

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA CIVIL
DIVISION

CASE NO.:

L.L.,

Plaintiff,

vs.

FIVE ELEMENT WELLNESS
CENTER, INC.,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, L.L., by and through her undersigned counsel, hereby files this Complaint and Demand for Jury Trial against Defendant, FIVE ELEMENT WELLNESS CENTER, INC., and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. This Complaint arises from the sexual assault of L.L. by massage therapist, Daniel Leduc (“Mr. Leduc”) at a massage therapy appointment on or about July 20, 2023 at FIVE ELEMENT WELLNESS CENTER, INC. (FIVE ELEMENT), a massage establishment located at 10251 W. Sample Road, Coral Springs, Florida.

2. Plaintiff, L.L., is an adult female who is a citizen and resident of Broward County, Florida. Plaintiff filed this lawsuit using a pseudonym to protect her privacy and because she fears further psychological injury if her name were publicly disclosed, as this lawsuit involves facts of the utmost intimacy regarding Plaintiff’s sexual assault. Plaintiff’s true identity is known to Defendant and its agents.

3. FIVE ELEMENT is business providing massage therapy services under the fictitious name FIVE ELEMENT.

4. Venue properly lies in this judicial circuit in that the sexual assault and other tortious acts that are the subject of this lawsuit were committed at the business location of FIVE ELEMENT, located in Broward County, Florida.

5. This Court has jurisdiction in that this is a claim for monetary damages far in excess of jurisdictional minimum of this Court of fifty thousand dollar (\$50,000.00), exclusive of interest, costs, and attorney's fees.

FACTUAL ALLEGATIONS

6. On or about July 20, 2023, L.L. went to FIVE ELEMENT to obtain acupuncture and massage treatment for therapeutic purposes. Mr. Leduc was assigned to perform her massage on that day.

7. L.L. had received massage services by Mr. Leduc on one previous occasion and trusted that she would be safe while undergoing a second massage by him.

8. Before the massage began, L.L. removed all of her clothing except for her underwear and laid down on the treatment table under the draping provided.

9. During the massage appointment, Mr. Leduc initiated unwanted sexual contact with L.L.

10. Mr. Leduc positioned his body throughout the massage in a manner such that she could feel his erect penis on her hand.

11. L.L. was shocked and frightened and did not know how to react to what she was feeling.

12. Mr. Leduc then suddenly and without warning, began to massage L.L.'s vagina

over her underwear and then escalated to moving her underwear to the side in order to access her vagina.

13. Mr. Leduc then began to massage L.L.'s clitoris.

14. While this sexual assault was occurring, L.L. was shocked, frozen and scared for her safety.

15. Mr. Leduc then attempted to massage L.L.'s breasts and L.L. shouted firmly, "No!"

16. Mr. Leduc then stopped the massage.

17. Just before Mr. Leduc left the room he said to her, "I hope that what happened was ok."

18. L.L. was disgusted by that comment and did not respond. She kept her head down until he had left the room to let her get dressed.

19. L.L. remained mortified and in shock as she got dressed and exited FIVE ELEMENT and went home.

20. L.L. proceeded to report the sexual assault by Mr. Leduc to FIVE ELEMENT, the Cora Springs Police Department and the Florida Department of Health.

21. When questioned by law enforcement officers, Mr. Leduc commented that "believed he felt a connection with L.L." and that "he lost himself in the moment based upon the connection he thought they had and that "he believed he was doing her a favor."

22. Mr. Leduc was arrested and subsequently adjudicated guilty.

23. As a condition of his plea agreement, Mr. Leduc agreed to voluntarily surrender his license.

24. None of the sexual contact initiated by Mr. Leduc toward Plaintiff was requested, invited, welcomed, reciprocated, consented to, or otherwise implied in the course of a massage

therapy appointment. Indeed, all sexual contact between a massage therapist and a client is expressly prohibited under Florida law and the ethics rules of massage therapy.

25. The massage therapy industry has a substantial problem that is or should be known to all operators of spas performing massage therapy services, including Defendant, FIVE ELEMENT. The problem is the sheer number of acts of sexual battery, sexual assaults, acts of sexual malfeasance, and acts of sexual misconduct committed by male massage therapists upon female clients.

26. Sexual battery, sexual assault, sexual misconduct, and sexual malfeasance are generally foreseeable consequence of the nature of work involved in the massage industry and is an unfortunate possibility engendered by the type of work FIVE ELEMENT's massage therapists are paid to perform. This fact is or should be well known to FIVE ELEMENT.

COUNT I – RESPONDEAT SUPERIOR/VICARIOUS LIABILITY

27. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 26 above.

28. At all relevant times, Mr. Leduc, the massage therapist assigned to perform the massage to Plaintiff, was an employee, servant and/or apparent agent of FIVE ELEMENT.

29. Mr. Leduc was authorized and entrusted by Defendant FIVE ELEMENT to be alone with Plaintiff in a darkened room while Plaintiff was undressed and in a vulnerable position.

30. The sexual misconduct described above occurred on a massage table, on premises operated and/or controlled by FIVE ELEMENT.

31. Mr. Leduc was authorized to touch Plaintiff via skin-to-skin contact in a manner consistent with providing spa services. Mr. Leduc extended and converted his authorized touching of Plaintiff into the sexual battery of Plaintiff as described above.

32. The sexual misconduct described above occurred during business hours of FIVE ELEMENT and occurred in the course and scope of the performance of Mr. Leduc's duties.

33. The initial physical contact and relationship of Mr. Leduc with Plaintiff was in furtherance of the business of FIVE ELEMENT.

34. The wrongful acts of Mr. Leduc were committed in the actual or apparent course and scope of his employment or agency with FIVE ELEMENT.

35. The massage services provided by Mr. Leduc benefited FIVE ELEMENT.

36. Mr. Leduc was aided in accomplishing the tort upon Plaintiff by the existence of his agency or employment relationship with FIVE ELEMENT. Specifically, Mr. Leduc used the authority actually delegated to him by FIVE ELEMENT to initiate sexual contact with Plaintiff while she was undressed and laying in prone, vulnerable position in a dark room seeking relaxation. She was in this vulnerable position with Mr. Leduc precisely because of Mr. Leduc's agency relationship with FIVE ELEMENT.

37. Under the doctrine of respondeat superior, FIVE ELEMENT is responsible for the reckless and intentional actions of its servant, committed in the actual or apparent scope of his duties.

38. As a direct and proximate result of the foregoing, Plaintiff has suffered injuries, mental anguish and the loss of enjoyment of life.

WHEREFORE, Plaintiff, L.L., demands judgment against Defendant, FIVE ELEMENT WELLNESS CENTER, INC. for compensatory damages, costs and such other and further relief as this Court deems just and proper.

COUNT II – NEGLIGENT HIRING

39. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 26

above.

40. At all material times, Defendant owed a duty to Plaintiff to use reasonable care to ensure her safety, care and well-being while she was obtaining spa services at its establishment. These duties encompassed the hiring of its massage therapists, including Mr. Leduc.

41. Defendant breached these duties by failing to exercise reasonable care to protect the Plaintiff from sexual battery and lewd and lascivious acts committed by its agent or employee, Mr. Leduc. Specifically, FIVE ELEMENT failed to properly vet Mr. Leduc by conducting a thorough investigation into his past employment and his background.

42. Upon information and belief, prior to the hiring of Mr. Leduc as a massage therapist at FIVE ELEMENT, Defendant knew or in the exercise of reasonable care should have known that Mr. Leduc was unfit for the intimate duties assigned, did not exhibit appropriate boundaries with women, did not possess the judgment or temperament to work as a massage therapist, was sexually inappropriate with females, and/or posed a risk of perpetrating unwanted sexual contact on Plaintiff.

43. Despite having such information, Defendant hired Mr. Leduc without any limitations on his employment and placed Plaintiff in a vulnerable position on the massage table in a dark room alone with Mr. Leduc where she sexually assaulted by him.

44. As a direct and proximate result of the foregoing, Plaintiff has suffered psychological and emotional injuries, mental anguish and the loss of enjoyment of life.

WHEREFORE, Plaintiff, L.L., demands judgment against Defendant, FIVE ELEMENT WELLNESS CENTER, INC., for compensatory damages, costs and such other and further relief as this Court deems proper.

COUNT III – NEGLIGENT RETENTION

40. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 26 above.

41. At all material times, Defendant owed a duty to Plaintiff to use reasonable care to ensure her safety, care and well-being while she was obtaining spa services at its establishment. These duties encompassed the retention of its massage therapists, including Mr. Leduc.

42. Defendant breached these duties by failing to exercise reasonable care to protect the Plaintiff from sexual battery and lewd and lascivious acts committed by its agent or employee, Mr. Leduc.

43. Upon information and belief, prior to the sexual battery perpetrated on the Plaintiff, Defendant knew or in the exercise of reasonable care should have known that Mr. Leduc was unfit for the intimate duties assigned, did not exhibit appropriate boundaries with females, did not possess the judgment or temperament to work as a massage therapist, was sexually inappropriate with females, and/or posed a risk of perpetrating unwanted sexual contact on Plaintiff.

44. Despite having such information, Defendant retained Mr. Leduc without any limitations on his employment, took no meaningful action to protect any of his clients from sexual assault, and placed Plaintiff in a vulnerable position on the massage table in a dark room alone with Mr. Leduc where she was sexually assaulted by him.

45. As a direct and proximate result of the foregoing, Plaintiff has suffered psychological and emotional injuries, mental anguish and the loss of enjoyment of life.

WHEREFORE, Plaintiff, L.L., demands judgment against Defendant, FIVE ELEMENT WELLNESS CENTER, INC., for compensatory damages, costs and such other and further relief

as this Court deems proper.

COUNT IV – NEGLIGENT SUPERVISION

46. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 26 above.

47. At all material times, Defendant owed a duty to Plaintiff to use reasonable care to ensure her safety, care and well-being while she was obtaining spa services at its establishment. These duties encompassed the supervision of its massage therapists, including Mr. Leduc.

48. Defendant breached these duties by failing to exercise reasonable care to protect the Plaintiff from sexual battery and lewd and lascivious acts committed by its agent or employee, Mr. Leduc.

49. Upon information and belief, prior to the sexual battery perpetrated on the Plaintiff, Defendant knew or in the exercise of reasonable care should have known that Mr. Leduc was unfit for the intimate duties assigned, did not exhibit appropriate boundaries with women, did not possess the judgment or temperament to work as a massage therapist, was sexually inappropriate with females, and/or posed a risk of perpetrating unwanted sexual contact on Plaintiff.

50. Despite having such information, Defendant failed to provide adequate supervision of Mr. Leduc to protect his clients from the risk of sexual assault and instead placed Plaintiff in a vulnerable position on the massage table in a dark room alone with Mr. Leduc where she was sexually assaulted by him.

51. As a direct and proximate cause of the foregoing, Plaintiff has suffered psychological and emotional injuries, mental anguish and the loss of enjoyment of life.

WHEREFORE, Plaintiff, L.L., demands judgment against Defendant, FIVE ELEMENT

WELLNESS CENTER, INC., for compensatory damages, costs and such other and further relief as this Court deems proper.

COUNT V - NEGLIGENT BUSINESS OPERATIONS (PROTOCOL AND TRAINING)

52. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 26 above.

53. At all material times, Plaintiff was an invitee and/or authorized visitor and paying client of FIVE ELEMENT.

54. At all material times, Defendant owed a duty to Plaintiff to use reasonable care to ensure her safety, care and well-being while she was on their premises to obtain massage therapy services.

55. Prior to Plaintiff's appointment with FIVE ELEMENT, Defendant knew that male massage therapists were committing sexual assault and/or engaging in sexual contact with female massage clients at extraordinary rates and that these facts were *not* generally known to the public.

56. The high rate of sexual contact in the spa setting constitutes a dangerous condition of which its female clients, including Plaintiff, were unaware and which should have been disclosed by Defendant to its female patrons, together with instructions about how to prevent, be prepared for, and respond to such incidents, particularly if they occur when no one else is in the spa.

57. Defendant had a duty to implement reasonable policies and procedures to protect its guests, particularly with respect to a person employed on Defendant's premises who was placed in a position of control over a vulnerable guest and was in a position to do intentional harm to that guest.

58. Defendant did not have reasonable policies and procedures in place to protect its female guests from a sexual battery by a person performing services at FIVE ELEMENT. In particular, Defendant failed to take reasonable steps to ensure that female clients who received massages from male therapists were sufficiently warned of and protected from foreseeable harm.

59. Defendant breached its duty of care by failing to act as a reasonable and prudent business operator would have under the same or similar circumstances. Specifically, Defendant committed negligence by:

- a. Alerting massage therapists that most dissatisfied clients will never complain about their massage;
- b. Failing to enforce adequate policies to punish massage therapists who commit sexual misconduct, which served to embolden perpetrators who would not fear harsh punishment;
- c. Failing to create, implement, and establish policies and procedures to properly train employees to ensure the proper and safe conduct of massage therapists;
- d. Failing to create, implement, and establish protocols to train employees on policies and procedures to ensure proper supervision of employees who were entrusted with the care and treatment of clients;
- e. Failing to create and implement procedures and properly train employees on draping procedures and policies and procedures preventing sexual misconduct, abuse or harm to the clients; identifying individuals who posed a risk of harm to the clients; how to respond to situations that posed a risk of harm to the clients; how to handle reports involving inappropriate situations or relationships involving the clients; and how to report inappropriate situations involving clients to law

enforcement;

- f. Failing to warn female clients of the high rate of sexual battery by male massage therapists within the industry;
- g. Failing to create, implement, and properly train employees on their duties as a professional in whom a client places his or her trust; and
- h. Failing to install a panic/call button for clients to discretely summon assistance, if needed, while in the massage therapy room.

60. As a direct and proximate cause of the foregoing, Plaintiff has suffered psychological and emotional injuries, mental anguish and the loss of enjoyment of life.

WHEREFORE, Plaintiff, L.L., demands judgment against Defendant, FIVE ELEMENT WELLNESS CENTER, INC., for compensatory damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial in this action.

CERTIFICATE RE: E-FILING AND E-SERVICE

I HEREBY CERTIFY that this Complaint and Demand for Jury Trial was filed electronically in compliance with Florida Rules of Judicial Administration 2.515

I FURTHER CERTIFY that the foregoing was served electronically in compliance with Florida Rule of Judicial Administration 2.516(b)(2)(A) to: SERVICE LIST, this **13th day of May, 2024.**

I FURTHER CERTIFY for purposes of service of any documents after initial process that adam@adamhorowitzlaw.com and elana@adamhorowitzlaw.com are primary and maria@adamhorowitzlaw.com is secondary.

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