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SJC-13933

AVA E. CROSS[1] vs. BEFREE ENTERPRISES, LLC.[2]

Worcester. September 9, 2026. - November 10, 2026.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges, Dewar, & Wolohojian, JJ.

Contract, Waiver, Release from liability. Waiver. Negligence, Contractual limitation of liability. Practice, Civil, Waiver, Summary judgment. Statute, Construction. Words, "Contract for health club services," "Health club."

Civil action commenced in the Superior Court Department on May 24, 2022.

The case was heard by J. Gavin Reardon, Jr., J., on a motion for summary judgment.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Ronald G. Gentle for the plaintiff.

Amy B. Yarbro (Carole Sakowski Lynch also present) for the defendant.

Jennifer A. Creedon & Katherine R. Kossoy, for Massachusetts Defense Lawyers Association, amicus curiae, submitted a brief.

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[1] By her parent and next friend, Denise M. Hanson.

[2] Doing business as The Little Gym of West Boylston.

WOLOHOJIAN, J. Five year old Ava Cross (Ava) broke her arm when she fell from a piece of equipment during a gymnastics class at The Little Gym of West Boylston (Little Gym). Alleging that her injury occurred when she was left unattended, Ava sued BeFree Enterprises, LLC, doing business as Little Gym, for negligence. In response, Little Gym asserted that Ava's claim was barred by a waiver of liability signed by her father, James Cross. The issue in this appeal is whether that waiver is unenforceable by virtue of G. L. c. 93, § 80, which provides, in pertinent part, that "[n]o contract for health club services may contain any provisions whereby the buyer agrees not to assert against the seller . . . any claim . . . arising out of . . . the buyer's activities at the health club." We conclude that the undisputed summary judgment record establishes that Little Gym is a "health club" for purposes of the statute, that the liability waiver signed by Ava's father was part of a "contract for health club services" as that term is defined in the statute, and that Ava's negligence claim arises from her activities at Little Gym. Accordingly, under the plain language of G. L. c. 93, § 80, the liability waiver is unenforceable and does not bar Ava's negligence claim. As a result, summary judgment should not have entered in favor of Little Gym.[3]

[3] We acknowledge the amicus brief submitted by the Massachusetts Defense Lawyers Association.

Background. We summarize the undisputed facts contained in the summary judgment record in the light most favorable to Ava as the nonmoving party, reserving certain facts as they pertain to our later discussion. See Banevicius v. Barnstable, 497 Mass. 585, 587 (2026).

Little Gym is a child development and gymnastic center focusing on three dimensions of whole child learning: (1) physical skills (which involves growing motor skills and gymnastic skills), (2) social and emotional development, and (3) cognitive development. Little Gym gives classes to children up to twelve years old, with children as young as four months old attending parent/child classes.

In October 2020, when Ava was four years old, Ava's paternal grandmother enrolled her in a weekly class at Little Gym. The grandmother completed the necessary enrollment paperwork together with Ava's father, who, on October 28, 2020, signed a liability waiver containing the following language:

> **"Acknowledgement of Risk and Waiver of Liability**
>
> "I understand that there may be some risk of injury associated with participation whether in-gym, outdoors, or online; . . . and I agree to waive any and all claims of liability, release and hold harmless The Little Gym International, Inc. and its franchisees in the event that such injury . . . may occur to me or my child."[4]

[4] Because they are not relevant to this case, we have omitted the portions of the liability waiver concerning risks from contracting communicable diseases, including COVID-19.

The following day, Ava's grandmother paid for the classes with an online credit card payment.

This process repeated itself in August 2021, when Ava's grandmother again enrolled Ava in classes at Little Gym, and her father again signed an identically worded liability waiver. It was after this second enrollment that Ava was injured while participating in a class at Little Gym on October 10, 2021. At the time of her injury, Ava was at the beam station, where she had previously used a "red bar" many times, apparently without incident. On this occasion, however, Ava tried to sit on top of the red bar, fell, and injured her arm. One of Little Gym's coaches was present at the time of Ava's fall.

Ava, through her mother, commenced this lawsuit against Little Gym asserting a single count of negligence based on the allegation that Little Gym committed a breach of its duty to supervise the children under its care and direction, thereby causing Ava injury. Little Gym raised the liability waiver as an affirmative defense, and moved for summary judgment on that ground. After a hearing, a judge of the Superior Court granted summary judgment in favor of Little Gym, concluding that the liability waiver was not a "contract for health club services," as that phrase is used in G. L. c. 93, § 80, and defined in G. L. c. 93, § 78. Ava appealed, and we transferred the case on our own initiative from the Appeals Court.

Discussion. Ava argues that the liability waiver is prohibited by G. L. c. 93, § 80, and, therefore, void and unenforceable. Because this is an issue of statutory interpretation involving a pure question of law, our review is de novo, Reuter v. Methuen, 489 Mass. 465, 470 (2022), as is our review of the summary judgment ruling and record, Berry v. Commerce Ins. Co., 488 Mass. 633, 636 (2021). We begin our discussion by laying out the statutory framework.

In 1985, the Legislature enacted An Act regulating contracts between health spas and their customers (act), declaring it to be an emergency law "necessary for the immediate preservation of the public convenience." St. 1985, c. 607, preamble. See Commonwealth v. Rainey, 491 Mass. 632, 642 (2023) ("Where the Legislature has set forth its intent in the form of a codified preamble, we consider the preamble as part of the whole statute, to the extent that it does not conflict with the more specific statutory provisions"). The act, which is situated within c. 93 of the General Laws concerning the regulation of trade, protects consumers of health club services by regulating the terms and conditions of contracts for such services. See G. L. c. 93, §§ 78–88.

Among other things, the act prohibits long-term contracts for health club services, see G. L. c. 93, § 80, first par., a practice that had been identified to the Legislature as a matter

of concern. House Bill No. 43 (Jan. 1976) (noting that "practices now prohibited by law to trade schools and dance studios are still freely engaged in by health clubs, often to the financial detriment of consumers," including "long-term, expensive contracts which many people will never be able to fully utilize"). Other provisions of the act prohibit any contract with a term longer than thirty-six months, G. L. c. 93, § 80, first par., prohibit requiring payments to be made more frequently than monthly, G. L. c. 93, § 80, second par., require a seller of a health club services contract to maintain a bond, G. L. c. 93, § 79, require conspicuous language regarding notice and cancellation rights, G. L. c. 93, § 81, provide for cancellation of a health club services contract in the event of death or significant physical or medical disability, G. L. c. 93, § 82, prohibit unfair and deceptive practices by health clubs, G. L. c. 93, § 84, create a cause of action and penalties for violation of the act, G. L. c. 93, §§ 86, 87, and permit enforcement by the Attorney General, G. L. c. 93, § 86-88.

In addition, the act prohibits certain liability waivers from being included in contracts for health club services:

> "[n]o contract for health club services may contain any provisions whereby the buyer agrees not to assert against the seller or any assignee or transferee of the health club services contract any claim or defense arising out of the health club services contract or the buyer's activities at the health club" (emphases added).

G. L. c. 93, § 80, third par.[5] This prohibition depends in turn on two defined terms: "contract for health club services" and "health club."[6] The act defines the term "contract for health club services" as a

> "contract which has the primary purpose of providing a person with the right to use the facilities of a health club or with instruction, training, or assistance by a health club in the preservation, maintenance, encouragement or development of physical fitness, conditioning or well-being, including physical culture, bodybuilding, exercising, weight control, figure development or the teaching of martial arts including judo, karate and self-defense, or any similar course of physical fitness or training or assistance."

G. L. c. 93, § 78. And a "health club" is defined as

> "each facility or location or group or chain of facilities or locations, in which any person, firm, corporation, partnership, unincorporated association, franchise or other business enterprise offers facilities for or instruction, training or assistance in the preservation, maintenance, encouragement or development of physical fitness, conditioning or well being. Such term shall include, but not be limited to, health spas, sports, tennis, racquet ball, platform tennis and health clubs, figure salons, health studios, gymnasiums, weight control centers or studios, martial arts and self-defense schools, or any other similar course of physical training."

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[5] The clause, "arising out of . . . the buyer's activities in the health club," was added in the last version of the bill. Senate Bill No. 2420 (July 9, 1985). The only waivers prohibited by earlier bills were those of "any claim or defense arising out of the health club services contract." Senate Bill No. 782 (Mar. 1985). Senate Bill No. 2256 (May 9, 1985).

[6] The act also supplies definitions of "buyer" and "seller," but the parties raise no issue concerning their meaning. See G. L. c. 93, § 78. Instead, the parties proceed on the assumption that Ava, through her father and grandmother, was a "buyer" of health club services for purposes of the act, and that Little Gym was a "seller."

Id.

The definitions of "health club" and "health club services" have similar structures: they both first provide a definition of the term at issue, which is then followed by a nonexclusive list of illustrative examples that do not limit that definition.[7] See DiFiore v. American Airlines, Inc., 454 Mass. 486, 495 (2009) (construing nonexclusive list of examples); Commonwealth v. Ryan, 93 Mass. App. Ct. 486, 490 (2018) ("including but not limited to" denotes nonexclusive, illustrative list of examples). "Providing definitions of the terms used in a statute is a way to narrow or expand the reach of that statute." King v. Town Clerk of Townsend, 480 Mass. 7, 11 (2018).

Incorporating the pertinent aspects of the definitions of "contract for health club services" and "health club" into § 80, the act prohibits certain liability waivers from being included in contracts whose primary purpose is to give a person the right to use facilities in which "instruction, training or assistance in the preservation, maintenance, encouragement or development of physical fitness, conditioning or well being" is offered. "Any contract for health club services which does not comply

[7] The enumerated examples in the two definitions are not identical. Neither party argues any significance to this and, in any event, the differences are immaterial to our analysis.

with the [act] shall be void and unenforceable as contrary to public policy." G. L. c. 93, § 85.

With this overview of the act in hand, we turn to the question whether the liability waiver signed by Ava's father is prohibited by § 80 of the act and hence void and unenforceable. As we have already noted, the act protects consumers of health club services from abusive industry practices by regulating the terms and conditions of contracts for such services. It is in this sense a remedial statute designed to shield consumers of health club services from certain types of contractual terms and conditions from which the Legislature intended to protect them. "[W]e interpret consumer protection statutes broadly to effectuate their remedial purposes" while remaining faithful to the Legislature's intent, which we ascertain through our ordinary rules of statutory interpretation. Roberts v. Enterprise Rent-A-Car Co. of Boston, 438 Mass. 187, 192 (2002).

We begin with the question whether the liability waiver signed by Ava's father was a "provision[] whereby the buyer agrees not to assert against the seller or any assignee or transferee of the health club services contract any claim or defense arising out of the health club services contract or the buyer's activities at the health club." G. L. c. 93, § 80. The parties do not seriously dispute this point but, in any event, a straightforward reading of the unambiguous language of the

liability waiver establishes that, as a matter of law, it purported to waive any claim "arising out of" Ava's "activities at the" Little Gym. See Eigerman v. Putnam Invs., Inc., 450 Mass. 281, 287 (2007) ("interpretation of a contract is a question of law for the court"); Black's Law Dictionary 132 (12th ed. 2024) ("arise" means to result from, as in "litigation routinely arises from such accidents"). The liability waiver is thus the type of provision targeted by § 80.

This conclusion does not, though, answer the question whether the liability waiver, which was a separate document Ava's father signed online, was a "contract for health club services." Little Gym argues that the waiver is the relevant contract, and that standing alone it does not qualify as a contract for health club services. On the other hand, Ava argues that the waiver was part of a single transaction together with the other enrollment paperwork and the grandmother's credit card payments, and that, taken together, the documents constitute a "contract for health club services." Taken alone, the liability waiver did not contain the essential terms of a "contract for health club services"; for example, it did not identify the services that would be provided by Little Gym. See Simons v. American Dry Ginger Ale Co., 335 Mass. 521, 523 (1957) (generally, "the essential terms of a contract must be sufficiently definite so that the nature and extent of the

obligations of the parties can be ascertained"). But although the liability waiver was a separate document, it was part and parcel of a single transaction whereby Ava's father and grandmother together completed various enrollment paperwork to enroll Ava in Little Gym's classes. "[W]hen several writings evidence a single contract between the parties, they will be read together in order to arrive at an interpretation of the contract." Phoenix Spring Beverage Co. v. Harvard Brewing Co., 312 Mass. 501, 505 (1942). See Skilton v. R.H. Long Cadillac La Salle Co., 265 Mass. 595, 597 (1929) ("three documents . . . executed together as parts of the same transaction . . . may all be considered in determining the real contract of the parties"). This can be true even when writings are signed at different times, as they were here. See Harding v. Broadway Nat'l Bank of Chelsea, 294 Mass. 13, 20 (1936) ("it was not essential that the credit agreement and the negotiable note should be executed at the same time"); Clark v. State St. Trust Co., 270 Mass. 140, 150 (1930) ("two contracts executed at the same time and as parts of the same transaction are to be construed together" even where parties were different). Accord 11 R.A. Lord, Williston on Contracts § 30:26 (4th ed. 2012) ("when the same parties execute two writings concerning the same subject matter, the writings may, under some circumstances, be regarded as a single contract and may be construed together, whether they were made

simultaneously or at different times . . . if they are related to and were part of the same transaction" [footnote omitted]). Taken together, the enrollment paperwork supplied the contract's essential terms, including that the contract's "primary purpose," G. L. c. 93, § 78, was to permit Ava to use Little Gym's facilities and to receive instruction in "encouragement or development of physical fitness," namely, Little Gym's first dimension of growing motor and gymnastic skills. Id. See Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/purpose [https://perma.cc/F78G-NE2A] ("purpose" means "the reason something is done or used").

All that remains is whether the summary judgment record raised a triable issue of fact concerning whether Little Gym is a "health club," which is defined as a place or business that "offers facilities for or instruction, training or assistance in the preservation, maintenance, encouragement or development of physical fitness, conditioning or well being." G. L. c. 93, § 78. It did not. The summary judgment record established that Little Gym is a child development and gymnastic center offering classes to children up to age twelve. Little Gym's facility is set up like a gymnastics studio, consisting of a room containing padding and gymnastics equipment. One of the three dimensions of Little Gym's program is physical skills, which includes developing motor and gymnastic skills. Little Gym employs

coaches, and one of these coaches was present when Ava was injured. On this record, we have no hesitation in concluding that Little Gym is a "health club" as defined by the act because it offers facilities for, and instruction in, "encouragement or development of physical fitness, conditioning or well being." Id.

Nonetheless, pointing to the fact that it offers scheduled classes rather than open access, extensive supervision from instructors, and programs catering to children, Little Gym argues that it is less like a traditional gym and more like an "early education enrichment program." Although Little Gym may indeed have features that traditional exercise gyms do not, that is not the question. Instead, we are tasked with determining whether the undisputed facts in the summary judgment record establish that Little Gym falls within the broad definition of "health club" established by the Legislature. And, for the reasons we have already set out, it does.

Our conclusion is buttressed by the breadth of the nonexclusive illustrative examples of "health clubs" the Legislature has supplied. See G. L. c. 93, § 78. These range from facilities offering traditional sports (such as tennis), to those offering programs of health and well-being (such as health spas and weight control centers), to those offering training in self-defense and martial arts. Like Little Gym, martial arts

and self-defense schools offer classes with instructors, and often to children. See, e.g., Lakes & Hoyt, Promoting Self-Regulation Through School-based Martial Arts Training, 25 J. Applied Dev. Psych. 283, 284 (2004) ("The martial arts historically have emphasized the importance of self-regulation, using terms such as self-control, body control, and discipline"); Vockell & Kwak, Martial Arts in the Classroom, 64 Clearing House 61, 61, 63 (1990) (describing "very large number of children" currently studying martial arts, and their resulting improved self-conception correlates with improved schoolwork).

In short, Little Gym falls within the plain meaning of the general definition of "health club" given in the first sentence of § 78, and the wide-ranging list of examples provided by the Legislature in the second sentence confirms that Little Gym fits comfortably within that definition.

Finally, Little Gym raises two policy-oriented points and asks that we look beyond the plain language of the statute. First, pointing to the fact that the act focuses primarily on regulating contractual terms and conditions, Little Gym contends that the Legislature intended to bar waivers of liability only for contract-based claims arising from health club services contracts themselves -- not for tort claims such as the one Ava brings here. This argument is defeated by the language of § 80

itself, which plainly prohibits waivers of liability for claims arising not only out of such contracts but also out of a "buyer's activities at the health club." "[T]he principal source of insight into legislative intent [is] the plain language of the statute" (citation omitted). Gravito v. Commonwealth, 496 Mass. 756, 759 (2025). And where, as here, "the statutory language is clear and unambiguous, it is conclusive as to legislative intent" (quotation and citation omitted). Id.

In the alternative, Little Gym argues that reading § 80 to extend to waivers of tort claims produces an absurd or unintended result since "Massachusetts law favors the enforcement of releases." Sharon v. Newton, 437 Mass. 99, 105 (2002). But there is no necessary inconsistency between a general policy favoring releases and a legislative decision to ban releases in a particular, specialized context. And, "absent a constitutional mandate to do so, '[i]t is not for us to inquire into the expediency or the wisdom of the legislative judgment.'" Blue Hills Cemetery, Inc. v. Board of Registration in Embalming & Funeral Directing, 379 Mass. 368, 375 (1979), quoting Sperry & Hutchinson Co. v. Director of the Div. on the Necessaries of Life, 307 Mass. 408, 418 (1940).[8]

[8] We note that our Legislature is not alone in barring liability waivers in analogous contexts. See Haw. Rev. Stat.

In sum, we conclude that the summary judgment record establishes that Little Gym is a "health club" as that term is defined by G. L. c. 93, § 78, that Ava, through her grandmother and father, entered into a "contract for health club services," id., and that her negligence claim arises out of her activities at Little Gym. The liability waiver was accordingly prohibited by G. L. c. 93, § 80, and void and unenforceable under G. L. c. 93, § 85.

Conclusion. For the reasons set out above, Little Gym's motion for summary judgment should have been denied. We accordingly vacate the judgment and remand for further proceedings consistent with this opinion.

So ordered.

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§ 663-1.54 (banning liability waivers for certain "recreational activities"); Md. Code Ann., Cts. & Jud. Proc. § 5-401.2 (banning liability waivers in contracts "relating to the use of a recreational facility," including gymnasiums, except for certain long-term contracts for services rendered for adults); N.Y. Gen. Oblig. Law § 5-326 (banning liability waivers in health club contracts). In addition, some States disfavor liability waivers for negligence as a matter of general policy. See La. Civ. Code art. 2004; Hiett v. Lake Barcroft Community Ass'n, 244 Va. 191, 196 (1992). And other States allow such waivers generally, but disfavor them for children. See, e.g., Woodman v. Kera LLC, 486 Mich. 228, 244 (2010); Santiago v. Philly Trampoline Park, LLC, 343 A.3d 995, 1015 (Penn. 2025); Scott v. Pacific W. Mountain Resort, 119 Wash. 2d 484, 492 (1992).