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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU

PRESENT: **HON. ANTHONY L. PARGA, J.S.C.**

CARL HYMAN and CINDY HYMAN,

Plaintiff(s),

- against -

**DAVID KOPLITZ, IRIS KOPLITZ, SEARS
ROEBUCK & CO., POULAN/WEED EATER
DIVISION WCF OUTDOOR PRODUCTS,
INC., and WCI OUTDOOR PRODUCTS, INC.,**

Sequence #004, 005

Motion Date: 2/20/01

Index # 28467/97

Part 23

Defendant(s).

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Upon the foregoing papers, the motion by the plaintiff for an order pursuant to CPLR 2221, vacating the order of this court dated December 6, 2000, Parga, J., and the motion by defendants Sears Roebuck & Co. ("Sears") and WCI Outdoor Products, Inc. ("WCI") for an order permitting an expert inspection, are consolidated for disposition and granted to the extent indicated below.

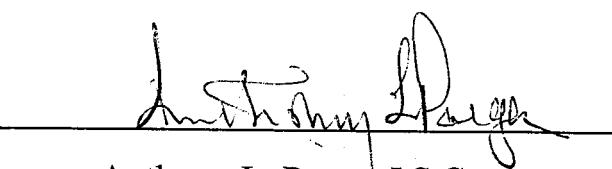
The motion by granting reargument of defendants Koplitz' motion for summary judgment, is granted (Foley v. Roche, 58 AD2d 558). Upon reargument, the court vacates

the first full paragraph on page 3 of its order of December 6, 2000, and page 4 of the same order granting summary judgment in the Koplitz' favor, and substitutes the following: "Applying these principles to the case at bar, the motion by defendants David and Iris Koplitz for an order granting summary judgment in their favor, and dismissing the complaint and the cross-claim as against them, is denied. The moving defendants are not entitled to judgment as a matter of law as triable issues of fact exists as to whether defendant David Koplitz breached his duty to the plaintiff by failing to use reasonable care in the operation although the plaintiff was admittedly standing 50-60 feet away from the machine at the time of the accident. There appears to be a contraction in the edger's operating manual as to the area of "hazard zone for thrown objects" from the blade of the edger: in one instance it is claimed to be a distance of 30 feet, in another instance it is stated to be a "60 foot (20 meter) hazard zone".

In view of this determination, the branch defendants Koplitz' motion for an order dismissing defendants Sears and WCI's cross-claims against them is denied".

The motion by defendants Sears and WCI for an order permitting and directing the inspection of the subject lawn edger by the experts designated by the moving defendants is granted. The inspection shall take place at a mutually convenient time within thirty days after the service of a copy of this order on the defendants Koplitz.

Dated: April 12, 2001



Anthony L. Parga, J.S.C.

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ENTERED

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COUNTY CLERK'S OFFICE