SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

STEPHANIE STITH, **Plaintiff,** **v.** **MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL et al.,** **Defendant.**	**2023-CAB-002379** **Judge Katherine E. Oler** **CASE CLOSED**

ORDER

Pending before the Court are the following motions:

- Defendant Quality Elevator Co.'s Motion for Summary Judgment ("QE MSJ"), filed September 30, 2024; Plaintiff's Opposition to Motion, filed October 8, 2024; and Defendant Quality Elevator Co.'s Reply, filed November 15, 2024
- Defendant MedStar Georgetown University Hospital's Motion for Summary Judgment ("MGUH MSJ"), filed September 30, 2024; Plaintiff's Opposition to the Motion, filed October 8, 2024; and Defendant MedStar's Reply, filed October 15, 2024
- Plaintiff's Motion to Reopen Discovery and Amend Expert Designation ("Discovery Motion"), filed October 3, 2024; Defendant Quality Elevator Co., Inc.'s Opposition to the Motion ("QE Opposition"), filed October 17, 2024; and Defendant MedStar Georgetown University Hospital's Opposition to the Motion ("MGUH Opposition"), filed October 17, 2024

The Court has considered the pleadings, the relevant law, and the entire record. As a preliminary matter, although the motions for summary judgment were filed before the discovery motion, the Court must rule on the discovery motion first. *See Dada v. Children's Nat'l Med. Ctr.*, 715 A.2d

904, 907 (D.C. 1998) (finding that the trial court erred by ruling on a motion for summary judgment without ruling on a pending motion to reopen discovery) [hereinafter *Dada I*]. For the following reasons, this Court hereby denies Plaintiff's Motion to Reopen Discovery and Amend Expert Designation and grants Defendants' Motions for Summary Judgment.

I. BACKGROUND

In November 2021, Plaintiff got on an elevator at MedStar Georgetown University Hospital, and after the door closed, the elevator suddenly dropped three floors. Compl. ¶¶ 5-7. Subsequently, in April 2023, Plaintiff filed a Complaint against the hospital and Quality Elevator Co. Inc. for premises liability, asserting a breach of duty to inspect, duty to warn, duty to maintain, duty to repair, and duty to refrain from creating a dangerous condition. *Id.* ¶¶ 14, 18a-e.

A scheduling order was entered for the case in July 2023. *See* Docket. Plaintiff filed a preliminary list of experts on October 20, 2023, which included the names of three medical professionals expected to testify about the nature, extent, and causation of Plaintiff's injuries. Filing of 10/20/2023. However, Plaintiff missed the original deadline of November 2, 2023, for filing her Rule 26(a)(2)(B) report. *See* Docket. The parties filed a joint motion to extend discovery deadlines on November 27, 2023. *Id.* When that motion was granted, Plaintiff's deadline to submit a Rule 26(a)(2)(B) report was extended to January 31, 2024. Order of 11/28/2024. For the second time, Plaintiff missed the Rule 26(a)(2)(B) deadline. *See* Docket. Another joint motion to extend discovery was filed on March 1, 2024. *Id.* When that motion was granted, the deadline for Plaintiff's Rule 26(a)(2)(B) report was set for April 1, 2024. Order of 03/07/2024. For the third time, Plaintiff missed the Rule 26(a)(2)(B) deadline. *See* Docket. The subsequent joint motion to amend the scheduling order, filed July 10, 2024, did not include a Rule 26(a)(2)(B) deadline for

Plaintiff, nor did the motion reference that report. Mot. of 07/10/2024. To date, Plaintiff has not filed a Rule 26(a)(2)(B) report. *See* Docket.

Discovery closed on September 15, 2024. Order of 07/22/2024. Defendants filed the instant motions for summary judgment on September 30, 2024, and Plaintiff filed the instant discovery motion on October 3, 2024. *See* Docket. The Court held a hearing on the discovery motion on January 23, 2025. *Id.*

II. LEGAL STANDARD

a. Motion to Reopen Discovery and Amend Expert Designation

Discovery may be reopened by amending the scheduling order. The scheduling order may be modified by leave of the court "on a showing of good cause." Super. Ct. R. Civ. Proc. 16(b)(7)(A). Additionally, "a party seeking modification of the scheduling order must provide the court with a copy of the existing scheduling order and a detailed discovery plan, which lists the specific methods of discovery to be conducted, the persons or materials to be examined, and the date or dates within which all further discovery must be completed." *Id.* However, because the specified timeframe for discovery has ended, the Court may extend the time only if the party failed to act due to excusable neglect. Super. Ct. R. Civ. Proc. 6(b).

The D.C. Court of Appeals has enumerated the following factors to be considered in determining the requisite good cause and excusable neglect in the context of seeking the addition of expert testimony:

> (1) whether allowing the evidence would incurably surprise or prejudice the opposite party; (2) whether excluding the evidence would incurably prejudice the party seeking to introduce it; (3) whether the party seeking to introduce the testimony failed to comply with the evidentiary rules inadvertently or willfully; (4) the impact of allowing the proposed testimony on the orderliness and efficiency of the trial; and (5) the impact of excluding the proposed testimony on the completeness of information before the court or jury.

Weiner v. Kneller, 557 A.2d 1306, 1311-12 (D.C. 1989); *see also Dada I.*, 715 A.2d 904, 909 (D.C. 1998) (applying the *Weiner* factors as measures of good cause and excusable neglect). This list is not exclusive, and the Court may consider additional factors relevant to the circumstances of the case. *Dada I*, 715 A.2d at 909. The D.C. Court of Appeals has specifically held that these five factors should apply to cases in which "excluding evidence obviously will have the effect of a dismissal." *Young v. Interstate Hotels & Resorts*, 906 A.2d 857, 861 (D.C. 2006).

b. Motion for Summary Judgment

"Summary judgment is a remedy that entitles the moving party to judgment as a matter of law when no genuine issue of material fact is present at the time the motion is made." *Sturdivant v. Seaboard Serv. Sys., Ltd.*, 459 A.2d 1058, 1059 (D.C. 1983); *accord* Sup. Ct. R. Civ. P. 56(a)(1). A material fact is "one which, under the applicable substantive law, is relevant and may affect the outcome of the case." *Rajabi v. Potomac Elec. Power Co.*, 650 A.2d 1319, 1321 (D.C. 1994). "Any doubt as to whether or not an issue of fact has been raised is sufficient to preclude a grant of summary judgment." *McCoy v. Quadrangle Dev. Corp*., 470 A.2d 1256, 1259 (D.C. 1983). The Court must not "resolve issues of fact or weigh evidence at the summary judgment stage." *Barrett v. Covington & Burling, LLP*, 979 A.2d 1239, 1244 (D.C. 2009). To avoid summary judgment, the non-moving plaintiff, in response, must show they can make out a prima facie case in support of their claim. *Smith v. Washington Metro. Area Transit Auth.*, 631 A2d 387 (D.C. 1993).

III. DISCUSSION

Premises liability and negligence are inextricably connected. Premises liability was historically considered a branch of negligence, eventually becoming its own cause of action based on common-law principles of negligence. 62 AM. JUR. 2D *Premises Liability* § 1 (2024). Some courts treat them as distinct causes of action, while others have held that they are not, and still

others treat premises liability as a specific type of negligence action. *Id.* District of Columbia case law demonstrates a variety of approaches, with examples in which premises liability and negligence are charged interchangeably, are charged in tandem, or in which one is charged but principles of the other are applied. *See*, *e.g., Reeves v. Wash. Metro. Area Transit Auth.*, 135 A.3d 807, 811-12 (applying both standards although only negligence was charged); *Dunleavy v. Dawson & Windsor, LLC*, No. 2020-CA-1489-B, 2021 D.C. Super. LEXIS 356, at *2 (D.C. Super. Aug. 16, 2021) (charging both premises liability and negligence for the same incident); *Givens-Nyarko v. Crothall Healthcare, Inc.*, No. 20-CV-2728-RMM, 2023 U.S. Dist. LEXIS 176289, at *1 (D.D.C. Sept. 29, 2023) (referring to premises liability as a negligence theory).

"The plaintiff in a negligence action bears the burden of proof on three issues: the applicable standard of care, a deviation from that standard by the defendant, and a causal relationship between that deviation and the plaintiff's injury." *Levy v. Schnabel Foundation Co.*, 584 A.2d 1251, 1255 (D.C. 1991). Under premises liability, a defendant landowner is liable to a plaintiff who is lawfully on the premises for breaching the duty of reasonable care to keep the premises safe. *See* 1 Civ. Jury Instr. D.C. § 10.01, .03; *Croce v. Hall*, 657 A.2d 307, 310 (D.C. 1995). This may include inspections reasonably necessary to detect dangerous conditions and a duty or repair or warn once a dangerous condition is identified. 1 Civ. Jury Instr. D.C. § 10.03. Generally, Plaintiff must show that the landowner had notice, either actual or constructive, of the dangerous condition. *Croce*, 657 A.2d at 311; *Marinopoliski v. Irish*, 445 A.2d 339, 340 (D.C. 1982).

The case at bar mirrors local jurisprudence in its approach to the cause of action claimed. While the Complaint asserts premises liability as well as an assortment of breached duties, the Plaintiff's Oppositions to the Motions for Summary Judgment describe the case as involving "a

claim of negligence." Compl. ¶¶ 14, 18a-e; *e.g.,* Opp'n to QE MSJ at 1. Based on the case law and the pleadings, the Court interprets premises liability as a type of negligence action, in which the inspections and notice are to be taken into consideration in establishing the standard of care.

a. Discovery and Expert Designation

Plaintiff seeks to "amend her expert designation and supplement final expert reports." Disc. Mot. at 3. Plaintiff asserts that Defendants were willfully uncooperative during discovery.[1] *Id.* According to Plaintiff, she retained an expert on elevator mechanics for the case, but because of evidentiary gaps resulting from Defendants' failure to provide full discovery, the expert was unable to form a final opinion on the facts of the case. *Id.* at 4. Plaintiff therefore asks that the Court "reopen discovery so that the Plaintiff may be able to obtain the information she has diligently sought from the Defendants in order to amend her designations and supplement a final expert report." *Id.* at 8. Notably, although Plaintiff characterizes her request as a motion to amend her expert designation, Plaintiff has never named an elevator expert during the pendency of this litigation or indicated in any way prior to the close of discovery that she intended to call an expert in this field.

The first factor the Court must assess is whether allowing Plaintiff to add an expert "would incurably surprise or prejudice the opposite party." *Weiner*, 557 A.2d at 1311. Plaintiff argues that allowing her elevator expert's report would not prejudice the defendants because both defendants have designated their own mechanical experts to address the relevant issues of liability. Disc. Mot. at 4. Defendant MedStar asserts it would be prejudiced because it prepared its case before Plaintiff

[1] Defendants dispute that they withheld discoverable information or otherwise interfered with discovery, and in turn relay examples of times that Plaintiff was not diligent communicating about discovery. *See* QE Opp'n. at 2-5; MGUH Opp'n at 2. Additionally, Defendant Quality Elevator asserts that Plaintiff never raised concerns about the sufficiency of either defendant's responses or documents. QE Opp'n at 4. The Court declines to make findings on the veracity of these claims, as such findings are not necessary for the Court rule on the instant motions.

sought leave to name a new expert, an effort that included "determin[ing] what investigation was required, and which depositions to take, records to obtain, experts to designate, and written discovery to pursue," as well as the time and expense of preparing its summary judgment motion. MGUH Opp'n at 3. Defendant Quality Elevator adds that Plaintiff's first reference to an elevator expert in October 2024 was "not merely surprising, it was shocking" -- specifically that this person was not identified earlier in the litigation process. QE Mot. at 8. The Court finds that Defendants would indeed be prejudiced by allowing Plaintiff to late designate this expert, as they have spent substantial time and expense preparing this case with the understanding that Plaintiff would not have an expert to speak to elevator mechanics.

Next, the Court considers whether "excluding the evidence would incurably prejudice the party seeking to introduce it." *Weiner*, 557 A.2d at 1311. Plaintiff argues that excluding their expert would mean that Plaintiff cannot present evidence regarding causation, which is a material issue in the case. Disc. Mot. at 5. Defendants do not dispute that excluding the expert would be harmful to Plaintiff's case. *See* QE Opp'n at 9; *see generally* MGUH Opp'n. As discussed further *infra*, an expert that can speak to elevator mechanics is essential for Plaintiff to establish the requisite standard of care and breach to make her case. *See District of Columbia v. Peters*, 527 A.2d 1269, 1273 (D.C. 1987) ("[a] plaintiff must put on expert testimony to establish what the standard of care is if the subject in question is so distinctly related to some science, profession or occupation as to be beyond the ken of the average layperson."). Therefore, Plaintiff would be prejudiced by the exclusion of her expert.

Third, the Court weighs whether the failure to follow evidentiary and procedural rules was inadvertent or willful. *Weiner*, 557 A.2d at 1311-12; *Dada I*, 715 A.2d at 910. This factor weighs most heavily on the instant motion. Under this factor, the Court "may consider the reasonableness

of the party's explanation for failing to meet the deadline, as well as any pattern of noncompliance." *Dada I*, 715 A.2d at 910. Plaintiff asserts that her noncompliance was not willful, because she could not have an expert produce a final report because Defendants withheld discovery materials that would be a necessary basis for the expert's opinions. Disc. Mot. at 6.

However, the Court does not find Plaintiff's explanation for failing to meet the deadline persuasive. Even if the assertion that Defendants were uncooperative in discovery is accurate, nothing prevented Plaintiff from simply naming an expert and requesting an extension of the deadline to file that expert's report. The Court's processes allow for the possibility that expert reports submitted in compliance with Rule 26(a)(2)(b) may not have complete information, as scheduling orders set deadlines for such reports prior to the end of discovery. The Rules accommodate this potential for incomplete information by specifically allowing expert reports to be supplemented, even past the end of discovery. Super. Ct. R. Civ. Proc. 26(e). Plaintiff asserts that the elevator expert was retained in September of 2023. Hr'g of 01/23/2025. However, this expert was not included in the preliminary expert designation that Plaintiff filed in October 2023, a submission that named three medical experts. Filing of 10/20/2023. Plaintiff did not include any reference to such an expert in any other filings, such as past motions to extend discovery.[2] Plaintiff has been unable to explain why she did not so much as name her expert earlier in the process, and instead has repeatedly referred to Defendant's alleged discovery deficiencies. Hr'g of 01/23/2025. Further, as Plaintiff did eventually file an expert report based on the provided discovery, the Court finds Plaintiff's repeated assertions that the delay was based on discovery deficiencies to be unpersuasive. Even if Plaintiff did not initially realize that an expert would be needed to address

[2] The first filings in which Plaintiff names her elevator expert are her amended oppositions to both motions for summary judgment, filed November 25, 2024, in which the expert's report is attached as an exhibit. Plaintiff did not seek leave of the Court to amend her oppositions. Plaintiff filed the amended oppositions over a month after the original oppositions, which was well after the deadline for such a filing.

elevator maintenance and mechanics, she was on notice several months before the end of discovery that Defendants would utilize such an expert. Specifically, Defendant Quality Elevator asserts that it retained an elevator expert and provided that expert the same documents it provided to Plaintiff in discovery, and the expert was able to draft a report setting forth opinions on the elevator incident. QE Opp'n at 4. Plaintiff received that report on June 5, 2024. QE Opp'n at 4. Despite this, Plaintiff failed to seek leave to designate its own elevator expert until after the close of discovery, and after motions for summary judgment had been filed. Further, Plaintiff has demonstrated a pattern of noncompliance. Plaintiff has missed three deadlines for filing a 26(a)(2)(B) report, submitting joint motions to extend discovery timelines at progressively longer intervals after those missed deadlines. *See* Docket; *infra* Section I. To date, Plaintiff has not filed a Rule 26(a)(2)(B) report, despite having preliminarily designated three experts. *See* Docket. Based on the above, the Court concludes that Plaintiff's failure to follow evidentiary and procedural rules was willful. Overall, Plaintiff's inadequate explanations for this unreasonable delay, in conjunction with the history of missing the Court's deadlines are a significant factor that weighs against granting Plaintiff's motion.

Fourth, the Court must assess the "impact of allowing the proposed testimony on the orderliness and efficiency of the trial." *Weiner*, 557 A.2d at 1312. However, a change in the Superior Court Rules since *Weiner* that puts civil cases on a more rigorous schedule allows the Court to put less weight on this factor than on the impact to the parties. *French v. Levitt*, 997 A.2d 701, 703 (D.C. 2010). Plaintiff asserts that preventing the Plaintiff from rebutting Defendants' expert testimony would be a "disservice to the efficiency of the trial." Disc. Mot. at 7. Defendant MedStar argues that if Plaintiff is allowed to late name an expert, there will need to be time to identify a new expert, for the expert to generate a report, deposition conducted, and then both

defendants will need to determine if they, in turn, need a new expert, "which will require all of the same steps be repeated again, by the defense." MGUH Opp'n at 5. All of this additional discovery would require further time and expense. *Id.* The Court believes that Plaintiff has construed this factor too literally, limiting its argument to the trial alone. The *Weiner* factors were developed to address a case already at trial; in this context, the factor speaks more to the efficiency of the remainder of the litigation process. *See Weiner*, 557 A.2d at 1308-09; *see also Dada I*, 715 A.2d at 910 (the status of the case at the time of the request can be a relevant addition to the *Weiner* factors). Here, although a trial date has not yet been set, the Court agrees with Defendants that allowing Plaintiff's late-designated expert would create significant further delays in the case.

Fifth, the Court considers the "impact of excluding the proposed testimony on the completeness of information before the court or jury." *Weiner*, 557 A.2d at 1312. Plaintiff argues that excluding the testimony of her expert witness will result in the court or jury having incomplete information on which to determine a material fact. Disc. Mot. at 7. The Court agrees, as without this expert witness, the Plaintiff will be unable to prove a material fact of her case. *See infra.* However, because it is Plaintiff's burden to affirmatively prove her case, the Court does not understand why Plaintiff did not take such an important step as designating this expert earlier in the litigation, specifically, before the close of discovery.

The Court must consider all the *Weiner* factors and the totality of the circumstances in rendering its decision, although unanimity among the factors is not required. *French v. Levitt*, 997 A.2d 701, 703 (D.C. 2010); *Lowrey v. Glassman*, 908 A.2d 30, 35 (D.C. 2006). The case progression of *Dada v. Children's National Medical Center* is instructive here. In *Dada I*, the trial court granted a motion for summary judgment without ruling on a pending motion to extend discovery and supplement expert testimony. *Dada I*, 715 A.2d at 906. The Court of Appeals

reversed the summary judgment decision and remanded the case to the trial court for consideration of the motion to reopen discovery, instructing the trial court to apply the *Weiner* factors. *Id.* at 910-911. On remand, the trial court applied the *Weiner* factors and denied the motion to reopen discovery, and appellant appealed again. *Dada v. Children's Nat'l Med. Ctr.*, 763 A.2d 1113, 1115 (D.C. 2000) [hereinafter *Dada II*]. As in this case, the movant was likely to lose her case on summary judgment if her motion was not granted, and the factor of willfulness, particularly stemming from noncompliance with court rules, weighed against movant. *See id.* at 1115-16. The Court of Appeals upheld the trial court's decision denying the motion to reopen discovery. *See id.* at 1117.

The Court may also consider additional factors relevant to the circumstances of the case. *Dada I*, 715 A.2d at 909. Defendants argue that granting Plaintiff's motion undermines the summary judgment process. MGUH Opp'n at 5. The Court agrees. If plaintiffs regularly relied on motions for summary judgment to identify gaps in their case, and then attempted to reopen discovery to fill those gaps, motions for summary judgment would cease to have any real value in the litigation process. *See Hussain v. Nicholson*, 435 F.3d 359, 364 (D.C. Cir. 2006) (upholding the lower court's denial of a request to reopen discovery over three months after discovery closed and several weeks after the defendant filed its motion for summary judgment).

The Court of Appeals has instructed that the trial court should also consider whether a less severe sanction is warranted, particularly when denying the motion is likely to have the effect of a dismissal. *Lowrey v. Glassman*, 908 A.2d 30, 34 (D.C. 2006); *Abell v. Wang*, 697 A.2d 796, 800-01 (D.C. 1997). The Court has considered a lesser sanction, such as requiring Plaintiff to bear the cost of further discovery. However, the Court finds that denying the motion to reopen is the appropriate sanction because designating an expert in elevator mechanics was essential for

Plaintiff to meet burden of proving the elements of her case. Plaintiff requested and was granted three consent motions to extend discovery, and thus had a significant amount of time to raise this issue prior to Defendants' motions for summary judgment, and Plaintiff demonstrated a lack of diligence in discovery by consistently missing discovery deadlines.

Accordingly, and for the reasons discussed above, the motion to reopen discovery is denied.

b. Summary Judgment

"The plaintiff in a negligence action bears the burden of proof on three issues: the applicable standard of care, a deviation from that standard by the defendant, and a causal relationship between that deviation and the plaintiff's injury." *Levy v. Schnabel Foundation Co.*, 584 A.2d 1251, 1255 (D.C. 1991). Defendant Quality Elevator asserts that "Plaintiff cannot establish the causal link between the alleged incident and her alleged injury because there is no evidence that Defendant Quality Elevator's actions or inactions caused or contributed to the alleged elevator incident." QE MSJ at 2.

In a negligence action, "plaintiff must put on expert testimony to establish what the standard of care is if the subject in question is so distinctly related to some science, profession or occupation as to be beyond the ken of the average layperson." *District of Columbia v. Peters*, 527 A.2d 1269, 1273 (D.C. 1987); *see also KS Condo, LLC v. Fairfax Vill. Condo. VII,* 302 A.3d 503, 508-509 (D.C. 2023) ("Where a plaintiff alleges negligent conduct in a context which is within the realm of common knowledge and everyday experience, the plaintiff is not required to adduce expert testimony either to establish the applicable standard of care or to prove that the defendant failed to adhere to it."). In this case, the standard of care and the deviation from the standard of care are aspects of elevator mechanics and maintenance, a highly specific application of

engineering that a layperson would not be expected to understand, and accordingly, would require testimony from an expert. As established *supra*, Plaintiff does not have an expert to testify as to elevator mechanics. As such, Plaintiff will be unable to prove the requisite standard of care.

Plaintiff argues that there are material facts in dispute that preclude summary judgment. Opp'n to QE at 4. The facts she alleges are in dispute are that she fell, and that the elevator fell. *Id.* at 4-5. While these facts are in dispute, because Plaintiff cannot establish the standard of care, it is immaterial to the outcome of the case whether the elevator fell or whether Plaintiff fell. Generally, "[w]here the party opposing the motion fails to meet the burden of demonstrating that she has stated a cause of action, then there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Smith v. Washington Metro. Area Transit Auth.*, 631 A.2d 387, 390 (D.C. 1993) (quotations omitted); *see also Croce v. Hall*, 657 A.2d 307, 310 (D.C. 1995) (applying *Smith* to a premises liability case). Because Plaintiff is unable to prove her cause of action, Defendants are entitled to judgment as a matter of law.

IV. CONCLUSION

Accordingly, it is this 6th day of February 2025, hereby

ORDERED that Plaintiff's Motion to Reopen Discovery and Amend Expert Designations is **DENIED**; it is further

ORDERED that Defendant MedStar's Motion for Summary Judgment is **GRANTED**; it is further

ORDERED that Defendant Quality Elevator's Motion for Summary Judgment is **GRANTED**.

SO ORDERED.

Judge Katherine E. Oler

Copies to:
All Parties and Counsel