

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT  
CIVIL ACTION  
No. 07-00418

CHRISTINE ARRA  
PLAINTIFF

VS.

TOWN OF CHATHAM & OTHERS<sup>1</sup>  
DEFENDANTS

MEMORANDUM OF DECISION AND ORDER ON MOTION OF THIRD-PARTY DEFENDANT DAVID  
H. GOULD FOR SUMMARY JUDGMENT ON THE THIRD-PARTY COMPLAINT OF TRACE  
CONSTRUCTION INC.

This is a personal injury action arising from a fall by plaintiff Christine Arra at the Chatham Fish Pier Packing Building ("Building") in July 2004. As the plaintiff descended from the Building's observation deck and walked down the external stairway, she stumbled on the second or third step from the top, and then fell down the remaining stairs injuring her left hand and fingers.

Defendants Vine Associates, Inc. and Trace Construction, Inc. were involved in renovating the Building, beginning in November 2003.<sup>2</sup> This court has previously denied the Motions for Summary Judgment of the defendants Vine Associates, Inc. and Trace Construction, Inc. This court denied both summary judgment motions on December 23, 2008. Vine Associates, Inc. and Trace Construction, Inc. filed renewed motions for summary judgment which were denied by Memorandum of Decision and Order dated April 20, 2010. The court declines to further reconsider those motions.

<sup>1</sup> Vine Associates, Inc. and Trace Construction, Inc.

<sup>2</sup> The Town of Chatham contracted with Vine Associates, Inc. to provide engineering design services for the renovation project. Trace Construction, Inc. was the general contractor for the project.

The defendant Trace Construction Inc. brought a third-party complaint against its subcontractor David H. Gould who now moves for summary judgment. David H. Gould, a subcontractor of Trace Construction Inc., was responsible by contract with Trace for replacing joists for the observation deck.

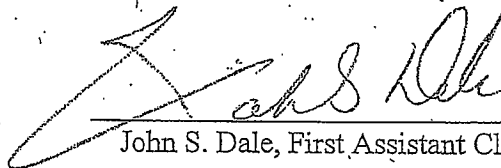
“Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Mass. R. Civ. P. 56(c), as amended, 436 Mass. 1404 (2002). See *Lambert v. Fleet Nat'l Bank*, 449 Mass. 119, 122-123 (2007); *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). ‘[A] party moving for summary judgment in a case in which the opposing party will have the burden of proof at trial is entitled to summary judgment if [the moving party] demonstrates ... that the party opposing the motion has no reasonable expectation of proving an essential element of that party's case.’ *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991).” *Correia v. Fagan*, 452 Mass. 120, 129 (2008). See also *Parent v. Stone & Webster Engineering Corp.*, 408 Mass. 108, 112-113 (1990).

Based upon a review of the Rule 56(c) materials filed with the motion and as supplemented following the hearing, the defendant David H. Gould has demonstrated that there is no genuine issue of material fact which may impose liability on him for the plaintiff's injuries. There is no evidence that Gould had any responsibility or duty with respect to the stairs in question. Nor is there any evidence that any negligence of Gould was a cause of or contributed to the injury of the plaintiff.

ORDER

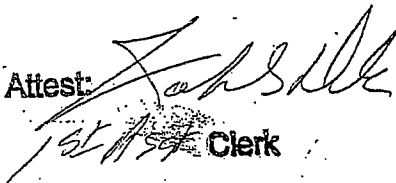
For the foregoing reasons, the motion of the third-party defendant David H. Gould is  
ALLOWED.

By the court (Quinlan, J.)

  
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John S. Dale, First Assistant Clerk

Date: January 6, 2011

A true copy, Attest:

  
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John S. Dale, First Assistant Clerk