

Alaverdi v Bui

2020 NY Slip Op 30010(U)

January 3, 2020

Supreme Court, New York County

Docket Number: 159549/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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INDEX NO. 159549/2017

LOURA ALAVERDI, AN INCAPACITATED PERSON, BY
HER TEMPORARY GUARDIAN, RUDYARD WHYTE, ESQ,

**MOTION DATE 12/05/2019,
12/05/2019**

Plaintiff,

MOTION SEQ. NO. 017 018

- v -

HUEY BUI, JENNY YMOUI CHEV, ROSEANN
BIRRITTELLA, RALPH LAUREN CORPORATION,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 017) 427, 428, 429, 435, 436, 443

were read on this motion to/for BIFURCATE.

The following e-filed documents, listed by NYSCEF document number (Motion 018) 430, 431, 432, 433, 434, 437, 438, 441, 444

were read on this motion to/for BIFURCATE.

Upon the foregoing documents, it is ordered that defendants Roseann Birrittella’s order to show cause (mot. seq. 017) and Ralph Lauren Corporation’s order to show cause (mot. seq. 018), both seeking to bifurcate the trial, are denied for the reasons set forth below.

The Court notes that this action was marked final for trial and jury selection on December 4, 2019. On such date, when counsel appeared for jury selection, counsel for defendant Ralph Lauren Corporation requested an adjournment due to a family emergency. The Court ordered all counsel to appear on the next day, December 5, 2019. On December 5, 2019, on the eve of trial, defendants Birrittella and Ralph Lauren Corporation moved to bifurcate the trial. Counsel for defendant Ralph Lauren Corporation reiterated his request for an adjournment due to his family emergency. Although the needs of plaintiff require an expeditious trial, plaintiff’s counsel aptly stated that civility and humanity dictate that all counsel consent to an adjournment. Thus, due to

the tragedy that befell counsel for Ralph Lauren Corporation, the final trial date was adjourned to January 6, 2020 for jury selection and marked final.

Here, according to the moving defendants, the issues of liability and damages are not so intertwined so as to merit a unified trial. Moving defendants further argue that a unified trial would serve to prejudice the jury should the jury hear of plaintiff's injuries. In support, moving defendants cite to, *inter alia*, CPLR §603 and 22 NYCRR §202.42(a). Plaintiff opposes both orders to show cause arguing that bifurcation would not expedite this trial. Plaintiff further argues that a bifurcated trial would prolong the trial as the evidence of defendant Huey Bui's conduct would be presented twice with regards to the damages as well as for the claims of recklessness and willful and wanton disregard in determining whether to award punitive damages.

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." Here, moving defendants argue that the issue of their liability is separate and apart from the issue of damages in that the theory of respondeat superior is a legal matter which may be determined prior to the issue of damages. Moving defendants further argue that a bifurcated trial would simplify the issues for the jury. In opposition, plaintiff alleges that she was a pedestrian who suffered a serious injury as a result of defendants' vehicle striking her on the sidewalk, and that a unified trial would serve to expedite the trial.

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 (2nd 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 is now scheduled for jury selection on January 6, 2020. 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. A bifurcated trial could subject plaintiff’s partner and her two children to the possibility of two separate trials, thus

forcing two young children to endure additional and unnecessary emotional turmoil. 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, both defendants Birrittella and Ralph Lauren Corporation's orders to show cause seeking bifurcation are denied.

Accordingly, it is

ORDERED that defendant Roseann Birrittella's order to show cause (mot. seq. no. 017) for a bifurcated trial is denied in its entirety; and it is further

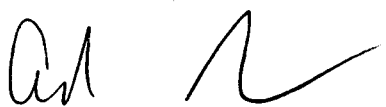
ORDERED that defendant Ralph Lauren Corporation's order to show cause (mot. seq. no. 018) for a bifurcated trial is denied in its entirety; and it is further

ORDERED that all counsel shall appear for jury selection on January 6, 2020 at 9:30am in room 136 of 80 Centre Street, New York, NY; and it is further

ORDERED that within 20 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.

1/3/2020
DATE


ADAM SILVERA, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE