

<b>Cavedo v Flushing Commons Prop. Owner, LLC</b>
2023 NY Slip Op 32520(U)
July 24, 2023
Supreme Court, New York County
Docket Number: Index No. 151350/2017
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA

PART

40

*Justice*

CARLOS CAVEDO,

Plaintiff,

- v -

FLUSHING COMMONS PROPERTY OWNER,  
LLC, TISHMAN CONSTRUCTION CORPORATION,

Defendant.

INDEX NO.

151350/2017

MOTION DATE

07/20/2023

MOTION SEQ. NO.

007

**DECISION + ORDER ON  
MOTION**

FLUSHING COMMONS PROPERTY OWNER, LLC, TISHMAN  
CONSTRUCTION CORPORATION

Plaintiff,

-against-

FIVE STAR ELECTRICAL CONTRACTING CORP.

Defendant.

Third-Party

Index No. 595128/2019

The following e-filed documents, listed by NYSCEF document number (Motion 007) 332, 333, 334, 335, 341, 371, 372, 373, 374, 375, 376

were read on this motion to/for

BIFURCATE

Upon the foregoing documents, and after oral arguments, it is ordered that defendants Flushing Commons Property Owner, LLC and Tishman Construction Corp.'s order to show cause seeking to bifurcate the trial is denied for the reasons set forth below.

The Court notes that on December 22, 2022, this action was marked for trial and jury selection to begin on August 3, 2023. At the end of June, a few days before the July 4<sup>th</sup> holiday, defendants filed the instant emergency order to show cause to stay the trial and seek bifurcation.

Here, moving defendants argue that the issue of liability is separate and apart from the issue of damages. Moving defendants further argue that a unified trial would be prejudicial as the jurors would be sympathetic to plaintiff upon hearing of the damages. In support, moving defendants cite to, *inter alia*, CPLR §603 and 22 NYCRR §202.42(a).

Plaintiff opposes the order to show cause arguing that the custom and practice in the First Department is for a unified trial. Plaintiff further argues that bifurcation would not expedite this trial. Rather, according to plaintiff, a bifurcated trial would prolong the trial. Plaintiff further points to defendants own expert disclosure which states that defendants' medical expert, in testifying regarding damages, will testify as to how the accident happened. Moreover, plaintiff alleges that there is no emergency herein, arguing that if an emergency existed for bifurcation, defendants would have moved by notice of motion when the Note of Issue was filed. Instead, defendants waited over two years prior to the making of the instant order to show cause seeking to bifurcate. Defendants reply. However, such reply was not requested, and permission to file such reply was not granted by this Court on the instant order to show cause. As such, the reply papers were not considered herein.

CPLR §603 states, in part, that “[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue.” 22 NYCRR §202.42(a) states that “Judges are encouraged to order a bifurcated trial of the issues of liability and damages in any action for personal injury where it appears that bifurcation may assist in a clarification or simplification of issues and a fair and more expeditious resolution of the action.” The statutory and case law are clear that bifurcation is not mandatory, nor is there a presumption of bifurcation. Rather, the Appellate Division has held that “trial courts should use their discretion in determining, in accordance with the statewide rule,

whether bifurcation will assist in clarifying or simplifying the issues and in achieving a fair and more expeditious resolution of the action”. *Castro v Malia Realty, LLC*, 177 AD3d 58, 60 (2<sup>nd</sup> Dep’t 2019). The court in *Castro* further held that “[a]lthough 22 NYCRR 202.42(a) encourages bifurcation where it may assist in a clarification or simplification of issues and a fair and more expeditious resolution of the action, it does not, on its face, contain...[a] strong...presumption in favor of bifurcation”. *Id.* at 63. It is clear from the case law that “bifurcation is not an absolute given and it is the responsibility of the trial judge to exercise discretion in determining whether bifurcation is appropriate in light of all relevant facts and circumstances presented by the individual cases.” *Id.* at 66.

Here, taking into account all the facts and circumstances in this action, and in order to manage the court calendar and attain an expeditious trial, the factors for a unified trial outweigh any potential prejudice raised by the moving defendants. Moreover, the law is clear that the Court MAY order bifurcation if it assists in clarification of the issues AND a more expeditious resolution of the action. *See* 22 NYCRR §202.42(a)(emphasis added). Here, a bifurcated trial will not serve to expedite this action which has been scheduled for jury selection on August 3, 2023. CPLR 4011 explicitly provides that the “court may determine the sequence in which the issues shall be tried and otherwise regulate the conduct of the trial in order to achieve a speedy and unprejudiced disposition of the matters at issue in a setting of proper decorum.” Here, plaintiff’s family has been waiting for over two years for their day in court. This trial date was scheduled over seven months ago. The Court finds that a bifurcated trial would only serve to delay this action and prolong the case which is contrary to the purpose of the statutes cited above. Thus, for the reasons specified above and for the purpose of judicial economy, and based upon a thorough review of the Court’s already full calendar, a unified trial would be most

appropriate herein. As such, defendants Birrittella and Ralph Lauren Corporation's orders to show cause seeking bifurcation are denied.

Accordingly, it is

ORDERED that defendants Flushing Commons Property Owner, LLC and Tishman Construction Corp.'s order to show cause seeking a bifurcated trial is denied in its entirety; and it is further

ORDERED that all counsel shall appear for jury selection on August 3, 2023 at 9:30am in room 422 of 60 Centre Street, New York, NY; and it is further

ORDERED that within 7 days of entry, plaintiff shall serve a copy of this decision/order upon defendants with notice of entry.

This constitutes the Decision/Order of the Court.



7/24/2023

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

☒

DENIED

☐

GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE