SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **CVA 1 / 57M**

Justice

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ANONYMOUS WW

Plaintiff,

- v -

POLICE ATHLETIC LEAGUE, INC.,

Defendant.

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INDEX NO. 950085/2021

MOTION DATE 03/24/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 50, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76

were read on this motion to/for JUDGMENT - SUMMARY.

BACKGROUND

This decision and order pertain to this action as well as the following Index Numbers 950062/2021, 950040/2021, 950049/2021; 950046/2021. In all five actions plaintiffs have asserted that between 1973 through 1977 they were abused by a martial arts instructor, Ronald Schwartz ("Schwartz"), who taught classes for Defendant. Plaintiffs have asserted a cause of action for negligence and a cause of action for negligent supervision, hiring and retention.

Because all five cases involve the same alleged wrongdoer, notice issues, and Plaintiffs' counsel, the parties have agreed, for summary judgment purposes, to address the summary judgment motions in a single motion and brief.

Defendant seeks summary judgment and dismissal of the actions based on the arguments that it lacked notice of Schwartz' propensities and because they assert that Plaintiffs will be unable to establish proximate cause at trial.

For the reasons set forth below, the Court finds that Defendant has failed to make a *prima facie* case warranting dismissal as a matter of law and the motion is denied.

FACTS UPON WHICH THE MOTION IS BASED

Defendant was founded in 1914 and since then has offered recreational, educational, cultural, and social programs designed to improve the quality of life and developmental outcomes for the children of New York City, particularly those who are disadvantaged and lack the means to otherwise take part in such programs. Currently, Defendant offers after-school programs, summer camps, and year-round sports and recreation leagues and tournaments.

In the mid-1970s, one of the programs offered by Defendant was a martial arts (Tae Kwon Do) class taught by Schwartz in library meeting rooms in Brooklyn. Students enrolled in such PAL programs by paying a yearly fee of one dollar and giving parental consent.

The Tae Kwon Do classes were typically held at one of two different sites in Canarsie, Brooklyn: the Paerdegat Library in the Glenwood Projects and the Jamaica Bayview Library. None of the locations where the classes were held was a facility owned by Defendant. The classes typically met a couple of times each week and were usually attended by approximately twenty students. Most of the students were boys, although a few girls, including Plaintiff AL, were in the classes. Defendant operated the martial arts classes and employed Schwartz as the instructor and Fred Gilstein ("Gilstein") to supervise this activity.

The parents of students, if they drove them, would drop or pick up the class participants outside the building, coming in only on the rare occasion to observe advancement tests or for award ceremonies. The room where the classes usually took place contained a solid door and only one window that would be blocked by blinds.

None of the Plaintiffs ever reported their allegations of abuse to Defendant, any adult, the police, or any other law enforcement authority. Similarly, there is no documentary evidence that Schwartz's alleged conduct was reported to PAL or some other authority.

Schwartz provided alcohol, marijuana, and other drugs to Plaintiffs. Any such use of drugs or alcohol did not take place during the Tae Kwon Do classes or at the location where the classes took place. Rather, it occurred, after class in Schwartz' car, and at other locations where Plaintiffs went with Schwartz, including his home and on camping trips to upstate New York.

Defendant alleges that trips and other excursions with Schwartz were not part of any PAL-sanctioned activity and that there is no evidence that Defendant had any knowledge that Plaintiffs would go on trips with Schwartz.

Plaintiffs allege that some of the excursions were tournaments for PAL Martial arts students.

In addition to the above facts, plaintiffs make the following allegations.

After arrival and before class began, the kids would change into their Gi's (uniforms). The boys would change in the multipurpose room, and the girls would change somewhere separately. While the boys were changing, Schwartz would watch them undress and often encouraged them to wear no underwear underneath their Gi's. Additionally, while the boys were changing, Schwartz would often walk around, either in his Gi with no underwear on, or completely nude in front of the boys. Anonymous ABB explained that "Ron Schwartz would always disrobe completely naked, and he would parade around the room, fondling or teasing and mocking the kids, all of us from behind, totally nude…" Ex. C at 112:13-18.

While naked, Schwartz would often come behind a student and have them cross their arms across their chest. He would then pick them up from the shoulders or chest and lift them in an ark, and when he did this, he would grind his genitals against the children.

Additionally, Schwartz, while naked, would also often massage the boys' upper legs, thighs, shoulders, and their genitals before class. Once the boys were done dressing and stretching, and the class started, Schwartz's sexual abuse continued. There were times when Schwartz would show students a karate move and would put his hands on their butts and keep them there for an uncomfortable amount of time. When students would get injured during class, Schwartz was known to rub a student's legs and thighs and move his hands up to the student's groin area, eventually either rubbing his hands on that student's genitals or outright grabbing their genitals and massaging them.

Also, Schwartz would do a stretch where he'd lift a student up from behind and grind his genitals into their back. Other times, Schwartz would grab the boys' genitals to show where to hit someone.

Gilstein was present on multiple occasions while the boys were changing. He observed Schwartz walking around naked, exposing his penis to the minor boys. He also observed the pre-class stretching and massaging that Schwartz conducted while nude, including back cracking, where Schwartz would place his nude penis against the boys.

As Gilstein was a supervisor plaintiffs argue Gilstein's knowledge is attributable to Defendant.

DISCUSSION

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist, and the movant is entitled to judgment as a matter of law. *Alvarez v. Prospect Hosp.*,

68 N.Y.2d 320, 324 (1986). To establish entitlement to summary judgment, the moving party is required to "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985). Only if the moving party satisfies this burden does the burden shift to the nonmoving party "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Alvarez v. Prospect Hospital* 68 N.Y.2d 320, 324 (1986).

The Court must view the evidence "in a light most favorable to the party opposing the motion, giving [that party] the benefit of every favorable inference." *International Rescue Committee v. Reliance Insurance Co*., 230 A.D.2d 641 (1st Dep't 1996).

A plaintiff bringing a negligence action must allege "a duty owed to the plaintiff by the defendant, a breach of that duty, and injury proximately resulting therefrom" (*Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 157 [2023], citing *Pasternack v Laboratory Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]; *Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]; *Akins v Glens Falls City School Dist.*, 53 NY2d 325, 333 [1981]).

An employer cannot be held vicariously liable for torts committed by an employee who is acting solely for personal motives unrelated to the furtherance of the employer's business, however the employer may still be held liable under theories of negligent hiring, retention, and supervision of the employee. *MCVAWCD-DOE v. Columbus Ave. Elementary Sch.*, 225 A.D.3d 845, 846 (2nd Dept., 2024). "To establish a cause of action based on negligent hiring, negligent retention, or negligent supervision, it must be shown that the employer knew or should have known of the employee's propensity for the conduct which caused the injury" *Shor v. Touch-N-Go Farms, Inc.*, 89 A.D.3d 830, 831 (2nd Dept., 2011), and that there exists a connection between

the defendant's negligence and the plaintiff's injuries. *Sayegh v. City of Yonkers*, 228 A.D.3d 690, 691 (2nd Dept., 2024). "The employer's negligence lies in having placed the employee in a position to cause foreseeable harm, harm which would most probably have been spared the injured party had the employer taken reasonable care in making decisions respecting the hiring, . . . retention, or supervision of the employee" (*MCVAWCD-DOE v Columbus Ave. Elementary Sch.*, 225 AD3d at 846-847).

It is well settled that a defendants' burden cannot be satisfied merely by pointing to gaps in the plaintiff's proof, and that movants herein are required to affirmatively demonstrate the merit of an alleged defense. *In re New York City Asbestos Litigation (Carriero),* 174 A.D.3d 461 (1st Dept. 2019); *CM v West Babylon Union Free School District* 231 AD3d 809 (2nd Dept., 2024); *Doe v Orange-Ulster Bd. Of Coop. Educ. Servs.* 4 AD3d 387, 388-89 (2nd Dept., 2004).

Defendant has failed to establish as a matter of law that it had no notice. While Defendant in its reply papers argues that the Court should not credit the allegations of what Gilstein observed, that argument in itself acknowledges there are triable issue of fact, as credibility determinations on a motion are not proper.

Similarly, the Court does not find that Defendant made a prima facie case on the issue of proximate cause. Proximate cause is a question of fact for the jury where varying inferences are possible. A jury could find that the sexual abuse of plaintiffs was a reasonably foreseeable consequence of defendant's failure to take any action, once Gilstein had observed Schwartz' inappropriate conduct. *Fernandez v. MercyFirst*, 205 A.D.3d 476, 478 (1st Dept., 2022).

Finally, Defendant's motion to preclude evidence that Schwartz provided his victims with alcohol and drugs is denied. As argued by Plaintiffs' expert, it is well accepted that sexual predators often use drugs and alcohol to groom victims. Drugs and alcohol are used to get the

victims to trust the abuser and is the carrot which lures the victim to the places where the predator can abuse them. Drugs and alcohol also get victims to lower their guard and make them more susceptible to the abuser's advances.

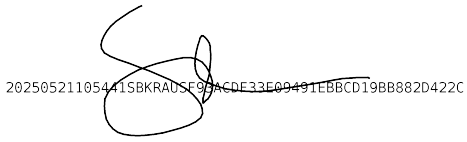
CONCLUSION

WHEREFORE it is hereby:

ORDERED that Defendant's motion is denied in its entirety; and it is further

ORDERED that counsel appear for a virtual pre-trial conference on June 23, 2025, at 12 pm at which time the Court will set firm trial dates for each of the five actions.

This constitutes the decision and order of the Court.



5/21/2025
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**