

Jin Chung v Lehmann
2016 NY Slip Op 07854
Decided on November 22, 2016
Appellate Division, First Department
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Decided on November 22, 2016

Mazzarelli, J.P., Sweeny, Andrias, Webber, Gesmer, JJ.

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[*1]Jin Chung, Plaintiff-Appellant,

v

Jonathan P. Lehmann, et al., Defendants-Respondents.

Sim & Record, LLP, Bayside (Sang J. Sim of counsel), for appellant.

Law Office of Andrea G. Sawyers, Melville (Scott W. Driver of counsel), for respondents.

Order, Supreme Court, New York County (Robert D. Kalish, J.), entered on or about August 21, 2015, which granted so much of defendants' motion as sought summary judgment dismissing the complaint, unanimously affirmed, without costs.

Defendants established entitlement to judgment as a matter of law based on the doctrine of primary assumption of the risk. Defendants submitted evidence showing that plaintiff, an experienced watersports instructor, was injured when, while tubing behind defendants' boat on a 60-foot towrope and simultaneously filming a skilled wakeboarder pulled by the same boat from a 65-

foot towrope, he fell from the tube when the boat allegedly turned sharply away from the approaching shoreline and another nearby boat, and as the boat crossed its own wake, plaintiff was propelled into the water where he was struck by the wakeboarder. Defendants' evidence showed that plaintiff's injuries arose from commonly appreciated risks inherent in the recreational activities in which he was engaged (*see Morgan v State of New York*, 90 NY2d 471, 484 [1997]).

In opposition, plaintiff failed to raise a triable issue of fact. Plaintiff's argument that the doctrine is inapplicable because the filming activity he was engaged in amounted to horseplay, as opposed to socially valuable recreation, is unavailing. Plaintiff assumed the risks of the watersports activity he was filming on the lake, which was a known venue for such recreational activity (*see Benitez v New York City Bd. of Educ.*, 73 NY2d 650, 658-659 [1989]; [Ticha v OTB Jeans](#), 39 AD3d 310 [1st Dept 2007]).

Similarly unavailing is plaintiff's argument that even assuming the application of the doctrine of primary assumption of the risk, he could not be deemed to have assumed certain increased risks beyond those inherent in the recreational activity, including risks created by defendants' purported reckless conduct in operating the boat at a very fast speed, the sharp turning of the boat, the inadequate attention given to the individuals towed behind the boat, and the utilization of disparate towrope lengths at the same time (*see Morgan* at 485-486). These contentions are conclusory and otherwise unsupported by expert opinion.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 22, 2016

CLERK