THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

NANCY NAGIUB

Claimant

and

EN VOGUE BEAUTY CENTER LTD

Defendant

ORDER WITH REASONS OF JUSTICE SIR JEREMY COOKE

UPON the Defendant's application no. CFI-057-2019/4, dated 3 January 2021, filed under RDC 31.13 to introduce in these proceedings the expert report dated 14 December 2020 of Dr John English, a specialist in the field of dermatology

AND UPON considering the submissions made by the parties

IT IS HEREBY ORDERED THAT:

1. The expert report of Dr. John English dated 14 December 2020 is admitted as expert evidence filed by the Defendant in these proceedings.

2. If the Claimant so elects, the Claimant shall file a responsive expert report to the expert report of Dr John English within 28 days of this order.

3. The Defendant may file a reply to the Claimant's responsive expert report within 14 days thereafter.

4. The trial is adjourned from 23 - 24 March 2021 to a dated to be fixed, unless the Parties otherwise agree within 7 days from the date of this Order, and so notify the Court.

5. Liberty to apply for further directions.

6. Costs in the case.

Issued by:
Nour Hineidi
Registrar
Date of issue: 9 February 2021
At: 12.30pm

SCHEDULE OF REASONS

1. On examination of the expert evidence adduced thus far, it is clear that there is an issue between the parties in relation to matters of dermatology. The matter is not foreclosed by the reliance on the part of the Claimant's expert on the August 2020 letter from a dermatologist who saw the Claimant on 22 October 2018, some 19 days after her visit to the Defendant's salon. The evidence of the Defendant's expert in microbiology raises a prima facie case that the Claimant's condition was the result of dermatitis, a sensitivity reaction or an allergy to a chemical used in the artificial nails, or a form of eczema. Whilst the Claimant seeks to dismiss this case on the basis of evidence that acrylic nails were not supplied, there are self-evidently issues of fact and expert evidence which require proper exploration and the least that I say about the potential prospects of either party in this context, the better, since I am the designated trial judge.

2. The cause of the Claimant's condition is fundamental to the question of liability. Whatever the procedural history, justice requires that this matter be fully explored in the evidence and that specialists with the appropriate expertise are available to give their opinions to the court. This matter started out as a small claim but has grown and taken on a more complex character. At the time of the case management order, the need for more than one medical expert could not have been foreseen and the order for sequential reports meant that when the Defendant's microbiological expert opined that there might be a dermatological cause, the need for investigation in that area only then became apparent. The parties should then have liaised and sought the court's assistance for directions, particularly if they could not agree. Neither party acted as they should in those circumstances.

3. The result is that the report of Doctor John English dated 14 December 2020 should be admitted and the Claimant given a proper opportunity to adduce expert evidence in response from another specialist dermatologist, should she consider it appropriate. In such circumstances, although she has had notice of the English report for over six weeks, and, by taking a root and branch objection, has contributed to the delay, it is necessary for her to have adequate time to instruct and obtain a report from her own appointed expert, should she so wish. For that purpose, I am prepared to allow 28 days, with a 14 day period for a response from Doctor English. This takes the matter very close to the date of trial which is fixed for 23/24 March and which must, unless the parties agree otherwise (on the basis of a shorter time table for experts), within the next seven days, be adjourned to a date to be fixed.

4. Paragraph 17 onwards of the previous case management order will need to be revisited in such circumstances with provision for a PTR, bundles of documents and the like which will doubtless be dependent, at least in part, on the date of the adjourned trial. Unless the parties can agree on a shorter timetable than that set out in paragraph 3 above, within the seven-day period mentioned, an application should be made to fix a date for trial and the parties can then seek to agree on the dates for the further steps necessary following exchange of the additional expert's reports. If no agreement is possible, I will make any necessary ruling. I wish to be updated in 7 days' time please.

5. The Claimant should not have served a report in reply in a new discipline and the Defendant should have recognised the need for evidence in the field of dermatology and agreed directions of the kind which I have made and which would have preserved the trial date. On this basis the costs of the application should be costs in the case.