

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-04-123

AMM - 2-1 - 9/2005

ROBERT R. CRAWFORD and)
JUDITH CRAWFORD,)

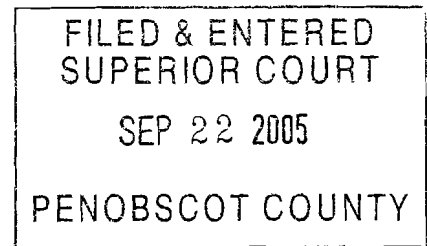
Plaintiffs)

v.)

PETER W. DOWNEY,)

Defendant)

OPINION: ORDER ON MOTION
FOR SUMMARY JUDGMENT



Pending before this Court is the Defendant's Motion for Summary Judgment, filed on May 12, 2005.

A party is entitled to summary judgment when the record shows that there is no genuine issue of material fact and the party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *see also Darlings v. Ford Motor Co.*, 2003 ME 21, ¶ 14, 817 A.2d 877, 879. To survive a motion for a summary judgment, the opposing party must produce evidence that, if produced at trial, would be sufficient to resist a motion for a judgment as a matter of law. *Rodrigue v. Rodrigue*, 1997 ME 99, ¶ 8, 694 A.2d 924, 926. "A fact is material when it has the potential to affect the outcome of the suit." *Prescott v. State Tax Assessor*, 1998 ME 250, ¶ 5, 721 A.2d 169, 172. Essentially the Court determines whether there is a genuine issue of material fact by comparing the parties' statement of material facts and corresponding record references. *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 8, 742 A.2d 933, 938. The court will view the

evidence in light most favorable to the non-moving party. *E.g.*, *Steeves v. Bernstein, Shur, Sawyer & Nelson, P.A.*, 1998 ME 210, ¶11, 718 A.2d 186.

Plaintiffs deny or qualify several of the material facts put forth by the moving party including that the Defendant “did not conduct a close visual inspection or inspect the stairs from beneath the stairway” (Opp. S.M.F. ¶ 9); and that “[i]t is unknown whether Crawford lost his balance and came down on the tread causing it to crack or whether the tread cracked under the weight of Mr. Crawford causing him to lose his balance and fall.” (Opp. S.M.F. ¶ 13).

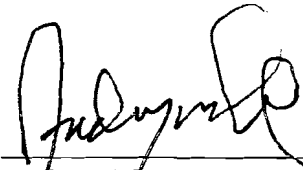
Essentially, Defendant argues that he did not breach a duty to invitee Crawford, while Plaintiffs argue the opposite. Existence of duty of care issues are questions of law, while breach of duty issues are generally questions of fact. *Cf. Radley v. Fish*, 2004 ME 87, ¶ 6; *Mastriano v. Blyer*, 2001 ME 134, ¶¶ 11-12, 779 A.2d 951, 954. In this case, the breach of duty issue is most certainly a “material” fact that is in dispute, because it has the potential to change the outcome of the case under the governing law. *See Steinke v. Sungard Fin. Sys. Inc.*, 121 F.3d 763, 768 (1st Cir. 1997). An issue is genuine “when sufficient evidence requires a fact-finder to choose between competing versions of the truth at trial.” *MP Assocs. v. Liberty*, 2001 ME 22, ¶12, 771 A.2d 1040, 1044. In looking at the facts in a light most favorable to the non-moving party, Defendant’s Motion for Summary Judgment should be denied.

CONCLUSION

For the foregoing reasons, the Defendant’s Motion for Summary Judgment is denied. Accordingly, the entry shall be:

The Motion for Summary Judgment is DENIED. The Clerk may incorporate this Decision and Order into the docket by reference.

Dated: Sept 22, 2005



Andrew Mead
Justice, Maine Superior Court

09/23/2005

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ROBERT R CRAWFORD ET AL VS. PETER W DOWNEY
UTN:AOCSSr -2004-0065151

CASE #:BANSC-CV-2004-00123

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