Farrauto v Manhattan Sch. of Music
2026 NY Slip Op 30271(U)
January 23, 2026
Supreme Court, New York County
Docket Number: Index No. 152075/2023
Judge: Phaedra F. Perry-Bond

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND **PART** 35
Justice

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NICHOLAS FARRAUTO

Plaintiff,

- v -

MANHATTAN SCHOOL OF MUSIC,

Defendant.

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INDEX NO. 152075/2023

MOTION DATE 04/08/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, Defendant's motion for summary judgment dismissing Plaintiff's Complaint is denied.

I. Background

On December 10, 2021, Plaintiff, a student enrolled at Defendant's school, was injured, allegedly while performing in an opera for Defendant. Plaintiff tried to step on a chair as part of his performance but fell and allegedly injured his knee (*see* NYSCEF Doc. 40 at 45-46). The night prior to Plaintiff's accident, he witnessed his colleague, James Burke, who performed in the same role as Plaintiff, trip over one of the garden chairs and break its leg (*id.* at 27-28). Allegedly, the same chair was used during Plaintiff's performance and caused Plaintiff's injury (*id.* at 41-42). A show report from the date of Plaintiff's accident states "[t]he same chair that broke yesterday, another bolt came out. Can we please tighten all the bolts on both chairs" (NYSCEF Doc. 39).

Defendant's witness testified she was not sure whether prior to Plaintiff's fall anyone checked to ensure the chair was safe, nor could she testify with certainty whether the chair from

which Plaintiff fell was the same chair that had broken the night prior (NYSCEF Doc. 41 at 37). Defendant seeks summary judgment dismissing Plaintiff's Complaint, and Plaintiff opposes.

II. Discussion

Viewing the facts in the light most favorable to the non-movant, and considering Defendant's heavy burden on summary judgment, Defendant's motion is denied. Contrary to Defendant's argument, Plaintiff did identify the defective condition which cause his accident – namely a flimsy chair which had broken the night prior and was insufficient for the movements which Plaintiff was required to perform. This is buttressed by Defendant's own show report which stated that another bolt came out of the chair that broke the night prior and all bolts had to be tightened (NYSCEF Doc. 39). The show report and testimonial evidence likewise negates Defendant's argument that it lacked notice of any defective condition.

To show entitlement to summary judgment, Defendant must do more than point to gaps in Plaintiff's evidence (*see, e.g. Maria v Concourse Estate, LLC*, 200 AD3d 578 [1st Dept 2021] citing *Vargas v Riverbay Corp.*, 157 AD3d 642 [1st Dept 2018]). Defendant must establish affirmatively that shortly prior to Plaintiff's accident, the allegedly defective chair had been inspected, replaced, or sufficiently repaired (*see, e.g. O'Halloran v City of New York*, 78 AD3d 536, 537 [1st Dept 2010] [failure to establish affirmatively that defendant did not cause or contribute to accident warranted denial of summary judgment]). The failure to provide specific testimony or documentary evidence regarding the last time the allegedly defective chair was inspected is insufficient for Defendant to meet its *prima facie* burden (*Henriquez v Appula Mgt. Corp.*, 234 AD3d 592, 593 [1st Dept 2025]). There is no documentation or testimony reflecting what, if any repairs or tests were done to the chair which had broke the night prior to ensure it was safe for use during Plaintiff's performance.

Defendant's assumption of the risk argument is likewise non-dispositive. The assumption of the risk defense is only dispositive where the risks are fully comprehended or perfectly obvious (*A.L. v Chaminade Mineola Society of Mary, Inc.*, 203 AD3d 1033 [2d Dept 2022]; *Levy v Town Sports Intern., Inc.*, 101 AD3d 519 [1st Dept 2012]). The doctrine does not apply where a defendant unreasonably heightens the risk of injury through their own negligence (*Serin v Soulcycle Holdings, LLC*, 145 AD3d 468 [1st Dept 2016]; *Lipari v Babylon Riding Center, Inc.*, 18 AD3d 824 [2d Dept 2005]). Here, there are issues of fact as to whether Defendant unreasonably increased the risk of harm to Plaintiff and whether the risks were "perfectly obvious" (*Qiao v Finn*, 189 AD3d 513 [1st Dept 2020]). Specifically, it remains an issue of fact as to whether Plaintiff fully comprehended the risk of standing on a chair which Plaintiff may have believed was properly repaired from the night prior. Moreover, it remains an issue of fact as to whether Defendant unreasonably increased the risk of harm to Plaintiff by requiring him to use a chair which was not well suited for the movements required to perform the opera.

Issues of fact are further raised by the affidavit of Plaintiff's expert, Richard Bottenus, a teacher of technical theater who opined that the previously broken chair should have been removed from use rather than repaired, failed to mark the stage properly to indicate where chairs should be moved and placed, and failed to give Plaintiff sufficient rehearsal time with the garden chairs that were used during the performance (NYSCEF Doc. 49).

Defendant's argument that Plaintiff was the sole proximate cause of his accident is unavailing for purposes of summary judgment. As held by the Court of Appeals, "[n]egligence cases by their very nature do not usually lend themselves to summary judgment, since often, even if all parties are in agreement as to the underlying facts, the very question of negligence is itself a question for jury determination" (*Ugarriza v Schmieder*, 46 NY2d 471, 474 [1979]). Likewise,

questions of proximate cause are generally issues of fact for the jury (*see generally Crandall v Equinox Holdings, Inc.*, 231 AD3d 472, 474 [1st Dept 2024]; *Gonzalez v City of New York*, 133 AD3d 65, 67 [1st Dept 2015]). Here, a reasonable jury could find that Defendant's failure to remove the chair which had broken the night prior was a proximate cause of Plaintiff's accident. Defendant's argument that Plaintiff broke the causal chain is similarly unavailing for purposes of summary judgment, especially since it fails to eliminate issues of fact as to whether Plaintiff's accident was caused by a flimsy chair that had broken the night prior to Plaintiff's performance. The Court has considered the remainder of the parties' contentions and finds them to be unavailing.

Accordingly, it is hereby,

ORDERED that Defendant's motion for summary judgment is denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

1/23/26
DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:		CASE DISPOSED		[x]	NON-FINAL DISPOSITION		
		GRANTED	[x] DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE