

CAUSE NO. 236-314403-20

HELEN COOK

Plaintiff,

VS.

HAU UT BUI, Individually and
d/b/a BUI NAILS

Defendant.

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, HELEN COOK, Plaintiff herein, complaining of HAU UT BUI, Individually and d/b/a BUI NAILS, Defendant herein, and for cause of action would show the Court the following:

I. DISCOVERY LEVEL DESIGNATION

Pursuant to the Texas Rules of Civil Procedure, Plaintiff designates this cause as a Level 2 discovery action.

II. PARTIES

Plaintiff, Helen Cook, is an individual who resides in Tarrant County.

Defendant Hau Ut Bui d/b/a Bui Nails is an individual and sole proprietorship and may be served with process at 2534 Oakland Blvd., Fort Worth, Texas 76103 or 807 W. Arlington Ave., Fort Worth 76110 or where ever he may be found.

III. MISNOMER/ALTER EGO

In the event any parties are misnamed or are not included herein, Plaintiff contends that such error or omission was a “misidentification,” “misnomer,” and/or such parties are/were “alter egos” of parties named herein.

IV. JURISDICTION AND VENUE

This Court has jurisdiction over this dispute, the amount in question being in excess of the jurisdictional minimum of this Court. Pursuant to Texas Civil Practices and Remedies Code § 15.002, *et seq.*, venue is proper in Tarrant County because Tarrant County is the county where all or a substantial part of the events or omissions giving rise to the claim occurred and Defendant does business in Tarrant County. Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000. Plaintiff’s Counsel offers this statement for informational purposes only as required by TEX. R. CIV. P. 47 and reserves the right to change or amend this amount. A jury, however, will ultimately determine the amount of monetary relief actually awarded. Plaintiff specifically reserves the right to amend as more information and discovery becomes available.

V. FACTUAL BACKGROUND

Plaintiff visited Defendant’s nail salon located at 2543 Oakland Blvd., Fort Worth, Texas 76103 on or about April 21, 2018 for the purpose of obtaining a manicure. Defendant advertises itself as able and proficient in performing manicures on members of the public such as Plaintiff in a safe manner. Plaintiff was escorted to a manicure station where, among other activity, her cuticles were trimmed/cut and her left hand was soaked in some type of solution. During the trimming of her cuticles, Plaintiff middle finger of her left hand was cut and/or pricked (“finger”). Later that night, her finger became painful and swollen. The next morning, it was apparent to Plaintiff that something was gravely wrong. She rushed to the emergency room where it was determined that the middle finger of

her left hand was infected with Methicillin-resistant Staphylococcus aureus (“MRSA”) and had contracted gangrene. Plaintiff was immediately admitted to the hospital and her finger was amputated. As a direct and proximate result of Defendant’s actions, Plaintiff suffered life altering and disfiguring injuries.

VI. CAUSES OF ACTION

A. NEGLIGENCE AND NEGLIGENCE PER SE

On the basis of the above and foregoing facts and information, paragraph V of which is incorporated by reference herein, Defendant has certain absolute non-delegable, and continuous duties to Plaintiff, its customer. Specifically, Defendant breached that duty in one or more of the following particulars:

- i. failing provide a sanitary environment for patrons as required by the Texas Department of Licensing and Regulations as well as applicable Texas rules and regulations governing Defendant’s salon;
- ii. improper sanitizing and sterilization technique of contaminated and un-sanitized tools and/or instruments;
- iii. improper sanitizing and sterilization technique of contaminate hand spa;
- iv. failing to sanitize and sterilize contaminated tools and/or instruments;
- v. failing to sanitize and sterilize the hand spa;
- vi. The use of contaminated and/or un-sanitized manicure tools and/or instruments;
- vii. To properly instruct, supervise and train their employees; and
- viii. In all things failing to act a reasonable person using ordinary care in the same or similar circumstances

Plaintiff would show that one or more of the foregoing acts and/or omissions, either singularly or in any combination, constitute negligence, gross negligence and/or negligence per se and a proximate cause of all injuries and damages sustained by Plaintiff in the incident in question.

Defendant further breached these duties by failing to warn Plaintiff of the dangers associated with Defendant's failure to comply with established Texas regulations pertaining to Cosmetology establishments such as Defendant's.

B. RES IPSA LOQUITUR

The evidentiary doctrine of Res Ipsa Loquitur is applicable to these circumstances in so far as the following factors are present:

- (1) The character of the accident is such that it would not ordinarily occur in the absence of negligence; and
- (2) The instrumentality causing the injury can be shown to have been under the exclusive management and control of the Defendant.

VII. VICARIOUS LIABILITY

Defendant is vicariously liable for the negligent conduct of his agents, servants, contractors, representatives and/or employees under the doctrine of *respondeat superior*. The employees of Defendant were acting in the course and scope of their employment, agency, and/or representative capacity at the time at the time of Plaintiff's injury. Alternatively, Defendant held such representatives out to be under the control of Defendant. Therefore, Defendant is liable for all acts and omissions of such agents, servants, contractors, representative, and/or employees.

VIII. DAMAGES

As a result of the incident above-described, Plaintiff suffered severe personal injuries causing permanent bodily impairment, disability, disfigurement and a loss of earning capacity in the past and the future. Specifically, Defendant's negligence resulted in the amputation of Plaintiff's finger. Plaintiff experienced physical pain, suffering and mental anguish in the past and will, in reasonable probability, continue to do so in the future. She has lost use and dexterity of the

remaining portion of the amputated finger. By reason of the nature and severity of her injuries, Plaintiff has been caused to incur medical charges and expenses in the past and will continue to incur medical charges and expenses in the future for the proper care and treatment of these injuries. Said charges were for necessary medical treatment and the charges were fair and reasonable and the usual and customary charges for said services at the time and places rendered. By reason of the above and foregoing, Plaintiff has suffered damages in an amount within the jurisdictional limits of this Court.

IX. TEX R. CIV. P. 193.7 NOTICE

Pursuant to Tex. Civ. P. 193.7, Plaintiff hereby gives notice of intent to utilize items produced in discovery against the producing Party.

X. REQUESTS FOR DISCLOSURE

Plaintiff serves upon Defendant her Requests for Disclosure pursuant to Rules 194.2 (a) through (k), and 194.4 of the Texas Rules of Civil Procedure and requests that Defendant serve his answers upon Plaintiff's counsel within 50 days of service.

XI. JURY DEMAND

In accordance with Rule 216 of the Texas Rules of Civil Procedure, Plaintiff demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that upon final trial, Plaintiff have judgment against and recover from said Defendant:

1. Actual and special damages in an amount exceeding the minimum jurisdictional limits of this Court;
2. Pre-judgment interest as provided by law;

3. Post-judgment interest as provided by law;
4. All costs of Court; and
5. All such other and further relief, both general and special, at law or in equity, to which Plaintiff may show herself to be justly entitled.

Respectfully submitted,

HARTLEY LAW FIRM

/s/ Austin F. Hartley

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