

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

651

CA 21-00532

PRESENT: SMITH, J.P., BANNISTER, OGDEN, GREENWOOD, AND NOWAK, JJ.

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MARK D. BOGUMIL, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

GREENBAUM FAMILY HOLDINGS, LP, TORTORA  
PROPERTY MANAGEMENT, INC., VINCENT TORTORA,  
DEFENDANTS-RESPONDENTS,  
ET AL., DEFENDANT.

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LIPSITZ GREEN SCIME CAMBRIA LLP, BUFFALO (JOHN A. COLLINS OF COUNSEL),  
FOR PLAINTIFF-APPELLANT.

HURWITZ & FINE, P.C., BUFFALO (V. CHRISTOPHER POTENZA OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered March 29, 2021. The order granted the motion of defendants Greenbaum Family Holdings, LP, Tortora Property Management, Inc., and Vincent Tortora to bifurcate.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the motion is denied.

Memorandum: Plaintiff commenced this action seeking damages for injuries that he allegedly sustained when he fell from an "upper patio or balcony" of an apartment building owned by defendant-respondent Greenbaum Family Holdings, LP and maintained by defendants-respondents Tortora Property Management, Inc. and Vincent Tortora. We agree with plaintiff that Supreme Court abused its discretion in granting defendants-respondents' motion to bifurcate the trial with respect to the issues of liability and damages. "As a general rule, issues of liability and damages in a negligence action are distinct and severable issues which should be tried separately" (*Abate v Wolf*, 219 AD3d 1118, 1120 [4th Dept 2023] [internal quotation marks omitted]; see *Almuganahi v Gonzalez*, 156 AD3d 1491, 1492 [4th Dept 2017]). Here, however, we conclude that the issue of liability is not distinct from the issue of plaintiff's injuries because plaintiff made statements to several of his medical care providers following his fall that render the testimony of several medical witnesses as well as hospital and medical records relevant to the liability phase of the trial. Plaintiff has thus established that bifurcation would not "assist in a clarification or simplification of issues and a fair and more expeditious resolution of the action" (22 NYCRR 202.42 [a]; see

*Zbock v Gietz*, 162 AD3d 1636, 1636 [4th Dept 2018]; *Kasprzak v Delaware YMCA*, 289 AD2d 1002, 1002 [4th Dept 2001]).

Entered: October 6, 2023

Ann Dillon Flynn  
Clerk of the Court