

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO.:

J.W.,

Plaintiff,

vs.

CB INVESTMENTS LLC d/b/a
MASSAGE ENVY,

Defendant,

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, J.W., by and through her undersigned counsel, hereby files this Complaint and Demand for Jury Trial against Defendant, CB INVESTMENTS LLC d/b/a MASSAGE ENVY, and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. This Complaint arises from the sexual battery of J.W. by her massage therapist, RAYMOND SMITH, JR., during a massage therapy appointment on or about December 17, 2014 at a Massage Envy franchise located at 7050 W. Palmetto Park Road, Boca Raton, Florida.

2. Plaintiff, J.W., is an adult female who is a citizen and resident of the State of Florida. Plaintiff filed this lawsuit using a pseudonym in order 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 battery. Plaintiff's true identity is known to Defendant and its agents.

3. Defendant, CB INVESTMENTS LLC d/b/a MASSAGE ENVY ("MASSAGE ENVY") is a Florida Limited Liability Company doing business as 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 Massage Envy franchise located at 7050 W. Palmetto Park Road, Boca Raton, Florida, including its daily operations ranging from the hiring and supervision of employees, risk management, and adopting and enforcing policies relating to sexual battery by its employees and the safety of its clients.

4. At all times material, RAYMOND SMITH, JR. (“SMITH”) was an agent and employee of Defendant MASSAGE ENVY where he was employed as the assistant manager and lead massage therapist to perform spa services. SMITH is a resident and citizen of Palm Beach County, Florida.

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

6. This Court has jurisdiction in that this is a claim for monetary damages far above the fifteen thousand dollar (\$15,000) jurisdictional minimum of this Court, exclusive of interest, costs, and attorney’s fees.

FACTUAL ALLEGATIONS

7. J.W. signed up for a membership at MASSAGE ENVY, which entitled her to a monthly massage at a reduced rate.

8. On December 17, 2014, J.W. went to MASSAGE ENVY to obtain a 90-minute massage. RAYMOND SMITH, JR. was assigned to perform her massage. SMITH had treated J.W. before and knew that this was the first time J.W. came to MASSAGE ENVY without her husband.

9. Approximately 80 minutes into the 90-minute massage, RAYMOND SMITH, JR. placed his hand on J.W.'s vagina and began stroking it as if he was trying to sexually satisfy J.W.

10. J.W. initially froze. She was in shock and disbelief as it was the last thing she expected or contemplated in this relaxed state. Once she gained composure, she told SMITH to stop and that she did not want to be touched there. RAYMOND SMITH removed his hand and apologized to J.W.

11. SMITH remarked that she was "juicy down there" while referring to her vagina. He also remarked that she had "exquisite legs".

12. J.W. remained mortified and in shock. She exited MASSAGE ENVY while remaining mortified.

13. J.W. reported her sexual battery to MASSAGE ENVY several days later. She was later informed by MASSAGE ENVY that RAYMOND SMITH, JR. was "taken off the schedule" and "let go." Nevertheless, J.W. canceled her membership at MASSAGE ENVY.

14. At all relevant times, there was an employer-employee relationship between SMITH and Defendant MASSAGE ENVY.

15. There are over 1000 Massage Envy franchises nationwide with approximately 1.25 million paying members.

16. The Massage Envy brand has a substantial problem that is or should be known to all of its franchisees, including 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 nationwide by its male massage therapists upon female clients.

17. 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 battery by massage therapist. The franchisor has alerted all of its franchises as to the extraordinary number and rate of incidents of sexual battery.

18. Massage Envy franchise owners are well aware that there is a vast amount of sexual battery victims who have never come forward and never will. In fact, the General Orientation, Manual & Workbook, provided to every MASSAGE ENVY "associate", including SMITH, on their hire date, states the following: *"Only 4% of upset customers will tell you when there is a problem."*

19. The "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.*

20. Despite the prevalence of sexual battery in the industry, Massage Envy franchises, including this Defendant, have a procedure wherein a client who reports an incident of sexual battery woman is sent out the door with only the mere “promise to investigate and take appropriate action”. The only indicated “appropriate action” is for the MASSAGE ENVY employee to complete a “Clinic Incident Report” and “Email a copy to the Regional Developer and Corporate Office.”

21. The “Inappropriate Touch Procedure” lacks any instructions to MASSAGE ENVY franchise employees to notify law enforcement to ensure an interview of the victim, questioning of the alleged perpetrator, and the gathering of criminal evidence.

22. In fact, even in the face of the knowledge that a massage therapist has perpetrated a felonious sexual act upon a victim, the “Inappropriate Touch Procedure” by its very terms discourages any independent action by an employee and demands that all such attained knowledge be placed immediately in the possession of only MASSAGE ENVY.

23. 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 battery.

COUNT I – RESPONDEAT SUPERIOR/VICARIOUS LIABILITY

24. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 23 above.

25. At all relevant times, RAYMOND SMITH, JR., the massage therapist assigned to give the massage to Plaintiff, was an employee and agent of MASSAGE ENVY.

26. SMITH was authorized and entrusted by Defendant MASSAGE ENVY to be alone with Plaintiff in a dimly lit room while Plaintiff was undressed and in a vulnerable position.

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

28. The sexual misconduct described above occurred during normal business hours of MASSAGE ENVY, and occurred in the course and scope of the performance of SMITH's duties.

29. The initial physical contact and relationship of SMITH with Plaintiff was in furtherance of the business of SMITH.

30. In addition, SMITH was authorized to touch Plaintiff via skin-to-skin contact in a manner consistent with providing spa services.

31. SMITH extended and converted his authorized touching into the sexual battery of Plaintiff as described above.

32. The wrongful acts of SMITH were committed in the actual or apparent course and scope of his employment or agency with MASSAGE ENVY.

33. The wrongful acts were committed while SMITH was doing what his employment or agency contemplated.

34. The massage services provided by SMITH benefitted MASSAGE ENVY.

35. SMITH was aided in accomplishing the tort upon Plaintiff by the existence of his agency relationship with MASSAGE ENVY. Specifically, SMITH used the authority actually delegated to him by MASSAGE ENVY to sexually assault Plaintiff while she was undressed and laying in prone, vulnerable position in a dark room seeking relaxation. She was in this

vulnerable position with SMITH precisely because of SMITH's agency relationship with MASSAGE ENVY.

36. Under the doctrine of respondeat superior, MASSAGE ENVY is responsible for the negligent, reckless and intentional actions of its servant, the male employee, committed in the actual or apparent scope of his duties.

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

WHEREFORE, Plaintiff, J.W, demands judgment against Defendant, CB INVESTMENTS LLC d/b/a MASSAGE ENVY for compensatory damages, costs and such other and further relief as this Court deems just and proper.

COUNT II – NEGLIGENCE RETENTION AND SUPERVISION

38. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 23 above.

39. 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, retention and supervision of SMITH.

40. Upon information and belief, SMITH sexually assaulted other women whom he came into contact with as a result of his employment by Defendant.

41. Defendant breached these duties by failing to protect the Plaintiff from sexual battery and lewd and lascivious acts committed by their agent, SMITH.

42. 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 SMITH was unfit for the intimate duties assigned, did not exhibit appropriate boundaries with women,

was sexually inappropriate with female clients, and/or posed a risk of perpetrating unwanted sexual contact on Plaintiff.

43. Despite having such information, Defendant retained SMITH without any limitations on his employment, failed to provide additional supervision of SMITH, and took no action protect any of his clients.

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

45. Despite such actual or constructive knowledge, Defendant retained SMITH, and failed to exercise adequate supervision by placing Plaintiff in a vulnerable position on the massage table in a dark room alone with SMITH.

46. 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, J.W., demands judgment against Defendant, CB INVESTMENTS LLC d/b/a MASSAGE ENVY, for compensatory damages, costs and such other and further relief as this Court deems proper.

COUNT IV – NEGLIGENT BUSINESS OPERATIONS
(PROTOCOL/POLICIES/TRAINING)

47. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 23 above.

48. At all material times, Plaintiff was an invitee and/or authorized visitor and paying client of CB INVESTMENTS LLC d/b/a MASSAGE ENVY.

49. 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.

50. Prior to Plaintiff's appointment with CB INVESTMENTS LLC d/b/a MASSAGE ENVY, 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.

51. 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.

52. 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.

53. 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 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.

54. 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 client will never complain about their massage;
- b. Failing to enforce adequate policies to punish massage therapist 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, to the Massage Envy hierarchy; and
- 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.

55. 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, J.W., demands judgment against Defendant, CB INVESTMENTS LLC d/b/a MASSAGE ENVY, 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 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 staff.efile@pathtojustice.com is primary.

Dated: April 27, 2015.

Respectfully submitted,

FARMER, JAFFE, WEISSING, et al.
425 North Andrews Ave., Suite #2
Fort Lauderdale, FL 33301
Tel: 954-524-2820
Fax: 954-524-2822
Email: adam@pathtojustice.com

By: /s/ Adam D. Horowitz
ADAM D. HOROWITZ
FLORIDA BAR NO. 376980