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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present: HON. RALPH P. FRANCO, Justice**

**TRIAL/IAS, PART 12**

**CAROLE HONIG & ALLEN HONIG**

Plaintiff(s),

-against-

INDEX No.: 18454/01

MOTION SEQ. NO: 1&2

**INTERN EXCHANGE INTERNATIONAL, LTD.**

Defendant(s).

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The following papers read on this motion:

Notice of Motion/ Order to Show Cause.....

Answering Affidavits.....

Replying Affidavits.....

Motion Seq. No. 2 by attorney for Defendant for an Order permitting Brad Compston, Esq., **pro hac** vice for the purposes of appearing, participating, and representing IEI in the within action is **granted.**

Motion (Seq. No. 1) by attorney for Defendant for an Order pursuant to CPLR 3211(a)(7), dismissing the complaint is **granted.**

An eighteen-year old woman at the time of the alleged incident,

Sima Honig (daughter of the Plaintiffs', hereinafter Sima), enrolled in a summer program for youths in London, run by the Defendant corporation, Intern Exchange International, Ltd. (hereinafter IEI). Sima and her parents both signed agreements with IEI, the Intern's Agreement and Parents' Agreement, respectively. Aff. Lynn Weinstein, Exhibit A. Both of these agreements recognized that behavior considered to be "grossly improper" would result in the expulsion of Sima from the program. In addition, the Rules and Regulations of the program, provided to each intern, state the existence of a Zero Tolerance policy toward both drugs and alcohol, with immediate dismissal from the program as punishment. Id., Exhibit B. On July 20, 2000, IEI expelled Sima after discovering that she had consumed alcohol. Sima's parents', the Plaintiffs', then commenced this action, stating three causes of action: 1) that IEI's failure to supervise Sima on July 20<sup>th</sup> resulted in her becoming ill and requiring medical attention as a result of alcohol consumption, and that such

failure to supervise Sima constituted a breach of contract, 2) that as a result of IEI not properly supervising its staff on July 8<sup>th</sup>, Sima was engaged in consensual intercourse with another member of the program (also at least 18 years of age), and that such failure to supervise its staff constituted a breach of contract, and 3) that IEI's failure to properly supervise its staff on July 20<sup>th</sup>, resulted in Sima consuming alcohol, which she mixed with her prescribed medication, and that such failure to supervise its staff constituted a breach of contract.

The Plaintiff's First Cause of Action alleges that IEI's failure to supervise Sima on July 20<sup>th</sup> resulted in her becoming ill and requiring medical attention as a result of alcohol consumption, and that such failure to supervise Sima constituted a breach of contract. However, the Plaintiff has not alleged anything to suggest that such a failure to supervise ever occurred. Sima is an adult, and voluntarily undertook the legal activity of consuming alcohol. The Plaintiff has not asserted

any case law that shows that the Defendants's duty to supervise an adult extends to prohibiting her from voluntarily undertaking legal activities. The Plaintiff has never even asserted such a statement at all, and seems to have been under the mistaken impression that alcohol consumption was not permissible for eighteen-year olds in England at the time this action was commenced. See: Harstock v. Harstock, 189 A.D.2d 993.

The Plaintiff's Second Cause of Action alleges that as a result of IEI not properly supervising its staff on July 8<sup>th</sup>, Sima engaged in consensual sexual intercourse with another member of the program (also at least eighteen years of age), and that such failure to supervise its staff constituted a breach of contract. This cause of action is only slightly different from the previous cause of action inasmuch as it alleges that the Defendant failed to supervise its staff instead of failing to supervise Sima. However, implied in the Plaintiff's argument is that if the Defendant had supervised its staff, then the staff would have

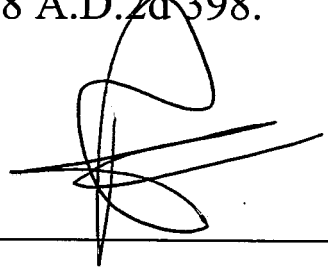
more carefully supervised Sima, and that in the course of the staff's supervising, the staff would have prohibited Sima from engaging in consensual sexual intercourse on July 8<sup>th</sup>. However, the Plaintiff asserts nothing to suggest that the staff's supervision duties, even if done perfectly, would have prohibited Sima from engaging in consensual sexual intercourse on July 8<sup>th</sup>, as her actions were both legal and voluntary. As there is no allegation that proper supervision would have prevented the above events, a cause of action claiming a breach of contract for failing to supervise the staff, where proper supervision would have rendered the same result, can not stand and **must be dismissed.**

The Plaintiff's Third Cause of Action alleges that IEI's failure to properly supervise its staff on July 20<sup>th</sup>, resulted in Sima consuming alcohol, which she mixed with her prescribed medication, and that such failure to supervise its staff constituted a breach of contract. This cause of action is virtually identical to the Second Cause of Action,

and fails for the same reasons. There are no assertions by the Plaintiffs' that the staff of the Defendant, even if supervising in a most aggressive manner, would have a duty to prevent Sima from voluntarily acting in ways she was legally entitled to act.

Pursuant to the terms of the contract, IEI cannot be liable to the Plaintiffs' for the alleged injuries to their adult daughter. See: Smith v. West Rochelle Travel Agency, Inc., 238 A.D.2d 398.

**Dated: July 8, 2002**



**Hon. Ralph P. Franco, J.S.C.**

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**ENTERED**

**JUL 09 2002**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**