

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

K.C.,

CASE NO.:

Plaintiff,

vs.

AAA G DEVELOPMENT, LLC d/b/a
MASSAGE ENVY EAST HOLLYWOOD,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, K.C., by and through her undersigned counsel, hereby files this Complaint and Demand for Jury Trial against Defendant, AAA G DEVELOPMENT, LLC d/b/a MASSAGE ENVY EAST HOLLYWOOD, and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Complaint arises from the sexual battery of K.C. by her massage therapist, Danis Diaz Delgado (“Mr. Delgado”), on or about January 22, 2021. This incident occurred while K.C. was seeking massage therapy services at the East Hollywood Massage Envy franchise located at 1640 Sheridan Street, Hollywood, Florida 33020.

2. Plaintiff, K.C., is an adult female who is a citizen and resident of the State of Florida. Plaintiff is identified by the pseudonym K.C. in that this lawsuit involves intimate facts concerning an incident in which she was the victim of a sexual battery. K.C.’s real identity is known to the Defendant, but she fears further psychological injury if her name were publicly disclosed.

3. Defendant, AAA G DEVELOPMENT, LLC d/b/a MASSAGE ENVY EAST

HOLLYWOOD (“MASSAGE ENVY”), is a Florida business entity headquartered and registered to do business in the State of Florida. It is a franchise of Massage Envy, a national company which offers spa services to the public at its franchise locations. At all material times, Defendant owned and operated the East Hollywood Massage Envy franchise located at 1640 Sheridan Street, Hollywood, Florida 33020, including its daily operations ranging from the hiring and supervision of employees, risk management, adoption and enforcement of policies relating to the safety of its clients, and the prevention and reporting of sexual misconduct by its employees.

4. At all material times, Mr. Delgado was an agent of MASSAGE ENVY, where he was employed as a massage therapist.

5. Venue properly lies in this judicial circuit in that the sexual misconduct and other tortious acts that are the subject of this lawsuit were committed at MASSAGE ENVY, located in Broward County, Florida.

6. This Court has jurisdiction in that this is a claim for monetary damages above the fifty thousand dollar (\$50,000) jurisdictional minimum of this Court, exclusive of interest, costs, and attorney’s fees.

FACTUAL ALLEGATIONS

7. On January 22, 2021, K.C. went to MASSAGE ENVY to obtain a one-hour full body massage.

8. K.C. was assigned by MASSAGE ENVY to Mr. Delgado for the massage session.

9. K.C. entered the massage therapy room and removed all of her clothing except for her underwear, then laid on the massage table in the face-down position.

10. Toward the end of the massage session, Mr. Delgado instructed K.C. to transition to the face-up position on the massage table.

11. As Mr. Delgado was massaging K.C.'s right upper inner thigh, he began slowly migrating his hands closer and closer to her vagina.

12. Mr. Delgado then moved his hand onto K.C.'s vaginal area and initially rubbed K.C.'s vaginal area over her underwear.

13. K.C.'s entire body tensed up as she was in shock and disbelief at what was happening.

14. The sexual assault continued to escalate, as Mr. Delgado proceeded to maneuver his hand underneath K.C.'s underwear and began rubbing her vaginal area, including her inner labia and clitoris, with his fingers.

15. Mr. Delgado then partially removed K.C.'s underwear by pulling her underwear down K.C.'s right leg and over her foot as he continued to rub her clitoris and inner vaginal area.

16. Although K.C. was in complete shock and frozen with fear as the sexual assault was occurring, she uttered to Mr. Delgado "I'm good" to try and thwart his actions in a manner that she hoped would not anger or upset Mr. Delgado while she was lying naked in a dark room and alone with him.

17. Mr. Delgado proceeded to lift the draping to view K.C.'s vagina and commented on her vagina by stating several times, "you have a baby's pussy."

18. K.C. verbally indicated that she wanted Mr. Delgado to cease his sexually inappropriate conduct, to which Mr. Delgado replied, "it's just a massage."

19. Mr. Delgado resumed massaging K.C.'s right leg. While massaging her leg, he began to stroke and twirl K.C.'s pubic hair with his fingers.

20. Mr. Delgado repositioned himself near K.C.'s head and massaged her chest and shoulders. He then proceeded to squeeze and fondle K.C.'s breasts underneath the draping via

skin-to-skin contact.

21. After Mr. Delgado groped her breasts, he told K.C. that the massage session was completed and exited the treatment room.

22. Extremely traumatized, in shock by the violation that had just occurred, and feeling like she was in a trance, K.C. quickly dressed, left the room, and reported the sexual assault immediately to her friends and boyfriend while in her vehicle still located in the parking lot of MASSAGE ENVY.

23. K.C. promptly reported the sexual assault to the Florida Department of Health and the Hollywood Police Department that same evening.

24. During the criminal investigation, K.C. submitted her underwear that she wore during the massage session for DNA analysis.

25. DNA analysis found Mr. Delgado's DNA on the interior crotch portion of K.C.'s underwear.

26. On May 13, 2022, Mr. Delgado was charged with Sexual Battery and Battery by the Broward County State Attorney's Office on account of sexual misconduct. K.C. is the victim in that case.

27. On March 29, 2021, the Florida Department of Health filed an Administrative Complaint against Mr. Delgado on account of sexual misconduct. On or about August 4, 2021, the Florida Department of Health entered a Final Order accepting Mr. Delgado's surrender of his license to practice as a licensed massage therapist in the State of Florida, as part of a disciplinary action against him.

28. Mr. Delgado was charged with the crime of Domestic Battery Strangulation in 2016 and received a withhold of adjudication.

29. K.C. did not invite, induce, ratify, implicitly consent, or comply with this sexual contact. To the contrary, K.C. was mortified and in shock at Mr. Delgado's actions. She was in disbelief at this violation by a licensed massage therapist.

30. At all relevant times, there was an employer-employee relationship between Mr. Delgado and Defendant, MASSAGE ENVY.

31. The massage industry has a substantial problem that is or should be known to the Defendant. 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.

32. Sexual battery, sexual assault, sexual misconduct, and sexual malfeasance are generally foreseeable consequences of the nature of work involved in the massage industry and is an unfortunate reality engendered by the type of work Massage Envy's massage therapists are paid to perform. This fact is or should be well known to Massage Envy franchises as the franchisor has collected and otherwise acquired data on the staggering numbers of incidents of sexual misconduct by massage therapists. The franchisor has alerted all of its franchises as to the extraordinary number and rate of incidents of sexual misconduct.

33. Defendant is also aware that there are a vast number of sexual misconduct victims who have never come forward and never will. In fact, the General Orientation, Manual & Workbook, provided to every MASSAGE ENVY "associate", including Mr. Delgado, on their hire date, states the following: *"Only 4% of upset customers will tell you when there is a problem."*

34. Defendant's "Inappropriate Touch Procedure" in the same manual has a diagram flow chart as to each step to take if a guest member complains that a therapist inappropriately touched them, as follows:

- **Member/Guest – Reports Inappropriate Conduct**
- *Clinic Owner or Administrator should immediately respond to the member/guest's need and get them to a private room. Let them recover, allow them to explain what happened and document what they say. Have a witness present.*
- **Do not admit/deny/or make any promise about the allegations other than to promise to investigate and take appropriate action.**
- **Complete Clinic Incident Report and gather any additional documentation, notes, etc.**
- **Email a copy of the Incident Report, and any additional documentation, to the Regional Developer and Corporate Office.** *If incident handed (sic) by Clinic Administrator, he/she should make Franchise Owner aware of the incident.*

35. The “Inappropriate Touch Procedure” lacks any instructions to MASSAGE ENVY to notify law enforcement or the Department of Health to ensure a proper interview of the victim, questioning of the alleged perpetrator, and the gathering of evidence.

36. Given the foregoing procedures, Defendant fosters an environment conducive to sexual misconduct by its massage therapists who can commit sexual misconduct without the risk that law enforcement will be notified by their employer and who are actually emboldened by their employer with the wisdom that most clients will never report their incidents of sexual misconduct.

COUNT I – NEGLIGENT HIRING

37. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 36 above.

38. 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. These duties encompassed the hiring of massage therapists such as Mr. Delgado.

39. Defendant breached this duty by failing to exercise reasonable care to protect the Plaintiff from sexual misconduct and lewd and lascivious acts committed by its agent, Mr.

Delgado.

40. Prior to hiring Mr. Delgado, Defendant knew, or in the exercise of reasonable care, should have known that Mr. Delgado was unfit for the intimate duties for which he was hired and had a temperament and/or history that rendered him unfit to be alone and in a position of trust with unclothed female clients, and/or posed a risk of perpetrating unwanted sexual contact.

41. Despite having such information, Defendant hired Mr. Delgado without any limitations on his employment or adequate supervision and took no action to warn or otherwise affirmatively protect any of his female clients.

42. At all relevant times, Defendant knew, or in the exercise of reasonable care, should have known that Mr. Delgado was unfit, dangerous, and/or a threat to the health, safety, and welfare of women entrusted to him for spa services.

43. Despite such actual or constructive knowledge, Defendant hired Mr. Delgado and thereafter placed Plaintiff in a vulnerable position on the massage table in a darkened room alone with Mr. Delgado.

44. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, K.C., demands judgment against Defendant, AAA G DEVELOPMENT, LLC d/b/a MASSAGE ENVY EAST HOLLYWOOD for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

COUNT II – NEGLIGENT RETENTION

45. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 36 above.

46. 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. These duties encompassed the employment of massage therapists such as Mr. Delgado.

47. Defendant breached this duty by failing to exercise reasonable care to protect the Plaintiff from sexual misconduct and lewd and lascivious acts committed by its agent, Mr. Delgado.

48. After hiring Mr. Delgado but prior to the sexual misconduct perpetrated on the Plaintiff, Defendant knew, or in the exercise of reasonable care, should have known that Mr. Delgado was unfit for the intimate duties assigned, did not exhibit appropriate boundaries with women, had a history and/or temperament that rendered him unfit to be alone and in a position of trust with an unclothed female, was sexually inappropriate with clients, and/or posed a risk of perpetrating unwanted sexual contact.

49. Despite having such information, Defendant retained Mr. Delgado as a massage therapist without any limitations on his employment and took no action to warn or otherwise protect any of his female clients.

50. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, K.C., demands judgment against Defendant, AAA G DEVELOPMENT, LLC d/b/a MASSAGE ENVY EAST HOLLYWOOD, for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

COUNT III – NEGLIGENT SUPERVISION

51. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 36

above.

52. 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. These duties encompassed the supervision of massage therapists whom it employed such as Mr. Delgado.

53. Defendant breached this duty by failing to exercise reasonable supervision and oversight to protect the Plaintiff from sexual misconduct and lewd and lascivious acts committed by its agent, Mr. Delgado.

54. After hiring Mr. Delgado but prior to the sexual misconduct perpetrated on the Plaintiff, Defendant knew, or in the exercise of reasonable care, should have known that Mr. Delgado was unfit for the intimate duties assigned, did not exhibit appropriate boundaries with women, had a history and/or temperament that rendered him unfit to be alone and in a position of trust with an unclothed female, was sexually inappropriate with clients, and/or posed a risk of perpetrating unwanted sexual contact.

55. Despite having such information, Defendant retained Mr. Delgado as a massage therapist without any limitations on his employment and failed to provide adequate supervision and oversight of Mr. Delgado, and otherwise took no action to mitigate the risk of harm or otherwise protect any of his female clients.

56. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, K.C., demands judgment against Defendant, AAA G DEVELOPMENT, LLC d/b/a MASSAGE ENVY EAST HOLLYWOOD for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

COUNT IV – NEGLIGENCE (PROTOCOL/POLICIES/TRAINING)

57. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 36 above.

58. At all material times, Plaintiff was an invitee and/or an authorized visitor and paying client of the Defendant.

59. 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.

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

61. 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 on how to prevent, be prepared for, and respond to such incidents.

62. 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.

63. Defendant did not have reasonable policies and procedures in place to protect its female guests from a sexual misconduct by a person performing services at MASSAGE ENVY.

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. Further, Defendant did not have adequate measures in place to deter foreseeable harm such as panic buttons in the massage therapy rooms.

64. 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, implement, and properly train employees on 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 and to the Massage Envy hierarchy;

- f. Failing to warn female clients of the high rate of sexual misconduct by male massage therapists within the industry; and
- g. Failing to create, implement, and properly train employees on their duties as a professional in whom a client places his or her trust.

65. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, K.C., demands judgment against Defendant, AAA G DEVELOPMENT, LLC d/b/a MASSAGE ENVY EAST HOLLYWOOD for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

COUNT V – RESPONDEAT SUPERIOR/VICARIOUS LIABILITY

66. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 36 above.

67. At all relevant times, Mr. Delgado, the massage therapist assigned to give the massage to Plaintiff, was an employee and agent of MASSAGE ENVY.

68. Mr. Delgado was authorized and entrusted by Defendant, MASSAGE ENVY, to be alone with Plaintiff in a darkened room while Plaintiff was undressed and in a vulnerable position.

69. The sexual contact described above occurred on a massage table, on premises operated and/or controlled by Defendant, MASSAGE ENVY.

70. The sexual contact described above occurred during the normal business hours of MASSAGE ENVY and occurred in the course and scope of the performance of Mr. Delgado's duties.

71. The initial physical contact and relationship of Mr. Delgado with Plaintiff was in furtherance of the business of Defendant, MASSAGE ENVY.

72. Mr. Delgado was authorized to touch Plaintiff via skin-to-skin contact.

73. The wrongful acts of Mr. Delgado were committed in the actual or apparent course and scope of his employment or agency with MASSAGE ENVY when Mr. Delgado extended and converted his authorized touching into sexual contact with Plaintiff.

74. The wrongful acts were committed while Mr. Delgado was doing what his employment or agency contemplated.

75. The massage services provided by Mr. Delgado benefitted MASSAGE ENVY.

76. Mr. Delgado was aided in accomplishing the tort upon Plaintiff by the existence of his agency relationship with MASSAGE ENVY. Specifically, Mr. Delgado used the authority actually delegated to him by MASSAGE ENVY to make sexual contact with Plaintiff while she was undressed and laying in a prone, vulnerable position in a dark room seeking relaxation. She was in this vulnerable position with Mr. Delgado precisely because of Mr. Delgado's agency relationship with MASSAGE ENVY.

77. Under the doctrine of *respondeat superior*, MASSAGE ENVY is responsible for the actions of its servant committed in the actual or apparent scope of his duties.

78. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, K.C., demands judgment against Defendant, AAA G DEVELOPMENT, LLC d/b/a MASSAGE ENVY EAST HOLLYWOOD for compensatory damages, costs, and such other and further relief as this Court deems just and 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 was filed electronically in compliance with Florida Rules of Judicial Administration 2.515 and 2.516(e).

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

Dated:

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