71465-1

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No. 71465-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DANIEL LAMONT,

Appellant,

v.

DAVID M. SAVIO, BAOYE WU SAVIO, husband and wife and the marital community thereof; QUORUM REAL ESTATE PROPERTY MANAGEMENT, INCORPORATED, a Washington corporation; and JANE AND JOHN DOE OTHER ENTITIES,

Respondents.

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

This is a case about dangerous stairs and a landlord's responsibility to have safe stairs that comply with minimum building code requirements. Two experts testify that Respondent landlord's interior residential stairs are greatly out of compliance with applicable building codes in a way that makes them "unreasonably dangerous to a tenant" who would "not have reason to appreciate the danger", and are an "accident waiting to happen" and that the dangerous condition of the stairs "directly caused Mr. Lamont's fall." Despite this unrefuted evidence and the fact that Appellant Daniel Lamont's fall caused severe injuries (4 (four) fractures to his arm, 7 (seven) fractures to the skull, a severe concussion, and a brain injury) the trial court granted summary judgment dismissing all of Appellant Lamont's claims against the owners and landlords of the stairs. CP 192-194; 172-173.

Appellant Dan Lamont filed this appeal to reverse the trial court's orders granting summary judgment in favor of Respondents David and Baoye Wu Savio ("Savios") and Quorum Real Estate Management ("Quorum"). CP 274-285; 359-361. In response to Respondents Savios' and Quorum's Motion for Summary Judgment, Appellant Lamont provided the trial court, *inter alia*, with declarations of two expert witnesses. The two expert declarations, by themselves, were sufficient to

create an issue of material fact that should have precluded the entry of summary judgment. CP 195-201; 202-208. With Appellant's motion for reconsideration below[1], Appellant Lamont provided additional evidence that should have compelled the trial court to reverse its prior ruling and deny summary judgment.

Appellant Lamont presented evidence beyond the "simple inference" which is sufficient to create a question of material fact. He submitted direct, unequivocal and uncontradicted expert testimony that Respondents breached the standard of care that is required of an owner/landlord, the breach directly caused Appellant Dan Lamont's fall and resulting severe injuries. Therefore, Appellant Lamont asks this Court to reverse the trial court's summary judgment ruling and remand this case for a trial on the merits.

B. ASSIGNMENTS OF ERROR

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[1] The trial court entered two orders on Respondents' motion for summary judgment. The first order was filed on December 18, 2013. CP 274-285. Appellant filed for reconsideration of that order on December 30, 2013. CP 345-358. The motion was noted for January 8, 2014. CP 342-344. The court subsequently filed a revised order granting summary judgment on January 2, 2014. CP 359-361. Appellant filed a renewed motion for reconsideration on January 13, 2014 to include the trial court's revised order. This renewed motion was noted for January 22, 2014. CP 365-366. The trial court thereafter entered an order on January 31, 2014 calling for a response within ten days and reply four days thereafter. CP 388. That response was filed on February 10, 2014 and the reply on February 14, 2014. CP 388; 487. Appellant sought and received an extension to file his initial brief in this Court in anticipation of the trial court ruling on the motion for reconsideration. As of the date of the filing of this brief, there has been no ruling by the trial court on the motion for reconsideration.

Assignment of Error No. 1

The trial court erred when it ruled that no issues of material fact existed and that the Savios and Quorum were entitled to summary judgment as a matter of law.

Issue Pertaining to Assignment of Error No. 1

Whether the trial court erred when it granted the Savios' and Quorum's motion for summary judgment even though Appellant Dan Lamont submitted admissible evidence of liability and damages including duty, breach, and unrebutted declarations from expert witnesses that the breach was the "direct cause" of Appellant Lamont's fall?

C. STATEMENT OF THE CASE

(1) Underlying Facts

In 2002 Respondents Savios purchased a house at 3440 West Blaine Street ("Blaine house") in the Magnolia area of Seattle, Washington. CP 106. The Savios contracted with Respondent Quorum in 2002 to handle the renting of the Blaine house. CP 29; 106. The Savios have never occupied the Blaine house. From the date of their purchase the Blaine house has been a residential rental property. CP 106.

At no time during or prior to their ownership of the Blaine house have the Savios had the Blaine house inspected to see if it was in compliance with the applicable building codes. CP 107. At no time since

managing the property has Quorum had the Blaine house inspected to see if it was in compliance with the applicable minimum building code standards. CP 150; 39-40.

The Blaine house was constructed in 1941. There are stairs in the Blaine house leading from the main floor to the lower level. CP 136. The stairs are not in compliance with either the 1937 building code which was in effect when the Blaine house was built in 1941 or the code in effect when the Blaine house was rented to Appellant Daniel Lamont in April of 2012, Seattle Municipal Code § 22.206.130. CP 260:23 - 261:17 [Gill re: 1937 Code]; CP 197 ¶¶6, 7 [Gill re: 2012 Code]; CP 252-53 [1937 Code applicable in 1941]; CP 340 Section 617 [Certified 1937 Code]; CP 160 [SMC §22.206.130 in effect in 2012]

The lease entered into by the Savios and Lamont provides the following covenant to maintain and repair: "Landlord shall: (A) maintain premises and appurtenances in a sound and habitable condition." CP 91; CP 176.

(2) The Stairs

After Appellant Lamont obtained an order compelling an inspection of the Blaine house, CP 169-170, Joellen Gill, a certified human factors professional and certified safety professional, inspected the

stairs along with a professional associate of Dr. Wilson C. "Toby" Hayes on April 29, 2013. Dr. Wilson C. "Toby" Hayes is an expert with more than 40 (forty) years of teaching, research and consulting experience in fields ranging across mechanical engineering, experimental mechanics, accident reconstruction, fall dynamics, injury biomechanics, human functional anatomy, and clinical orthopedics. CP 196; 202-204. Likewise the Respondents also had their own expert inspect the stairs at issue on April 29, 2013. CP 118.

Both Ms. Gill and Dr. Hayes found that the stairs violate numerous building code provisions, are dangerous and are an accident waiting to happen. CP 202-207 ¶¶ 5-19; CP 202-209 ¶10. See photos of stairs. CP 136-138. The stairs are very steep, and significantly unequal in rise and run, especially between the first and second steps: that is, they are greatly out of compliance with recognized building codes and their noncompliance is in precisely the way that makes them unreasonably dangerous for a tenant, who would not have reason to appreciate the nature of the hazard they present. CP 195-201 ¶¶5-7, 12, 14, 19. Additionally the dangerousness of the stairs is exacerbated by loose carpeting particularly on the nose of the steps. CP 198 ¶10: CP 206-207 ¶¶7, 8, 9.

The reason such a stairway design is particularly hazardous is

because of the propensity to overstep the target tread when descending. That is, because the riser heights are taller than permitted, the tendency is for our leading foot to strike the target tread with greater speed and force and also to strike the target tread further ahead (i.e. as our foot descends it also swings forward); because the tread depths are more shallow than permitted when the leading foot strikes the target tread it can overhang the front of the tread. If too much of the foot overhangs the tread then the tendency is for the foot to roll or slip off the tread nosing. CP 198 ¶9.

This tendency for the foot to roll or slip off the tread nosing is exacerbated by the loose carpet that was in place on the steps at the time of Mr. Lamont's fall; the loose carpet would have facilitated the forward movement of Mr. Lamont's foot once it struck the tread in a forward position. CP 198 ¶10.

It is imperative that tread nosings be distinct so as to assist the user in foot placement and in clearly identifying the leading edge of a stair tread and landing (i.e. ASTM F-1637-95, NBS, etc.). However, the treads on which Mr. Lamont fell were all the same uniform carpet, effectively camouflaging the tread nosings. CP 199 ¶14. Such a condition was another contributing factor to the dangerous condition of the subject stairway that induced Mr. Lamont's fall. CP 199-200 ¶14. There is no documentation of how many "near misses" or incidents may have

occurred on the stairs, either by Appellant Lamont or prior tenants. CP 207.

Respondents Savios and Quorum argued below that the stairs at issue were originally constructed in 1941 and that the only applicable codes would be "the one in effect when the house was built in 1941", and "any such violation would need to be shown to substantially impair the health or safety of the tenant". CP 36. However, neither the Savios nor Quorum offered any evidence, expert declaration nor otherwise, that the stairs ever complied with **any** building codes.

Thus, the unrebutted evidence presented on summary judgment is that the specific stairs upon which Appellant Lamont fell are "inherently dangerous", "grossly non-uniform", and fail to comply with the Seattle Building Code, including the 1937 code which was in effect in 1941: the time the Blaine house was constructed. CP 260:23-261:17; CP 197 ¶¶6, 7

(3) The Fall and Injury

Mr. Lamont fell as he was stepping from the first step down to the second step down. CP 146. P. 93; lines 1-12. He had just descended a 7 1/4 inch riser onto a 10 inch tread depth. He then descended an 8-inch riser toward an 8 3/4 inch tread depth. CP 197-198. ¶¶8-9.

The scientifically based and unrebutted expert opinion of Dr.

Wilson C. Toby Hayes, presented to the court concludes that given the dimensions and conditions associated with the stairs in question, they were an "**accident waiting to happen**", and **"directly caused Mr. Lamont's fall"**. CP 206:15 – 207:20.

On the afternoon of August 3, 2012, at or about 3:00 pm, Appellant Lamont began to descend the stairs. At the time of his descent Lamont's hands were free, he was not carrying anything, he had not taken any medications other than some Wellbutrin, had not consumed any alcoholic beverages, he was not suffering from any physical problems, and it was a beautiful sunny day. CP 146 P. 91:lines12-25; P. 92: lines 1-6.

Mr. Lamont testified in his deposition as follows:

> A. I take -- took a step down the stairs, and I – and I -- as I proceeded to take another step downstairs, I had this -- I had no footing. I was just in the air. I had this incredibly eerie sense of pitching head over heels through the air.
>
> Q. So you were conscious?
>
> A. I was quite conscious. I was walking into my house going downstairs.

CP 146 P. 93: lines 4-12.

Mr. Lamont suffered injuries that include 4 (four) fractures to his arm, 7 (seven) fractures to the skull, a severe concussion, and a brain injury. The full extent of the injuries is yet to be determined. CP 192-194; 172-173.

D. PROCEDURAL BACKGROUND

On January 29, 2013, Appellant Dan Lamont filed this lawsuit in King County Superior Court against the Savios and Quorum. CP 1-12. Appellant pled, *inter alia*, , breach of contract, violations of the RLTA, negligence and nuisance, and breach of implied warranty of habitability. CP 4-9. The trial court entered two orders granting Respondents' Motion for Summary Judgment. The first Order was filed on December 18, 2013. CP 274-285. Appellant filed a Motion for Reconsideration of that Order on December 30, 2013. CP 345-358. The motion was noted for January 8, 2014. CP 342-344. The court subsequently filed a revised Order granting summary judgment on January 2, 2014. CP 359-361. Appellant filed a renewed Motion for Reconsideration on January 13, 2014 to include the trial court's revised Order. This renewed motion was noted for January 22, 2014. CP 365-366. The trial court thereafter entered an Order on January 31, 2014 calling for Savios and Quorum to file a response within ten days, with a reply four days thereafter. CP 388. The response and reply were joined in the court file by February 14, 2014. CP 389; 487. Appellant sought and received an extension to file his initial brief in this Court in anticipation of the trial court ruling on the motion for reconsideration. As of the date of the filing of this brief there has been no ruling by the trial court on the Motion for Reconsideration.

E. ARGUMENT

(1) The Trial Court Erred by Granting Summary Judgment Despite Issues of Material Fact

The trial court erred by granting Savios' and Quorum's motion for summary judgment because Appellant Lamont submitted declarations establishing that his fall was proximately caused by the negligence of the Savios and Quorum in having "unreasonably dangerous" and "extremely hazardous" stairs which violated applicable standards and building codes, in the premises they rented to Mr. Lamont. CP 195-201 ¶ ¶5-7; *12; -14; 19*; CP 261; lines 7-9.

Appellant Lamont provided the trial court with evidence sufficient to raise a material issue of fact as required under CR 56(c). The burden of proving that a case should be summarily dismissed rests with the moving party, Respondent landlords Savio and Quorum in this case. The trial court "must consider the facts submitted and all reasonable inferences therefrom in the light most favorable to the nonmoving party." *Sheriffs Ass'n. v. Chelan County*, 109 Wn.2d 282, 294-95, 745 P.2d 1 (1987); see also CR 56(c). Summary judgment "must be denied if a right of recovery is indicated under any provable set of facts." *Smith v. Acme Paving Co.*, 16 Wn.App. 389, 393, 558 P.2d 881 (1976). "A trial is not useless but absolutely necessary where there is a genuine issue as to any material

fact." *Preston v. Duncan*, 55 Wn.2d 678, 681, 349 P.2d 605 (1960). Summary judgment must be denied "if the record shows any reasonable hypothesis which may entitle the non-moving party to relief." *Mostrom v. Pettibon*, 25 Wn.App. 158, 162, 607 P.2d 864 (1980). Questions of proximate cause are also generally questions for the jury. *See e.g., Schooley v. Pinch's Deli Market, Inc.*, 80 Wn.App. 862, 874,912 P.2d 1044 (1996), aff'd, 134 Wn.2d 468, 951 P.2d 749 (1998). With regard to the appropriate appellate standard of review, this Court reviews determinations on summary judgment de novo. *Enterprise Leasing, Inc. v. City of Tacoma*, 139 Wn.2d 546,551,988 P.2d 961 (1999).

"Summary judgment is subject to a burden-shifting scheme. The moving party is entitled to summary judgment **if it submits affidavits establishing it is entitled to judgment as a matter of law.** *See Meyer v. Univ. of Wash.*, 105 Wash.2d 847, 719 P.2d 98 (1986)." *Ranger Ins. Co., v. Pierce County*, 164 Wash.2d 545,552, 192 P.3d 886, 889 (2008) (emphasis added). In this case neither the Savios nor Quorum submitted any declarations –expert or otherwise—to show compliance with any building codes.

Appellant Lamont, however, submitted the declarations of Dr. Wilson C. "Toby" Hayes and JoEllen Gill showing that the stairs at issue failed to comply with any industry standards or building codes and are

unreasonably dangerous and hazardous. CP 195-201; 202-208; 260-262.

The Seattle Municipal Code ("SMC") has the following requirements for residential property owners and managers such as the Savios and Quorum who rent their properties:

> **SMC § 22.206.160 Duties of owners:**
>
> A. It shall be the duty of all owners, regardless of any lease provision or other agreement that purports to transfer the owner's responsibilities hereunder to an operator, manager or tenant, to:...
>
> 7. Maintain the building and equipment in compliance with the minimum standards specified in **Sections 22.206.010** through **22.206.140** and in a safe condition...

CP 152.

> **SMC §22.206.130** requires:
>
> A. Stair and Stairway Construction.
>
> 1. **All stairs**, except stairs to inaccessible service areas, exterior stairs on grade and winding, circular or spiral stairs **shall have a minimum run of 10 inches and a maximum rise of 7 3/4 inches** and a minimum width of 36 inches from wall to wall. **The rise and run may vary no more than 3/8ths inch in any flight of stairs**.
>
> 3. Every stairway having more than three risers, except stairs to Inaccessible service areas, shall have at least one handrail mounted not less than 34 inches or more than 38 inches above the tread **nose.** (emphasis added)

CP 160.

The rise and run and variation of the stairs in this case are in

violation of this provision. "With the pad removed the first step down from the landing was 7 1/4 inches high; the second step was 8 inches high and the third step was 7 7/8 inches high. The tread depth for the first tread was 10 inches, followed by a tread depth of 8 3/4 inches and 9 inches on the next step". CP 197 ¶7.

Further the 1937 Building Code required that: "[t]he dimensions of treads and risers shall be maintained uniform in each run of stairs." CP 259; 340. However, Gill testified:

> "The dimensions of the treads and risers" were not uniform in the run of stairs where Mr. Lamont fell. They are grossly non-uniform and the non-uniformity is the same danger and hazard to which I testified in my prior declaration. It is that non-uniformity which makes those specific stairs on which Mr. Lamont fell extremely hazardous and an accident waiting to happen.

CP 261: lines 6-17.

"Regardless of whether you apply the current SMC Building Code Minimum Standards, or the 1937 Building Code provision, or the longstanding standards of the Building industry and its knowledge about stairway hazards, the stairs upon which Mr. Lamont fell do not meet code and are inherently dangerous." CP 261:lines 6-17.

While evidence that Respondents Savios' and Quorum's violation of a local ordinance was the direct cause of the fall and injury does not

constitute negligence *per se*, **it may be considered as evidence of negligence**. RCW 5.40.050. *See also Pettit v. Dwoskin,* 116 Wash. App 466,468, 68 P.3d 1088 (2003) (homeowner has duty to comply with building code). While evidence of breach of duty is not necessarily evidence of proximate cause, **such evidence may be admissible on the issue of proximate cause as well as breach of duty**. *See Taggart v. State*, 118 Wn.2d 195, 226, 822 P.2d 243 (1992) (**the question of legal causation is so intertwined with the question of duty that the former may be answered by addressing the latter**).

Overall, Appellant Lamont's obligation under CR 56(c) was to establish a question of "material fact" in order to defeat Respondents Savios' and Quorum's motion for summary judgment. In response to their motion, Lamont's admissible evidence established issues of material fact as to breach of duty, proximate cause of injury, and harm, which should have precluded the entry of summary judgment. The trial court simply erred by granting summary judgment and this case should be remanded for trial on the merits.

(2) Lamont Submitted Admissible Evidence to Satisfy All Prima Facie Elements of a Negligence Claim.

a) Duty

Under well settled Washington law there are three independent

bases upon which a tenant may bring a claim for damages. "[A] claim for personal injuries by a tenant can be premised on three distinct legal theories: contract (a rental agreement), common law obligations imposed on a landlord, and the Washington Residential Landlord Tenant Act [RLTA]." *Tucker v. Hayford.* 118 Wn.App. 246, 248, 75 P.3d 980 (2003); *accord Landis &. Landis Const., LLC v. Nation*, 171 Wash. App. 157, 162, 286 P.3d 979 (2012 Div. 1) *review denied,* 177 Wn.2d 1003 (2013).

Included within the common law and the RLTA is the landlord's duty to comply with the warranty of habitability that is inherent in all residential tenancies in Washington. *Landis at* 163. A landlord can be held liable to a tenant for personal injuries for failing to maintain the leased premises in a safe and hazard-free manner, and in accordance with the applicable building codes. Washington's state and federal courts have adopted the Restatement (Second) of Property § 17.6 in cases such as this. *Martini v. Post*, 178 Wash. App. 153,168-170, 313 P.3d 473 (2013); *Lian v. Stalick*, 106 Wn.App. 811, 25 P.3d 467 (2001) ("*Lian I*") (adopting Restatement (Second) of Property § 17.6); *Lian v. Stalick*, 115 Wn.App. 590, 62 P.3d 933 (2003) ("*Lian II*") (affirming award of personal injury damages against landlord): *Pinckney v. Smith*, 484 F. Supp. 2d 1177 (2007) (illustrating application of *Lian I & II*).

That section provides:

> A landlord is subject to liability for physical harm caused to the tenant and others upon the leased property with the consent of the tenant or his subtenant by a dangerous condition existing before or arising after the tenant has taken possession, if he has failed to exercise reasonable care to repair the condition and the existence of the condition is in violation of:
>
> > (1) An implied warranty of habitability; or
> >
> > (2) A duty created by state or administrative regulation.
>
> This rule applies even when the dangerous condition occurs in an area of the premises under the control of the tenant so long as the defect constitutes a violation of either the implied warranty of habitability or a duty imposed by statute or regulation.

Restatement (Second) of Property § 17.6.

According to *Lian II*,

> "[T]o prevail on a § 17.6 claim, the tenant must show: **(1) that the condition was dangerous, (2) that the landlord was aware of the condition or had reasonable opportunity to discover the condition and failed to exercise ordinary care to repair the condition, and (3) that the existence of the condition was a violation of the implied warranty of habitability or a duty created by statute or regulation.**"

115 Wn.App. at 595. [emphasis added]

The evidence in Mr. Lamont's case meets all three elements. First, it is uncontested that the condition of the stairs is dangerous.

Second, Respondents Savios and Quorum knew or should have known that the stairs failed to meet the building code standards of 1937 and of 2009. The Savios had a legal duty to conduct an inspection at the inception of each lease and their negligence in failing to discover and remedy the defect is a question of fact for the jury. See *Mesher v. Osborne*, 75 Wn. 439, 451 (1913). As noted earlier, the lease entered into by the Savios and Lamont provides the following covenant to maintain and repair: "Landlord shall: (A) maintain premises and appurtenances in a sound and habitable condition." CP 91; CP 176.

> One reason we are constrained to hold that where the landlord, as in this case, agreed to put and keep the premises in repair, there arose the antecedent duty to inspect the premises for concealed dangers and either remove them or **notify the tenant of their existence that he might either decline the tenancy or guard against the dangers**. The [landlord] should be held to know what a reasonable inspection on his part would have discovered.
>
> As in other cases of negligence, whether he would have discovered the defect by a reasonable inspection was a question for the jury on the evidence. The trial court correctly so instructed.

Mesher 75 Wn. at 451.

"Ordinarily, the landlord will be chargeable with notice of conditions which existed prior to the time that the tenant takes possession." *Lian v. Stalick*, 115 Wn.App. 590, 596, 62 P.3d 933 (2003)

("*Lian II*"), *quoting* Restatement (Second) of Property § 17.6, comment (c).

Further, even in the absence of their legal duty, the Savios and Quorum admit replacing the carpeting on the stairs in 2002, which necessarily means that their agent had to measure the stairs to put the carpeting on them. CP 106-107 ¶¶ 2-3; 149 P. 8:lines 19-21; CP 150 P.12: lines 8-14; and *Appleway Leasing, Inc., v. Tomlinson Dairy Farms, Inc*, 22 Wn. App. 781, 783 (1979) (a principal is charged with knowledge acquired by its agent while acting within the scope of his authority)].

Respondents Savios and Quorum owed a duty to fix the defects in Lamont's rental house once they learned or should have known that the stairs were unsafe and failed to meet any building code. This duty stems from the RLTA's implied warranty of habitability, which states, in pertinent part:

> The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:
>
> > (1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation .. . if such condition endangers or impairs the health or safety of the tenant;
> >
> > (5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the

commencement of the tenancy.

RCW 59.18.060.

The implied warranty of habitability is triggered "whenever the defects in a particular dwelling render it uninhabitable or pose an actual or potential safety hazard to its occupants." *Lian I* 106 Wn.App. at 818 (citing *Atherton Condominium Apartment-Owners Ass 'n Board v. Blume Dev. Co.*, 115 Wn.2d 506, 520, 799 P.2d 250 (1990); *accord Landis & Landis Const. LLC v. Nation,* 171 Wash. App. 157, 166, 286 P.3d 979 (2012) *review denied,* 177 Wn.2d 1003 (2013) (the defect need not be so severe that the dwelling is uninhabitable: however, the defect must constitute a violation of the landlord's duties under RCW 59.18.060).

In the case *sub judice,* the Savios and Quorum have a duty to comply with the building code and failed to do so. Whether you consider their duty as arising under the RLTA, the common law or the lease itself the duty exists in this case.

b) Breach

The trial court decided this matter on a summary judgment motion. Appellant Lamont submitted declarations that the stairs did not ever meet any building codes and that the Respondents knew or should have known this fact. In other words, the Savios and Quorum neglected to repair the

hazardous stairs by bringing them into compliance with the building code and thus breached their duties as a landlord under the RLTA, the contract and the common law, as set forth in greater detail above. Moreover, the element of breach is a factual issue that is nearly always left for the trier of fact to decide. *Fuentes v. Port of Seattle*, *119* Wn.App. 864, 868, 82 P.3d 1175 (2003). It is reversible error for the trial court to make a factual decision about breach in this case.

c) Causation

Proximate cause consists of two elements: cause in fact and legal causation. *Hartley* v. *State*, 103 Wn.2d 768, 777, 698 P.2d 77 (1985). Accordingly, proximate cause is a mixed question of law and fact. *Rasmussen v. Bendolti* 107 Wn.App. 947, 955, 29 P.3d 56 (2001). "The question of proximate cause is for the jury, and it is only when the facts are undisputed and the inferences therefrom are plain and incapable of reasonable doubt or difference of opinion that it may be a question of law for the court." *Bordynoski* v. *Bergner*, 97 Wn.2d 335, 340, 644 P .2d 1173, 1176 (1982). In regard to causation, Lamont met his burden on summary judgment by relying on the declarations and evidence presented.

F. CONCLUSION

The trial court committed reversible error in granting the Respondents' Savios' and Quorum's motion for summary judgment – despite Appellant

Lamont's production of expert declarations establishing multiple questions of fact. Juxtaposing Lamont's expert opinion testimony against the standard set out in CR 56 (c) illustrates that the trial court made a mistake. Moreover. because the standard of review is de novo. any and all ambiguities, inferences, or reasonable hypotheses supporting Appellant Lamont's claims must result in reversal. The trial court's orders granting summary judgment should be reversed, and this case remanded for trial on the merits.

RESPECTFULLY SUBMITTED this 9 day of MAY 2014.

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PROOF OF SERVICE

The undersigned declares, under penalty of perjury under the laws of the State of Washington, that on the below date I caused the foregoing pleading to be served via email on the following attorneys:

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