

**Carroll v New Sch.**

2023 NY Slip Op 33266(U)

September 21, 2023

Supreme Court, New York County

Docket Number: Index No. 150134/2013

Judge: Suzanne J. Adams

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

**PRESENT: HON. SUZANNE J. ADAMS PART 39TR**

*Justice*

-----X

NANCY CARROLL, JAMES CARROLL,  
Plaintiff,

- v -

THE NEW SCHOOL, TISHMAN CONSTRUCTION  
CORPORATION,  
Defendant.

-----X

THE NEW SCHOOL, TISHMAN CONSTRUCTION  
CORPORATION  
Plaintiff,

-against-

FRED GELLER ELETRICAL, INC  
Defendant.

-----X

INDEX NO. 150134/2013  
MOTION DATE 09/18/2023,  
09/18/2023  
MOTION SEQ. NO. 002 003

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595238/2016

The following e-filed documents, listed by NYSCEF document number (Motion 002) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 83, 84, 86, 87, 88, 94, 95  
were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 80, 81, 82, 89, 90, 91, 92, 93  
were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and oral argument having been heard by the court on  
September 18, 2023,

This is an action for personal injuries sustained by the plaintiff, NANCY CARROLL, on  
December 20, 2012, while working at a premises under construction at The New School, located  
at 65 Fifth Avenue, NY, New York. Plaintiff, NANCY CARROLL, testified at her deposition  
that she slipped on dirt and debris, on a staircase, and reached for a handrail to stop her fall, but

none was there. Her husband, plaintiff JAMES CARROLL, brings a derivative claim for loss of consortium.

It is well-settled that “the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986) (citing *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985)). The party opposing a motion for summary judgment is entitled to all reasonable inferences most favorable to it. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520, 521 (1<sup>st</sup> Dep’t 1989). Summary judgment will only be granted if there are no genuine, triable issues of fact. *Assaf*, 153 A.D.2d at 522.

THE NEW SCHOOL and TISHMAN CONSTRUCTION CORPORATION’s motion seeking summary judgment and dismissing the plaintiffs’ complaint and seeking summary judgment as to defendants/third party plaintiffs THE NEW SCHOOL and TISHMAN CONSTRUCTION CORPORATION against third-party defendant FRED GELLER ELECTRICAL, INC. for contractual indemnification, is denied with prejudice. Third-party defendant, FRED GELLER ELECTRICAL, INC.’s, motion seeking summary judgment and dismissing the third-party complaint, is denied with prejudice. These motions are all denied because there are several triable issues of fact regarding the causation of plaintiff NANCY CARROLL’s injuries including the origin of the alleged dirt and debris on a staircase, the lack of a handrail, and the poor lighting conditions. These issues of fact preclude summary judgment.

Plaintiffs’ cross motion seeking summary judgment pursuant to Labor Law §240(1) is granted. It is undisputed that no safety devices were provided to prevent plaintiff NANCY CARROLL’s fall from the elevated surface. At the time of the accident, plaintiff NANCY

CARROLL was working on an elevated surface to perform her firestopping duties, when she slipped on dirt and debris, causing her to fall five feet down the stairs. Plaintiff NANCY CARROLL's irrefutable testimony that she went to grab for a handrail to prevent her fall, but there was nothing there, clearly demonstrates the lack of a handrail, guardrail or other safety device was a proximate cause of her accident. She further testified that the insufficient lighting contributed to the happening of her accident. The non-party witness, Jacqueline Hurd, corroborated this testimony.

Plaintiffs' cross motion seeking summary judgment pursuant to Labor Law §241(6) is granted as to Industrial Code §23-1.7 protection from general hazards (d) slipping hazards, (e)(1) tripping and other hazards, (2) working areas, Industrial Code §23-1.30 illumination, and Industrial Code §23-2.7(e) protective railings as there are no triable issues of fact.

Plaintiffs' cross motion seeking summary judgment pursuant to Labor Law §200 is granted. Labor Law §200 is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work. Plaintiff NANCY CARROLL's injuries allegedly arise not from the manner by which the work was performed, but from a dangerous condition at the work site, thus this portion of plaintiffs' cross motion is granted, as there are no triable issues of fact.

ORDERED that the defendants, THE NEW SCHOOL and TISHMAN CONSTRUCTION CORPORATION's motion seeking an Order: (a) pursuant to CPLR Rule 3212 seeking summary judgment and dismissing the plaintiffs' complaint, with prejudice; and (b) granting summary judgment to defendants/third party plaintiffs THE NEW SCHOOL and TISHMAN CONSTRUCTION CORPORATION against third-party defendant FRED GELLER ELECTRICAL, INC. for contractual indemnification; is denied in the entirety; and it is further

ORDERED that the third-party defendant, FRED GELLER ELECTRICAL, INC.'s, motion seeking an Order pursuant to CPLR Rule 3212 summary judgment and dismissing the third-party complaint, is denied in the entirety; and it is further

ORDERED that plaintiffs' cross motion seeking an Order (a) pursuant to CPLR Rule 3212 granting summary judgment against the defendants THE NEW SCHOOL and TISHMAN CONSTRUCTION CORPORATION is granted.

This constitutes the decision and order of the court.



<u>9/21/2023</u> DATE					<hr/> SUZANNE J. ADAMS, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE
				<input type="checkbox"/>	FIDUCIARY APPOINTMENT