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California Trial Court Grants Summary Judgment for Sigma Alpha Mu and Three Other Fraternity Related Entities in USC Sexual Assault Case

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In *Jane Doe v. Sigma Alpha Mu Fraternity, Inc., et al.*, Los Angeles County Superior Court Case No. 21STCV46495, Plaintiff Jane Doe ("Plaintiff") alleged that she attended a college fraternity party at USC hosted by the Mu Theta Chapter of Sigma Alpha Mu Fraternity. Plaintiff further alleged she was served and consumed alcohol at the party despite being underage and, after becoming intoxicated at the party, claimed that she was sexually assaulted by a chapter member. USC signed off on the party before it began, and the Mu Theta Chapter hired an outside events company to provide private security.

Plaintiff sued her alleged assailant, the Mu Theta Chapter, the event services company that provided the security, and four other fraternity-based entities—Sigma Alpha Mu Fraternity, Inc. (the national fraternity), SAM USC Housing, LLC (the house corporation that owned the chapter house where the alleged assault occurred), SAM Property Management, LLC (the property manager of the chapter house), and SAM National Properties, LLC (a national entity focused on investing in undergraduate fraternity houses throughout the country). Plaintiff brought claims of negligence, premises liability, negligent hiring, supervision, and retention, negligent security, assault, battery, negligent infliction of emotional distress, and intentional infliction of emotional

distress. Plaintiff sought compensatory damages in excess of $5,000,000, as well as punitive damages.

Plaintiff's overarching theory of liability against Sigma Alpha Mu Fraternity, Inc., SAM USC Housing, LLC, SAM Property Management, LLC, and SAM National Properties, LLC was that they were each directly negligent because they had knowledge that the Mu Theta Chapter had previously been placed on probation for unrelated disciplinary issues but, despite such knowledge, failed to institute the appropriate safeguards or take the necessary corrective measures to ensure that the Mu Theta Chapter did not host social events that violated fraternity rules and regulations. Plaintiff alleged that each of these entities had a duty to control and/or supervise the Mu Theta Chapter and its members, and they each breached this duty when they collectively allowed, and did not stop Mu Theta from hosting the fraternity party at issue. Plaintiff also asserted that each of the fraternity defendants were the alter egos of one another and, thus, each should be vicariously liable for the acts and omissions of the others.

After extensive discovery was conducted, but before Plaintiff or her alleged assailant were ever deposed, Sigma Alpha Mu Fraternity, Inc., SAM USC Housing, LLC, SAM Property Management, LLC, and SAM National Properties, LLC, each filed a motion for summary judgment. Each fraternal entity argued that it did not owe Plaintiff any duty of care and there was no evidence to support Plaintiff's theory that all the defendants were the alter egos of each other. The motions relied heavily on *Barenborg v. Sigma Alpha Epsilon Fraternity*, 33 Cal.App.5th 70 (2019), where the California Court of Appeal held that national fraternal organizations do not owe injured third parties any duty of care because they do not possess the requisite special relationship with their local chapters or their chapter members. Ultimately, the Court issued two extremely thorough rulings granting the motions in full. The Court fully adopted

the *Barenborg* court's holding as to the duty issue, and completely rejected Plaintiff's alter ego theory.

The Court's ruling in this case is believed to be the first trial court ruling in California granting summary judgment to a national fraternity and other fraternity-related entities where a plaintiff had sought liability under the alter ego theory.

Sigma Alpha Mu Fraternity, Inc., SAM USC Housing, LLC, SAM Property Management, LLC, and SAM National Properties, LLC, were all represented by Patrick Ball, Mary Childs, and Ida Farahmand of Yoka Smith, LLC, in Los Angeles and Irvine, California.

Hazing Allegations Dismissed: Ohio University Not Liable For Collin Wiant's Death

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"Collin Wiant (Collin), an 18-year-old freshman attending Ohio University (OU) in fall 2018, died as a result of asphyxiation from ingesting nitrous oxide with members of the Sigma Pi Fraternity, Epsilon Chapter (Sigma Pi) at a privately-owned property located off campus."[1]

Following Collin's death, his estate initiated litigation against the Sigma Pi Fraternity and some of its individual members. That litigation ultimately settled. But in Ohio, lawsuits seeking financial damages against state institutions, such as public universities, must be brought in the Court of Claims of Ohio. The estate's lawsuit against OU in the Court of Claims was stayed during

[1] *Wiant v. Ohio Univ*., 2024-Ohio-4571 (Ohio Ct. Cl.), at ¶ 2.

the pendency of the litigation against the Fraternity and its individual members. That stay was lifted in December 2022.

After a "voluminous amount of discovery,"[2] both parties, the Wiant interests and OU, filed motions for summary judgment. Plaintiffs' Complaint claimed two causes of action against OU: "(1) Defendant's negligence resulted in Collin's wrongful death on November 12, 2018, and (2) Defendant violated R.C. 2307.44—Ohio's civil hazing statute."[3] On the eve of trial, Plaintiffs sought to dismiss the negligence claim and try only the violation of Ohio's hazing statute. OU objected. Ultimately, the court proceeded to consider summary judgement offered by both sides related to both causes of action.

While "Plaintiffs complaint alleges that Collin's death was caused by a cumulation of hazing that could have been prevented if Defendant had taken steps to reasonably address Sigma Pi's history of hazing,"[4] the Court's decision carefully details OU's efforts to prevent hazing in OU fraternities and specifically tracks Sigma Pi's history of alleged hazing from 2014 through the time of Collin's death. According to the Court, "the evidence shows that… Defendant has explicitly prohibited misconduct that endangered students' health and safety through OU's formal written policies."[5] The Court devoted several pages to detailing OU's anti-hazing policies, procedures for investigating hazing allegations, and disciplinary procedures when hazing is found,

[2] *Id.* at ¶ 5.

[3] *Id.* at ¶ 4.

[4] *Id.*

[5] *Id.* at ¶ 20.

noting that OU's Office of Community Standards and Student Responsibility "handled roughly 2,500 cases concerning various types of misconduct per year."[6]

With regard to Sigma Pi, the Court noted, "the record is void of any reported misconduct involving Sigma Pi until several complaints of potential hazing were reported during the 2013-2014 school year."[7] Some reports were dismissed for lack of evidence, but one issue involving an incident at "Burr Oak State Park regarding an event sponsored by Sigma Pi that involved alcohol, illegal drugs, and other inappropriate behavior" ultimately led to Sigma Pi being placed on probation until May 3, 2015.[8] The Court acknowledged that in late December of 2015, a property rented by members of Sigma Pi received numerous code violations from the City of Athens. While the property involved was not always occupied by Sigma Pi members, it had a history as a party house. But ultimately the University determined it "could not take action because 45 Mill St. was not officially registered with OU as a fraternity-affiliated property."[9]

In September 2016, OU's staff learned that conduct during what may have been Sigma Pi's "rush week" might have required students to do menial work such as cleaning the fraternity house. OU's staff made clear to the Sigma Pi chapter president what kinds of activities OU would view as hazing, and the investigation led to no charges against Sigma Pi.

[6] *Id.* at ¶ 21.

[7] *Id.* at ¶ 34.

[8] *Id.* at ¶¶ 37–38.

[9] *Id.* at ¶ 41.

"After the 2016 investigation closed, Defendant did not receive any reports of hazing involving Sigma Pi for the remainder of 2016. Likewise, Defendant did not receive any reports of hazing involving Sigma Pi in 2017 or 2018 until after Collin's death."[10]

Using information that was filed with the Court, the Judge took the time to describe "Collin at OU." Collin received his informal bid to join the Fraternity and "bragged to family that he was 'first to get a bid.'"[11] Collin eventually became his pledge class's President. He described via text message to his ex-girlfriend a trip he took with some members of the Fraternity to Gatlinburg, Tennessee as the "greatest weekend" because he "got to do free coke weed and aderal [sic] constantly mixed with moonshine and endless alcohol constantly blacked out."[12] According to the Court, "by mid-October, Collin was encouraging his fellow initiates to endure the hazing" they were experiencing.[13]

A female student reported to OU's police department that, after meeting at a party hosted by Sigma Pi at the 45 Mill Street property, Collin sexually assaulted her on October 19, 2018. The Court noted that OUPD initiated a criminal investigation into Collin for sexual assault, and subsequently, "Sigma Pi members were also informed that Collin was suspended from the pledge class due to the criminal investigation and that he could not be affiliated with any Sigma Pi activity."[14]

[10] *Id.* at ¶ 46.

[11] *Id.* at ¶ 48.

[12] *Id.* at ¶ 49.

[13] *Id.*

[14] *Id.* at ¶ 50.

Despite that restriction, in the early morning hours of November 12, 2018, Collin attended an event at 45 Mill Street with some members of Sigma Pi and others where one hundred (100) cannisters of nitrous oxide, which a Sigma Pi member had purchased earlier, were present. "Uncontroverted deposition testimony establishes that the whippets were available to anyone, fraternity and non-fraternity members alike, who wanted to participate.... Those in the room with Collin also deponed that they were not engaged in an official or unofficial fraternity event and that Collin was neither being hazed nor did anyone force, coerce, or otherwise instruct Collin to take the whippet."[15]

Upon taking the nitrous oxide, Collin began gasping for air and turned "purple and blue."[16] Collin later died that night at O'Bleness Memorial Hospital, and the Athens County Coroner's Officer determined Collin's cause of death to be asphyxiation due to nitrous oxide ingestion. Later, individual Fraternity members were charged with—and pleaded guilty to—various criminal offenses related to the events leading to Collin's death.

In considering Plaintiffs' claim that OU was liable in negligence for the cause of Collin's death, the Court identified that Plaintiffs needed to show that: (1) Defendant owed a duty, (2) Defendant breached its duty, (3) Defendant's breach proximately caused Plaintiffs' injury—in this case, Collin's death.

OU acknowledged that since Collin was one of its students, he had a special relationship with OU as a business invitee during University activities or while located on premises under OU's possession and control. But OU disputed it had a "duty of care to warn or protect students from

[15] *Id.* at ¶ 52.

[16] *Id.* at ¶ 53.

the criminal acts of a third party once they leave campus or a premises that is under the institution's possession or control."[17] Because Colin was not located on the premises under Defendant's control or possession at the time he ingested the nitrous oxide, OU "had no duty to shield him from the harmful off-campus activity of others."[18]

While the Court could have stopped there, given what the Court identified as unique circumstances, the Court went on to address the issues of foreseeability and breach. On the issue of foreseeability, the Court noted that a criminal act is not foreseeable as a matter of law if the evidence shows (1) spatial separation between previous crimes and the crime at issue; (2) difference in degree and form between previous crimes and the crime at issue; and (3) lack of evidence reviewing Defendant's actual knowledge of violence. The evidence must demonstrate something greater than the general knowledge of potential crimes.

The Court pointed out that the Plaintiffs did not argue that OU had actual knowledge that Collin was being hazed, and while others close to Collin knew of the hazing, no one reported that to any OU employee or law enforcement. The Court rejected Plaintiffs' claim that Sigma Pi had a "deeply ingrained culture" of hazing because of "insufficient evidence to support this conclusion."[19] And again, the Court relied on the fact that there was a "two-year lapse in time from 2016 to 2018 without any reports of hazing involving Sigma Pi whatsoever," noting, "the record is also void of any evidence that shows that any member of Sigma Pi who was involved in the hazing in 2014 continued to be a member into 2018 to be able to carry forward such a culture of

[17] *Id.* at ¶ 59.

[18] *Id.* at ¶ 61.

[19] *Id.* at ¶ 66.

hazing."[20] "Given the limited number of prior reports and the spatial separation between them, as well as the discrete nature of the allegations, and variation in the type of misconduct reported, the Court found that prior complaints involving the Fraternity did not prove it reasonably foreseeable that Collin or any other initiate would be hazed in 2018.

The Court went on to find that Defendant acted in accordance with any required standard of care under the circumstances:

> Within two months of his death, the undisputed evidence shows that Defendant warned Collin of the dangers of hazing by educating him about OU's formal anti-hazing policy as well as requiring him to attend anti-hazing presentations and providing resources to report hazing or otherwise seek help.[21]

The Court therefore found that OU was entitled to judgement as a matter of law on Plaintiffs' negligence claim.

Regarding the second cause of action—the violation of Ohio's hazing statute, R.C.2307.44—the Court noted that the claim involved questions of law regarding statutory construction that had not previously been addressed by the courts. Ohio's hazing statute specifically authorizes claims against a university or any administrator, employee, or faculty member of the university who knew or reasonably should have known of the hazing and who did not make reasonable attempts to prevent it. The statute goes on to specifically provide that "in an action against a school, university, college or other educational institution, it is an affirmative

[20] *Id.* at ¶¶ 66–67.

[21] *Id.* at ¶ 71.

defense that the school, university, college, or other institution was actively enforcing a policy against hazing at the time the cause of action arose."[22]

OU had its own anti-hazing policy that it actively communicated to students in a variety of ways, specifically required fraternity and sorority student leaders to attend specialized workshops about hazing, and mandated that all students wanting to join Greek life attend anti-hazing presentations before becoming official members. As a result, the Court did not appear to have any difficulty in determining that OU was ""actively enforcing" its anti-hazing policy by informing students about its policy against hazing, providing information about the dangers of hazing, and offering access to resources for students to report hazing or protect themselves from hazing."[23]

Judge Lisa L. Sadler of the Ohio Court of Claims concluded her 38-page decision as follows: "Having reviewed all the evidence in a light most favorable to Plaintiffs and for the reasons stated above, the Court finds that Defendant is entitled to judgement as a matter of law pursuant to Civ. R. 56."[24]

Due to the language of the statute, fraternities and sororities do not benefit from the same kind of direct (affirmative) defense that OU did under Ohio's anti-hazing law. Fraternal groups therefore cannot escape liability by simply establishing that they were "actively enforcing a policy against hazing at the time a cause of action arose." Nonetheless, proving that a national fraternity or sorority has an anti-hazing policy in place clearly promotes and enforces that policy, and

[22] *Id.* at ¶ 76 (citing Ohio Rev. C. 2307.44).

[23] *Id.* at ¶ 87.

[24] *Id.* at ¶ 97.

actively investigating reports of hazing and, where found, disciplining those who engage in it, often greatly assists in defending the organization.

Family Sues Sorority and Property Owner Over Tragic Fall at Party

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On May 12, 2024, Batul Kazim, William Cox, and Sarah Cox filed a complaint[1] against multiple defendants, including the Alpha Epsilon Phi Sorority (AEPhi), AEPHi's Phi Omega Chapter (the "Chapter"), and the former chapter president, Maggie Scales (collectively, the "Sorority Defendants") for negligence stemming from an incident that left Sarah Cox, Batul and William's daughter, with "catastrophic injuries."[2]

On March 31, 2023, Sarah, a junior at Northeastern University and member of the Chapter, attended a pre-formal gathering at an apartment (the "Property") rented by Ms. Scales and others, and owned by Defendant Ramos Properties II, LLC ("Ramos Properties").[3] During that party, Sarah fell twenty feet from the second story window of the apartment onto the pavement, and has been in a catatonic state ever since.

Plaintiffs seek 10.2 million dollars for Sarah's ongoing and future medical care and the upheaval to the lives of Batul Kazim and William Cox who claim they "now have to provide care

[1] Grace has recently joined the Manley Burke Team as law clerk. Grace graduated from Stetson University College of Law in May.

[2] Complaint, *Cox v. Ramos*, No. 2484CV00684 (Suffolk Cnty. Super. Ct.).

[3] *Id.* at ¶ 26.

and support of every aspect of Sarah's life 24 hours per day and 7 days per week on a permanent basis."[4]

The Complaint asserts that Maggie's apartment was "openly used"[5] as the Chapter's sorority house and was used for "personal social gatherings as well as Sorority events and gatherings."[7] Sarah's tragic fall from the second story kitchen window occurred purportedly due to the kitchen being overcrowded with thirty or more intoxicated people at the time of the accident.

The Complaint sets forth three claims each against the Property Owner Defendants. These claims include negligence based on their purported (1) allowance of overcrowding by intoxicated college students in a unit with low-positioned windows; and (2) failure to properly maintain the property by not having window screens securely installed in the low-positioned windows in the unit. Ramos is also alleged to have failed to sufficiently warn Sarah of the dangers created by windows installed at a low position.

With respect to the Sorority Defendants and an unnamed individual, the Complaint asserts claims against each for negligence and failure to warn. According to Plaintiffs, both the Chapter and AEPhi "had a duty to ensure that their members prevent dangerous conditions during Sorority related activities and events safe for those attending such events,"[8] and should have known the property was being used as the Sorority house and would foreseeably result in dangerous

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[4] The Complaint also names Marcia Ramos, the manager and controller of Ramos Properties. Ramos Properties and Marcia Ramos, collectively, are hereinafter referred to as the "Property Owner Defendants."

[5] *Id.* at ¶ 170.

[6] *Id.* at ¶ 18.

[7] *Id.* at ¶ 19.

[8] *Id.* at ¶ 72.

conditions due to overcrowding and alcohol usage, despite no allegation that alcohol actually contributed to or otherwise caused Sarah's fall.

The Property Owner Defendants filed crossclaims against the Sorority Defendants and an unnamed individual for contribution, common law indemnification, and—in the case of Maggie Scales—contractual indemnification. The Property Owner Defendants also denied having knowledge that the Property was being used as a sorority house. In their respective Answers to the Property Owner Defendants' crossclaims, each of the Sorority Defendants denied any negligence whatsoever for Sarah's fall.

Separately, the Sorority Defendants filed a Motion to Dismiss Plaintiffs' Complaint under Rule 12 (b)(6) for failure to state a claim for relief. In doing so, the Sorority Defendants refuted Plaintiffs' claim that the apartment was designated and used as the Chapter's sorority house. They also called attention to the abstract nature of the Complaint, which contains few facts about the events leading up to Sarah's fall from the window, and simply presumes that it was caused by the number of intoxicated people in the apartment:

> Did she trip? Lose her balance? Slip on something on the floor? Was she pushed? Did she sit on a windowpane? Was the window improperly designed? Was she inebriated? We do not know other than Cox seeks to blame her sorority sisters.[9]

Plaintiffs opposed the Sorority Defendants' Motion to Dismiss, acknowledging that the facts surrounding the incident are murky, but explaining that, due to the severity of Sarah's injuries,

[9] *Memo in Support of Motion to Dismiss*, *Cox*, No. 2484CV00684 (filed July 1, 2024).

she cannot communicate what happened. Furthermore, Plaintiffs claimed they cannot compel testimony from witnesses present that evening without pursuing legal action.[10]

On September 11, 2024, the Superior Court of Suffolk County denied the Sorority Defendants' Motion to Dismiss without prejudice, but ordered Plaintiffs to amend their Complaint by October 11, 2025, to include answers to the following questions raised by the Court during oral argument:

(i) Does Ms. Cox herself have the capacity to bring this suit on her own behalf;
(ii) What facts show a plausible link between the alleged conditions and Ms. Cox's fall; and
(iii) How each of these Sorority Defendants caused or contributed to the conditions that Plaintiffs allege led to the fall.

As this case progresses, we will provide substantive updates that may be of interest to our readers.

Sweet Briar College Faces Backlash Over New Admissions Policy

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Sweet Briar College was founded by—and funded through the will of—Fletcher Williams in 1900 to be a school for "girls and young women." The College has a history of promoting inclusion, even taking legal action to remove the restriction against admitting Black students after the Civil Rights Act of 1964 came into effect.

[10] *Objection to & Response to Defs.' Motion to Dismiss*, *Cox*, No. 2484CV00684, at *6–8 (filed July 1, 2024).

In recent years, as with most women's colleges and universities, Sweat Briar had not restricted admission to only those who had been assigned at birth as female. However, that all changed this summer when the President and Chair of the College Board announced that any future applicant must "confirm that her sex assigned at birth is female and that she consistently lives and identifies as a woman."[1] The President justified the decision by stating that Williams' will remains legally binding and "must be interpreted as it was understood at the time it was written." [2]

U.S. News reported that "Williams' will stipulated that the school was to be a place 'for the education of white girls and young women.'"[3]

The policy shift has sparked criticism. The Sweet Briar faculty voted 48-4 in favor of rescinding the new rule, and the Student Government Association condemned the decision, calling it "alienating, unnecessary, and reflective of the rise of transphobia in our country," as reported by U.S. News.[4]

In the meantime, the lawsuits against Kappa Kappa Gamma related to the controversy over the admission of a transgender member remain pending in both Wyoming and Ohio.

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[1] Trudy Ring, *A Virginia College Bans Transgender Students — Based on Language From the Year 1900*, ADVOCATE (Sept. 4, 2024, 5:39 AM).

[2] *Id.*

[3] Ben Finley, *Women's College in Virginia Bars Transgender Students Based on Founder's Will from 1900*, U.S. NEWS (Aug. 30, 2024,6:45 PM).

[4] *Id.*

The goal of *Fraternal Law* is to provide a discussion of fraternity law, but its contents are not intended to provide legal advice for individual problems of Greek organizations. The latter should be obtained from your attorney.

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