

2013 WL 11272171 (N.Y.Sup.) (Trial Pleading)
Supreme Court of New York.
Queens County

Lillyan ROSENBERG and Gerald Rosenberg, Plaintiffs,
v.
Jing JIANG and Jing-River Acupuncture, Defendants.

No. 233262013.
December 26, 2013.

Verified Complaint

Douglas & London, P.C., Randolph D. Janis, Esq., 59 Maiden Lane, 6th Floor, New York, New York 10038, (212) 566-7500, for plaintiffs.

Plaintiff, LILLYAN ROSENBERG and GERALD ROSENBERG, by their attorneys, DOUGLAS & LONDON, P.C., complaining of the Defendants, respectfully allege, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION (*MEDICAL MALPRACTICE/ACUPUNCTURE MALPRACTICE*)

1. Plaintiff, LILLYAN ROSENBERG is and was a resident of Whitestone, Queens, within the County of the Queens and State of New York.
2. At all of the times herein mentioned, Defendant JING JIANG was or represented herself to be an acupuncturist duly licensed and authorized to practice acupuncture in the State of New York
3. At all times herein mentioned defendant, JING JIANG maintained and still maintains an acupuncture office located at 600 Mamaroneck Avenue, Suite 406 Harrison, NY 10528.
4. Upon information and belief, at all times hereinafter mentioned, the defendant JING JIANG specialized in the field of acupuncture.
5. At all times hereinafter mentioned defendant JING JIANG held herself out to be a acupuncturist offering professional services to the public in general, and to the plaintiff LILLYAN ROSENBERG, in particular.
6. Upon information and belief, and at all times hereinafter mentioned, the defendant JING JIANG was an acupuncturist duly licensed and/or certified to practice acupuncture in the State of New York.
7. Upon information and belief and at all times hereinafter mentioned the defendant JING JIANG was an acupuncturist, agent, independent contractor, servant, affiliated, associated, and/or employed with/by defendant JING RIVER ACUPUNCTURE.
8. At all times mentioned defendant JING JIANG represented herself to be able, competent, and qualified to order, recommend, request, advise, perform, render, or provide all of the acupuncture, diagnostic, physical examinations, evaluations, consultations, care, treatments, services and advice ordered for, recommended for, requested for, advised for, performed upon, rendered to, provided for, or required by plaintiff.

9. At all of the times herein mentioned, Defendant, JING JIANG undertook to and did order, recommend, request, advise, perform, render, and provide acupuncture, diagnostic, physical examinations, evaluations, consultations, care, treatments, services, and advice of, for, and to the plaintiff,

10. That at all times hereinafter mentioned the Defendant, JING RIVER ACUPUNCTURE was and still is a acupuncture facility located within the County of Westchester, State of New York.

11. That at all times hereinafter mentioned Defendant, JING RIVER ACUPUNCTURE was and still is an acupuncture facility and/or other entity, duly organized and existing pursuant to the laws of the State of New York.

12. That at all times hereinafter mentioned, the Defendant, JING RIVER ACUPUNCTURE did maintain, operate, manage and control a acupuncture facility for the care of individuals seeking acupuncture treatment, and held itself out to the public as furnishing accommodations for the public, including the Plaintiff herein, where one can or could receive acupuncture care.

13. That at all times hereinafter mentioned, the Defendant, JING RIVER ACUPUNCTURE employed and provided personnel for the care and treatment of individuals presenting for acupuncture case in their acupuncture facility, including the plaintiff, LILLYAN ROSENBERG and in addition thereto, they made available machines, acupuncture equipment, and other necessities to those whom its facilities were made available including the plaintiff.

14. That at all times hereinafter mentioned, the Defendant JING RIVER ACUPUNCTURE provided acupuncture care to the plaintiff, LILLYAN ROSENBERG.

15. On or about August 15, 2013, plaintiff, sought treatment from defendants JING JIANG and JING RIVER ACUPUNCTURE and remained under the care and treatment of said defendants, including the provision of certain acupuncture care, diagnosis, treatment and advice.

16. On or August 15, 2013 plaintiff sought the acupuncture care of Defendants JING JIANG and JING RIVER ACUPUNCTURE for certain complaints, care, diagnosis, advice, and treatment for complaints, signs, and symptoms from which she was suffering and defendants rendered acupuncture care, diagnosis, treatment and services to her.

17. The above acupuncture care, diagnosis, treatment and services rendered to plaintiff by Defendants JING JIANG and JING RIVER ACUNPUCTURE was rendered careless, unskillfully, negligently, and not in accordance with good and accepted standards of acupuncture care including but not limited to severely burning plaintiff with a heating lamp and in otherwise being careless, negligent and departing from good and accepted acupuncture practice.

18. As a result of all of the foregoing malpractice and negligence on part of defendants JING JIANG and JING RIVER ACUNPUCTURE, Plaintiff was caused to and did suffer and sustain severe and serious personal injuries that are permanent in nature including but not limited to: severe burns, scarring, disfigurement, conscious pain and suffering and its resultant sequella, and other injuries too numerous to mention herein.

19. As a result of all of the foregoing negligence and malpractice of defendants JING JIANG and JING RIVER ACUNPUCTURE Plaintiff was caused to and did suffer and sustain severe and serious conscious pain and suffering that are permanent in nature.

20. As a result of all of the foregoing, Plaintiff was caused to and did suffer and sustain severe and serious mental anguish that are permanent in nature.

21. As a result of all of the foregoing, Plaintiff was caused to receive medical care and ongoing medical monitoring.

22. As a result of all of the foregoing, Plaintiff was caused to and did suffer and sustain substantial economic losses.

23. The injuries caused to Plaintiff were occasioned by reason of the negligence, carelessness, and medical malpractice of Defendants JING JIANG and JING RIVER ACUNPUCTURE and said injuries were not caused by or contributed to by plaintiff in any manner.

24. As a direct and proximate result of the foregoing negligence and medical malpractice of Defendants, JING JIANG and JING RIVER ACUNPUCTURE. the plaintiff, sustained serious and permanent personal injuries and has been caused to suffer severe physical pain and mental anguish as a result thereof, including diminished enjoyment of life, medical expenses, and other serious injuries, which are permanent and lasting in nature, and that Plaintiff has been incapacitated from her regular activities, including but not limited to social and economic activities.

25. As a result of all of the foregoing, Plaintiff has been injured and damaged in a sum which exceeds the jurisdictional limitations of all lower Courts which would otherwise have jurisdiction over this action.

AS AND FOR A SECOND CAUSE OF ACTION ON (NEGLIGENT HIRING/SUPERVISION)

26. Plaintiff, repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint, with the same force and effect as if hereinafter set forth more fully at length.

27. Defendant, JING RIVER ACUNPUCTURE its agents, servants, staff, and employees were negligent in hiring, supervising, and reviewing credentials of the acupuncture care providers and other staff members and employees, and in failing to set proper standards of treatment and, as such, knew or should have known of the improper negligent treatment rendered herein.

28. That at all times hereinafter mentioned, the Defendant, JING JIANG and JING RIVER ACUNPUCTURE its agents, servants, and/or employees was negligent in failing to periodically review the performance, qualifications and standards of care rendered by acupuncturist and staff practicing and assisting at said facility.

29. As a direct and proximate result of the foregoing negligence and medical malpractice of Defendants JING JIANG and JING RIVER ACUNPUCTURE the plaintiff, sustained serious and permanent personal injuries and has been caused to suffer severe physical pain and mental anguish as a result thereof, and that Plaintiff has been incapacitated from her regular activities.

30. As a result of the foregoing negligence and carelessness, plaintiff was damaged in a sum, which exceeds the jurisdictional limits of all lower Courts, which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION NEGLIGENCE

31. Plaintiff, repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint, with the same force and effect as if hereinafter set forth more fully at length.

32. Upon information and belief that at all times hereinafter mentioned, Defendant, JING RIVER ACUPUNCTURE was and still is a corporation organized and existing under and by virtue of the laws of the State of New York, and doing business in the State of New York.

33. Upon information and belief that at all times hereinafter mentioned, Defendant, JING RIVER ACUPUNCTURE was and still is a Domestic corporation organized and existing under and by virtue of the laws of the State of New York, and doing business in the State of New York.

34. On or about August 15, 2013, and at all times mentioned herein there existed a premises located at 600 Mamaroneck Avenue, Suite 406, Harrison, NY 10528 owned by the Defendant, JING JIANG and/or JING RIVER ACUPUNCTURE

35. On or about August 15, 2013, and at all times mentioned herein there existed a premises located 600 Mamaroneck Avenue, Suite 406, Harrison, NY 10528 operated by the Defendant JING JIANG and/or JING RIVER ACUNPUCTURE.

36. On or about August 15, 2013 and at all times mentioned herein there existed a premises located at 600 Mamaroneck Avenue, Suite 406, Harrison, NY 10528 maintained by the Defendant, JING JIANG and/or JING RIVER ACUNPUCTURE.

37. On or about August 15, 2013, and at all times mentioned herein there existed a premises located at 600 Mamaroneck Avenue, Suite 406, Harrison, NY 10528 controlled by the Defendant, JING JIANG and/or JING RIVER ACUNPUCTURE.

38. On or about August 15, 2013, and at all times mentioned herein, Defendant, JING RIVER ACUPUNCTURE. and/or its agents, servants, employees and/or licensees, owned, operated, maintained and controlled the aforesaid acupuncture facility.

39. Upon information and belief, there were/are no other owners of the aforesaid premises.

40. On or about August 15, 2013, Plaintiff, was lawfully present on the aforesaid premises of defendant JING JIANG and/or JING RIVER ACUNPUCTURE.

41. On or about August 15, 2013, as a result of defendants negligent use of a heating lamp, plaintiff was caused to suffer serious burns, disfigurement, scarring, conscious pain and suffering and multiple other injuries.

42. That the aforesaid occurrence was caused wholly and solely by reason of the negligence of the defendants without any fault or negligence on the part of the plaintiff contributing thereto.

43. Plaintiff has been caused to incur, and will continue to incur, expenses for medical care and attention; and Plaintiff, was and will continue to be, rendered unable to perform Plaintiff's normal activities and duties and has sustained a resultant loss therefrom.

44. The Defendant, and its agents, servants, were negligent, willful, wanton, reckless, careless and deserving of blame in the ownership, operation, maintenance, control, management, supervision, of the acupuncture facility, its agents, servants, staff and employees by means of but not limited to: in permitting a heat lamp to burn plaintiff; in burning plaintiff; in placing a an excessively hot lamp in close proximity to plaintiff and in failing to take proper actions to ensure that plaintiff would not be burned; in failing to timely and properly address and respond to plaintiff's complaints about the subject lamp; in failing to recognize that the risks of the subject heating lamp, in regards to the manner used, outweighed any benefits; in failing to timely recognize that plaintiff had been burned and timely and properly address and follow up in regards to same; in failing leaving plaintiff unattended.

45. That as a result of the foregoing, Plaintiff, seeks an amount of damages which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF
OF GERALD ROSENBERG (*LOSS OF CONSORTIUM*)**

46. The Plaintiff, GERALD ROSENBERG repeats, reiterates and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as if hereinafter set forth fully herein.

47. At all times herein mentioned, and to date, Plaintiff, GERALD ROSENBERG, was the lawful wedded husband of Plaintiff, LILLYAN ROSENBERG, and they duly co-habitated as husband and wife.

48. As a result of the foregoing, Plaintiff, GERALD ROSENBERG, suffered loss of consortium, having been deprived of the rights and interests which have accrued by reason of their marriage, and the continuation of said marital relationship, including those of conjugal fellowship, sexual fulfillment, support, aid, companionship, company, society, affection, comfort and services, and has been caused to expend money for medicines and medical, hospital, therapeutic and psychological care and treatment, all to his damage.

49. The Plaintiff, GERALD ROSENBERG, seeks an amount of damages, which exceeds the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

50. As a result of the foregoing negligence and carelessness, plaintiff was damaged in a sum, which exceeds the jurisdictional limits of all lower Courts, which would otherwise have jurisdiction.

WHEREFORE, plaintiff demands judgment against the Defendants on the First, Second, Third, and Fourth Causes of Action in amounts, respectively, which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action; together with interest, attorneys fees, costs and disbursements of this action.

Dated: New York, New York

December 26, 2013

Yours, etc.,

DOUGLAS & LONDON, P.C.

By: <<signature>>

Randolph D. Janis, Esq.

Attorneys for Plaintiffs

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New York, New York 10038

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