

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 22-01567

PRESENT: SMITH, J.P., PERADOTTO, CURRAN, BANNISTER, AND OGDEN, JJ.

MELINDA B. ABATE, MATTHEW C. ABATE AND
PETER TUBIOLO, PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

ELIZABETH S. BLACK WOLF, ALSO KNOWN AS
ELIZABETH BLACK, ET AL., DEFENDANTS,
1840 RESTAURANT, LLC, AND 1840 RESTAURANT, LLC,
DOING BUSINESS AS COMPANE BRICK OVEN BISTRO,
DEFENDANTS-APPELLANTS.
(APPEAL NO. 2.)

RUPP BAASE PFALZGRAF CUNNINGHAM LLC, ROCHESTER (MATTHEW A. LENHARD OF
COUNSEL), FOR DEFENDANTS-APPELLANTS.

FARACI LANGE, LLP, ROCHESTER (CAROL A. MCKENNA OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS MELINDA B. ABATE AND MATTHEW C. ABATE.

CAMPBELL & ASSOCIATES, HAMBURG (JASON M. TELAACK OF COUNSEL), FOR
PLAINTIFF-RESPONDENT PETER TUBIOLO.

Appeal from an order of the Supreme Court, Monroe County (Craig J. Doran, J.), entered September 27, 2022. The order denied the motion of defendants 1840 Restaurant, LLC and 1840 Restaurant, LLC, doing business as Compane Brick Oven Bistro for an order bifurcating the trial with respect to the issues of liability and damages.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Same memorandum as in *Abate v Black Wolf* ([appeal No. 1] – AD3d – [Aug. 11, 2023] [4th Dept 2023]).

Entered: August 11, 2023

Ann Dillon Flynn
Clerk of the Court