STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
No. AUGSC-CV-2023-0098

U.S. RENTAL,

Plaintiff

v.

WENTWORTH PARTNERS AND ASSOCIATES, and STEVEN C. GOVONI, P.E.,

Defendants

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Before the court is Defendants Wentworth Partners and Associates and Steven C. Govoni, P.E.'s ("Wentworth") motion for summary judgment, pursuant to M.R. Civ. P. 56(b), on both counts of Plaintiff U.S. Rental's ("US Rental") complaint. For the following reasons, the court denies the motion.

BACKGROUND

The summary judgment record supports the following undisputed facts. All facts recounted are properly supported by citations to the summary judgment record. M.R. Civ. P. 56(h).

US Rental owns property in Kingfield on which it planned to construct a sizable lodge to host government officials and others. Pl.'s Opp'n S.M.F. ¶¶ 121-22, 124. At the start of the project, it hired Dennis Dunbar ("Dunbar") as the project manager and draftsman of the project. *Id.* ¶ 117. In February 2012, excavation for the main house and construction of the fireplace were both underway when Dunbar

reached out to Wentworth regarding the project. *Id.* ¶¶ 4-6. At that point, Dunbar asked Wentworth to provide pricing for the structural design of the residence and its foundation. *Id.* ¶ 7. Wentworth provided no further services between February 2012 and March 2015, when Dunbar again reached out to Wentworth to request it begin designing drawings for the primary residence. *Id.* ¶¶ 9-10. Dunbar provided Wentworth with design plans to allow Wentworth to undertake the foundation design. *Id.* ¶ 12.

In 2016, once the foundation had been poured, Dunbar again reached out to Wentworth and asked it to begin work on the steel beams for the dining room floor and the floor for the primary bedroom. *Id.* ¶¶ 13-15. Construction on the portion of the steel frame relevant to this dispute began around August 2017. *Id.* ¶ 21. Wentworth's involvement in the design and implementation is a subject of dispute, but in September 2019, Dunbar asked Wentworth to visit the site regarding a vibration felt in the dining room floor. *Id.* ¶ 26. US Rental, Dunbar, and Wentworth discussed possible remedies for the problem after inspecting the beams, columns, and connections. *Id.* ¶ 31. Ultimately, a rod and turnbuckle solution was adopted that would include a steel plate being added on the inside of each of the columns. *Id.* ¶¶ 32-33. Wentworth began working on a solution in late 2019. *Id.* ¶¶ 34-36. However, installation of the rod and turnbuckle was never finished. *Id.* ¶ 37.

In 2023, US Rental commenced this professional negligence action seeking to recover damages it alleges were incurred because of Wentworth's 2019/2020 remedial plan. *Id.* ¶ 1. In 2024, Wentworth again designed a plan to address the existing issues

that included creating a shear connection instead of the existing moment connection between the beams and columns. *Id.* ¶ 47. This required the weld between the two to be broken and supplemental plates to be added. *Id.* ¶¶ 50-51. Wentworth suggested a contractor to complete the work; however, US Rental used a different contractor and heavier beams than were called for in Wentworth's plan. *Id.* ¶ 54.

While there is a dispute regarding where the issues arose with this remedial plan, the parties do not generally dispute that the attempt to fix the initial problems was again unsuccessful. *See id.* ¶¶ 54-68. US Rental's contractor retained another engineer, Cody Lyons, P.E. ("Lyons"), who analyzed Wentworth's original and subsequent design plans and appeared at a site visit with Wentworth and US Rental in April 2024. *Id.* ¶¶ 69-72, 78-79. At that visit, Lyons opined that the column sizing and connection shown in the remedial plan at that time was inadequate. *Id.* ¶ 80. In May 2024, Wentworth revised its remedial plan. *See id.* ¶¶ 82-83. When he eventually reviewed the May 2024 remedial plan, he concluded that the beams were adequately sized. *Id.* ¶ 87.

Lyons was not involved with US Rental's attempted remedial work in September 2024; however, he did inspect the structural work that was completed during the summer of 2024. *Id.* ¶¶ 86, 90. Lyons concluded that the repair work was made pursuant to Wentworth's May 2024 remedial plan, except that the beams were larger in size than those detailed in that plan. *Id.* ¶ 91. US Rental had not consulted with Lyons prior to the remediation attempt regarding design input or the use of heavier beams. *Id.* ¶¶ 94-95, 105. Lyons continued to believe the columns were

undersized, and the size of the columns was not changed during the 2024 remediation attempt. *Id.* ¶ 92, 106-09. After the 2024 remediation attempt, the building frame did not meet relevant building code requirements, there was additional deflection in the columns, and the columns and connections were worse than prior to the attempted fix. *Id.* ¶¶ 96-98. There was also buckling in the rafters, and the insulation appeared to be cracked. *Id.* ¶ 99. Lyons determined that either additional bolts would be needed or the beams would need to be welded to the columns; however, even with that fix and additional plates, there would still be some deflection. *Id.* ¶¶ 113-16.

In May 2025, US Rental amended its complaint to seek damages stemming from the 2024 remediation attempt. *See* Am. Compl. ¶¶ 12-18. Wentworth moved for summary judgment in September 2025, and the court took the matter under advisement.

DISCUSSION

The court briefly outlines its standard of review before diving into the specific claims on this summary judgment motion.

A. Standard of Review

Summary judgment may be granted to a moving party where "there is no genuine issue as to any material fact" and the moving party "is entitled to a judgment as a matter of law." M.R. Civ. P. 56(c). "A material fact is one that can affect the outcome of the case, and there is a genuine issue when there is sufficient evidence for a fact-finder to choose between competing versions of the fact." *Lougee Conservancy*

v. CitiMortgage, Inc., 2012 ME 103, ¶ 11, 48 A.3d 774 (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8, 13 A.3d 773).

When it is the plaintiff opposing summary judgment, they must establish a prima facie case for every element of each of their claims. *Tri-Town Marine, Inc. v. J.C. Milliken Agency, Inc.*, 2007 ME 67, ¶ 7, 924 A.2d 1066. On summary judgment, the court considers both the evidence and any reasonable inferences that may be drawn from that evidence. *Cap. City Renewables, Inc. v. Piel*, 2025 ME 42, ¶ 23, 335 A.3d 588. The nonmoving party benefits from any favorable inferences. *Curtis v. Porter*, 2001 ME 158, ¶ 9, 784 A.2d 18. When either those inferences or the facts themselves are in dispute, "the court must engage in fact-finding, and summary judgment is not available." *Rose v. Parsons*, 2015 ME 73, ¶ 4, 118 A.3d 220.

B. Wentworth's Motion for Summary Judgment

To survive Wentworth's motion, US Rental must establish a prima facie case for each element of its causes of action. *Mastriano v. Blyer*, 2001 ME 134, ¶ 11, 779 A.2d 951. A prima facie case of professional negligence requires a plaintiff to (1) establish the appropriate standard of care; (2) demonstrate the defendant deviated from that standard of care; and (3) prove that deviation caused (4) the plaintiff's damages. *Graves v. S.E. Downey Registered Land Surveyor, P.A.*, 2005 ME 116, ¶ 10, 885 A.2d 779. In its motion, Wentworth does not challenge US Rental's evidence establishing the existence of (1) a duty or (2) breach. Rather, Wentworth takes issue with US Rental's prima facie showing of proximate cause and damages. The court addresses these contentions in turn.

1. Proximate Cause

Proximate cause is usually a question of fact for the jury. *Merriam v. Wanger*, 2000 ME 159, ¶ 10, 757 A.2d 778. It requires the defendant's actions to occur "in a natural and continuous sequence, uninterrupted by an intervening cause, that produces an injury that would not have occurred but for the action." *Toto v. Knowles*, 2021 ME 51, ¶ 10, 261 A.3d 233 (quoting *Cyr v. Adamar Assocs. Ltd. P'ship*, 2000 ME 110, ¶ 6, 752 A.2d 603). Summary judgment is only appropriate as to proximate cause if the record is "completely devoid of evidence supporting causation." *Id.* ¶ 11. Only if "'there is so little evidence tending to show that the defendant's acts or omissions were the proximate cause of the plaintiff's injuries that the jury would have to engage in conjecture or speculation in order to return a verdict for the plaintiff,' then the defendant is entitled to summary judgment." *Estate of Smith v. Salvesen*, 2016 ME 100, ¶ 21, 143 A.3d 780 (quoting *Addy v. Jenkins, Inc.*, 2009 ME 46, ¶ 12, 969 A.2d 935).

a. Count I: 2019/2020 Plan

Wentworth first claims US Rental severed the causal chain between its alleged breach and the damages it seeks by deviating from Wentworth's design plan and not installing the turnbuckles as required by the 2020 remedial plan. Def.'s S.M.F. ¶¶ 3, 36-44. It cites *Goette v. Press Bar & Café, Inc.* for the proposition that the designer of a plan is not liable for deviations from that plan because such deviations constitute intervening causes of the resulting damages. 413 N.W.2d 854, 856 (Minn. Ct. App.

1987) ("The plans and designs of a professional are not the proximate cause of an injury if the work was not constructed or performed according to the plans.").

In response, US Rental contends that it was Wentworth's responsibility, not its own, to procure and install the rod and turnbuckle. Pl.'s Opp'n S.M.F. ¶¶ 3, 36-44. Assuming, as the court must on a motion for summary judgment, that this is true, US Rental's failure to install the turnbuckle in 2020 would not have been an intervening cause sufficient to break the chain of causation, and a factfinder could, without speculation, find it foreseeable that US Rental would suffer the damages it incurred as a result of Wentworth's alleged breach. The court denies summary judgment on this ground as to Count I.

b. Count II: 2024 Plan

Wentworth next claims that US Rental once again broke the causal chain in 2024 by implementing its second proposed remedy using different-sized beams than it had recommended. Def.'s S.M.F. ¶ 54. US Rental admits it used different-sized beams but contends that the difference in size did not matter and, in any event, the issue with the columns remained. Pl.'s Opp'n S.M.F. ¶¶ 54, 161-64. Viewing the evidence in the light most favorable to US Rental, a jury could find the difference in the size of the beams de minimis, such that even with the deviation from Wentworth's remedial plan, the damages incurred were a foreseeable result of Wentworth's alleged breach. Furthermore, US Rental has presented sufficient evidence tending to show that the columns were the primary cause of its damages and that Wentworth's 2024 proposed fix was insufficient to remedy that issue. *E.g.*, *id.* ¶ 172. Assuming that is

the case, a jury could find, without speculation, that US Rental's deviation from the plans did not so attenuate Wentworth's breach that it relieved Wentworth of liability for the damages incurred. The court denies summary judgment on this ground as to Count II.

2. Damages

Wentworth also takes issue with US Rental's calculation of damages. As a general rule, "[d]amages may not be awarded when the proof is speculative." *Snow v. Villacci*, 2000 ME 127, ¶ 13, 754 A.2d 360. Damages may only be recovered "if they are grounded on facts established by the evidence, not surmise and conjecture." *Carter v. Williams*, 2002 ME 50, ¶ 9, 792 A.2d 1093.

US Rental claims damages totaling between $1,228,164 and $1,539,096. Pl.'s Opp'n S.M.F. ¶ 176. It reached this calculation by adding together: the amount it spent on welders and labor in 2020, *id.* ¶ 177 ($7,100); the amount it spent to rent equipment in connection with the work to have beams cut out and replaced, *id.* ¶ 178 ($24,809); the amount it spent to cut out and replace those beams, *id.* ¶ 179 ($64,662.22); the amount it paid for engineering services, *id.* ¶ 180 ($24,000); the amount it paid a contractor for labor, oversight, and fire watch in connection with the 2024 remediation attempt, *id.* ($43,500); and estimates as to the cost of performing additional necessary work to remediate the undersized columns, *id.* ¶ 181 ($777,335), associated equipment rental costs, *id.* ¶ 182 ($35,000), and the cost of redesigning and installing new ceilings, *id.* ¶ 183 ($174,025). It also anticipates having to pay a contractor's profit that it projects to be between $77,733 and $388,665. *Id.* ¶ 185.

These amounts are supported by the affidavit of Daniel Bickford, who attested to his familiarity with the costs of construction. *Id.* ¶ 187; Bickford Aff. ¶ 26.[1] This detailed estimation is far from those in cases where the damages sought are premised on mere speculation or conjecture. *See, e.g., Carter*, 2002 ME 50, ¶¶ 4, 10-11, 792 A.2d 1093 (holding a trial court did not err in determining that the pecuniary loss suffered by parents on the death of their child was too speculative when the damages for pecuniary loss were based on the same theories of liability as other damages sought). The court finds the itemization provided by US Rental sufficient to overcome summary judgment, notwithstanding Wentworth's objections.

CONCLUSION

For the reasons stated above, US Rental has raised a sufficient dispute as to genuine issues of material fact that preclude the court from granting summary judgment against it as to either proximate cause or damages.

The entry is:

Defendants Wentworth Partners and Associates and Steven C. Govoni, P.E.'s Motion for Summary Judgment is DENIED.

The clerk is directed to incorporate this order into the docket by reference. M.R. Civ. P. 79(a).

Dated: Feb. 9, 2024

M. Michaela Murphy
Justice, Maine Superior Court

[1] The court also takes account of the fact that, as time goes on and US Rental continues construction, the precise amount of damages incurred may become clearer. *See* Bickford Aff. ¶ 26.