

**Mironov v Memorial Hosp. for Cancer &
Allied Diseases**

2023 NY Slip Op 34135(U)

November 27, 2023

Supreme Court, New York County

Docket Number: Index No. 155433/2017

Judge: Lori S. Sattler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LORI S. SATTLER PART 02TR

Justice

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SVETLANA MIRONOV,

Plaintiff,

- v -

MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES, EWING COLE, INC., HUNTER ROBERTS CONSTRUCTION GROUP, L.L.C., WJL ARCHITECTURE & ENGINEERING, D.P.C. D/B/A EWING COLE, WILSON JARVIS PATEL ARCHITECTURE & ENGINEERING, P.C. D/B/A EWING COLE, JAROS, BAUM & BOLLES, INC., JAROS, BAUM & BOLLES CONSULTING ENGINEERS, LLP, ROBERT SILMAN ASSOCIATES STRUCTURAL ENGINEERS, D.P.C., STANTEC CONSULTING SERVICES INC., GRANARY ASSOCIATES, INC., ORANGE COUNTY IRON WORKS, LLC, A-VAL ARCHITECTURAL METAL III LLC, PORT MORRIS TILE & MARBLE, CORP., IMPERIAL WOODWORKING COMPANY, RE SOURCE NEW JERSEY, INC., WEST-FAIR ELECTRIC CONTRACTORS, INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 332, 333, 394, 395, 396, 397, 398, 399, 438, 452, 455, 456, 457, 458, 459, 516, 517, 518, 519, 524

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 007) 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 334, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 436, 506, 525

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 008) 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 413, 414, 415, 416, 417, 418, 419, 420, 437, 439, 440, 441, 442, 443, 444, 453, 460, 461, 462, 463, 464, 504

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 009) 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 421, 422, 423, 424, 425, 426, 445, 446, 447, 448, 449, 450, 454, 465, 466, 467, 468, 469, 507, 526

were read on this motion to/for JUDGMENT - SUMMARY

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 010) 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 427, 428, 429, 430, 431, 432, 433, 434, 435, 451, 505, 527

were read on this motion to/for

JUDGMENT - SUMMARY

This premises liability action arises from Plaintiff Svetlana Mironov's ("Plaintiff") purported fall on a staircase inside the Memorial Sloan Kettering Westchester medical facility in Harrison, New York ("the premises") on September 21, 2015. Plaintiff was a radiologist employed at the premises at the time of the incident. She alleges she suffered a traumatic brain injury, multiple fractures, and various orthopedic injuries. Plaintiff commenced this action against the owner of the premises along with various engineers, architects, contractors, and subcontractors she alleges were involved in the design and/or construction of the staircase. In their answers, the Defendants crossclaim for indemnification. According to Plaintiff's Bill of Particulars, Defendants were negligent in designing and constructing the staircase, in particular by only including a handrail on one side and by installing inadequate lighting in the area (NYSCEF Doc. No. 301 ¶ 4).

Plaintiff was deposed over multiple days, and movants attached transcripts from February and March 2021. She testified that she began working at the premises in October 2014, 11 months before the accident (NYSCEF Doc. No. 302, Plaintiff's EBT, 54-55). Plaintiff testified to using the staircase on which she fell "pretty much on a daily basis" to go between her office and the facility's cafeteria (*id.* at 84). She testified that in the 11 months she worked there "[i]t was always in the same condition. It was a very narrow staircase, and usually you had to wait for the person to descend, to pass by, because there was no space for two people. It was a very, very narrow staircase" (*id.* at 84-85). Each step on the staircase had three lines which Plaintiff describes as being "grainy and slightly elevated" and "provide some grip" (*id.* at 95-96). The staircase also had a metal railing on one side only; when descending the staircase, the railing is

on the left-hand side (*id.* at 96). Plaintiff testified that she used the railing most of the time (*id.*). A photograph of the staircase is annexed to papers (NYSCEF Doc. No 305).

On the date of the accident, just before 5:30 pm, Plaintiff was retrieving leftovers from her lunch before attending a meeting (*id.* at 88-89). She was “under pressure to go and be on time” to this meeting (*id.* at 99). She was walking down the stairs with her purse in her left hand and with her right hand free (*id.* at 100). She testified:

I stepped on the staircase, and on the second or third step, I lost my balance. I tried to grab something with my right hand, and there was nothing to grab, and then I went down somehow on the left side of my body facedown and head first all the way down to the floor. So I don’t remember the mechanism of this injury, why I went head first and facedown. I don’t remember this, and all I remember is waking up and several people were at the bottom staircase, I was on the floor.

(*id.* at 99). She testified that there was nothing slippery on the staircase when she fell, that she could see the step in front of her and did not observe any debris or a defective condition, and she does not know what caused her to lose her balance, or exactly where her feet were at the time she fell (*id.* at 102, 165).

Plaintiff further testified that she believed the staircase was darker later in the day, “[b]ecause there’s only a skylight above the staircase, and there are no sconces on the wall and the staircase is very long” (*id.* at 89). On the date of the accident, “[i]t was a dark day, overcast. There was no sunshine at 5:30 p.m. at the end of September” (*id.*). Because it was dark, Plaintiff testified she “always was afraid of that staircase” (*id.* at 93). Nevertheless, she testified that the step on which she fell was visible to her at the time of her fall and nothing was preventing her from seeing the steps in front of her (*id.* at 164-165).

She stated she had never had any slips, trips, or falls on the staircase prior to the date of the accident and never told anyone at the facility about her concerns about the staircase being

dangerous, nor was she aware of anyone having complained (*id.* at 97-98). She stated that she and her colleagues would complain to one another about the staircase being steep and too narrow for one person to ascend and one person to descend at the same time (*id.* at 98, 152-153).

To her knowledge, no one witnessed her fall (*id.* at 103). Eight days later in an email sent as part of filing an incident report, Plaintiff wrote that the incident occurred “when I was rushing” to a meeting “and slipped on the narrow, marble staircase and fell 10-15 steps head and face down” (*id.* at 134-135). Plaintiff further testified to being on several medications at the time of the incident (*id.* at 117-122).

According to Plaintiff’s papers, Defendant Memorial Hospital for Cancer and Allied Diseases is the owner of the premises. Approximately one year before the accident, it retained Defendant Hunter Roberts Construction Group LLC and Defendant Ewing Cole, Inc. to be construction manager and architect, respectively, on a “major construction / renovation / alteration” project at the premises (“Project”) which included the staircase down which Plaintiff allegedly fell (NYSCEF Doc. No. 400, Plaintiff’s Attorney Affirmation in Opposition to Motion Sequence No. 007, 5-7). The other Defendants were all hired in connection with the Project. None of the Defendants have been deposed. In 2019, another Defendant, ReSource New Jersey, Inc., moved for summary judgment dismissing the Complaint as to them. That motion was granted by the Appellate Division, First Department (*Mironov v Memorial Hosp. for Cancer & Allied Diseases*, 192 AD3d 514 [1st Dept 2021]).

All remaining Defendants now move for summary judgment dismissing the Complaint and all crossclaims. Motion Sequence No. 006 was filed by two subcontractors, Jaros, Baum & Bolles, Inc. and Jaros, Baum & Bolles Consulting Engineers, LLP (collectively, “JBB Defendants”). Motion Sequence No. 007 was brought by premises owner Memorial Hospital for

Cancer and Allied Diseases; construction manager Hunter Roberts Construction Group LLC; and subcontractors Orange County Iron Works LLC, A-VAL Architectural Metal III LLC, Port Morris Tile & Marble Corp., Imperial Woodworking Company, and West-Fair Electric Contractors, Inc. (collectively, “Memorial and Hunter Defendants”). Motion Sequence No. 008 is subcontractor Robert Silman Associates Structural Engineers, D.P.C.’s (“Silman”) motion. Motion Sequence No. 009 was made by project managers Stantec Consulting Services, Inc. and Granary Associates Inc. (collectively, “Stantec and Granary”), and Motion Sequence No. 010 was filed by the Project’s architect Ewing Cole, Inc., WJL Architecture & Engineering, D.P.C. d/b/a Ewing Cole, and Wilson Jarvis Patel Architecture & Engineering, P.C. d/b/a Ewing Cole (collectively, “Ewing Cole Defendants”). The five motions, which are all opposed, are consolidated for disposition.

On a motion for summary judgment, a movant 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 Hosp.*, 68 NY2d 320, 324 [1986]). After the movant makes this showing, “the burden shifts to the party opposing the motion . . . to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*id.*). The Court must view the facts “in the light most favorable to the non-moving party” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]).

To prevail on a negligence claim, a plaintiff must first demonstrate that a duty is owed by the defendant to the plaintiff (*Murray v New York City Hous. Auth.*, 269 AD2d 288, 289 [1st Dept 2000] [citations omitted]). “Liability for a dangerous condition is generally predicated on ownership, control or a special use of the property” (*Colon v Corporate Bldg. Groups, Inc.*, 116

AD3d 414 [1st Dept 2014] [citations omitted]). For that reason, a defendant seeking dismissal has met its prima facie burden by submitting evidence that it did not own, control or create the purportedly dangerous condition (*Singleton v Consolidated Edison Co. of N.Y., Inc.*, 112 AD3d 491, 491-492 [1st Dept 2013]).

A property owner owes a duty to exercise reasonable care in maintaining its property in a reasonably safe condition under the circumstances (*Powers v 31 E 31 LLC*, 24 NY3d 84, 94 [2014]; *Galindo v Town of Clarkstown*, 2 NY3d 633, 636 [2004]). A defendant moving for summary judgment has the initial burden of showing that it did not create a dangerous or defective condition or did not have actual or constructive knowledge of the condition (*Langer v 116 Lexington Ave., Inc.*, 92 AD3d 597, 598 [1st Dept 2012]). Having done so, the burden shifts to the plaintiff to raise a triable issue of fact as to the creation of the defect or notice thereof (*Ceron v Yeshiva Univ.*, 126 AD3d 630, 632 [1st Dept 2015], citing *Kesselman v Lever House Rest.*, 29 AD3d 302, 303-304 [1st Dept 2006]).

Likewise, a party who contracts with a property owner to render services on a premises is generally not liable in tort to third parties on the premises (*Espinal v Melville Snow Contrs.*, 98 NY2d 136, 138 [2002]). Nevertheless, a contracting party assumes a duty of care “where the contracting party, in failing to exercise reasonable care in the performance of his duties, ‘launches a force or instrument of harm’” (*id.* at 140, citing *H.R. Moch Co. v Rensselaer Water Co.*, 247 NY 160, 168 [1928]). “A contractor launches a force or instrument of harm where its affirmative act creates a dangerous condition” (*Trawally v City of New York*, 137 AD3d 492 [1st Dept 2016]). It is “the responsibility of courts, in fixing the orbit of duty, to limit the legal consequences of wrongs to a controllable degree” (*Strauss v Belle Realty Co.*, 65 NY2d 399, 402 [1985] [internal quotations omitted]).

The Memorial and Hunter Defendants are comprised of the property owner, the Project's construction manager, and several subcontractors. In support of their motion, these Defendants claim they are entitled to summary judgment because Plaintiff's theory of causation is speculative. They point to her EBT testimony wherein she concedes she does not know what caused her fall. They contend that where a plaintiff is unable to identify the defect that led to injury, a defendant is entitled to summary judgment as a matter of law. They further argue that Plaintiff's claim that the lighting near the staircase was insufficient is without merit given her testimony that she could see the steps in front of her at the time she fell. The Memorial and Hunter Defendants do not make any additional arguments on behalf of the Defendants who are subcontractors, nor do they specifically address any of the crossclaims asserted against them by co-Defendants.

Plaintiff opposes the motion, maintaining that an award of summary judgment would be premature because none of the Defendants in the action have been deposed and because certain discovery related to the construction of the staircase remains outstanding. Plaintiff further annexes an affidavit of her engineering expert, Andrew R. Yarmus, PE, F.NSPE, who inspected the stairs and opined as to the existence of several New York State building code violations (NYSCEF Doc. No. 405). In reply, the Memorial and Hunter Defendants maintain that the building code sections cited by Mr. Yarmus are inapplicable, and argue that even if they were, there is no evidence that these issues contributed to Plaintiff's fall. They contend that the evidence shows only that Plaintiff, who conceded she could see the steps in front of her, lost her balance while rushing and did not use the handrail available to her.

It is well settled that a defendant is entitled to summary judgment where a plaintiff testifies that they are unable to identify a defect that caused their injury. However, where

negligence and causation can be established with circumstantial evidence, a plaintiff's inability to testify as to how an accident occurred does not require dismissal (*Canzoneri v City of New York*, 193 AD3d 637 [1st Dept 2021]). Here, Plaintiff testified to sustaining injuries due to losing her balance and falling on a staircase, which she attributed in part to poor lighting and the absence of a handrail on her right-hand side. She further testified to falling on the second or third step from the top and annexed an expert affidavit opining that the rise of the steps, and in particular the top step, violated building code. Accordingly, even though Plaintiff was unable to identify exactly why she fell, the circumstances to which she did testify are sufficient to require denial of the Memorial and Hunter Defendants' motion. The suitability of the lighting and handrails, along with Plaintiff's testimony about being "under pressure" to be on time for a meeting, her statement that she was rushing, and her pre-existing health conditions create issues of fact appropriately addressed at trial. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004], quoting *Anderson v Liberty Lobby, Inc.*, 477 US 242, 255 [1986]). Therefore, the Memorial and Hunter Defendants' motion is denied.

The remaining motions were brought by the other Defendants, who were either hired by the premises owner to perform construction or related work or were subcontracted for the Project.

In their motion, the JBB Defendants maintain they owe no duty to Plaintiff because they had no role in the design or construction of the staircase (NYSCEF Doc. No. 297, JBB's Statement of Material Facts). They describe the work they performed as "coordination services to the architect of the Project, which included determining the necessary amperage and circuits that were to be used for lighting and other electrical fixtures/appliances by the building" (*id.* ¶ 8).

They submit an affidavit of Mitchel W. Simpler, a Partner and Officer of the JBB Defendants (NYSCEF Doc. No. 307). Mr. Simpler states that the JBB Defendants were retained by the Project architect, Ewing Cole, to consult on certain mechanical, electrical, and plumbing engineering services. He states that the JBB Defendants did not perform lighting design services, construction work and/or serve as a construction contractor, nor did they design or retain any entity to design or construct the staircase at issue or the lighting in the area. He annexes four scope of work proposals, two of which were dated prior to the accident, which he maintains show that the JBB Defendants did not perform work related to the accident. Based on Mr. Simpler's affidavit and the relevant scope of work proposals, the JBB Defendants make a prima facie showing that it did not own, control, or create the purportedly dangerous condition, as it did not perform work related to the conditions Plaintiff alleges were negligently created.

Plaintiff, the Memorial and Hunter Defendants, Stantec and Granary, and the Ewing Cole Defendants oppose the motion. They maintain it is premature because the JBB Defendants have not yet been deposed. They do not explicitly contend that the JBB Defendants performed design or construction services on the staircase or its lighting, but rather that a deposition is needed to confirm or oppose the JBB Defendants' position. In the Memorial and Hunter Defendants' Counter Statement of Material Facts, they point to the JBB Defendants' description of themselves as a "full service Mechanical and Electrical Consulting Engineering firm" and maintain that "[s]uch services can be construed as 'construction services'" (NYSCEF Doc. No. 312, 2). They further maintain that the scope of work described in the letter proposals annexed to Mr. Simpler's affidavit create issues of fact that must be explored at a deposition.

Pursuant to CPLR 3212(f), where facts essential to justify opposition to a motion for summary judgment are exclusively within the knowledge and control of the movant, summary

judgment may be denied. Nevertheless, “[t]he party invoking the section must provide a proper evidentiary basis supporting its request for further discovery” (*Global Mins. & Metals Corp. v Holme*, 35 AD3d 93, 102-103 [1st Dept 2006] [citations omitted]). “The mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion” (*Flores v City of New York*, 66 AD3d 599, 600 [1st Dept 2009]; see also *Voluto Ventures LLC v Jenkins Gilchrist Parker Chapin LLP*, 44 AD3d 557 [1st Dept 2007] [“claims in opposition must be supported by something other than mere hope or conjecture”]). In the decision granting Defendant ReSource New Jersey, Inc.’s motion for summary judgment in this action, the First Department found that Defendant had established it did not work on the subject staircase and that the motion’s opponents “failed to make the requisite showing that discovery may lead to evidence justifying opposition” (*Mironov*, 192 AD3d 514).

Like the Appellate Division there, the Court here finds that Plaintiff and the co-Defendants opposing the motion fail to make a showing that further discovery or an EBT will uncover any facts essential to justify opposition to the JBB Defendants’ motion. The scope of work proposals and Mr. Simpler’s affidavit are sufficient to enable the Court to determine that the JBB Defendants were not involved in the design or construction of the staircase or nearby lighting in any way that could give rise to a duty to Plaintiff in this case. Accordingly, the JBB Defendants’ motion is granted and the Complaint and all crossclaims against it are dismissed.

Similarly, Silman states in its motion that it has been improperly named in the action. It maintains that it was hired by Ewing Cole to provide structural engineering services at the premises which concluded in approximately June 2014. Silman annexes an affidavit of Joseph Tortorella, P.E., who was President of Silman during its work for Ewing Cole and at the time of

the accident (NYSCEF Doc. No. 347). According to Mr. Tortorella, “Silman was responsible for designing stair openings at the Project. However, Silman was not responsible for and did not design any of the staircases themselves, including the subject staircase where Plaintiff’s Incident allegedly occurred” (*id.* ¶ 11). He further states: “Silman was also not responsible for or in any way involved in designing the placement of staircase handrails, the lighting conditions, or the riser or handrail heights at any of the staircases at the Project” (*id.* ¶ 12). Silman further argues that Plaintiff’s claims fail on their merits for the same reasons argued by the Memorial and Hunter Defendants.

In opposition, Plaintiff maintains the motion must be denied because Silman fails to specifically identify the work it performed, “including whether they reviewed or approved any drawing or request for this stairway to have only one handrail and whether they inspected any of the work either during or after completion” (NYSCEF Doc. No. 413, Plaintiff’s Affirmation in Opposition, 4). Plaintiff maintains that Silman reviewed plans regarding the staircase, but the extent of its work is unknown (*id.* at 4-5). She argues summary judgment is premature and that more discovery is needed.

The Memorial and Hunter Defendants, the Ewing Cole Defendants, and Defendants Stantec and Granary each oppose the motion as it relates to their respective indemnification claims. The Defendants also argue that summary judgment based only on Mr. Tortorella’s affidavit without any EBT testimony is premature. None of the Defendants point to anything specifically within Silman’s possession that would be the subject of discovery. The Memorial and Hunter Defendants maintain that the services proposal attached to Silman’s papers “is broadly-worded and could indicate a greater degree of onsite responsibility than Mr. Tortorella’s affidavit would suggest” (NYSCEF Doc. No. 439, MEMORIAL AND HUNTER Defendants’

Affirmation in Partial Opposition to Motion Sequence No. 008, 3). In reply, Silman argues these Defendants fail to establish what additional discovery would lead to relevant evidence. Silman further maintains that it only contracted with Ewing Cole, and that that contract did not have an indemnification clause, therefore no crossclaims for contractual indemnification may be maintained.

As with the JBB Defendants, Silman has made a prima facie case that it did not own, control, or create the purported dangerous condition. Mr. Tortorella's affidavit establishes that Silman's work on the Project was limited to "stair openings." There is no evidence in the record as to the openings at the top or bottom of the subject staircase, let alone any that would indicate that the openings contributed to Plaintiff's fall. To the extent Silman reviewed any designs that lighting, handrail, and/or riser proposals, the Court finds that review does not constitute an affirmative act sufficient to impose a duty to Plaintiff on Silman. Accordingly, all claims and crossclaims against Silman are dismissed.

Defendants Stantec and Granary also move for summary judgment dismissing Plaintiff's claims and all crossclaims against them. Like the JBB Defendants and Silman, Stantec and Granary maintain they were not involved in the design or construction of the staircase, its railing, or the lighting in the area. They contend that Stantec and Granary were hired by the premises owner to serve as the "project management consultant" and "project manager," respectively, for the project (NYSCEF Doc. No. 353, Stantec and Granary's Statement of Material Undisputed Facts, 2).

They annex the contract with Stantec (NYSCEF Doc. No. 366), which includes a detailed description of the scope of work to be performed. The work largely consists of procurement, project coordination, and developing and enforcing budgets and timelines. The contract

includes, in relevant part, that Stantec was to “review the conceptual design as prepared by the Project architect, so as to assist Owner in defining the scope of the Project in meeting Owner’s goals and objectives”; interview and select an architect, contractors and construction managers, equipment planners, and interior designers; help Owner provide information regarding “all requirements for the Project”; and conduct design meetings (*see id.* at 3-9). The contract also provides that Stantec “will not have control or charge of, and will not be responsible for, construction means, methods . . . in connection with the Project, or for the acts or omissions of the Project architect, engineers, contractor/construction managers, subcontractors, consultants, or any other persons” performing work for the Project, or for their failure to perform their work (*id.* at ¶ 3.1.6.14).

They further annex the contract with Granary (NYSCEF Doc. No. 365), which also outlines work related to time and budget management of the Project, including providing “financial feasibility studies,” planning surveys, site evaluations, and environmental studies (*id.* at ¶ 3.2-3.3). It also provides that Granary was to provide “architectural or engineering or zoning and/or site planning services” and “interior design, equipment planning and/or other similar services required for or in connection with the selection, procurement or installation of equipment, furniture, furnishings and related materials or equipment” (*id.* ¶¶ 3.15, 3.18; *see generally id.*, 2-10).

Plaintiff opposes the motion, arguing that she should have the opportunity to depose someone from movants “to interpret said contracts and describe the specific work performed on the Project by the Movants” (NYSCEF Doc. No. 421, Plaintiff’s Affirmation in Opposition to Motion Sequence No. 009, 6). They maintain that witnesses with knowledge of Stantec and Granary’s work on the Project would be able to identify who designed and constructed the

staircase. Likewise, the Memorial and Hunter Defendants and Ewing Cole Defendants oppose the motion as to their crossclaims, making the same arguments they made in opposition to the Silman motion. Additionally, the Memorial and Hunter Defendants contend that its crossclaim for breach of contract for failure to procure insurance and for contractual indemnification cannot be dismissed, citing to specific language in its contracts.

Stantec and Granary's motion is granted. The scopes of work contained in their contracts describe services focused on overall Project coordination and management, timing, and budgeting. The Court finds that any hiring or supervision of the entities who did perform the work purportedly leading to Plaintiff's injuries, and any review of design plans or other oversight conducted as part of that work, does not amount to "launching a force or instrument of harm" such that they could be found to owe a duty in this action. Accordingly, all claims and crossclaims against them are dismissed.

Finally, the Ewing Cole Defendants seek summary judgment dismissing all claims and crossclaims against them. Unlike the other non-owner Defendants, the Ewing Cole Defendants do not argue that they owe no duty to Plaintiff. Instead, they, like the Memorial and Hunter Defendants, argue that Plaintiff's claims are speculative given her testimony that she did not know what caused her fall and that her contention as to the lighting is not supported by the record. In opposition, Plaintiff makes the same arguments that she made opposing the Memorial and Hunter Defendants' motion. The Memorial and Hunter Defendants and Stantec and Granary oppose the motion only to the extent of arguing that their crossclaims should not be dismissed if their own summary judgment motions are denied. They note that the Ewing Cole motion does not include any arguments specifically addressing the crossclaims asserted against them.

The Ewing Cole Defendants' motion is denied for the same reasons that the Court is denying the motion filed by the Memorial and Hunter Defendants. As previously set forth herein, issues of fact exist with respect to the circumstances surrounding Plaintiff's fall and the height of the top three steps. However, as all claims are being dismissed as against the JBB Defendants, Silman, and Stantec and Granary, those parties' crossclaims against the Memorial and Hunter Defendants and the Ewing Cole Defendants are dismissed.

Accordingly, for the reasons set forth herein it is hereby,

ORDERED that the motions of the JBB Defendants (Mot. Seq. No. 006), Silman (Mot. Seq. No. 008), and Stantec and Granary (Mot. Seq. No. 009) for summary judgment dismissing the Complaint and all crossclaims herein are granted and all claims are dismissed in their entirety as against these defendants, and the Clerk is directed to enter judgment accordingly in favor of these defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the Court bear the amended caption; and it is further

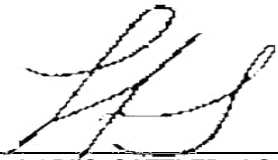
ORDERED that counsel for movants shall serve a copy of this Order with Notice of Entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the Court's records to reflect the change in the caption herein;

ORDERED that the motions of the Memorial and Hunter Defendants (Mot. Seq. No. 007) and Ewing Cole Defendants (Mot. Seq. No. 010) for summary judgment dismissing the Complaint and all crossclaims herein are granted to the limited extent of dismissing any claims

asserted against them by the JBB Defendants, Silman, and Stantec and Granary, and are otherwise denied; and it is further

ORDERED that the remaining parties shall appear for a Status Conference on December 12, 2023 at 9:30 am in person at 60 Centre Street, Room 212.

This constitutes the Decision and Order of the Court.



11/27/2023
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: