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CPLR 4011: Prejudicial Separation of Issues of Liability and of Damages Requires Retrial

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trial.¹⁶⁴ The *Fortgang* case, in which the court had spoken in general terms, was limited to the facts of the *Hacker* case, which it was intended to follow.¹⁶⁵ *Hacker* expressly did not apply to the continuous proceeding, wherein one jury either tries both issues simultaneously or promptly hears the damages question after returning a verdict on the liability issue.¹⁶⁶

The Second Department properly resolved the question of the right to immediate appeal on the liability issue alone in a split trial by permitting the trial judge to weigh the equities and interpose an interlocutory judgment when justice requires. Courts ordinarily will realize the advantage and economy in allowing the same jury, with its familiarity with the facts, to try the issue of damages. This will expedite trial of the damages question and probably result in more equitable damage verdicts.¹⁶⁷ Where this procedure unduly prejudices the defendant or in other special circumstances, however, the court may interpose an interlocutory judgment and thus allow earlier appeal.

CPLR 4011: Prejudicial separation of issues of liability and of damages requires retrial.

CPLR 4011 restates the power to determine the sequence of issues presented at trial which common law vested in the trial judge.¹⁶⁸ In the absence of distinct statutory mandate to the contrary, it frees the trial court to effect rapid and just disposition by those means which the court's discretion dictates. As a result of this broad power, most negligence actions are "bifurcated trials."¹⁶⁹ wherein the issue of liability is tried separately from and prior to the issue of damages.¹⁷⁰ Thus, unnecessary litigation is avoided, since no trial of damages occurs if the liability issue is determined in the defendant's favor. Where the nature of the plaintiff's injuries has a significant bearing on the issue of the defendant's liability, however, a "bifurcated trial" may prejudice the plaintiff's case. *Williams v. City of New York*¹⁷¹ illustrates how a trial court's decision to modify the usual trial sequence may substantially influence both the trial and the judgment.¹⁷²

¹⁶⁴ *Id.*; see 4 WK&M ¶ 4011.05.

¹⁶⁵ 25 App. Div. 35, 37, 266 N.Y.S.2d 194, 196 (1st Dep't 1966).

¹⁶⁶ *Id.* at 36-37, 266 N.Y.S.2d at 195-96.

¹⁶⁷ See 7B MCKINNEY'S CPLR 603, supp. commentary at 42 (1966).

¹⁶⁸ See 4 WK&M ¶ 4011.04.

¹⁶⁹ See 7B MCKINNEY'S CPLR 4011, supp. commentary at 33 (1966).

¹⁷⁰ CPLR 603 states: "In furtherance of convenience or to avoid prejudice the court may order a separate trial of any claim or any separate issue. . . ."

¹⁷¹ 36 App. Div. 2d 620, 318 N.Y.S.2d 536 (2d Dep't 1971) (mem.).

¹⁷² See 7B MCKINNEY'S CPLR 4011, supp. commentary at 33 (1966).

In *Williams*, an assault action was brought for injuries allegedly caused by the use of excessive force by a city police officer. After trial of the liability issue the jury returned a verdict for the defendant. The Supreme Court, Kings County, gave judgment upon the verdict, precluding plaintiff's presentation of evidence of his injuries. On appeal, the Appellate Division, Second Department, reversed the judgment "in the exercise of discretion" and ordered a new trial on the combined issues of liability and damages. It reasoned that "under the circumstances of this case, the issue of liability, insofar as it involved the question of the use of excessive force by the police officer . . . and the issue of the injuries sustained and attributable to such excessive force were inseparable."¹⁷³ Exclusion of the evidence of plaintiff's injuries to the use of excessive force, the court concluded, was tantamount to denial of a fair trial.¹⁷⁴

The United States Supreme Court case of *Gasoline Products Co., Inc. v. Champlin Refining Co.*¹⁷⁵ provided the framework for the *Williams* holding. Therein, an error in the measure of damages awarded to the defendant on his counterclaim necessitated retrial of the damage issue raised by said counterclaim. The Court believed that the question of damages could not be submitted to a jury independently of the question of liability without confusion. Accordingly, it issued an order for the retrial of liability and damages together.¹⁷⁶

In departing from the accepted practice of separately trying issues of liability and damages, the *Williams* court is in accord with precedent, which establishes that the interests of justice may favor joint retrial of the issues of damages and liability,¹⁷⁷ especially where the two issues are not intelligibly separable.¹⁷⁸

ARTICLE 50 — JUDGMENTS GENERALLY

CPLR 5014(1): Action to revive lien on realty dismissed as premature.

Under CPLR 5014, with certain exceptions herein not relevant, "an action upon a money judgment entered in a court of the state may only be maintained between the original parties to the judgment

¹⁷³ 36 App. Div. 2d at 620, 318 N.Y.S.2d at 537; see generally *Mercado v. City of New York*, 25 App. Div. 2d 75, 265 N.Y.S.2d 834 (1st Dep't 1966).

¹⁷⁴ *Id.*

¹⁷⁵ 283 U.S. 494 (1931).

¹⁷⁶ *Id.* at 500-01.

¹⁷⁷ *E.g.*, *Culley v. City of New York*, 25 App. Div. 2d 519, 267 N.Y.S.2d 282 (1st Dep't 1966) (mem.); *Klein v. Pavarine Constr. Co.*, 24 App. Div. 2d 486, 260 N.Y.S.2d 688 (2d Dep't 1965) (mem.); *Ruina v. Nu Car Carriers, Inc.*, 2 App. Div. 2d 179, 154 N.Y.S.2d 504 (2d Dep't 1956) (mem.).

¹⁷⁸ See 4 WK&M ¶ 4011.06.