

280 A.D.2d 420, 720 N.Y.S.2d 497, Prod.Liab.Rep. (CCH) P 16,013, 2001 N.Y. Slip Op. 01618
(Cite as: 280 A.D.2d 420, 720 N.Y.S.2d 497)

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Supreme Court, Appellate Division, First Department, New York.
Mark FINGUERRA, Plaintiff-Respondent,
v.
Stephen CONN, et al., Defendants,
Summer Activities, Inc., et al., Defendants-Appellants.
Jetline Products of Long Island, Inc., Fourth-Party Plaintiff,
v.
Cardinal Systems, Fourth-Party Defendant-Appellant.
[And Other Actions].
Feb. 22, 2001.

Tenant brought negligence and products liability action against landlords and pool companies, seeking recovery for injuries tenant sustained when he dove head-first into pool on leased premises after consuming alcoholic beverages. After rejection of negligence claim against landlords, 252 A.D.2d 463, 676 N.Y.S.2d 154, the Supreme Court, New York County, Beverly Cohen, J., denied companies' motion for summary judgment. Companies appealed. The Supreme Court, Appellate Division, held that tenant's reckless conduct was proximate cause of his injuries.

Order reversed and motions granted.

West Headnotes

[1] Appeal and Error 30 ⚡1097(1)

30 Appeal and Error
30XVI Review
30XVI(M) Subsequent Appeals
30k1097 Former Decision as Law of the Case in General
30k1097(1) k. In General. Most Cited Cases
Supreme Court, Appellate Division's prior determination rejecting tenant's negligence claim against

landlords who owned swimming pool, on basis that tenant's own reckless conduct in consuming alcoholic beverages and then diving into section of pool where water was not deep enough to safely support his dive, even though he was familiar with pool and its contours, was proximate cause of his injuries, barred tenant's product liability claims against pool companies.

[2] Landlord and Tenant 233 ⚡164(1)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(E) Injuries from Dangerous or Defective Condition
233k164 Injuries to Tenants or Occupants
233k164(1) k. In General; Defective or Dangerous Conditions. Most Cited Cases

Landlord and Tenant 233 ⚡164(7)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(E) Injuries from Dangerous or Defective Condition
233k164 Injuries to Tenants or Occupants
233k164(7) k. Notice to or Knowledge of Tenant as to Defects. Most Cited Cases

Products Liability 313A ⚡149

313A Products Liability
313AII Elements and Concepts
313Ak146 Proximate Cause
313Ak149 k. Warnings or Instructions.
Most Cited Cases
(Formerly 313Ak60)

Products Liability 313A ⚡270

313A Products Liability
313AIII Particular Products
313Ak270 k. Swimming Pools. Most Cited

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Cases

(Formerly 313Ak60)

Under both negligence and product liability theories asserted by tenant against landlords and pool companies, tenant's reckless conduct in drinking alcoholic beverages and then diving into landlords' swimming pool in section where water was not deep enough to safely support his dive, even though tenant was familiar with pool and its contours, was proximate cause of his injuries, regardless of defective products or landlords' failure to warn potential users of varying depths of pool.

****498** Andrew B. Weiner, attorney for the Plaintiff-Respondent.

Loretta A. Redmond, James K. O'Sullivan and Brendan T. Fitzpatrick, attorneys for the Defendants-Appellants.

ROSENBERGER, J.P., NARDELLI, ELLERIN, SAXE and FRIEDMAN, JJ.

***420** Order, Supreme Court, New York County (Beverly Cohen, J.), entered January 4, 2000, which denied the motions by defendants Summer Activities, Jetline Products, Dover Vinyl Products, and fourth-party defendant Cardinal Systems, for summary judgment dismissing, *inter alia*, plaintiff's complaint, unanimously reversed, on the law, without costs, and the motions granted. The Clerk is directed to enter judgment in favor of appellants dismissing the complaint and the fourth-party complaint and all claims against them.

[1][2] This court's prior determination (reported at 252 A.D.2d 463, 676 N.Y.S.2d 154), rejecting plaintiff's negligence claim against the owners of a swimming pool, on the basis that plaintiff's own reckless conduct in consuming alcoholic beverages and then diving into a section of the pool where the water was not deep enough to safely support his dive, even though he was familiar with the pool and its contours, was the proximate cause of his injuries, bars plaintiff's product liability claims against

the non-owner ***421** defendants (*see, People v. Evans*, 94 N.Y.2d 499, 502, 706 N.Y.S.2d 678, 727 N.E.2d 1232). Under both negligence and product liability theories, plaintiff's reckless conduct was the proximate cause of his injuries, regardless of defective products or the pool owners' failure to warn potential users of the varying depths of the pool (*see, Campbell v. Muswim Pools, Inc.*, 147 A.D.2d 977, 537 N.Y.S.2d 412, *lv. denied*, 74 N.Y.2d 608, 545 N.Y.S.2d 104, 543 N.E.2d 747; *Belling v. Haugh's Pools Ltd.*, 126 A.D.2d 958, 511 N.Y.S.2d 732, *lv. denied*, 70 N.Y.2d 602, 518 N.Y.S.2d 1024, 512 N.E.2d 550).

N.Y.A.D. 1 Dept., 2001.

Finguerra v. Conn

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