

Israeli Army Veteran's Suit Over Martial Arts Injury Can Proceed

BY ANDREW KESHNER

AN ISRAELI army veteran and former air marshal for El Al can continue his suit against the martial arts school where he was injured in a cage fight after a judge found factual questions remain on whether the onetime soldier assumed the risks involved in sparring at an advanced class.

"The court finds that questions of fact exist as to whether the risk of injury which [Erez] Tadmor was to be exposed to by participating in the advanced class was known, apparent or reasonably foreseeable to him and whether [New York Jiu Jitsu] exercised reasonable care to protect Tadmor from unassumed, concealed or unreasonably increased risks," Acting Supreme Court Justice Salann Scarpulla in Manhattan wrote on Aug. 8 in *Tadmor v. New York Jiu Jitsu*, 111457/10, denying the school's summary judgment motion.



Justice Scarpulla

Erez Tadmor enrolled in New York Jiu Jitsu's beginner mixed martial arts academy in January 2010.

He had no formal training in martial arts, according to Scarpulla's decision, but he previously had "limited martial arts training" during his three-year service with the Israeli army. He also had learned how to defend himself against armed attacks while working as an air marshal for four years, though he was never involved in an actual fight.

In the school's enrollment form, Tadmor listed "survival krav maga" as his prior training.

About two months into his beginner class, his instructor, Steven Williams, suggested Tadmor try an advanced class.

According to his deposition, Tadmor asked Williams, who also taught the advanced class, if he would "fit in" and Williams assured him he would.

At the advanced class, Tadmor, then 32 and with an » Page 2

Online

✦ The Manhattan Supreme Court decision is posted at nylj.com.

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average physique, lost a match against a "tall thin guy." His next opponent was a "stocky guy."

"It doesn't look like a match," Tadmor said to Williams.

"Don't worry about it," the instructor said, adding, "Listen. I got your back. He knows what he's doing. He's got the skills, the techniques to control himself."

During the match, which was held in a cage, Tadmor's opponent grabbed his legs and Tadmor fell to the ground, cracking his left knee, which required two surgeries.

In his personal injury suit for unspecified damages, Tadmor argued the school's instructors and supervisors "mis-matched plaintiff with a sparring partner who possessed a highly incompatible level of skill and physical strength," thereby exposing Tadmor to "unreasonable and substantial risk of serious bodily injury." The instructors also failed to teach Tadmor how to defend himself, he said.

New York Jiu Jitsu, in its summary judgment motion, said Tadmor was a self-defense "expert" who assumed the risk of injury in a mixed martial arts class. It also claimed the action failed because Tadmor signed a valid liability waiver.

In her decision, Scarpulla noted that plaintiffs voluntarily participating in athletic events are held to assume risk of "injury-causing events that are known, apparent or reasonably foreseeable," citing *Benitez v. New York City Board of Education*, 73 N.Y.2d 650.

But, she continued, that assumption of risk does not extend to "unreasonably increased or concealed" risks, again citing *Benitez*.

Scarpulla observed it was Tadmor's instructor who recommended the advanced class and allegedly allayed Tadmor's reservations about fighting the larger

man. She added that there was "no evidence" Tadmor was an "expert" in mixed martial arts.

The judge also rejected the school's signed waiver defense. Agreements releasing a tortfeasor from its acts or omissions "must plainly and precisely state that the limitation of liability extends to negligence or other fault of the party attempting to shed his or her ordinary responsibility," she said.

The waiver Tadmor signed stated that he would release the school "from any and all claims from injury or damage that may be sustained by [him] while participating in the New York Jiu Jitsu classes."

But Scarpulla said the waiver was faulty.

"Because the waiver releases [New York Jiu Jitsu] from 'any and all' claims and does not specify that the waiver extends to claims that might arise from [the school's] own negligence, the waiver signed by Tadmor is unenforceable and can not bar his claim," she said.

Tadmor was represented by **Eitan Ogen of Ogen & Sedaghati** in Manhattan.

"I really did believe this was not the standard situation involved in an assumption of risk case in a martial arts scenario and I believe that this was within a narrow exception to that line of cases, so I believe the judge came up with the correct decision," **Ogen** said.

He added that Tadmor is no longer doing martial arts.

"He's abandoned that pursuit," **Ogen** said.

The school is represented by Rondiene Novitz of Cruser, Mitchell & Novitz in Farmingdale. Novitz said she was "shocked by the decision and it absolutely will be appealed."

"This is a plaintiff who was involved in a cage fight and clearly assumed risk by entering a cage fight," she said.

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