

**Carroll v 69 W. 9 Owners Corp.**

2023 NY Slip Op 33615(U)

October 17, 2023

Supreme Court, New York County

Docket Number: Index No. 151127/2021

Judge: J. Machelle Sweeting

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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. J. MACHELLE SWEETING PART 62**

*Justice*

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STEPHANIE CARROLL,

Plaintiff,

- v -

69 WEST 9 OWNERS CORP., VILLAGE ENTERPRISES  
LLC, CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC., GREENWICH VILLAGE FISH CO.  
INC., SAFEWAY CONSTRUCTION ENTERPRISES  
LLC, BOARD OF MANAGERS OF 69 WEST 9  
CONDOMINIUM, GUMLEY-HAFT LLC,

Defendants.

INDEX NO. 151127/2021

MOTION DATE 06/20/2023,  
06/22/2023,  
07/25/2023

MOTION SEQ. NO. 002 003 004

**DECISION + ORDER  
ON MOTION #002**

**DECISION + ORDER  
ON MOTION #003**

**INTERIM ORDER  
ON MOTION #004**

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69 WEST 9 OWNERS CORP., BOARD OF MANAGERS OF 69  
WEST 9 CONDOMINIUM, GUMLEY-HAFT LLC

Plaintiffs,

-against-

THE CITY OF NEW YORK

Defendant.

Third-Party  
Index No. 595553/2023

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 67, 68, 69, 70, 71,  
72, 73, 74, 75, 76, 77, 78, 127, 128, 129, 130, 131

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY  
DEMAND/FROM TRIAL CALENDAR

The following e-filed documents, listed by NYSCEF document number (Motion 003) 80, 81, 82, 83, 84,  
85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 125, 132

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 004) 100, 101, 102, 103,  
104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124,  
133, 134

were read on this motion to/for

SUMMARY JUDGMENT (AFTER JOINDER)

In the underlying action, plaintiff alleges that she tripped and fell on the sidewalk at a location that is described in the Fourth Amended Complaint (NYSCEF Doc.No. 42) as: “adjacent to the building(s) located at 69-73 West 9th Street a/k/a 422-430 Avenue of the Americas in the borough of Manhattan; on the sidewalk adjacent to a Citarella Market and west of the Path Station entrance on West 9th Street” (the “accident location”).

Plaintiff filed this action against: West 9 Owners Corp., Board Of Managers Of 69 West 9 Condominium, and Gumley-Haft LLC (collectively, the “Building defendants”); Village Enterprises LLC and Greenwich Village Fish Co. Inc. (collectively, the “Village defendants”); Consolidated Edison Company Of New York, Inc. (“Con Ed”); and Safeway Construction Enterprises LLC (“Safeway”). The Building defendants filed a third-party complaint (NYSCEF Doc. No. 63) against The City of New York (the “City”).

Pending now before the court are three motions, described below:

Motion #002

In this motion, the Building defendants seek an order:

- (i) vacating the Note of Issue pursuant to 22 New York Codes, Rules and Regulations 202.21(e);
- (ii) striking the action from the trial calendar pursuant to Civil Practice Law and Rules 3212(a);
- (iii) compelling the deposition of Safeway; and

(iv) proceeding with the third-party action against the City.<sup>1</sup>

This motion was filed on June 20, 2023. This action, including all pending motions, was subsequently transferred to the undersigned (transfer orders at NYSCEF Doc. Nos. 131-133) on September 20, 2023. Pursuant to the Part 62 practices, discovery issues are addressed in the “City DCM Part,” which has scheduled this case for an in-person conference on November 9, 2023 at 2:00 PM. Accordingly, this motion is granted to the sole extent that the parties are directed to conference these matters with the City DCM Part at their next appearance.

Further, pursuant to the Part 62 Rules (<https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/Rules/part62-rules.pdf>), no discovery motions shall be filed without first conferencing the matter with the Court. In the future, counsel must exercise good faith in seeking to resolve any outstanding discovery issues prior to filing any discovery motions. In the absence of a resolution, counsel may request a conference with the court by following instructions at: <https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/PDF/Remote-Conference-Protocol.pdf>.

Further, pursuant to Administrative Order 270/2020 from Chief Administrative Judge Marks, the Uniform Civil Rules for the Supreme Court and the County Court are amended as of February 1, 2021 by, *inter alia*, adding a new section as follows:

202.23 Consultation prior to Preliminary and Compliance Conference

Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery, including discovery of electronically stored information, and any other issues to be discussed at the conference. (in) the use of alternate dispute

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<sup>1</sup> Responsive filings were made by plaintiff and by Safeway, but the Building defendants filed no Reply. Chambers (Principal Law Clerk BB Liu, Esq.) sent courtesy emails to movants’ counsel on September 21, 2023 and October 2, 2023. Movants’ counsel did not respond to the emails, or make any further filings regarding this motion sequence.

resolution to resolve all or some issues in the litigation; and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.

Accordingly, the party requesting the conference must explain, with particularity, its good faith efforts and why court intervention is needed.

### Motion #003

In this motion, plaintiff seeks an order dismissing the third-party complaint against the City, or alternatively, severing the third-party action from the main action. Plaintiff argues that it was known from the inception of this lawsuit two years ago, in 2021, that the City could be impleaded, and yet the Building defendants (who are the third-party plaintiffs) inexplicably waited until June 2023 to do so, after the note of issue was already filed. Plaintiff argues that she has a trial preference due to age (NYSCEF Doc. No. 97) and would be prejudiced by the third-party action because it will significantly delay her trial date, as plaintiff would “be burdened with a new cycle of discovery with the City.” Plaintiff also argues that the third-party action lacks merit because the City did not own or control the accident location and in fact, the Building defendants admittedly caused or created the defect; received a violation notice from the City; and made subsequent repairs—facts that are incompatible with the City having any responsibility for the maintenance of the accident location.

No opposition papers were filed, and on September 21, 2023 and October 2, 2023, the court sent courtesy e-mails to counsel for the Building defendants but there was no response. Defendants did not make any further filings or applications regarding this motion sequence.

Accordingly, this motion is granted as unopposed.

Motion #004

In this motion, plaintiff seeks an order:

- (v) awarding summary judgment on liability to plaintiff and against defendants 69 West 9 Owners Corp., Greenwich Village Fish Co., Inc. and Board of Managers of 69 West 9 Condominium;<sup>2</sup>
- (vi) striking the defendants' defense of comparative negligence;
- (vii) scheduling a trial on damages against these defendants.

No opposition was filed. On September 21, 2023 and October 2, 2023, the court sent courtesy e-mails to counsel but there was no response or further filings until October 4, 2023 when counsel for Greenwich Village Fish Co. Inc. and Village Enterprises LLC (the Village defendants) filed a letter (NYSCEF Doc. No. 134) seeking an extension of time to file opposition papers. Letters in opposition were subsequently filed by plaintiff (NYSCEF Doc. No. 135) and by Safeway (NYSCEF Doc. No. 136).

This court has reviewed the file, including the above letters and, in the exercise of discretion and preference in deciding matters on the merits, grants a short adjournment.

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<sup>2</sup> There is no indication on this record that plaintiff seeks similar relief against GUMLEY-HAFT LLC or against Village Enterprises LLC.


Conclusion

In conclusion, it is hereby:

**ORDERED** that Motion #002 is granted to the sole extent that the parties are directed to conference these matters with the City DCM Part at their next appearance on November 9, 2023 at 2:00 PM; and it is further

**ORDERED** that Motion #003 is **GRANTED** as unopposed. The third-party complaint against the City is dismissed; and it is further

**ORDERED** that on Motion #004 no later than **October 24, 2023, at 5 p.m.** the Village defendants may serve and file opposition; and no later than **October 31, 2023 at 5 p.m.** plaintiff may serve and file a reply.

<u>10/17/2023</u> DATE					 J. MACHEL SWEETING, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE