STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: August 30, 2021)

TIMOTHY McAULEY	:	
	:	
v.	:	**C.A. No. PC-2016-4038**
	:	
JOHN DIAS, III; PROVIDENCE WATER SUPPLY BOARD; PROVIDENCE WATER COMPANY; and JAMES LOMBARDI, in his capacity as Treasurer of the CITY OF PROVIDENCE	:	
	:	
v.	:	
	:	
W. WALSH COMPANY, INC.; and PARKSIDE SITE & UTILITY COMPANY CORPORATION, as Third-Party Defendants	:	

DECISION

McGUIRL, J. Before this Court for decision are motions for summary judgment from the City of Providence, Providence Water Supply Board, Parkside Site & Utility Company Corporation, and W. Walsh Company, Inc. (collectively, Movants). This Court heard the parties' arguments regarding these motions on November 9, 2020. Jurisdiction is pursuant to Rule 56 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

Plaintiff Timothy McAuley (McAuley) is a United States Postal Service letter carrier who alleges that he fell and sustained injuries on Defendant John Dias III's (Dias) property at 230-232 Summit Avenue in Providence on August 28, 2013. (McAuley Dep. 5:4-18; 8:18-21; 22:19-22; 23:23-24:3; 38:9-39:5.) McAuley alleges that he fell because rubber mats that normally were flush

with the property's steps instead were moved forward so that the mats were unsupported and thus unsafe to step on. *Id.* at 12:9-19.

230-232 Summit Avenue

Dias purchased the mats on March 22, 2011 and installed them shortly thereafter. (Dias Dep. 66:8-68:17; Pl.'s Mem. Ex. 12 (Ex. 12).) Prior to installing the mats, Dias used quick-setting cement patch to repair cracks in the landing on which he placed the mats. *Id.* Dias testified in his deposition that the mats were flush against the steps when he installed them and that moving the mats would create an overlap where the mats would not be supported by the cement landing in front of the steps. *Id.* Dias also testified that he would never leave the mats in a state that would be unsupported by the landing because doing so would create "an unsafe condition[.]" (Dias Dep. 57:13-23; 64:20-65:5; 73:3-9.)

Both Dias and McAuley claim that Defendant City of Providence (City), through Defendant Providence Water Supply Board (PWSB),[1] contracted with third-party Defendants Parkside Site & Utility Company Corporation (Parkside) as contractor and W. Walsh Company, Inc. (Walsh) as subcontractor to repair the water mains. (Am. Compl. ¶¶ 16-17; Dias Am. Answer Crossclaim; Walsh Mem. Ex. K; Aff. of Christopher Walsh (Walsh Aff.) ¶ 2.). Further, both claim that Walsh moved the mats on Dias's property to place a temporary, small blue pipe along the landing. *See* Am. Compl. ¶¶ 16-17; Dias Am. Answer Crossclaim. Dias described the placement of the blue pipe as across the bottom step and then into the basement. (Dias Dep. 48:1-5.) Walsh denies that its employees moved the mats. (Walsh Aff. ¶ 7.) The project's work log reflects that

[1] PWSB stated in its Answer of October 12, 2016 that McAuley incorrectly named PWSB as "Providence Water Company." *See* Answer at 1.

on August 7, 2013, Walsh connected temporary piping on Summit Avenue near 9th Street, which is within the vicinity of Dias's property. *See* Pl.'s Mem. Ex. 3; Pl.'s Mem. Ex. 9.

Dias testified that he lacks personal knowledge as to when the mats were moved to create a fall hazard on his property, nor did he know who employed the workers. (Dias Dep. 47:7-9; 74:19-22.) Prior to McAuley's fall, Dias did, however, see workers on Summit Avenue, when the blue pipe appeared on his property. *Id.* at 47:2-6; 47:15-20. While Dias testified that he did not know who moved the mats, if he had seen that the mats were in an unsafe condition, he would have put them back flush to the property's steps. *Id.* at 49:12-21. Dias testified that, based on his common-sense and experience as a landlord, he concluded that whoever installed the pipe also moved the mats and created the hazard that was the cause of McAuley's injury. *Id.* at 91:6-92:1.

McAuley's Injury

McAuley described the weather on the day he fell as being sunny and without rain; the day was warm enough that McAuley wore shorts while delivering the mail, in addition to above-the-ankle boots that his employer issued to him. (McAuley Dep. 13:24-14:5; 19:4-9; 39:6-14.) McAuley delivered mail to Dias's property approximately once a week starting sometime between 2010 to 2012, usually on Wednesdays around 10 to 11 a.m. *Id.* at 42:18-43:14. McAuley would walk up the steps to deliver the mail on the left side because his left hand would be free to use the handrail and likewise go down the steps via the same side, i.e., what was on the left going up would be on the right going down. *Id.* at 11:3-13.

McAuley claims that when he fell, he did not slip or lose his balance when going up the steps, nor did he skip a step. *Id.* at 13:5-10; 14:16-18. After he walked up the steps and delivered the mail, McAuley turned around and walked down while holding the handrail. *Id.* at 14:6-15. As McAuley walked down the steps, his right foot stepped onto a four to six-inch overhang by the

mats that was unsupported by the cement landing, causing him to fall onto the ground on his right side and then tumble onto the sidewalk. *Id.* at 14:22-16:8; 45:9-13. McAuley lay on the ground for some time before getting up on his own and did not notice the blue pipe until after he fell. *Id.* at 16:9-21; 40:5-41:4.

McAuley stated that he drove back to his post office and informed his supervisor and manager. *Id.* at 17:14-18:21. The supervisor and manager took pictures of McAuley's injuries and then went with him back to Dias's property to take pictures of where he fell. *Id.* at 18:22-20:12. McAuley's supervisor and manager then took him to receive medical attention. *Id.* Doctors diagnosed McAuley with a torn anterior cruciate ligament in his right knee, and McAuley also suffered other injuries to his right knee and lower back. *Id.* at 22:16-22; 38:18-22.

McAuley stated that he lacked any personal knowledge as to who moved the mats or when, and he did not notice any construction at the time of his fall. *Id.* at 11:18-23; 48:7-49:14. McAuley also did not notice anything unusual about the mats until after he fell. *Id.* at 12:2-24. McAuley did not speak to either Dias's tenants or Dias himself. *Id.* at 38:3-14.

Travel

McAuley filed this action on August 26, 2016. On March 1, 2018, Dias filed a Third-Party Complaint against Walsh and Parkside. On July 23, 2020, Parkside, PWSB, and the City moved for summary judgment. Walsh also moved for summary judgment on August 7, 2020. Both Dias and McAuley objected to the motions for summary judgment on August 21 and 24, 2020, respectively. This Court heard both motions for summary judgment on November 9, 2020.

II

Standard of Review

Under Rule 56(c) of the Superior Court Rules of Civil Procedure, summary judgment shall issue when the evidence "show[s] that there is no genuine issue as to any material fact and that the

moving party is entitled to judgment as matter of law." The Rhode Island Supreme Court "frowns upon the disposition of negligence claims by summary judgment" because "complaints sounding in negligence generally are not amenable to summary judgment and should be resolved by fact finding[.]" *Dent v. PRRC, Inc.*, 184 A.3d 649, 653-54 (R.I. 2018) (brackets and quotations omitted). The Rhode Island Supreme Court has also stated that "summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Id.* at 653 (brackets and quotations omitted).

III

Analysis

A

Duty

Under Rhode Island negligence law, "a plaintiff must establish a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage." *Voccola v. Stop & Shop Supermarket Co., LLC*, 209 A.3d 558, 560 (R.I. 2019) (quotations omitted). "Of the four well-worn elements of negligence, only duty is a question of law." *Aubin v. MAG Realty, LLC*, 161 A.3d 1143, 1146 (R.I. 2017) (quotations omitted). "The remaining three elements of a negligence claim . . . are fact-based and [this Court] may treat the issue of negligence as a matter of law only if the facts suggest only one reasonable inference." *Id.* (brackets and quotations omitted). "Specifically, with respect to a [trip]-and-fall claim, a plaintiff must present evidence of an unsafe condition on the premises of which the defendant was aware or should have been aware, and that the condition existed for a long enough time so the owner of the premises should have taken steps to correct the condition." *Voccola*, 209 A.3d at 560-61 (quotations omitted). Thus, a plaintiff "must present evidence that

his or her fall was the result of an unseen danger." *Yanku v. Walgreen Co.*, 224 A.3d 1130, 1134 (R.I. 2020) (brackets and quotations omitted).

The duty element of negligence is a question of law for this Court to resolve. *See Aubin*, 161 A.3d at 1146. McAuley alleges that the Movants owed him a duty because the Movants were responsible under Article XI, § 1101(a)(1) (§ 1101(a)(1)) of the Providence City Charter to supervise, manage, and control water supply. *See* Pl.'s Mem. 3 n.1. McAuley quotes *Konar v. PFL Life Insurance Co.*, 840 A.2d 1115 (R.I. 2004) in support of this argument. *Id.* "For example, a party may be vicariously liable for the negligent acts of its independent contractor if the party retained an independent contractor to carry out a duty to the public that is set out in a statute or ordinance." *Konar*, 840 A.2d at 1117. McAuley also analyzes this action through the five-part test established in *Banks v. Bowen's Landing Corp.*, 522 A.2d 1222 (R.I. 1987). McAuley argues that the Movants acknowledged the foreseeability of harm to others in the contract to install the piping; the Movants proximately caused McAuley's injuries; under § 1101(a)(1), the Movants, specifically Walsh, owed a duty to prevent negligent work; and the benefit to the public of imposing liability on the Movants outweighs the burden. *See Banks*, 522 A.2d at 1225; Pl.'s Mem. 12-15.

In response, the Movants analogize this action with *Habershaw v. Michaels Stores, Inc.*, 42 A.3d 1273 (R.I. 2012), where the Rhode Island Supreme Court held that the plaintiff's allegations that she slipped on a "shiny" floor did not rise above a speculative conjecture that failed to amount to a legal duty to protect the plaintiff from slipping. *See* City Mem. 6-7; Walsh Mem. 6; *Habershaw*, 42 A.3d at 1276-77. The Movants also argue, under *Ferreira v. Strack*, 636 A.2d 682 (R.I. 1994), that they do not owe McAuley a duty under premises liability law. *See* City Mem. 9-11; *Ferreira*, 636 A.2d at 685-86.

1

Habershaw

To begin, *Habershaw* is not analogous to the facts here. The plaintiff in *Habershaw* alleged that she slipped on a department store floor while she placed items at the cash register to ring out because the floor was "shiny[.]" *Habershaw*, 42 A.3d at 1274. The plaintiff in *Habershaw* admitted that the floor was not wet, slippery, or otherwise hazardous, either at the register or anywhere in the store. *Id.* at 1274-75. In affirming the trial justice's grant of summary judgment, the Rhode Island Supreme Court in *Habershaw* reasoned that "[t]he allegation that the floor was shiny, without more, was not 'competent evidence' of defendant's negligence and plaintiff's allegation [was] nothing more than 'conjecture or speculation.'" *Id.* at 1277 (quoting *Santiago v. First Student, Inc.*, 839 A.2d 550, 552 (R.I. 2004)). The plaintiff's claim in *Habershaw* could not survive summary judgment because the plaintiff presented no other evidence than the floor's sheen. *Id.*

Here, the key difference between the allegations before this Court and those in *Habershaw* is that the rubber mats on Dias's property somehow were moved from being flush with the steps, constituting the hazard that caused McAuley to trip. (Dias Dep. 91:6-92:1; McAuley Dep. 14:22-16:8; 45:9-13.) Dias admitted in deposition that moving the mats would create "an unsafe condition[.]" (Dias Dep. 57:13-23; 64:20-65:5; 73:3-9.) The issue of who moved the mats differentiates these allegations from *Habershaw*, where the plaintiff only alleged that the floor was shiny and nothing more. *See Habershaw*, 42 A.3d at 1277. Thus, *Habershaw* is inapplicable here.

In contrast, there is substantial caselaw from both Rhode Island and other jurisdictions that favors finding a duty between McAuley and the Movants. *See Voccola*, 209 A.3d at 562 (finding a duty where plaintiff demonstrated sufficient evidence that she slipped on black ice in a supermarket's parking lot); *Dent*, 184 A.3d at 654-55 (finding a duty between a business owner

and a customer who slipped on a beverage on a convenience store floor); *Cutroneo v. F. W. Woolworth Co.*, 112 R.I. 696, 701, 315 A.2d 56, 59-60 (1974) (finding a duty between a department store and a customer who slipped on water in the store); *Bloom v. Casella Construction, Inc.*, 232 A.3d 357, 362 (N.H. 2019) (finding a duty between a snowplow contractor who plowed and sanded a hospital parking lot and a hospital employee who slipped and fell in the parking lot after a snowfall); *Washington v. Qwest Communications Corp.*, 704 N.W.2d 542, 549 (Neb. 2005) (finding a duty between utility provider who installed a telephone wire on an employer's property on which an employee tripped and fell); *Haffey v. Lemieux*, 224 A.2d 551, 554-56 (Conn. 1966) (finding a duty between a homeowner and a letter carrier who slipped and fell on the homeowner's property while delivering mail).

The most factually comparable of these to the instant case is *Washington*, cited *supra*. In *Washington*, the Nebraska Supreme Court held that the plaintiff alleged sufficient facts that the defendant, who installed a telephone wire that the plaintiff tripped and fell on, owed the plaintiff an actionable duty. *See Washington*, 704 N.W.2d at 549. The plaintiff in *Washington* was a maintenance worker at a packing plant and his duties included trash collection. *Id.* at 544-45. While chasing a plastic bag blowing in the wind, the plaintiff tripped and fell on a telephone wire hidden in tall grass. *Id.* at 545. A third party requested that the defendant make a telephone connection to a construction trailer. *Id.* To that end, the defendant laid a temporary wire across the ground on the plaintiff's employer's property from a terminal box and pole to the trailer. *Id.* One of the defendant's employees "admitted that laying a wire on top of the ground can be dangerous and that no warnings were placed between the terminal box and the utility pole." *Id.* The plaintiff claimed that the defendant was in actual or constructive possession, control, and use of the land on which the wire laid, and the defendant was negligent because the wire was hidden in grass and

foot traffic was expected in the area. *Id.* The court in *Washington* held that the utility defendant owed a duty to the plaintiff because the defendant was in control of the premises both at the time the wire was installed and at the time of the plaintiff's injury. *Id.* at 548-49. As a result, the court granted the plaintiff a new trial. *Id.* at 549.

The similarities between the allegations here and those in *Washington* center on the installation by the Movants of a temporary utility connection that caused McAuley to fall. Here, Walsh contracted with Parkside to "connect[] and activate[] the temporary bypass water connection to 230-232 Summit[.]" Walsh Aff. ¶ 6. Walsh installed the pipe on Dias's property on August 7, 2013, approximately three weeks before McAuley's fall. *Id.*; Am. Compl. ¶¶ 6, 12. Dias saw workers installing the blue pipe. *See* Dias Dep. 47:2-6; 47:15-20. While Walsh denies that any of its employees moved the mats when installing the blue pipe, Dias stated in his deposition that based on his experience as a landlord and based on common sense, whoever installed the blue pipe moved the rubber mats from being flush with the steps to creating a gap.[2] *Id.* at 91:6-92:1; Walsh Aff. ¶ 7.

Based on *Washington*, as well as the other cases listed *supra*, Walsh and the other Movants had a duty to install the temporary blue pipe in a safe, non-hazardous manner. Thus, there is a triable issue before this Court; therefore, summary judgment is not appropriate here.

[2] While this Court may not weigh evidence in evaluating motions for summary judgment, it is merely demonstrating how facts currently conflict in a light most favorable to the non-moving parties, and thus, summary judgment is inappropriate. *See Voccola*, 209 A.3d at 562 ("In determining whether an issue is genuine for purposes of summary judgment, a trial justice cannot consider the merits, make credibility determinations, evaluate testimony, or weigh the evidence. Instead, the trial justice must review the pleadings, affidavits, admissions, answers to interrogatories, and other appropriate evidence from a perspective most favorable to the party opposing the motion.") (quotations omitted).

2

***Banks* Analysis**

In addition, the *Banks* test also favors finding a duty between McAuley and the Movants. *See Banks*, 522 A.2d at 1225-27. In *Banks*, the Rhode Island Supreme Court adopted a five-factor test to determine the presence or absence of a duty for negligence purposes:

> "(1) the foreseeability of harm to the plaintiff, (2) the degree of certainty that the plaintiff suffered an injury, (3) the closeness of connection between the defendant's conduct and the injury suffered, (4) the policy of preventing future harm, and (5) the extent of the burden to the defendant and the consequences to the community for imposing a duty to exercise care with resulting liability for breach." *Id.* at 1225 (citation omitted).

McAuley argues that the *Banks* factors weigh in his favor. *See* Pl.'s Mem. 12-15.

The first *Banks* factor examines the foreseeability of the harm. *See Banks*, 522 A.2d at 1225. Here, McAuley cites the contract specifications that the City used in negotiating with Parkside and Walsh. *See* Pl.'s Mem. Ex. 13 (Ex. 13). The contract specification document states that "[w]here temporary bypass pipes and service lines are permitted to cross streets, driveways or sidewalks, [Parkside and Walsh] shall provide all necessary and required construction to protect and prevent injury to persons, property, vehicles, and pipelines." *See* Ex. 13, at § 7.3.1.

Contrast this contract provision, which requires the contractors to take measures to prevent negligence, with *Splendorio v. Bilray Demolition Co., Inc.*, 682 A.2d 461 (R.I. 1996), where an independent contractor had a contractual duty to provide asbestos inspection services to a public housing authority. *Splendorio*, 682 A.2d at 467. In *Splendorio*, the plaintiffs were homeowners who lived near a wrecking yard where asbestos from a demolition site was kept before being sent to a waste facility in Indiana. *Id.* at 463-64. One of the parties sued by the plaintiffs in *Splendorio* was the independent contractor responsible for determining whether asbestos was present at the

demolition site. *Id.* at 463. The Rhode Island Supreme Court reasoned that no duty existed between the plaintiff and independent contractor because "it was not reasonably foreseeable that [the defendant in charge of demolition] would transport any of the demolition debris to its wrecking yard in Johnston, contrary to the terms of its contract with [the housing authority], and to the dictates of the law, and thereby create a risk to the [plaintiffs]." *Id.* at 467.

By contrast, here, the contract specifications for the installation of the pipe required contractors with the City to take all steps necessary to prevent acts of negligence from harming third parties, such as McAuley. *See* Ex. 13, at § 7.3.1. The Court in *Splendorio* did not discuss the existence of such a provision in the contract between the defendants. *See Splendorio*, 682 A.2d at 467. Thus, unlike in *Splendorio*, the Movants here could foresee that the installation of the pipe could potentially harm third parties such as McAuley, and this factor weighs in favor of finding a duty between McAuley and the Movants.

The second *Banks* factor is the degree of certainty that McAuley suffered an injury. *See Banks*, 522 A.2d at 1225. The parties do not dispute that McAuley suffered injuries related to his alleged fall on Dias's property. *See* Walsh Mem. 2; City Mem. 2; Pl.'s Mem. 14; Pl.'s Mem. Ex. 6, ¶ 9. Thus, the second factor also weighs in McAuley's favor.

The third *Banks* factor is "the closeness of connection between the defendant's conduct and the injury suffered[.]" *Banks*, 522 A.2d at 1225. In *Banks*, there were several actions that the plaintiff took before falling into shallow water and injuring himself that the court highlighted as severing the causal connection: the plaintiff's intoxication, his climb over a rail or railing, and his voluntary dive into the water. *Id.* at 1225. Here, however, McAuley took no unusual actions to cause his own injury; McAuley was merely delivering the mail to Dias's property, as he had done for at least a year prior to his fall. (McAuley Dep. 42:18-43:6.) McAuley followed the same routine

as always—he held onto the handrail with his left hand, delivered the mail, and then walked down the stairs while also holding onto the handrail. *Id.* at 11:3-13. McAuley wore boots that his employer issued him, and there is no evidence that McAuley tripped on his own feet. *Id.* at 39:6-14. The primary causal question in this case is who moved the rubber mats on which McAuley tripped, which is not appropriately resolved at this stage. *Id.* at 12:9-19. Thus, this factor similarly weighs in favor of finding a duty between McAuley and the Movants.

McAuley finally argues under the fourth and fifth *Banks* factors that finding a duty would further public policy, as stated in § 1101(a)(1), to protect persons such as McAuley from harm and that the Movants "had numerous, burden free options" to prevent such harm. (Pl.'s Mem. 15.) The Movants do not address this in their argument in support of summary judgment. *See* Walsh Mem. 6-8; Parkside Mem. 6-9; City Mem. 6-12. Thus, these factors likewise weigh in favor of finding a duty present.

Therefore, the *Banks* factors also weigh in favor of finding a duty by Dias and the Movants to McAuley to prevent McAuley from being injured.

3

Premises Liability

The City and PWSB also argue under *Ferreira* that they do not owe McAuley a duty under premises liability law. *See* City Mem. 9-11; *Ferreira*, 636 A.2d at 685. The City and PWSB argue that under *Ferreira*, "a landowner has no right or ability to control adjacent property as such property is not owned or possessed by the landowner." *See* City Mem. 10; *Ferreira*, 636 A.2d at 686-87. The City and PWSB argue that they did not possess or control the area where McAuley fell, i.e., the steps and rubber mats of 230-232 Summit Avenue on August 28, 2013. *See* City Mem. 11.

The facts of *Ferreira* do not support this argument. *See Ferreira*, 636 A.2d at 684. In *Ferreira*, the Rhode Island Supreme Court held that a church did not owe a duty to injured parishioners who were struck by an alcohol-impaired driver while crossing the street from the church to a nearby parking lot because the church lacked control over the roads and drivers. *Id.* at 686-87. The Court in *Ferreira* articulated five reasons behind their holding: traffic control is traditionally a government function; the church had no control over the property where the accidents occurred; the church had no control over the instrumentality (the driver or his vehicle); imposing liability onto property owners for accidents on public roads would create an impossible-to-define amount of property owner liability; and traffic control expenses are borne by taxpayers as a whole, not individually. *Id.*

This rationale, that the church in *Ferreira* had no control over where the injuries occurred, does not comport with the facts here. *See id.*; *see also* Walsh Aff. ¶ 6. Here, Walsh installed the temporary blue pipe on Dias's property on behalf of the City and PWSB. Walsh Aff. ¶ 6. Installing the pipe on Dias's property is comparable to the telephone wire in *Washington*, where the court found that the defendant was still in control of the wire and the immediate area around it. *See Washington*, 704 N.W.2d at 548. The court in *Washington* reasoned that the defendant was in control of the wire because it created a utility easement, and the defendant had control over where it placed the wire. *Id.* Thus, the court in *Washington* found that the defendant never lost control over the wire. *Id.* There is no evidence that Walsh or another defendant removed or otherwise gave up control over the blue pipe on Dias's property. *See* Walsh Aff. ¶¶ 6-7. There is also no direct evidence as to who moved the rubber mats to cause McAuley to trip. *Id.* ¶ 7. As in *Washington*, there is no evidence that Walsh or another defendant was *not* in control of the temporary blue pipe and the area around it, unlike the evidence that the church in *Ferreira* had no control over the street

where its parishioners crossed to the nearby parking lot. *Washington*, 704 N.W.2d at 548; *Ferreira*, 636 A.2d at 686-87. Thus, the reasoning and holding of *Ferreira* are inapplicable here.

B

Contribution and Indemnification

Finally, the Movants argue that Dias's cross-claims for contribution and indemnity must fail as a matter of law because they have no liability for McAuley's injuries, and thus, Dias has no right to have his liability or obligation discharged by them. (City Mem. 11-12; Parkside Mem. 6-9; Walsh Mem. 8.) Dias argues that a factual dispute exists because Defendants City and PWSB are vicariously liable for Walsh's negligence. (Dias Mem. 5-7.) Dias also argues that Parkside agreed to indemnify PWSB. *Id.*

Both claims for contribution between joint tortfeasors under G.L. 1956 §§ 10-6-1 *et seq*. and common law require "(1) the party seeking indemnity must be liable to a third party; (2) the prospective indemnitor must also be liable to the third party; and (3) as between the prospective indemnitee and indemnitor, the obligation ought to be discharged by the indemnitor." *See Wampanoag Group, LLC v. Iacoi*, 68 A.3d 519, 523-24 (R.I. 2013) (quotations omitted). First, the parties do not dispute that the issue of Dias's liability to McAuley is not yet ripe for summary judgment. (City Mem. 12; Dias Mem. 7; Parkside Mem. 9; Walsh Mem. 8.) Second, as stated above, there is a factual question regarding Parkside and Walsh's liability to McAuley based on *Washington* and other cases cited *supra*. Third, in interrogatories between Dias and the City, the City admitted that "[p]ursuant to the project contract, [Parkside] will indemnify and hold harmless the [PWSB]." (Dias Ex. C, Answer 13.) Thus, Dias's cross-claim is not appropriately resolved by summary judgment because Parkside and Walsh may be liable to McAuley, and Parkside agreed to indemnify the City.

IV

Conclusion

The Movants owed McAuley a duty as a matter of law and there are remaining issues of material fact in dispute; therefore, this Court denies Movants' motions for summary judgment.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Timothy McAuley v. John Dias, III, et al. v. Parkside Site & Utility Company Corporation, et al.**
CASE NO:	**PC-2016-4038**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 30, 2021**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
For Plaintiff:	**Mark S. Mandell, Esq.; John D. Meara, Esq.**
For Defendant:	**Stephanie F. Friedel, Esq.; Andrew Lentz, Esq.; Patrick J. McBurney, Esq.; Danial Calabro, Jr., Esq.; Matthew C. Reeber, Esq.**
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