kaljic or an expert, that Kaljic followed standard procedures in administering the Brazilian Blowout treatment to plaintiff and took precautions against any risks that the treatment posed, as is defendants' burden upon their motion for summary judgment. Defendants may not simply point to plaintiff's lack of evidence. Hairston v. Liberty Behavioral Mgt. Corp., 157 A.D.3d 404, 405 (1st Dep't 2018); Belgium v. Mateo Prods., Inc., 138 A.D.3d 479, 480 (1st Dep't 2016); Dylan P. v. Webster Place Assoc., L.P., 132 A.D.3d 537, 538 (1st Dep't 2015); McCullough v. One Bryant Park, 132 A.D.3d 491, 492 (1st Dep't 2015).

Defendants focus instead on requiring plaintiff to exclude causes of her hair loss other than the Brazilian Blowout treatment, a requirement imposed on a plaintiff at trial claiming product liability. See Rosa v. General Motors Corp., 226 A.D.2d 213, 213 (1st Dep't 1996). Plaintiff, however, does not attribute her hair loss to a defect in the Brazilian Blowout

product. Instead, plaintiff claims defendants' negligent misuse of the product.

In opposition to defendants' motion, plaintiff points out that defendants' expert, Barry D. Goldman M.D., who conducted a physical examination of plaintiff, conceded that he could not reach any conclusion regarding causation. Aff. of G. Oliver Koppell Ex. 20, NYSCEF Doc. No. 64, at 9. Plaintiff, on the other hand, presents evidence of both defendants' negligence and a causal connection between their Brazilian Blowout treatment and her injury. Her expert hair stylist Julia Hickey, with six years of training and experience in performing the Brazilian Blowout treatment, its use, its toxic chemical content, the attendant risks, and the warning signs of misuse, attests that Kaljic failed to follow the standard procedures for a Brazilian Blowout in at least three ways that cause injury. Aff. of Julia M. Hickey, NYSCEF Doc. No. 42, ¶¶ 4, 7-8, 10, 12. (1) Kaljic placed the shower cap on plaintiff's head. Id. ¶¶ 13-14, 20. (2) Kaljic failed to rinse the chemicals out of plaintiff's hair. Id. ¶¶ 13, 21-22. (3) Kaljic failed to react when plaintiff complained about pain from the treatment. Id. ¶ 17. This evidence alone raises a factual issue as to Kaljic's negligence. Janiya W.-G. v. Smith, 160 A.D.3d 502, 504 (1st Dep't 2018).

Although Hickey does not link plaintiff's hair loss to Kaljic's negligence, plaintiff's expert dermatologist Nicholas Mollanazar M.D. reviewed plaintiff's medical records and the

other evidence in this action and attests that, to a reasonable degree of medical certainty, Kaljic's use of a shower cap during the Brazilian Blowout treatment caused plaintiff's injury. Hickey attests that the chemicals used in the Brazilian Blowout include formaldehyde, a toxic chemical. Hickey Aff. ¶ 7. Dr. Mollanazar in turn attests that the formaldehyde from the mixture applied to plaintiff's hair released formaldehyde gas that was trapped inside the shower cap, where it burned her scalp and caused her to develop lichen planopilaris, which resulted in her hair loss. Aff. of Nicholas Mollanazar, M.D., NYSCEF Doc. 39, ¶¶ 5, 24. Dr. Mollanazar explains that he arrives at this diagnosis of plaintiff's condition and the cause of her hair loss because the symptoms that plaintiff experienced immediately after the treatment and that developed into lichen planopilaris are the symptoms that exposure to formaldehyde gas causes. Id. ¶¶ 7, 25, 33. He explains that the diagnoses and opinions of other potential causes by other physicians who examined and treated plaintiff are unsupported and erroneous because they failed consider all plaintiff's symptoms. Id. ¶¶ 7, 19, 36-38. He also explains that the physicians who did not trace her symptoms to the hair treatment may have lacked experience with lichen planopilaris, as it is an uncommon condition, takes time to manifest itself, and usually is diagnosed by tertiary specialists. Id. ¶ 7. See id. ¶¶ 16-18, 37-38, 41.

In reply, defendants challenge Dr. Mollanazar's opinion on

the grounds that it is based on the records of plaintiff's treating physicians who could not pinpoint a cause for her condition, and Dr. Mollanazar never examined or treated plaintiff. Defendants cite no authority for the proposition that medical records are an inadequate foundation for a medical diagnosis or an opinion regarding causation, because no such requirement is to be found. See Cabrera v. Ahmed, 189 A.D.3d 403, 403 (1st Dep't 2020); Paulling v. City Car & Limousine Servs., Inc., 155 A.D.3d 481, 482 (1st Dep't 2017); Putchlawski v. Diaz, 192 A.D.2d 444, 445 (1st Dep't 1993). At best, Dr. Mollanazar's failure to examine or treat plaintiff bears only on his opinion's probative value, not on its admissibility.

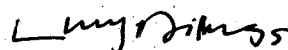
Defendants also challenge Dr. Mollanazar's qualifications to attest to the chemical contents of the Brazilian Blowout treatment that Dr. Mollanazar concludes caused plaintiff's chemical burn. Hickey, however, attests to the formaldehyde in the Brazilian Blowout treatment based on her training and experience in the treatment. Dr. Mollanazar, as a dermatologist, in turn is qualified to attest to the effects of the chemical content on the skin.

IV. CONCLUSION

Thus, even if defendants met their burden to show the absence of their negligence or causation of plaintiff's hair loss, plaintiff has demonstrated material factual issues regarding defendants' negligence and the cause of her injury.

Therefore the court denies defendants' motion for summary judgment. C.P.L.R. § 3212(b); De Lourdes Torres v. Jones, 26 N.Y.3d at 763; Vega v. Restani Constr. Corp., 18 N.Y.3d at 505-506; Orea v. NH Hotels USA, Inc., 187 A.D.3d 476, 477 (1st Dep't 2020); Janiya W.-G. v. Smith, 160 A.D.3d at 504.

DATED: August 5, 2022



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