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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 189

Michael Aquino,
Appellant,

v.

Michael Higgins,
Defendant,

John Higgins et al.,
Respondents.

Samuel J. Capizzi, for appellant.
Dennis J. Bischof, for respondents.

MEMORANDUM:

The order of the Appellate Division, insofar as
appealed from, should be reversed, with costs, and the fourth
cause of action against John and Heather Higgins reinstated.

There is an issue of fact as to whether defendants
provided adequate supervision for minor guests who became
intoxicated at their home and, in particular, whether defendants

properly supervised their departure from the premises (compare Rudden v Bernstein, 61 AD3d 736, 738 [2d Dept 2009]). Since the basis of any liability on defendants' part, assuming proximate cause, rests on the duty to supervise (see Appell v Mandel, 296 AD2d 514 [2d Dept 2002]), rather than their duty as landowners, it is not dispositive that the injury occurred off premises. As a result, summary judgment should not have been granted in defendants' favor and the cause of action for negligent supervision should be reinstated.

* * * * *

Order, insofar as appealed from, reversed, with costs, and the fourth cause of action against defendants John and Heather Higgins reinstated, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided November 18, 2010