

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA

C.B.

CASE NO.:

Plaintiff,

vs.

FONTAINEBLEAU FLORIDA HOTEL, LLC,
A Delaware Limited Liability Company d/b/a
FONTAINEBLEAU MIAMI BEACH
and as LAPIS SPA,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, C.B. by and through her undersigned counsel, hereby files this Complaint and Demand for Jury Trial against Defendant, FONTAINEBLEAU FLORIDA HOTEL, LLC, A Delaware Limited Liability Company d/b/a FONTAINEBLEAU MIAMI BEACH and as LAPIS SPA, and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Complaint arises from the sexual assault of C.B. by her massage therapist, Christopher Mankarious (“Mr. Mankarious”), on or about April 27, 2021. This sexual assault occurred while C.B. was seeking a massage therapy treatment at the Lapis Spa located within the Fontainebleau Miami Beach Hotel.

2. Plaintiff is identified by the pseudonym C.B. in that this lawsuit involves intimate facts concerning an incident in which she was the victim of a sexual assault. C.B.’s real identity is known to the Defendant, but she fears further psychological injury if her name were publicly disclosed.

3. Defendant, Fontainebleau Florida Hotel, LLC was and is a foreign limited liability company with its principal place of business located in Miami-Dade County, Florida. Defendant is authorized to do business in the State of Florida and is currently conducting business in the State of Florida.

4. Defendant, Fontainebleau Florida Hotel, LLC does business as The Fontainebleau Miami Beach Hotel and as the Lapis Spa. The Fontainebleau Miami Beach Hotel and the Lapis Spa are both located at 4441 Collins Avenue, Miami Beach, Florida 33140.

5. At all material times, Defendant owned and operated the Lapis Spa, located on its premises, 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.

6. At all material times, Mr. Mankarious was an agent and/or employee of Defendant, where he was employed as a massage therapist.

7. 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 Lapis Spa, located in Miami Dade County, Florida.

8. 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

9. On April 27, 2021, C.B. and her future mother-in-law had massage therapy treatments scheduled at Lapis Spa while they were staying at The Fontainebleau Hotel.

10. At all material times, Lapis Spa was advertised as a top-rate, exclusive spa, located

at the luxurious world-renowned hotel, The Fontainebleau Miami Beach.

11. When C.B. arrived for her spa service, she was assigned to Mr. Mankarious as her massage therapist.

12. C.B. was escorted upstairs to a massage treatment area where she met Mr. Mankarious.

13. C.B. entered the treatment room, completely disrobed, removing her wet bathing suit as instructed, and laid on the massage table in the face-down position.

14. Mr. Mankarious then entered into the treatment room and began to massage C.B.

15. Approximately 15 minutes into the massage session, Mr. Mankarious positioned himself near C.B.'s legs and undraped one whole side of C.B.'s body, as if he split down the center of her spine, leaving her back, one buttock cheek, and one leg completely uncovered and exposed.

16. Mr. Mankarious proceeded to massage her buttocks, hip area, and inner and outer thigh before moving to the other leg.

17. Mr. Mankarious then grabbed C.B.'s opposite leg, maneuvered her knee outward to the edge of the bed, completely exposing C.B.'s vagina.

18. Mr. Mankarious grew even more emboldened and started massaging the top of C.B.'s buttocks and proceeded to slide his fingers down and through her buttocks, grazing her anus.

19. He continued to migrate his hand further down and inserted two fingers into C.B.'s vagina, digitally penetrating her.

20. In a complete state of shock and panic, C.B. jumped up, attempted to cover herself with the draping, and asked Mr. Mankarious what he was doing.

21. C.B. was completely shaken and terrified by the sexual assault, asking Mr.

Mankarious to immediately terminate the treatment, resulting in Mr. Mankarious fleeing the scene.

22. Extremely traumatized, in shock by the violation that had just occurred, C.B. quickly dressed, left the room, and reported the sexual assault to a manager of Lapis Spa.

23. C.B. also promptly reported the sexual assault to the Florida Department of Health while Lapis Spa reported the sexual assault to the Miami-Beach Police Department.

24. C.B. returned to her hotel room at The Fontainebleau and was left feeling terrified and unsafe with little to no communication from the Defendant about Mr. Mankarious' whereabouts and how the sexual assault was being handled while she was still a guest staying on hotel property.

25. Mr. Mankarious was inexplicably able to return to Lapis Spa and destroy crucial evidence of the sexual assault by cleaning and sanitizing the treatment room without any prevention or intervention from spa or hotel personnel.

26. During the criminal investigation, DNA analysis revealed a positive match for Mr. Mankarious' DNA on vaginal swabs taken from C.B.

27. Mr. Mankarious admitted to feeling "heated" and to touching C.B.'s vagina during questioning by the Miami Beach Police Department.

28. Mr. Mankarious plead guilty and was convicted of Felony Battery in Miami Dade Circuit Court. C.B. was the victim in that case.

29. The Florida Department of Health filed an Administrative Complaint against Mr. Mankarious on account of sexual misconduct. On or about November 29, 2021, The Board of Massage Therapy entered a Final Order accepting Mr. Mankarious' surrender of his license to practice as a licensed massage therapist in the State of Florida, as part of disciplinary action against him.

30. C.B. did not invite, induce, ratify, implicitly consent, or comply with this sexual contact. To the contrary, C.B. was mortified and in shock at Mr. Mankarious' actions. She was in disbelief at this violation by a licensed massage therapist who she placed her trust in.

31. At all relevant times, there was an employer-employee relationship between Mr. Mankarious and Defendant.

32. 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 massage therapists upon unsuspecting clients.

33. 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 Lapis Spa massage therapists are paid to perform. This fact is or should be well known to the Defendant.

34. Prior to C.B.'s massage, there was at least one other similar sexual misconduct committed by Mr. Mankarious on a female victim in December 2020.

35. Defendant also continued to retain Mr. Mankarious without restricting his employment or providing enhanced supervision despite multiple documented incident reports, additional coaching, and counseling by Defendant.

COUNT I- NEGLIGENCE HIRING

36. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 35 above.

37. 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. Mankarious.

38. 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. Mankarious.

39. Prior to hiring Mr. Mankarious, Defendant knew, or in the exercise of reasonable care, should have known that Mr. Mankarious 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.

40. Despite having such information, Defendant hired Mr. Mankarious as a massage therapist without any limitations on his employment or adequate supervision and took no action to warn or otherwise affirmatively protect any of his clients.

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

42. Despite such actual or constructive knowledge, Defendant hired Mr. Mankarious and thereafter placed Plaintiff in a vulnerable position on the massage table in a darkened room without an assistance button with Mr. Mankarious.

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

WHEREFORE, Plaintiff, C.B. demands judgment against Defendant, FONTAINEBLEAU FLORIDA HOTEL, LLC, A Delaware Limited Liability Company d/b/a FONTAINEBLEAU MIAMI BEACH and as LAPIS SPA, for compensatory damages, costs, and such other and further

relief as this Court deems just and proper.

COUNT II – NEGLIGENT RETENTION

44. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 35 above.

45. 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. Mankarious.

46. 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. Mankarious.

47. After hiring Mr. Mankarious but prior to the sexual misconduct perpetrated on the Plaintiff, Defendant knew, or in the exercise of reasonable care, should have known that Mr. Mankarious did not adhere to company rules, was unfit for the intimate duties assigned, did not exhibit appropriate boundaries with female clients, 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.

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

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

WHEREFORE, Plaintiff, C.B., demands judgment against Defendant, FONTAINEBLEAU FLORIDA HOTEL, LLC, A Delaware Limited Liability Company d/b/a FONTAINEBLEAU MIAMI BEACH and as LAPIS SPA, for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

COUNT III – NEGLIGENT SUPERVISION

50. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 35 above.

51. 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. Mankarious.

52. 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. Mankarious.

53. After hiring Mr. Mankarious but prior to the sexual misconduct perpetrated on the Plaintiff, Defendant knew, or in the exercise of reasonable care, should have known that Mr. Mankarious did not adhere to company rules, 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.

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

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

WHEREFORE, Plaintiff, C.B., demands judgment against Defendant, FONTAINEBLEAU FLORIDA HOTEL, LLC, A Delaware Limited Liability Company d/b/a FONTAINEBLEAU MIAMI BEACH and as LAPIS SPA, for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

COUNT IV – NEGLIGENCE (POLICIES AND PROTOCOLS)

56. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 35 above.

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

58. At all material times, Defendant owed a duty to Plaintiff to use reasonable care to prevent her from being subjected to improper sexual misconduct by its male massage therapists.

59. Prior to Plaintiff's massage appointment, Defendant knew that male massage therapists 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.

60. 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 patrons, together with instructions on how to prevent, be prepared for, and respond to such incidents.

61. 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.

62. These duties include, but are not limited to, exercising reasonable care in the establishment and enforcement of policies and procedures related to: (1) boundaries of appropriate touch; (2) appropriate draping techniques; (3) reporting suspected sexual misconduct (4) training with regards to proper physical contact with clients; and (5) proper procedures for handling suspected sexual misconduct.

63. Defendant did not have reasonable policies and procedures in place to protect its guests from sexual misconduct by a person performing services at the Lapis Spa. In particular, Defendant failed to take reasonable steps to ensure that 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/assistance 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. Failing to create, implement, and establish policies and procedures to properly train employees to ensure the proper and safe conduct of massage therapists;
- b. 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;

- c. 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 Department of Health;
- d. Failing to warn clients of the high rate of sexual misconduct by male massage therapists within the industry; and
- e. 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, physical injuries, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, C.B., demands judgment against Defendant, FONTAINEBLEAU FLORIDA HOTEL, LLC, A Delaware Limited Liability Company d/b/a FONTAINEBLEAU MIAMI BEACH and as LAPIS SPA, 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 35 above.

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

68. Mr. Mankarious was authorized and entrusted by Defendant 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.

70. The sexual contact described above occurred during the normal business hours of Defendant and occurred in the course and scope of the performance of Mr. Mankarious' duties.

71. The initial physical contact and relationship of Mr. Mankarious with Plaintiff was in furtherance of the business of Defendant.

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

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

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

75. The massage services provided by Mr. Mankarious benefited Defendant.

76. Mr. Mankarious was aided in accomplishing the tort upon Plaintiff by the existence of his agency relationship with Defendant. Specifically, Mr. Mankarious used the authority actually delegated to him by Defendant 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. Mankarious precisely because of Mr. Mankarious' agency relationship with Defendant.

77. Under the doctrine of *respondeat superior*, Defendant 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, physical injuries, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, C.B. demands judgment against Defendant, FONTAINEBLEAU FLORIDA HOTEL, LLC, A Delaware Limited Liability Company d/b/a FONTAINEBLEAU MIAMI BEACH and as LAPIS SPA, 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: January __ 2025.

HOROWITZ LAW
110 E. Broward Boulevard, Suite 1530
Fort Lauderdale, FL 33301
Tel: 954-641-2100
Fax: 954-828-0596
Email: adam@adamhorowitzlaw.com
deedee@adamhorowitzlaw.com

By: /s/ Adam D. Horowitz
ADAM D. HOROWITZ

FLORIDA BAR NO. 376980
DOLORES M. SCHELLER
FLORIDA BAR NO.: 113106