SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. SABRINA B. KRAUS PART CVA 1 / 57
Justice

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JOHN DOE

Plaintiff,

INDEX NO. 525322/2019

MOTION DATE 7/28/2025

MOTION SEQ. NO. 004

EDUCATIONAL INSTITUTE OHOLEI TORAH

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 106, 108-130 were read on this motion to/for RENEWAL.

BACKGROUND

Plaintiff commenced this action pursuant to the Child Victims Act ("CVA") seeking damages for alleged sexual assault he suffered when he was a student at Educational Institute Oholei Torah ("Oholei Torah").

ALLEGED FACTS

The following facts are alleged in the complaint.

Oholei Torah is an educational institution that seeks to offer boys of Chabad-Lubavitch families, ages 3 to 18, a strong and traditional Chassidic education. It has several educational programs to address the needs of various age groups. At the age for 16 or 17, a boy begins advanced Yeshiva-called Zal-which is extremely intense.

Plaintiff joined the Zal division of Oholei Torah on or about 1987, at the age of 17. Since Plaintiff's parents did not live in New York, he was assigned to live in the dormitory located at 841-853 Ocean Parkway, Brooklyn, N.Y.

From the start, Plaintiff was lonely and needed guidance. His friend suggested that he confide in their young teacher[1], Avrohom Charitonov ("Charitonov") who was also viewed as a mentor to the students. Charitonov was enrolled in Central Yeshiva Tomchei Tmimim Lubavitch ("Central Yeshiva"), equivalent to college. Charitonov resided at the President Street dormitory.

Plaintiff approached Charitonov and asked him for guidance. This was the start of an allegedly abusive relationship, in which Charitonov used his role as a teacher and role model to sexually abuse Plaintiff, repeatedly, in Central Yeshiva's dormitory, and later at a mikvah located at 394 Kingston Avenue, Brooklyn, N.Y.

PROCEDURAL HISTORY AND PENDING MOTION

Plaintiff commenced this action asserting six causes of action for (i) negligent hiring, supervision and retention, (ii) negligence, (iii) breach of non-delegable duty, (iv) breach of fiduciary duty, (v) negligent infliction of emotional distress and (vi) breach of duty *in loco parentis*.

Defendants moved to dismiss for failure to state a cause of action and asserting that the CVA was unconstitutional. Pursuant to a Decision and Order entered on November 3, 2023, this Court, granted the motions to the extent of dismissing so much of the first cause of action that asserted negligent hiring against defendants, as well as the third through sixth causes of action.

[1] Movant argues it never employed Charitonov and that it has provided documentary evidence to that effect to Plaintiff, but that is beyond the scope of a 3211 motion, where the Court will assume the truth of the allegations pled.

The Court found that the Complaint had sufficiently pleaded the notice element for the claim for negligent retention and supervision.

Thereafter, Central Yeshiva successfully appealed the November 3 Decision wherein the Appellate Division determined that the Complaint had indeed failed to sufficiently plead the notice element for the two remaining causes of action asserted against Central Yeshiva. The Appellate Division held in pertinent part:

> Here, the complaint failed to state causes of action alleging negligence and negligent retention, supervision, and direction against Central Yeshiva, as the complaint did not sufficiently plead that Central Yeshiva knew or should have known of Charitonov's propensity to commit the alleged wrongful acts and failed to provide any factual allegations from which it could be inferred that Central Yeshiva had prior notice of similar conduct at its dormitory (*see Kessler v. Yeshiva of Cent. Queens,* 231 A.D.3d 1140, 1141–1142, 221 N.Y.S.3d 617; *Doe v. Hauppauge Union Free Sch. Dist.,* 213 A.D.3d at 810–811, 184 N.Y.S.3d 150). The complaint merely asserted bare legal conclusions that Central Yeshiva knew or should have known of Charitonov's propensity for improper conduct without providing any factual allegations that Charitonov's abuse of the plaintiff was foreseeable (*see Well v. Yeshiva Rambam,* 300 A.D.2d 580, 581, 753 N.Y.S.2d 512). Moreover, the plaintiff failed to adequately demonstrate any basis to allow him to conduct discovery prior to directing dismissal of those causes of action (*see* CPLR 3211[d]; *Vasquez v. Kennedy,* 221 A.D.3d 936, 939, 201 N.Y.S.3d 110).

Doe v. Educ. Inst. Oholei Torah, 235 A.D.3d 843, 845–46 (2025).

DISCUSSION

Pursuant CPLR Section 2221, "(a) motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination." CPLR 2221(e)(2).

It is well settled that "(a) clarification of the decisional law is a sufficient change in the law to support renewal (see CPLR 2221[e][2]; *Roundabout Theatre Co. v. Tishman Realty & Constr. Co.*, 302 A.D.2d 272, 756 N.Y.S.2d 12)." *Dinallo v. DAL Elec.*, 60 A.D.3d 620, 621 (2009*); see also Puello v. City of New York*, 118 A.D.3d 492 (1st Dept 2014).

In this case, the holding of the Second Department supports renewal and upon renewal dismissal of the action as to Oholei Torah for the same reasons the action was dismissed as to Central Yeshiva. The allegations of notice in the complaint as to the two defendants are identical.

WHEREFORE it is hereby:

ORDERED that the motion for renewal is granted and that upon renewal the action is dismissed in its entirety as to the remaining defendant Oholei Torah; and it is further

ORDERED the action is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of defendant dismissing this action, together with costs and disbursements to defendant, as taxed by the Clerk upon presentation of a bill of costs; and it is further

ORDERED that, within 20 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office.

This constitutes the decision and order of the Court.

7/28/2025
DATE

HON. SABRINA B. KRAUS, J.S.C.

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