Circuit Court for Baltimore City
Case No. 24-C-20-004964

UNREPORTED *

IN THE APPELLATE COURT

OF MARYLAND

No. 1402

September Term, 2022

Tom Brown Contracting, LLC

v.

Amador Vargas Cano

Wells, C.J.,
Leahy,
Alexander Wright, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: January 5, 2024

* This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In November 2010, Tom Brown of Tom Brown Contracting, LLC ("TBC") and Michael Thomas (together, "Appellants" or "Defendants") were hired by Candace Beattie ("Beattie") to renovate a building that would later house the Thames Street Oyster House ("Oyster House") located at 1728 Thames Street, in Baltimore City, Maryland. As part of that work, Appellants built an exterior staircase to provide access between the first, second, and third floors. The stairs included one long stair running from the ground level to second floor, and another set of stairs that ran up to and then from a landing located between the second and third floors.

On September 19, 2018, one portion of the stairs that ran from the second-floor landing to the intermediate landing halfway between floors two and three collapsed while Amador Vargas Cano ("Cano" or "Appellee") was on it. Cano sued Appellants in the Circuit Court for Baltimore City and alleged a single, separate, count of negligence against each. At trial, both sides relied heavily on expert testimony to contest whether Appellants' alleged use of "corbel blocks" caused the stairway's partial collapse. Some of Cano's exhibits depicted drawings and photos showing how Beattie and other non-parties tried to make the stairway safer during reconstruction. Appellants considered these exhibits to be evidence of "subsequent remedial measures" as defined under Maryland Rule 5-407, and initially objected to their admission into evidence.

Appellants moved for judgment at the close of the evidence, asserting that there was insufficient evidence to establish a breach of duty or causation, and the court denied the motion. The jury returned a verdict for Cano and, post-trial, the jury's $1.5 million award

was reduced to $845,000. Appellants filed a timely appeal to this Court and present five questions which we have condensed into the following two:[1]

I. Did the Trial Court commit error when it admitted subsequent remedial measure evidence which was introduced for the sole purpose of proving negligence and was substantially more prejudicial than probative?

II. Did the Trial Court commit error in denying defendants' motion for judgment where plaintiff's evidence of negligence was based entirely on speculation and the happening of the stairway's collapse, and where wood rot constituted a superseding cause of the collapse?

We hold that Appellants failed to preserve their challenge to the trial court's admission of what they characterize as evidence of subsequent remedial measures because they failed to either obtain a continuing objection or make new objections when testimony

[1] In their brief, Appellants present the following questions:

> "Did the Trial Court commit error when it admitted subsequent remedial measure evidence which was introduced for the sole purpose of proving negligence?"
>
> "Did the Trial Court commit error when it admitted subsequent remedial measure evidence that was substantially more prejudicial than probative?"
>
> "Did the Trial Court commit error in denying defendants' motion for judgment where plaintiff's evidence of negligence was based entirely on speculation?"
>
> "Did the Trial Court commit error in denying defendants' motion for judgment where plaintiff's causation evidence relied solely on the happening of the occurrence?"
>
> "Did the Trial Court commit error in denying defendants' motion for judgment where plaintiff's expert admitted to an independent, contributing cause of the collapse that was not attributable to the defendants?"

about the subsequent remedial measures was elicited at later points in the proceedings. We also hold that the trial court did not err in denying Appellant's motion for judgment because evidence of Appellants' negligence, as elicited through the testimony of Cano's expert witness, Douglas Gardner, was not based entirely on speculation, and the evidence presented on causation was not limited to the "happening of the stairway's collapse." Moreover, we hold that a reasonable factfinder could find that wood rot did not constitute a superseding cause of the collapse. Therefore, we affirm the judgment of the trial court.

BACKGROUND

A. The Complaint

Cano filed a complaint on November 30, 2020, in which he alleged that a portion of the exterior staircase of the Oyster House collapsed while he was on the "middle flight of stairs." For the alleged negligent construction of the stairway that caused the collapse, the complaint asserted two counts of negligence; one against Tom Brown Contracting, LLC; and, the other against Michael Thomas. According to Cano, Defendants "used unsafe mechanisms to attach the middle flight of stairs to the second floor and intermediate landing prior to the third floor." Specifically, the complaint alleged that "the stringers in the middle flight came to bear on a blocking element that was screwed to the header in the second-floor landing[,]" and the blocking element was "scabbed off the header 4 ½ inches from the face of the header." This corbelling "placed the screws between the landing [of the stairs] and the [corbel] blocking in tension and in shear [stress,]" thus causing the collapse.

The complaint sought damages for the bodily injuries Cano sustained from the fall, including medical expenses, lost time and income from work, lost earning potential, and pain and suffering. Both Defendants filed answers in which they denied liability for the accident.

B. Expert Witness Designations

Cano filed a designation of expert witnesses on June 9, 2021. It named Douglas A. Gardner ("Gardner"), P.E., of Gardner Engineering, Inc., as an "expert in the field of engineering" who would opine that the Defendants' "defective design, construction, and installation" of the staircase "was the proximate cause of the staircase failure." Gardner was deposed on October 29, 2021. During his testimony, Gardner spoke to his qualifications as an engineer, the materials he reviewed, and a site visit he made in preparation to provide an opinion in this case. He also explained his overarching theory that the staircase had not been built to code and that "the stair construction, the stringer, specifically, connection to the landing was not installed correctly and was the primary cause of the failure."

Defendants filed a supplementary disclosure of expert witnesses on February 8, 2022, in which they named Christopher W. Carlson ("Carlson"), P.E., SECB, of Carlson Structural Engineering, as an expert they expected to call at trial. Carlson was expected to testify that, among other things, "weather, lack of proper repair, and lack of proper maintenance" could have contributed to the collapse; that there was "[n]o evidence" that

Defendants caused the collapse; and that it was "reasonable" for a contractor to "rely on drawings and specifications" provided to them for the construction of the staircase.

C. Pretrial motions

The Defendants filed a motion for summary judgment on April 29, 2022. The motion asserted that Cano could not meet his burden on two specific elements of negligence, breach and causation. Among other things, the Defendants argued that Cano had "no evidence" the stairway's construction "fell below the standard of care for the industry" and that the testimony of Cano's expert witness, Gardner, "relie[d] on improper[] assumptions and other speculative bases[.]"

Causation could not be established, Defendants asserted, because Gardner's testimony was based on speculation and a series of assumptions. According to Defendants, Gardner admitted in his deposition that he did not know what load capacity the stair should have been able to hold and could not explain why the stairway collapsed when it did. Quoting *Peterson v. Underwood*, 258 Md. 9, 15 (1970), Defendants argued that "the mere violation of a statute [or ordinance] will not support an action for damages, even though it may be evidence of negligence, unless there is legally sufficient evidence to show the violation was the proximate cause of the injury."

Cano filed an opposition to the motion in which he argued that Gardner's opinions were supported by evidence that "far surpasses the requirement of 'meager evidence of negligence' that is sufficient to carry the case to the jury." Cano also distinguished his case from *Peterson* by pointing to expert testimony explaining that the "unnecessary . . . corbel

extensions" that were "improper[ly] attach[ed]" with "screws" caused the collapse due to the "engineering dynamics of load, rotational force and vertical shear implicated in such faulty construction." The motion was denied on June 27, 2022, following a hearing in the circuit court.

On the same day they filed their motion for summary judgment, the Defendants also filed a motion in limine to exclude Plaintiff's expert witness. They claimed that Gardner's expert testimony was inadmissible under Maryland Rule 5-702 because it lacked a sufficient "factual basis[.]" Defendants asserted that Gardner's testimony relied on unreasonable "speculation" and "improper assumptions[,]" and that because he had "nothing else of value to provide to a jury[,]" his testimony was inadmissible.

Cano filed an opposition, and on July 25, 2022, the parties appeared before a judge in the circuit court on the motion in limine. The judge denied the motion by order entered July 27.

D. The Trial

1. Plaintiff's Case

The parties appeared before a different judge on October 3, 2022, to select a jury and begin the trial. During his case-in-chief, Cano testified as well as seven other witnesses, including Candace Beattie, who owned Oyster House, and the engineering expert, Gardner.

On the first day of trial, Beattie provided testimony about the original construction of the stairway, what she saw on the day of the collapse, and her efforts to repair and rebuild the stairway after the collapse so that her restaurant could continue operating.

Beattie related that she originally purchased the row house in 2010 with the intention of converting it to a restaurant. She opened the Oyster House in July 2011.[2] Before the grand opening, Beattie undertook an extensive renovation (the "2010-11 renovation") because, as she described it, the building had been "a shell." First, Beattie "got plans" from the architect John Mariani ("Mariani"),[3] and then hired "Mike Thomas and Tom Brown" as "contractors to do the project[] start to finish." [4] Beattie testified that "the plans and the contractors" decided what materials would be used and "the contractors" decided "how each flight in that rear staircase would be attached to the landings." She did not dictate

[2] Beattie owned the building through the entity Norman Eats, LLC.

[3] Blueprints by architect John Mariani included plans for stairs.

[4] The contract was executed on November 19, 2010, by Beattie as a member of Norman Eats, LLC, and by Thomas and Brown individually, and Brown on behalf of TBC. The purpose of the contract was to "[b]uild out and renovat[e]" the row house "to be a Bar and Restaurant[.]" Under the scope of work, TBC and Thomas, "acting jointly and severally as Contractor[,]" were to "fully execute" the work described by the contract, which included the construction of an "exterior stair[.]" Work was to commence on "November 22, 2010" and "[s]ubstantial [c]ompletion" of the work was to be achieved within "150 days" of that date. In return for their work, Thomas and TBC would be paid "$445,000 Dollars[.]" The "Contract Documents" included "Blue Prints (drawings) dated March 08, 2010 and revised May 20, 2010[,]" and "Revised Structural Drawing S1, dated July 19, 2010."

what materials were used to build the stairs, other than a decision to use an iron railing instead of "steel cable[] railing[.]"

On September 19, 2018, Beattie "heard a sound" and "ran outside" Oyster House to find her dishwasher, Cano under "some wood." Cano appeared to be "unconscious for a moment" with "a huge gash in his head." Eventually, an ambulance took Cano to the hospital.

Beattie testified that, prior to the collapse, the stairway was left as originally constructed in 2010 with the exception of replacing "one board" and "one tread" on portions of the stairs that did *not* collapse, and the addition of certain "non-slip treads[.]" Otherwise, little maintenance was performed.

Within "a few days to a week" of the collapse, the stairs were "shore[d] up" so the restaurant could reopen in a reduced capacity. Beattie also reached out to the architect, Mariani, and others to undertake more comprehensive repairs. She did not reach out to the Defendants because their relationship "declined" during the 2010-11 renovation. According to Beattie, the Defendants did "a poor job in general, subbing out materials [and] leaving things undone."

Beattie testified that the architect Mariani provided new plans that "re-clarified how [the work] should have been done in the first place." Defense counsel objected when, immediately thereafter, Cano's counsel approached Beattie with two exhibits marked for identification as Plaintiff's 13 and 14. Exhibit 13 portrayed drawings for a "temporary stair shoring" made by a structural engineer, Adams Mirza ("Mirza"), dated September 25,

2018. Exhibit 14 contained new drawings made by the architect Mariani dated February 11, 2019. Defense counsel argued that these schematics portrayed unduly prejudicial and inadmissible evidence of subsequent remedial measures. The judge overruled the objection, noting that counsel failed to object to Beattie's prior statement, and instructed that it was necessary to "flesh out" Beattie's testimony before a decision on admissibility could be reached. At the close of Beattie's direct examination Cano moved to admit both exhibits and, following another objection, the judge "reserve[ed]" the issue. Both exhibits were admitted the next day after the judge found that neither exhibit would "confuse the jury[.]"

On cross-examination, Beattie admitted that the stairway passed all inspections during the 2010-11 renovation, and that on the day of the collapse she used the stairs "multiple times" without noticing any issues. She also described how, in February 2019, the company Manner Wood "demo[lished] a section [of the stairway] that [Beattie had been] told needed to be removed because it was buil[t] like the part that collapsed." Then, in April 2019, another company replaced "[a]ll of the second to the third floor" of the stairs, replaced "treads" from the first to second floors, and potentially replaced "the stringers."

The next day, October 4, 2022, Cano called his expert in structural engineering, Douglas Gardner.[5] According to Gardner, the Defendants' use of corbel blocks to support the stringers constituted a departure from Mariani's plans and a violation of the building

[5] Gardner was admitted as an expert in the field of structural engineering without objection. Gardner related that he had investigated "a few hundred" incidents involving structural failure, including at least one stairway collapse.

code and industry standards, and the collapse was caused by the use of insufficient fasteners in connection with the corbel blocks.

Gardner's conclusions were based on: (i) a "visual examination of the site" in April 2021, roughly two and a half years after the collapse; (ii) an examination of a January 2019 report with photographs prepared by the engineer Dominic Catanzaro ("Catanzaro Report"); (iii) other photographs, including photos "from the architect" and photos taken "by the owner shortly after the collapse"; and (iv) architectural drawings "from the original construction" and "repair drawings" following the collapse. He concluded the collapse was caused by:

> The manner in which the stair was installed, specifically the stringer,[6] which is the long board that holds up the treads, that board was attached to the landing in a manner which was not structurally sufficient by use of corbel blocks and screws.[7]

Gardner asserted that using corbel blocks to support the stringers did not conform to Mariani's original drawings. Those drawings "indicate[d]" that the stairway's stringers should be "continuous from landing to landing cut flush vertically[,]" thus "coming all the

[6] Gardner explained that a "stringer" is a "long board" that extends "from landing to landing[,]" and "connect[s] to [each] landing."

[7] Gardner also stated the collapse was "primarily the result of the corbel or shelf that was installed with insufficient fasteners into the header." Likewise, after the trial judge overruled an objection that Gardner's testimony was based on speculation, Gardner testified he did not "believe" the collapse would have occurred if Defendants "had cut the stringer the way the architect indicated and used the appropriate stringer hanger with fasteners[.]"

way to the header and being directly fastened to the header[.]"[8] Instead, the Defendants "sat" the stringers on a series of "corbel blocks," which consisted of "a bunch of two by six boards that were screwed into the face of the header[,]" thus forming "a shelf of some sort[.]"

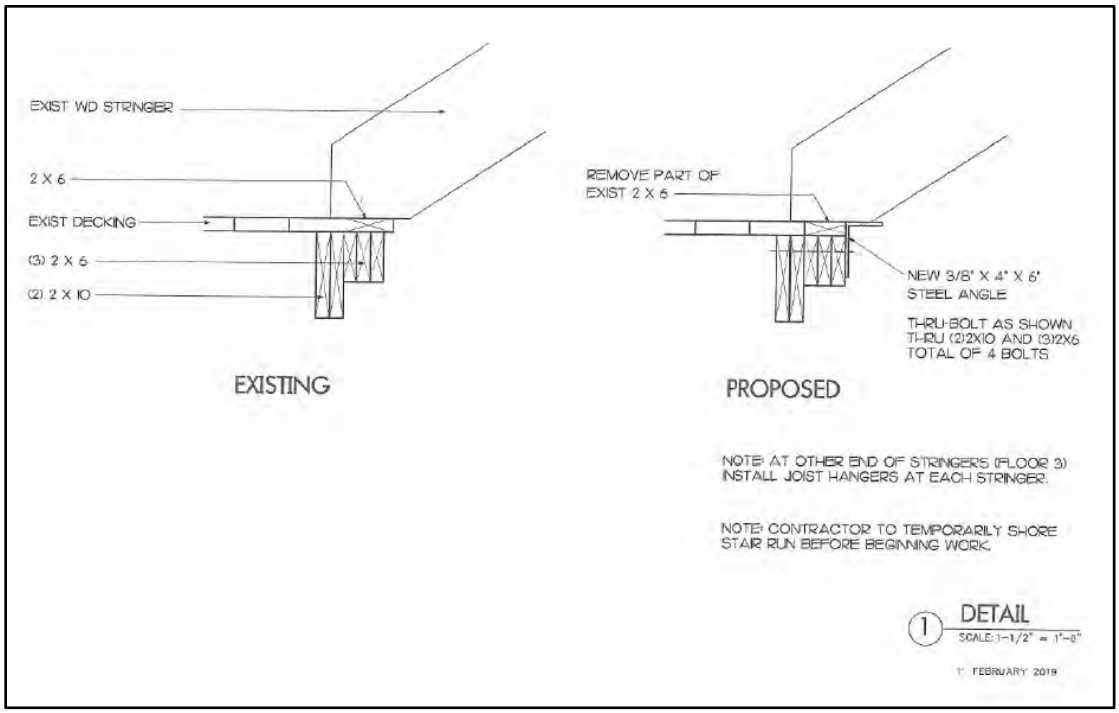
Gardner explained the "corbel[s]" were "two by six pieces of lumber that were screwed into the header with deck screws. And so a corbel is a protrusion. It's a piece of structure that sticks out from the face of the building." The corbels appeared to have been made by fastening "[t]hree" separate "2 by 6[]" boards together with "deck screws," thus creating a shelf of wood "[f]our and a half inches" wide. Although Gardner "d[idn't] know" whether each screw "ran through all three of the corbel pieces[,]" he opined that "based on the length of" the screws visible in photos in Plaintiff's Exhibit 15, he "would expect that [Defendants] used a shorter screw to put the first layer and the second layer and the third layer" rather than a fastener that went "all the way through" the corbels.

The use of corbel blocks, Gardner said, was not "appropriate" and did not "meet industry standards[.]" The industry standard that would conform to Mariani's original drawings, would "[t]ypically" be to "us[e] a hanger" to "meet[] the stringer flush to the header[.]"[9] If corbel *was* used, and *not* a hanger, the "appropriate way" to connect the stringer to the header would be to use "multiple" "lag bolt[s]" or "through bolt[s]" and not

[8] Gardner explained that the "header beam" is normally a "part of the structure of the landing" that "connect[s]" the stringer to the landing and "support[s]" the stringer.

[9] Gardner explained a "hanger[]" as a "piece of galvanized steel that gets fastened to the stringer and to the header to connect the two together."

"decking screws"; the bolts would "go through all of the pieces [of the corbel] . . . to support the structure" and thus "bolt[]" everything "together[.]" Gardner showed to the jury both a "typical deck screw" used to "hold . . . wood down" and a "half-inch lag bolt" that could be used to "go through" a corbel as part of a secure connection. Later, on redirect, Gardner explained that the drawing prepared by Mariani and admitted as Exhibit 14, showed how through bolts could be inserted through all of the blocks that comprised one of the corbels on the decking going to the third floor that survived the collapse.



(Plaintiff's Ex. 14)

When asked whether there were any building code requirements or industry standards "that mandate the use of through bolts for that kind of connection[,]" Gardner answered "not specifically for a corbel." He explained that it was "unusual" to use a corbel "to support a stringer[,]" and that, by comparison, "if this were a deck on a house, the code

does require . . . the structural piece that holds . . . the rest of the deck up [to be] bolted onto the house with a lag bolt." The building code in effect at the time also "indicate[d] . . . connections have to be able to withstand the applied loads[,]" but did not "specifically give details about" corbels. He stressed that the Oyster House having received "an occupancy permit" was not dispositive of whether the stairs were built "in accordance with the building code and industry standards[.]"

Gardner conceded that "deterioration" of the stairway's wood had "some contributory effect" in causing the collapse but maintained the "incorrect corbel installation" was the "primary cause[.]" The Catanzaro Report reached the same conclusion. Gardner maintained that wood rot would not have "come into play" if the Defendants used "through bolts" in conjunction with the corbel blocks.

To support the proposition that corbel blocks were used to support the stringer of the collapsed stair, Gardner pointed to "photo 7" of Plaintiff's Exhibit 15—a photo taken by the engineer Catanzaro in January 2019. The photo showed a "remaining piece of corbel block" that was still attached to the "header" beam of the "section of stair [that] . . . collapsed." It also showed a "shelf or corbel" on a "similarly" built portion of the stairway "going up to the third floor" that did not collapse. Gardner noted the Catanzaro Report also found "corbels" were used "to continue the stringer to the landing[.]"[10]

[10] Defense counsel objected to mention of Catanzaro's conclusions, asserting it was "prejudicial and hearsay." The court overruled the objection.

Defense counsel objected when Cano's counsel moved to admit two photos Gardner had taken in April 2021—Plaintiff's Exhibits 19 and 20—to support the theory a hanger should have been used to support the stringer instead of corbel blocks. The photos showed the then-repaired and rebuilt stairs. Defense counsel argued the photos were inadmissible because they were "unduly prejudicial" and showed "subsequent remedial measures[.]" The trial judge, however, determined that the policy behind Maryland Rule 5-407, which governs evidence of subsequent remedial measures, was inapplicable and overruled the objection after the following exchange:

> [Defense Counsel]: [T]hese photos show the *new build* . . . not by the defendants. These photos show hard board that was not specifically called for in any architectural plans. It shows a completely different staircase than was originally called for in the architectural plans. At a minimum, because there are extra stringers in the back. There's extra hardware in the back. And it's unduly prejudicial . . . to put these into evidence and suggest that . . . this is how it should have been done [during the 2010-11 renovation]. . . .
>
> [Cano's Counsel]: . . . . The basis of the case is these corbels were not the correct thing to use. They're very poorly conceived and . . . the industry standard is to use stringer hangers. *When the new contractor*, not [Defendants] . . . *came out to fix* [*the stairs*] *based on new drawings that were made for the fix, they used stringer hangers to make the connections*. *They used the industry standard*.
>
> [Defense Counsel]: New drawings—*new drawings that were not provided* to [Defendants] *when making the original staircase*. *This goes to subsequent remedial measures*, Your Honor. This is saying . . . it was done wrong and this [new construction] is how it should have been. That's exactly what the rules [prohibit]. That's exactly what the subsequent remedial measure rule says can't be done.
>
> [Cano's Counsel]: No. Remedial measures doesn't apply. . . . [Cano is] *not suing the building owner* and then saying, ha, you fixed the hazardous condition, now I've got you. You admitted it was wrong. [Cano is] *suing the contractors* who built [the stairs] for [the building owner]. . . .

> [Defense Counsel]: The rule doesn't say it only applies to the building owner.
>
> [Cano's Counsel]: Yeah. *It's not the public policy remedial argument* that—
>
> THE COURT: *No. I agree*. I think that's where my disconnect came from with the [prior objection concerning a] subsequent remedial repair. And I don't think that's what we're [sic] here—I don't have an issue with the line of the questioning. . . . [Defendants'] objection is overruled.

(Emphasis added). Exhibits 19 and 20 were admitted. Based on the photos, Gardner asserted the rebuilt portion of the stairway used "hangers" instead of corbel blocks, and stringers that were "flush" with the header. Elsewhere, "through bolts" were used.

To close his testimony on direct, Gardner stated that, within a "reasonable degree of engineering probability[,]" the "collapse was primarily the result of the corbel or shelf that was installed with insufficient fasteners into the header[,]" the original "use of corbel blocks" did not "compl[y]" with "applicable building codes and industry standards[,]" and if the Defendants had "cut the stringer the way the architect [Mariani] indicated and used the appropriate stringer hanger with fasteners[,]" the stairway would not "have failed." On cross-examination, Gardner explained that he was able to conclude the corbel blocks were originally fastened with deck screws because the photos taken by Catanzaro in January 2021 showed "the remaining deck screws that [were] left after the corbel detached[,]" and if through bolts had been used, they would have left "holes" in the surviving structure that would be visible in the photos.

Attempting to challenge Gardner's theory of what caused the collapse, defense counsel pointed out details in Mariani's repair plans (Plaintiff's Exhibit 14) that were absent in his original plans (Plaintiff's Exhibit 12). Gardner acknowledged new details in the repair that expressly required the addition of a "through bolt" and "steel angle" to a portion of the stairway that did not collapse. However, "[y]ou wouldn't need [that detail] on the original plan" because "the way the architect drew it, you would install it with a hanger[,]" which is the "industry standard." The "purpose" of these additions was "to correct and strengthen the corbel blocks that were installed at the time of [the] original construction[,]" because there was "concern[] about" the similarly built surviving portion of the stairway that "didn't fail[.]"

Cano testified to his work at Oyster House, his medical treatment, and the lasting effects of his injuries on his health and wellbeing. On cross-examination, he stated he did not feel "any shaking or wobbling" or hear "any noises" before the stairs collapsed underneath him.

2. The First Motion for Judgment

At the close of Cano's case,[11] the Defendants moved for judgment under Maryland Rule 2-519. Counsel argued that Gardner "assumed too much" in his testimony, and that Cano failed to demonstrate the "actual link" between an alleged deficiency and "the reason

[11] Cano also called several witnesses who testified to his injuries, including Dr. Vincent Culotta, Dr. Michael Sellman, Dr. Douglas Shepard, and his son, Jorge Garcia.

for the failure." Thus, the Defendants argued that Cano failed to present sufficient evidence that they breached any duty of care or to establish causation.[12]

In opposition, Cano's counsel argued that a *prima facia* case was established through Gardner's testimony. The trial judge "agree[d]" with Cano's counsel and denied the motion.

3. Defendants' Case

Carlson, an expert in structural engineering, testified that he did not believe Defendants used any corbel blocks to build the collapsed portion of the stairway. The "remnants of wood blocking" in Catanzaro's January 2019 photos did not represent "a [corbel] based on the geometry of the layout of the other stairs." There would "not have been any room" to use a corbel because it would have "been in the way" of the stringer. Although there was corbel blocking in areas of the stairway that did not collapse, in Carlson's view, the "conditions" in those areas were "not identical" to the collapsed portion of the stairway, and thus it did not follow that there would be "identical connections." Therefore, Carlson opined, the evidence did not demonstrate a "violat[ion]" of any "industry standard[.]"

[12] As in their prior motion for summary judgment, Defendants directed the court's attention to *Peterson v. Underwood*, 258 Md. 9 (1970) for the proposition a "mere violation of a statute will not support an action for damages, even though it may be evidence of negligence, unless there is legally sufficient evidence to show the violation was the proximate cause of the injury." (Citing *Peterson*, 258 Md. at 15 (quoting *Austin v. Buettner*, 211 Md. 61, 70 (1956)).

According to Carlson, decayed wood played a major role in the collapse. A photo taken by the engineer Catanzaro showed wood that "look[ed] decayed." Photos taken by Beattie shortly after the collapse showed "clearly decayed lumber" and screws that left "whatever [they were] attach[ed] to . . . behind" in a manner that suggested decay. Photos taken by the architect Mariani also showed "decay" in the vicinity of the second-floor landing. The stairs were situated in a "shaded alcove" where decay could occur "quickly" in wet conditions. Additionally, Carlson pointed out that Cano did not hear a "cracking sound" that, if the wood had been intact, would have preceded the collapse.

On cross-examination, Carlson said that there is "absolutely nothing wrong with using screws" to fasten a corbel block to a header, instead of a through bolt, so long as there are "enough screws . . . to carry [the] load." As to why, after the collapse, the architect Mariani indicated that through bolts should be run through the corbel blocks on the remaining stairs, Carlson "guess[ed] . . . it's because [Mariani] wanted to go overkill and did not want to get sued[.]" Moreover "if there [had been] a structural deficiency" in the stairway's original construction, a related issue would "show up in the first year or two[,]" not "eight years after things have a chance to decay[.]"

Next, Tom Brown, president of Appellant TBC, took the stand and related that he had not been contacted about the staircase since the 2010-11 renovation.[13] Specifically, Brown testified that TBC worked with Thomas to build the stairs after winning a bidding

[13] Between the testimony of Carlson and Brown, the Defendants called an additional witness, Dr. Richard Restak, who testified to Cano's injuries. We note that the transcript incorrectly indicates Dr. Restak was called by the Plaintiff.

process during which Beattie or Beattie's mother asked Brown to "[l]ower the cost" to construct the stairs.[14] The scope of Brown's work included "personally" working on the stairs' construction, "mak[ing] the work permittable[,]" and attending "inspections[.]" Brown recalled discussing the construction with the architect Mariani during his site-visits, including issues related to "lighting[,]" but Brown did not recall discussing the stairs with Mariani. Although Brown was "comfortable" with Mariani's plans, he emphasized that Mariani "design[ed]" the stairway. However, on cross-examination Brown admitted he "didn't do the same thing the architect showed on the plans" with respect to the stairway's "connections," stating he "tried to make [the connections] even better."

Brown acknowledged that he worked to address concerns about cost and various "fix[es]" that Beattie and her mother brought to his attention, most of which were "cosmetic." After the work was complete, no one contacted Brown to raise an issue or concern related to the stairs.

Thomas was the last witness to testify for the defense. Thomas talked about the high quality of the stairway's construction. He stated that he was not retained to maintain the stairs, and related how he was struck by evidence of wood rot in photos of the stairs.

Thomas said the stairs were "[a]bsolutely" compliant with applicable codes and industry standards. During construction, he routinely used the stairs to transport heavy equipment up and down. Once construction was complete, there was "[a]bsolutely" no

[14] On cross-examination, Plaintiff's counsel challenged Brown's ability to recall any conversations related to lowering the cost of the stairs. In a prior deposition, Brown stated he could not recall ever discussing the stairs with Beattie.

agreement for Defendants to "do any sort of maintenance[.]" Thomas reviewed photos of the stairway as it existed after the collapse sometime after he learned he was being sued, and he was struck by "wood [that] looked water logged, moist, damp, green and brown and discolored[.]" On cross-examination, Thomas said the stairs were made with "weather resistant wood[,]" as required by the building code.

4. Motion for Judgment at the Close of Evidence

Prior to closing arguments, the Defendants made their second motion for judgment. Counsel raised "all of the original" arguments made in the prior motion and urged that Cano failed to introduce sufficient evidence to show that any alleged defect *caused* the collapse, particularly considering Gardner's testimony that acknowledged wood rot contributed to the collapse.

In response, Cano's counsel pointed to testimony by Gardner that the stairway failed due to Defendants' use of decking screws to fasten the corbel blocks, which was unsafe and a violation of the building code and industry practice. Counsel also highlighted Gardner's testimony that if a "through bolt" or appropriate "hanger" was installed, the wood rot would not have factored into the collapse. The trial court denied the motion.

5. The Verdict

The jury found that the Defendants' negligent construction of the stairs caused Cano's injuries and awarded him $1,500,000 after deliberating for less than an hour. Defendants filed a timely appeal to this Court.[15]

DISCUSSION

I.

Subsequent Remedial Measures

A. Parties' Contentions

Before this Court, Appellants argue that the trial court erred by admitting evidence

[15] In accordance with Md. Rule 2-601(a)(2), the clerk of the court signed a final order setting forth the judgment on October 6, 2022. This order was entered on the docket on October 14, 2022. On that same day, Defendants filed a motion to reduce the amount of the judgment at 12:47PM, and a notice of appeal a minute later, at 12:48PM. The record does not provide the exact time the judgment was entered on the docket, but the docket number assigned to the judgment is lower than that assigned to Defendants' motion to reduce the judgment; for this reason, and because Appellee does not assert Defendants failed to file a timely appeal, it is reasonable to find the entry of judgment was first-in-time.

A motion to reduce a judgment, also known as a motion for "remittitur," is governed by Maryland Rule 2-534, which permits parties to make a "motion . . . within ten days after entry of judgment" to, *inter alia*, "amend the judgment, or . . . enter a new judgment." Here, Defendants incorrectly state their motion was filed under Maryland Rule 2-533, which governs motions for a new trial. Although Rule 2-534 permits a "motion to alter or amend a judgment [to be] joined with a motion for a new trial[,]" Defendants' motion did not request a new trial. The Maryland Supreme Court has instructed that "a notice of appeal filed prior to the withdrawal or disposition of a timely filed motion under . . . [Rule] 2-534, is effective" and "[p]rocessing of that appeal is delayed until the withdrawal or disposition of the motion." *Edsall v. Anne Arundel Cnty.*, 332 Md. 502, 508 (1993). Accordingly, Defendants' notice of appeal is treated as-if filed on May 5, 2023, and Defendants were not required to file a second notice of appeal. *See id.*

of subsequent remedial measures in violation of Maryland Rules 5-403 and 5-407.[16] At trial, Appellants objected to the admission of Plaintiff's Exhibit 13, a drawing by the structural engineer Mirza; and Plaintiff's Exhibit 14, a drawing by the architect Mariani. Both drawings were made for the purpose of fixing the staircase. Appellants' counsel claimed both exhibits constituted subsequent remedial measures and were unduly prejudicial. The trial judge reserved her ruling on the admissibility of these exhibits on the first day of trial, October 3, 2022, but admitted both the next day.

Appellants also objected to the admission of Plaintiff's Exhibits 19 and 20. Both exhibits were photos taken by Cano's expert, Gardner, in April 2021, well after the stairway was repaired. Exhibit 19 portrayed "the lower portion of the stair" that had not collapsed, and "the rebuilt portion of the stair that collapsed." Exhibit 20 was "a closeup of the second floor stair and some of the connection details at the header." Appellants' counsel argued both exhibits constituted subsequent remedial measures and were unduly prejudicial. Cano's counsel responded that the policy underlying Maryland Rule 5-407 did not apply

[16] Maryland Rule 5-407, "Subsequent Remedial Measures," provides:

> **(a) In General.** When, after an event, measures are taken which, if in effect at the time of the event, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event.
> **(b) Admissibility for Other Purposes.** This Rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as (1) impeachment or (2) if controverted, ownership, control, or feasibility of precautionary measures.

Md. Rule 5-407.

because the lawsuit was not against the building owner. The trial judge agreed and overruled the objections.

In their brief, Appellants invoke the general exclusionary rule against the admissibility of evidence of subsequent remedial measures, as contained in Maryland Rule 5-407(a), and claim that it is applicable whenever the social policy underpinnings of the rule are implicated. Appellants cite to cases from the federal courts and our sister states that they say support this view.[17] In short, they assert that social policy seeks to encourage, or at least not discourage, individuals to take steps in furtherance of added safety without fear those steps will be held against them in court. *See Tuer v. McDonald*, 347 Md. 507, 522 (1997). Here, Appellants argue that social policy is implicated because the non-party owner of Oyster House—whose agents undertook the remedial repairs—*could* have been sued in the instant case and *could* be sued in a future action for contribution.

Appellants also claim the trial court should have sustained their objections to the exhibits under Maryland Rule 5-403 on the grounds the probative value of the exhibits was substantially outweighed by the danger of unfair prejudice. Appellants lean on Gardner's

[17] Appellants also asserted our holding in *Blaw-Knox Construction Equipment Co. v. Morris*, 88 Md. App. 655 (1991), which held that evidence of subsequent remedial measures was admissible when the measure was undertaken by a non-defendant, *see id.* at 662, was superseded by the adoption of Maryland Rule 5-407 in 1993. Thus, Appellants claim the Rule would apply with equal force irrespective of the status of the party who undertook the subsequent remedial measure, i.e., whether the party who undertook the measure was also the defendant against whom evidence of the measure was being introduced. At oral argument, Appellants' counsel conceded *Blaw-Knox* was not overruled by the adoption of the Rule. In any case, because we find Appellants waived their objections related to Maryland Rule 5-407, we do not address the issue.

acknowledgment that there were no "specific[]" "building code requirements or industry codes" applicable to how the corbel blocks should have been installed, and argue his "sole basis" for concluding the "construction was negligent" was the "photographs and drawings of the new construction." The mere fact that the staircase was rebuilt differently was "probative of nothing[,]" particularly because the ex-post installation of "through bolts" and "hangers" was prompted by specifications in new drawings that were absent in the architect's original drawings. Additionally, Appellants point to authority indicating evidence of subsequent remedial measures is generally of "marginal relevance" and "low probative value."[18]

To the contrary, Cano asserts that evidence of subsequent remedial measures is broadly admissible against a defendant when those measures are undertaken by a non-party, and that Maryland Rule 5-407 did not bar admission of the exhibits in this case. As to Appellants' objections under Maryland Rule 5-403, Cano argues the trial court properly admitted the exhibits because any prejudice was not "unfair" and, even if there were any unfair prejudice, it did not "substantially outweigh" the probative value of the evidence.

In a footnote, Cano also argues that Appellants failed to preserve claims related to Maryland Rule 5-403 by "fail[ing] to object, continuing or otherwise, or to move to strike" at later points in the proceedings, which "constitutes a waiver" under Maryland Rule 2-

[18] *See, e.g.*, *Tuer v. McDonald*, 347 Md. 507, 523 n.8 (1997), *quoting* LEMPERT & SALTZBURG, A MODERN APPROACH TO EVIDENCE 194 (2d ed. 1982) ("[S]ubsequent remedial measures are of marginal relevance in assessing . . . culpability or fault, and . . . this marginal relevance is almost always substantially outweighed by the risk of jury confusion[.]").

517(a). This argument applies with equal force to Appellants' claims related to Maryland Rule 5-407.

B. Preservation

At the threshold of our analysis of the first issue presented on appeal, we must examine whether Appellants preserved their objections, under Maryland Rules 5-407 and 5-403, to the admission of Plaintiff's Exhibits 13, 14, 19, and 20. The record reveals that they did not.

C. Legal Framework

Maryland Rule 2-517 specifies the method for making objections to evidence in a civil case. The "equivalent rule" applicable in criminal proceedings is Maryland Rule 4-323. *Hall v. State*, 119 Md. App. 377, 390 (1998). Because these rules are identical, caselaw interpreting one generally applies equally to the other. Both rules provide:

> **(a) Objections to Evidence.** An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. *Otherwise, the objection is waived*[.]
>
> **(b) Continuing Objections to Evidence.** At the request of a party or on its own initiative, the court may grant a continuing objection to a line of questions by an opposing party. For purposes of review by the trial court or on appeal, the continuing objection is effective only as to questions clearly within its scope.

Md. Rules 2-517(a)-(b) & 4-323(a)-(b) (emphasis added).

As we stated in *Beghtol v. Michael*, "[i]n the absence of a continuing objection, specific objections to *each question* are necessary to preserve an issue on appeal." 80 Md. App. 387, 394 (1989) (emphasis added) (citing *Balt. & Ohio R.R. v. Plews*, 262 Md. 442,

470-71 (1971)); *see also Fowlkes v. State*, 117 Md. App. 573, 588 (1997) ("Cases are legion in the [Supreme Court of Maryland] to the effect that an objection must be made to each and every question, and that an objection prior to the time the questions are asked is insufficient to preserve the matter for appellate review.") (citation omitted).

Relatedly, a "motion *in limine* is not the equivalent of a continuing objection"; there is "no equivalent to a continuing objection." *Beghtol*, 80 Md. App. at 85; *see also CSX Transp., Inc. v. Pitts*, 203 Md. App. 343, 381 (2012) ("Denial of a motion in limine, without more, does not preserve for appellate review the propriety of later admitting specific evidence which falls within the scope of the issue raised by the motion.") (quoting *Billman v. State Deposit Ins. Fund Corp.*, 88 Md. App. 79, 114 (1991)). The grant of a continuing objection is "optional for the trial court" and an attorney's "offer" of a continuing objection is "without any effect unless the proposed continuing objection is expressly granted[.]" *Kang v. State*, 163 Md. App. 22, 44 (2005) (citations omitted). Any continuing objection that *is* granted is only effective "as to questions clearly within its scope." *Id.* at 44-45 (citing *Hall v. State*, 119 Md. App. 377, 390-91 (1998)).

In *Brown v. State*, 90 Md. App. 220 (1992), we demonstrated that an objection to an exhibit may be waived by either failing to "object each time a question concerning the [exhibit is] posed or to request a continuing question to the entire line of questioning." 90 Md. App. at 225. In that case, the appellant/defendant "made a motion in limine to suppress evidence of [a] handgun[,]" but the trial court denied the motion. *Id.* at 224. The appellant "apparently recognized" that a mere motion in limine would not preserve the issue for

appellate review, and he "made a timely objection" when the State sought to introduce the gun at trial. *Id.* at 224. But the appellant "failed to object when the evidence was introduced at subsequent points in the proceedings[,]" namely, when the appellant took the stand and was asked about the gun on cross-examination. *Id.* at 224-25. Because appellant failed to object to "each time a question concerning the gun" was asked, or "request a continuing objection[,]" the initial "objection [was] waived[.]" *Id.* at 225; *see also Snyder v. State*, 104 Md. App. 533, 556-57 (1995) (relying on *Brown* to hold an objection was waived).

Various exceptions to the principles discussed in *Brown* relieve counsel of the need to repeatedly reassert an objection, for example, where doing so "would only spotlight for the jury the remarks of the [opposing party]." *See State v. Robertson*, 463 Md. 342, 366-67 (2019) (quoting *Johnson v. State*, 325 Md. 511, 515 (1992)). In *Johnson*, the appellant/defendant objected to statements made during the State's closing argument that implied a guilty verdict was less final than a not guilty verdict due to the greater availability for an appellate court to review a guilty verdict. *Johnson*, 325 Md. at 513. The trial court overruled the objection and, "[t]hus encouraged," the prosecutor continued to make similar statements—this time without objection. *Id.* at 513. On appeal, the Supreme Court of Maryland held the subsequent failure to object did not waive the initial objection because:

> By overruling the objection, the judge demonstrated that he was permitting the prosecutor to continue along the same line. It was apparent that his ruling on further objection would be unfavorable to the defense. Persistent objections would only spotlight for the jury the remarks of the prosecutor. In the circumstances, the absence of a further objection did not constitute a

waiver.

Johnson, 325 Md. at 514-15 (citing Md. Rule 4-323(c)). In another, earlier case, that also addressed a failure to object during closing argument, the Supreme Court explained that "it was not necessary, in order to preserve [the just overruled objection] for review, to renew the objection by motion to strike or for a mistrial when the State's Attorney proceeded to make the argument which the court had *just allowed him to make*." *Shoemaker v. State*, 228 Md. 462, 467-68 (1962) (emphasis added). The principles reflected by *Johnson* and *Shoemaker* are not limited to the context of closing arguments. *See Robertson*, 463 Md. at 367 ("When the trial judge overruled defense counsel's objection, the State pursued a continuing line of questioning about the . . . incident [that prompted the objection]. Continuing objections would have been futile and would likely 'spotlight for the jury the remarks of the [State].'") (second alteration in original) (quoting *Johnson*, 325 Md. at 514-15).

Another exception to the principles discussed in *Brown* enables attorneys to attack evidence they previously objected to without fear of waiving their objection. *See Mayor & City Council of Balt. v. Smulyan*, 41 Md. App. 202, 219 (1979). In that case, we stated:

> [T]he oft-stated rule [is] that an objection to evidence may be deemed waived if the same evidence is permitted to come in subsequently without objection. *See*, for example, *State Roads Comm. v. Bare*, 220 Md. 91, 151 A.2d 154 (1959). However, there are some practical limits to what counsel must do, or refrain from doing, in order to preserve the objection. When a party makes a clear objection to specific evidence and that objection is plainly overruled, he is not required to play the ostrich and simply ignore the evidence, or its potential effect upon his case, for fear of losing his ground for appeal. He may cross-examine (or, in this instance, re-directly examine) the witness about the evidence, *Peisner v. State*, 236 Md. 137, 144, 202 A.2d 585 (1964),

> and make other reasonable efforts to show that the evidence, admitted over his objection, should nevertheless be discounted or disregarded by the trier of fact. This is all . . . quite different from soliciting (or failing to object to) the independent reception of the same evidence, from which a waiver may be implied.

Id.; *see also Schreiber v. Cherry Hill Constr. Co., Inc.*, 105 Md. App. 462, 483-84 (1995) (construing *Smulyan*).

Even if a continuing objection *is* granted, the protection afforded has limits. In *Hall v. State*, 119 Md. App. 377 (1998), we explained that a continuing objection, if granted, must generally be renewed if the improper line of questioning to which the continuing objection was granted is interrupted by other testimony or evidence:

> [I]f the improper line of questioning is interrupted by other testimony or evidence and is thereafter resumed, counsel must state for the record that he or she renews the continuing objection. McLain, *Maryland Evidence,* § 103.12. Otherwise, it would be impossible for an appellate court to determine whether the trial judge regarded the continuing objection as remaining in effect. An appellate court will reverse or vacate a judgment only for judicial errors. Unless it appears that the trial judge is or should be aware, when a question is asked and no objection is voiced, that counsel is relying on the continuing objection, the appellate court cannot conclude that the judge erred in not sustaining the "continuing" objection.

Id. at 390-91. Thus, in *Hall*, the appellant's "reliance on [a] continuing objection[,]" which *had* been granted by the trial court, was "misplaced" because after "the court granted appellant a continuing objection" appellee's line of questioning "shifted to a different topic" and, when "[t]he questioning later drifted back to the original topic" there "was no notice to the trial judge that appellant had resumed reliance on the previously granted continuing objection." *Id.* at 391.

We applied these same principles in *Choate v. State*, 214 Md. App. 118 (2013). In that case, the appellant/defendant anticipated that the prosecutor planned to elicit testimony from the victim's sister that, following an alleged assault, the victim promptly reported the assault to the sister. *Choate*, 214 Md. App. at 143. To head-off that expected testimony, the appellant objected on the ground "a report of sexual assault is not admissible except to rebut a defense argument that it was not prompt." *Id.* The court overruled the objection and, during the questioning that ensued, appellant requested and received a continuing objection. *Id.* "Five transcript pages after" the continuing objection was noted, which included "utterly unrelated" testimony, the prosecutor asked the sister about "what happened after [the sister] and the victim arrived at the hospital"; in response, and without objection, the sister indicated the victim spoke to the police at the hospital. *Id.* at 150.

The appellant was convicted of rape in the first degree and sexual offense in the first degree and, on appeal, he contested the admissibility of the above testimony. *See id.* at 125, 143-51. The State argued testimony concerning the victim's report to the sister was admissible as a prior consistent statement under Maryland Rule 5-802.1(d). *See id.* at 145. The State also argued the scope of the continuing objection did not encompass the later testimony about what happened at the hospital. *See Choate*, 214 Md. App. at 145.

We held that the victim's report to her sister was admissible under Maryland Rule 5-802.1(d) and agreed the later testimony, concerning events at the hospital, did not fall within the scope of the continuing objection. *See id.* at 145-50. Nonetheless, assuming the testimony concerning events at the hospital *did* fall within the scope of the continuing

objection, we explained that appellant failed to preserve any objection because "[c]ontinuing objections do not persist in perpetuity" and the "later testimony [about events at the hospital] was separated from the continuing objection" by several transcript pages of "utterly unrelated" testimony. *Id.* at 150-51. We held that "[t]he appellant's continuing objection was severed by the intervening testimony and not renewed" and therefore "appellant preserved no objection to this testimony and we shall not consider it on appeal." *Id.* at 151.

Finally, we note that if an objection *is* timely made *and* properly preserved, we will not reverse the trial court if the admission of the evidence in error "was harmless." *Schreiber*, 105 Md. App. at 484. Thus, in *Schreiber*, "[a]ssuming *arguendo* that the admission of [a] report was error, that error was harmless" because a witness "had already testified, without objection, concerning [the] contents" of the report. *Id.* at 484. Likewise, in *Yates v. State*, 202 Md. App. 700 (2011), we stated "[t]his Court and the [Maryland Supreme Court] have found the erroneous admission of evidence to be harmless if evidence to the same effect was introduced, without objection, at another time during the trial." *Id.* at 709 (citing *Robeson v. State*, 285 Md. 498, 507 (1979)).

D. Analysis

As previously noted, Appellants objected during trial to the admission of Cano's Exhibits 13, 14, 19, and 20, because each portrayed subsequent remedial measures that Appellants argued were inadmissible under Maryland Rules 5-407 and 5-403.

The first pertinent objections came during the testimony of Beattie, the owner of the Oyster House. Without objection, Beattie testified a company "came out and did the fix within a reasonable amount of time" of the stairway's collapse, and that she called the architect, Mariani, who drew up plans that "re-clarified how [the stairs] should have been done in the first place." Counsel for Cano handed Exhibits 13 ("temporary stair shoring" prepared by Mirza) and 14 (drawings of stringers by Mariani) to Beattie for identification, and Appellants' counsel objected to the exhibits being admitted to evidence. The judge overruled the objection, finding the line of questioning relevant to Beattie's prior testimony that two individuals "c[ame] out" to do the fix. Later in Beattie's testimony, counsel renewed her objection when Cano's counsel attempted to admit Exhibits 13 and 14 into evidence. The judge reserved on the ruling, and then admitted both exhibits the next day. The judge expressly found that neither exhibit would "confuse the jury in any way[,]" but otherwise did not elaborate on her reasoning.

Later, during the testimony of Gardner (Cano's expert), Appellants' counsel objected to the admission of Exhibit 19 (photo showing "the lower portion of the stair" and the "rebuilt portion . . . that collapsed) and Exhibit 20 ("closeup" photo "of the second floor stair and some of the connection details") again relying on Maryland Rules 5-403 and 5-407. The trial judge overruled the objections and appeared to agree with Cano's counsel that the policy underlying Maryland Rule 5-407 did not apply because the lawsuit was not against the building owner, but rather, the contractors who allegedly constructed the stairs

contrary to the architect's plans.[19] The judge indicated a similar logic was applicable to the earlier admission of Exhibits 13 and 14, stating "that's where my disconnect came from with the other [exhibits] when you had the subsequent remedial repair."

Gardner then testified that Exhibits 19 and 20 showed that, in rebuilding the staircase, "they didn't use corbel again[,]" the stringers were "connected flush with the header[,]" "hangers" were installed, and "through bolts" were installed. At no point did Appellants' counsel request a continuing objection or renew their objection. However, because this testimony directly followed Appellants' objection to the admissibility of Exhibits 19 and 20, we conclude that Appellants' initial objections were preserved under the precepts recounted above from *Johnson*, 325 Md. at 514; *Shoemaker*, 228 Md. at 467-68; and *Robertson*, 463 Md. at 365-66.

At points throughout the remainder of the trial, however, Appellants failed to object, or request a continuing objection, to questions and testimony that fell within the scope of Appellants' objections to Exhibits 13, 14, 19, and 20; namely, discussion of the subsequent remedial measures installed following the stairway's collapse.

On cross-examination, Appellants were permitted to ask questions about the contested exhibits, and evidence pertaining to subsequent remedial measure generally,

[19] In their brief, Appellants also assert the trial court overruled their objection to a statement by Beattie, who owned Oyster House, after she stated the architect drew new plans that "re-clarified how [the stairs] should have been done in the first place." A review of the transcript, however, plainly shows Appellants failed to object to this statement. Appellants *did* object to a question concerning Plaintiff's Exhibit 13; but, as the trial court noted, "there was no objection to [Beattie] making" the earlier statement.

without waiving their prior objections. *See Smulyan*, 41 Md. App. at 219; *Schreiber*, 105 Md. App. at 483-84. Appellants fatal error, however, was the failure to renew their objections, or obtain a continuing objection, during Cano's re-direct examination of his expert, Gardner, or Cano's later cross-examination of Appellants' expert, Carlson. During the re-direct of Gardner, Appellants failed to object to the following:

> [Cano's Counsel]: So this is—who prepared [Exhibit 14]?
>
> [Gardner]: This was prepared by the original architect.
>
> [Cano's Counsel]: Mr. Mariani[?]
>
> [Gardner]: Yes.
>
> [Cano's Counsel]: Okay. And there are measurements on there . . . . Are those . . . for new construction . . . .?
>
> [Gardner]: Everything on this drawing to the right is existing except for the *new angle* and the *through bolts*. So the . . . header beam and the . . . [corbel] blocking was existing . . . to what failed. So [Mariani was] concerned about [surviving stair with corbel blocking] because this one didn't fail so they won't [sic] repair it. And they came in and added the *through bolt* and *steel hanger*.
>
> [Cano's Counsel]: So [Exhibit 14 was] prepared then to *fix* [the defendant's] work?
>
> [Gardner]: *Correct*.

(Emphasis added). After Cano rested his case, Appellants called their expert, Carlson, to the stand, and Appellants failed to object to the following during cross-examination:

> [Cano's Counsel]: Can you take a look at this, please? This is Plaintiff's Exhibit 14. So you're saying that connection you thought was fine, correct? You see what 14 is? I'm going to proffer to you that, since this is already into evidence, this is the schematic, the drawing, done by the original architect of

those stairs to fix what was left of the stairs; do you understand that?

[Carlson]: Yes.

* * *

[Cano's Counsel]: Well apparently the architect thought [the existing construction] was so safe and according to code that he thought they should run a through bolt. You know what this is. It's a lag bolt, correct?

[Carlson]: That's a through bolt. Yes.

[Cano's Counsel]: That's it. And they should—they needed a through bolt [to] go all the way through the three [corbel blocks] and the two headers there with an angle iron in order to make it safe; isn't that right?

[Carlson]: I don't know what his design intent was there.

[Cano's Counsel]: It was to fix the existing structure, sir.

[Carlson]: I can't speak to why he did it because everybody—everyone will design the way that they feel they need to design. There is absolutely nothing wrong with using screws. You'd have to use enough screws in order to carry a load. That's what the building code requires . . . .

* * *

[Cano's Counsel]: If [the stairs] were safe, why did the architect determine you needed to put a through bolt through . . . the headers, through everything, with an angle iron on the back?

[Carlson]: I'm only guessing as to why he would do it . . . . [B]ecause he wanted to go overkill and did not want to get sued in the process.

Appellants failed to object when evidence, which they characterized as inadmissible evidence of subsequent remedial measures under Maryland Rule 5-407,[20] was introduced

[20] Although the exhibits at issue—various drawings and photographs—may show "subsequent remedial measures," we are careful to qualify that it is Appellants' characterization of the exhibits because we do not reach the question of whether the exhibits should have been excluded under Maryland Rule 5-407.

at subsequent points in the proceedings. Therefore, applying the relevant principles established in our decisional law, we must hold that the initial "objection[s] [are] waived, and the issue[s] [are] not preserved for our review." *Brown*, 90 Md. App. at 224-25; *Snyder*, 104 Md. App. at 556-57. Although the above excerpts of the transcript *specifically* concern only Exhibit 14, the *topic* and *issue*—the extent and nature of the subsequent remedial measures that prompted each of counsel's initial objections—falls within the scope of the objections made to Exhibits 13, 19, and 20, as well. *See Hall*, 119 Md. App. at 391. Indeed, even if a continuing objection *had* been granted, it would have been "severed" by numerous "transcript pages" of "utterly unrelated" and "intervening" testimony, and thus we would "not consider it on appeal." *Choate*, 214 Md. App. at 150-51.

Separately, but relatedly, we hold that any error in the trial court's admission of the exhibits was rendered harmless because the "contents" of the objected-to exhibits were separately introduced, without objection, by Gardner's testimony on re-direct and Carlson's testimony on cross. *See Schreiber*, 105 Md. App. at 484; *see also Robeson*, 285 Md. at 507; *Yates*, 202 Md. App. at 709. The jury could consider the subsequent remedial measures made to the stairway, including the "new angle[,]" "through bolts[,]" and "steel hanger[,]" *even if* all prior evidence of those measures was struck from the record. Therefore, any error was harmless.

II.

Motion for Judgment

A. Parties' Contentions

According to Appellants, the trial court erred by denying their motion for judgment because the testimony of Cano's expert relied on a "[s]eries of [a]ssumptions" and "guesswork" to conclude that the "staircase stringer was improperly attached to the landing." Appellants assert that Cano's expert was "unable to cite [any] support" for his testimony that Appellants violated the "[building] code or industry standards[.]" As to causation, Appellants assert that the motion for judgment should have been granted because Cano's expert relied solely on "the [h]appening of the [c]ollapse[,]" and because wood rot was an "independent cause of the collapse[.]"[21]

Cano points to exhibits and testimony in evidence to show that he presented legally sufficient evidence for a reasonable fact finder to conclude that Appellants' negligence proximately caused his injuries. Cano also disputes Appellants' assertions that his expert based their testimony on conjecture and the mere fact the collapse occurred; to the contrary, Cano insists that his expert offered a "direct explanation" that the collapse was "primarily" caused by "the corbel . . . that was installed with insufficient fasteners[.]"

[21] Appellants also assert that Cano's expert lacked a factual basis for his testimony and was therefore inadmissible. In his brief, Cano explains why this issue is not before this Court, and Appellants concede this point in their Reply.

B. Standard of Review

The Maryland Supreme Court articulated the appellate standard of review applicable to claims that a trial court erred in granting or denying a motion for judgment in *Steamfitters Local Union No. 602 v. Erie Insurance Exchange*, 469 Md. 704 (2020):

> We review a trial court's decision to grant or deny a motion for judgment *de novo*. [Citation omitted]. In a civil trial, if, considering the evidence in a light "most favorable to the plaintiff, a reasonable finder of fact could find the essential elements of the cause of action by a preponderance of the evidence standard, the issue is for the jury to decide, and a motion for judgment should not be granted." [Citation omitted]. An appellate court performs the same task as the trial court, affirming the denial of the motion for judgment, "if there is 'any evidence, no matter how slight, that is legally sufficient to generate a jury question.'" [Citation omitted]. In other words, "we will reverse the trial court's denial of a motion for judgment notwithstanding the verdict only if the facts and circumstances permit but a single inference as relates to the appellate issue presented." [Citation omitted].

Steamfitters, 469 Md. at 726; *see also Webb v. Giant of Md., LLC*, 477 Md. 121, 135-36 (2021) (comparing the standards of appellate review applicable to motions for summary judgment and motions for judgment).

C. Legal Framework

To challenge a trial court's denial of a motion for judgment on appeal, the party claiming the evidence was insufficient must have made a motion for judgment at the conclusion of the evidence, and that motion must "state with particularity all reasons why the motion should be granted." *Gittin v. Haught-Bingham*, 123 Md. App. 44, 48 (1998) (citations omitted).

The *Steamfitters* Court summarized the essential elements a plaintiff must prove to maintain a negligence action:

> In a negligence action, a plaintiff bears the burden of proving: "1) that the defendant was under a duty to protect the plaintiff from injury, 2) that the defendant breached that duty, 3) that the plaintiff suffered actual injury or loss, and 4) that the loss or injury proximately resulted from the defendant's breach of that duty." *Rowhouses, Inc. v. Smith*, 446 Md. 611, 631 (2016) (quoting *Hamilton v. Kirson*, 439 Md. 501, 523–24 (2014)).

Steamfitters, 469 Md. at 727.

In Maryland, a builder owes a duty of "due care"[22] to "persons foreseeably subjected to the risk of personal injury because of a latent and unreasonably dangerous condition" resulting from the builder's negligent "design, inspection, and construction of a building[.]" *Council of Co-Owners Atlantis Condo., Inc. v. Whiting-Turner Contracting Co.*, 308 Md. 18, 22 (1986). In this case, whether Appellants owed Cano a duty of care is not in dispute. Instead, we focus on the second element, breach of duty, and the fourth element, proximate cause, because those issues were raised in Appellants' motion for judgment.

A duty is breached where "conduct . . . falls below the standard of care owed." *Moore v. Myers*, 161 Md. App. 349, 375 (2005). When negligence is alleged by a professional, "expert testimony is generally necessary to establish the requisite standard of care[.]" *Sage Title Grp. v. Roman*, 455 Md. 188, 217 (2017) (quotation omitted). To

[22] Terms such as "due care," "ordinary care," and "reasonable prudence" are used interchangeably in Maryland's negligence jurisprudence. *See Balt. Transit Co. v. Prinz*, 215 Md. 398, 403-04 (1958).

establish breach against a professional, the plaintiff must "overcome[e] the presumption that due skill and care were used." *Crockett v. Crothers*, 264 Md. 222, 224 (1972) (citation omitted). Compliance with a statutory standard "is evidence of due care, but compliance with the standard does not preclude a finding of negligence for failure to take additional precautions." *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581, 602 (1985). Conversely, violation of a statute or rule may be "evidence of negligence." *Hector v. Bank of N.Y. Mellon*, 473 Md. 535, 559 (2021) (quotation omitted). Additionally, "Maryland law has long recognized that industry standards can be admi[tted] to show the applicable standard of care[.]" *CSX Transp., Inc. v. Pitts*, 430 Md. 431, 463 (2013) (citing *C & M Builders, LLC v. Strub*, 420 Md. 268, 282 (2011)).

To satisfy proximate cause, the "wrongful act or omission must be (1) a cause in fact, and (2) a legally cognizable cause" of the injury. *Wadsworth v. Sharma*, 479 Md. 606, 621 (2022) (quoting *Pittway Corp. v. Collins*, 409 Md. 218, 243 (2009)); *see also Mitchell v. Rite Aid of Md., Inc.*, 257 Md. App. 273, 316 (2023), *cert. denied*, 483 Md. 579 (2023) (stating that "[t]he negligence decision tree[,]" on the element of causation, "bifurcates into [these] two sub-elements") (citation omitted). Under the "but for" test, cause in fact is established if "only one negligent act is at issue" and the injury "would not have occurred . . . 'but for' the . . . negligent act." *Pittway Corp.*, 409 Md. at 244 (citations omitted). If two or more independent negligent acts are at issue, cause in fact may be established using the "substantial factor" test. *See id.* at 244-45. In other words, as we explained in *Mitchell*, "on the cause-in-fact prong, the plaintiff must show that the

defendant's conduct was a but-for cause of the plaintiff's injuries, or, if one of multiple causes, that 'it is more likely than not that the defendant's conduct was a substantial factor in producing the plaintiff's injuries.'" 257 Md. App. at 329 (quoting *Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476, 505 (2011)). A "familiar method" of proving cause in fact is testimony by an expert who "states that, based on facts in evidence, X was the efficient cause of the injury." *Rowhouses, Inc. v. Smith*, 446 Md. 611, 632 (2016) (quoting *Peterson v. Underwood*, 258 Md. 9, 17 (1970)). Both direct and circumstantial evidence, or "a combination of both[,]" may be used to "prove causation in fact[.]" *Id.* (citations omitted).

With respect to legal cause, this Court "asks whether the defendant, in light of considerations of fairness and social policy, should be held liable for the injury, even when cause in fact has been established." *Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 261-62 (2015) (quotation omitted). This question "often involves a determination of whether the injury was foreseeable." *Id.* at 262 (quotation omitted). To "determine[e] whether harm is foreseeable, Maryland appellate courts have adopted the view set forth in RESTATEMENT (SECOND) OF TORTS § 435 (1965) concerning proximate causation." *Id.* at 262 (citations omitted). Liability may be avoided if an "intervening" negligent act or omission "rises to the level of a superseding cause[.]" *Pittway*, 409 Md. at 247-53 (citations omitted); *see also McGowans v. Howard*, 234 Md. 134, 138 (1964) (describing superseding events as "unusual" and "extraordinary forms of negligent conduct"); Restatement (Second) of Torts §§ 442, 447 (Am. L. Inst. 1965).

Evidence of subsequent remedial measures is "not legally sufficient in and of itself to prove negligence." *Wilson v. Morris*, 317 Md. 284, 299 (1989), *superseded on other grounds*, Md. Rule 5-407 (adopted Dec. 15, 1993, eff. July 1, 1994), *as recognized in Tuer v. McDonald*, 347 Md. 507, 520-23 (1997).

D. Analysis

As mentioned above, we focus our analysis on the issues of breach of duty and proximate cause—the two elements that Appellants raised in their motion for judgment. *See Gittin*, 123 Md. App. at 48. Accordingly, as detailed below, we conclude the record establishes that: 1) contrary to Appellants' assertions, the testimony by Cano's expert, Gardner, was not based entirely on speculation; 2) the "happening of the collapse" was not the only evidence that negligent construction of the stairway caused the accident; and 3) although Gardner conceded wood rot played a limited role in the collapse, a reasonable factfinder could determine this did not rise to the level of a superseding cause.

1. Whether Plaintiff's Evidence of Negligence was Based Entirely on Speculation

Appellants argue there was not legally sufficient evidence to demonstrate they breached a duty of care because the testimony of Gardner, Cano's only liability expert, was based "entirely on speculation[,]" a "[s]eries of [a]ssumptions[,]" and "[u]nsubstantiated [i]ndustry [s]tandard [c]ontentions." We determine that these contentions are without merit, and that there was legally sufficient evidence for a reasonable fact finder to determine Appellants breached the applicable standard of care by using inappropriate fasteners to attach corbel blocks to the header of the stairway.

Cano's expert, Gardner, said that Appellants used corbel blocks to support the stairway's stringer and, to support this, he pointed to "photo 7" of Plaintiff's Exhibit 15, which showed a "remaining piece of corbel block" on the "section of stair [that] . . . collapsed." There was also a "shelf or corbel" on a nearby "similarly" built portion of the stairs that did not collapse. The presence of corbel blocks on the surviving flight of stairs indicated that they were also used to support the collapsed portion because the "stairs [were] the same dimension, same number of treads, same number of risers." Gardner noted that his conclusions matched those reached by the engineer Catanzaro in his earlier report.

According to Gardner, Appellants deviated from the industry standard by using corbel blocks. Mariani's drawings indicated that the stairway's stringers should be "continuous from landing to landing cut flush vertically"; instead, Appellants "sat" them on a series of "corbel blocks[.]" Use of corbel blocks was not "appropriate" and did not "meet industry standards[.]" The industry standard to make stringers "flush to the header" is to use "a hanger[,]" not corbel blocks. The "way the architect drew it, you would install it with a hanger[,]" which is the "industry standard." This statement is supported by the testimony of Brown, president of Appellant TBC; Brown acknowledged that he deviated from Mariani's plans for the stairway's "connections" to "tr[y] to make [them] even better."

If corbel blocks *are* used, Gardner explained that the "appropriate" hardware to connect the blocks to the header is "multiple" "lag bolt[s]" or "through bolt[s.]" This

hardware would "go through all the pieces [of the corbel] . . . to support the structure" and "bolt[]" everything "together[.]" If through bolts *had* been used, corresponding "holes" would have been visible in photos attached to the Catanzaro Report. Instead of using this hardware, photos showed that Appellants used "deck screws," which are not a "structural screw[.]" Gardner explained that, if "through bolts" were used, any present wood rot would not have "come into play[.]" Likewise, Gardner indicated that a hanger would form a more robust connection by stating that the stairway would not have "failed" if an "appropriate stringer hanger" was used.

Although no building code requirement or industry standard "specifically" mandated use of a lag or through bolt "for a corbel[,]" Gardner explained that it was an "unusual" practice to use a corbel "to support a stringer[,]" and, by analogy, "if this were a deck on a house, the code does require . . . the structural piece that holds . . . the rest of the deck up [to be] bolted onto the house with a lag bolt." As he highlighted, the code "indicate[s] . . . connections have to be able to withstand the applied loads."

Evidence of what Appellants characterize as subsequent remedial measures provided circumstantial evidence that Appellants breached the standard of care—but Cano did not rely solely on this evidence to establish breach. *See Wilson*, 317 Md. at 299. The architect Mariani and others used a "hanger" instead of corbel blocks in the reconstruction of the collapsed portion of the stairway and added "through bolts" and a "steel angle" to surviving corbel blocks. These facts support an inference that Mariani did not intend corbel blocks to be used in the original construction, and that through bolts were needed to make

the surviving corbel blocks safe. Gardner testified that the "purpose" of adding a through bolt and steel angle was "to correct and strengthen" the surviving corbel blocks in a portion of the stairway that did not collapse. The jury could compare plans for the rebuild, Plaintiff's Exhibits 13 and 14, with plans for the original construction, Plaintiff's Exhibit 12. In a similar vein, the company Manner Wood "demo[lished] a section [of the stairway] that [Beattie had been] told needed to be removed because it was buil[t] like the part that collapsed."

Plainly, Gardner's testimony was not based on mere speculation or guesswork. He based his testimony on his experience, a visual inspection of the site in April 2021, various photos taken after the stairway's collapse, the January 2019 report of engineer Dominic Catanzaro, and architectural drawings made for both the original construction and later repair of the stairway.

Of course, at trial Appellants maintained that there was nothing wrong with the stairway's original construction. Appellants' expert Carlson, for example, disputed whether Appellants used *any* corbel blocks to construct the collapsed portion of the stairway. Carlson also said that there is "absolutely nothing wrong with using screws" to fasten a corbel block to a header, instead of a through bolt, so long as there are "enough screws . . . to carry [the] load[,]" and that it was "overkill" for Mariani to indicate a steel angle and through bolts should be added to surviving portions of the stairway. Carlson "guess[ed]" Mariani added these details because he "did not want to get sued[.]" This

testimony was not dispositive, nor was the testimony of Appellant Thomas, who asserted that the stairs were "[a]bsolutely" compliant with applicable codes and industry standards.

"[C]onsidering the evidence in a light most favorable to the plaintiff, a reasonable fact finder" could conclude Appellants breached the standard of care despite countervailing testimony from Appellants' witnesses. *See Steamfitters*, 469 Md. at 726 (quotation omitted). Consequently, we hold that the question was properly submitted to the jury.

2. Whether Evidence of Causation was Limited to the Happening of the Occurrence, and Whether Wood Rot Constituted a Superseding Cause of the Collapse

We view Appellants' assertion that the happening of the collapse is the sole evidence that the negligent construction caused the collapse to be without merit. Moreover, on this record, a reasonable factfinder could conclude that wood rot was *not* a superseding cause of the collapse.

To begin, a reasonable person could find that the use of deck screws to attach the corbel blocks to the stairway's header was a "cause in fact" of Cano's injuries under the "but for" test. *See Pittway Corp.*, 409 Md. at 243-44. Gardner conceded wood deterioration had "some contributory effect" in causing the collapse, but also stressed that this would not have "come into play" if "through bolts" had been used to bolt the corbel blocks to the header. Likewise, Gardner asserted that if Appellants "cut the stringer the way the architect [Mariani] indicated and used the appropriate stringer hanger with fasteners[,]" the stairway would not "have failed." A reasonable fact finder could conclude, from Gardner's testimony, that the stairway would not have failed "but for"

Appellants' decision to use corbel blocks, and not a hanger; and "but for" the decision to fasten the blocks with deck screws rather than with through or lag bolts.

The same conclusion attains under the "substantial factor" test. *See Pittway Corp.*, 409 Md. at 244-45. Gardner asserted that the "incorrect corbel installation" was the "primary cause" of the collapse, while "deterioration" of the stairway merely had "some contributory effect[.]" Gardner based this opinion on his April 2021 site-visit, when he viewed wood that "looked like" it was "still original" with "deterioration" that was "minimal." Gardner noted that the Catanzaro Report reached the same conclusion. Appellant Thomas's testimony also supports an inference that wood rot was minimal; specifically, Thomas stated that the stairs were built with "weather resistant wood" as required by the building code.

At trial, Appellants disputed Gardner's theories and argued that wood rot played a much greater role in the collapse. Their expert, Carlson, said that decayed lumber was visible in various photos, and that the stairs were situated in a "shaded alcove" where decay could occur "quickly" in wet conditions. Carlson also said that Cano would have heard a "cracking sound" before the collapse if the wood had been intact, but he didn't hear it. In a similar vein, Thomas urged that when he first reviewed photos of the stairs after being sued, he was struck by "wood [that] looked water logged, moist, damp, green and brown and discolored[.]" Still, Gardner indicated that properly constructed stairs should not collapse "seven to eight years after they were built."

Appellants cite to *Peterson v. Underwood*, 258 Md. 9 (1970), to support their argument that Cano failed to establish a *prima facia* case of negligence against them because Cano's evidence was limited to the "happening" of the collapse. Appellants' reliance on *Peterson,* however, is misplaced because in sharp contrast to that case, Cano's expert provided substantial testimony on the issue of causation. In *Peterson*, a child died after an exterior wall collapsed. *Peterson*, 258 Md. at 11-12. The boy's surviving mother sued the current and previous owners of the property in the Circuit Court for Baltimore City, alleging negligent construction and negligent failure to inspect and repair the wall. *Id.* At trial, the proof relevant to the issue of causation included:

> 1) that the wall was built in 1959 in violation of the Baltimore City Building Code, 2) some time after it was built a clothespole with clotheslines running to the house was inserted into the 'cells' of the wall, and 3) in 1964 it collapsed, killing [the boy].

Id. at 16. The jury returned a verdict for the mother, but the trial judge granted the defendants' motion for judgment notwithstanding the verdict. *Id.* at 12.

On appeal, the Maryland Supreme Court held that there was "clearly sufficient" evidence for the jury to find the wall was "negligently constructed[,]" that there was a "fail[ure] to inspect the wall," and that the boy's death was "the result of the collapse[,]" but that "causation in fact" could not be established because the "lack of any evidence casually linking defendants' negligence to the injury suffered" was a "fatal defect[.]" *Id.* at 15.

The Court explained how the mother erred by relying "entirely on the inference" that the negligent construction of the wall must have caused its later collapse:

> If the negligently constructed wall had fallen immediately or soon after its construction, the inference of causal relation would be reasonable. Here the wall stood apparently unchanged and stable for four and a half years after construction. The most likely inference would . . . be that with such a length of time negligent construction was not the proximate cause of the collapse.

Id. at 19. To permit the jury to "attempt to answer the question of what caused the wall to fall four and a half years after its construction without any evidence as a guide would permit the rankest kind of guesswork, speculation and conjecture." *Peterson*, 248 Md. at 21 (citation omitted).

The Court noted that circumstantial evidence is not "inherently insufficient" to prove causation but that the evidence must "amount to a reasonable likelihood or probability rather than a possibility." *Id.* at 17. However, in *Peterson* the "glimmering of a causal connection" was "extinguished by the passage of time" and, thus, "direct proof [was] necessary to reillumine the relationship." *Id.* at 19. Importantly, the Court recognized that "time or space alone will [not] insulate a negligent wrongdoer from liability" and that "[w]ithout other types of direct proof, the *testimony of experts* most frequently corrects this deficiency." *Id.* at 19-20 (emphasis added). But in *Peterson*, the mother's expert gave testimony that "amount[ed] to no more than that the original construction of the wall was negligent"; his testimony "did not give his opinion on *what caused the wall to fall*[.]" *Id.* at 18 (emphasis added).

We reached a contrary holding in *Marrick Homes LLC v. Rutkowski*, 232 Md. App. 689 (2017). There, we held that the issue of causation was "properly submitted to the jury" where a plaintiff/homeowner alleged a negligently installed safety guardrail caused his

injuries.[23] *See Marrick Homes*, 232 Md. App. at 711-14. Specifically, in that case the plaintiff presented the following evidence:

> The appellee's home construction expert . . . testified that the use of finishing nails rather than screws to affix the guardrail to the building was "why [the guardrail] failed." [The expert] explained that the use of the finishing nails as fasteners was "the big problem with the railing." In addition, the appellee's engineering expert . . . testified that the safety guardrail would not have been able to withstand 200 pounds of force, as required by the building code, on the day it was built. [The engineering expert] estimated that the amount of weight [plaintiff] would have pressed against the guardrail when he leaned against it . . . was between thirty-five and forty-five pounds. Furthermore, [the engineering expert] identified the place where finishing nails were used as the point of failure for the guardrail. Indeed, [defendant's] engineering expert . . . agreed that the place where finishing nails were used was the point at which the guardrail failed.

Id. at 713-14. We concluded that *Marrick Homes* was "not a case like *Peterson*" where the jury was "tasked with determining the cause of an incident 'without any evidence'" on causation. *Id.* at 714 (quoting *Peterson*, 258 Md. at 21).

The instant case, factually closer to *Marrick Homes*, is to like effect. As discussed above, Cano's expert repeatedly testified that the use of insufficient fasteners to install the corbel blocks caused the stairway's collapse. Although Cano's expert did not, for example, testify to the amount of force that Cano exerted on the corbel blocks while he was on the stairs, the testimony he *did* provide went far beyond that in *Peterson*. Significantly, to the degree Cano sought to rely on the "inference" that the collapse was caused by the prior negligent construction, Cano's expert "correct[ed] this deficiency." *See Peterson*, 258 Md.

[23] Only one plaintiff/homeowner was injured in *Marrick Homes*; however, his wife also joined the suit, alleging a loss of consortium. *See Marrick Homes*, 232 Md. App. at 696.

at 19; *see also Marrick Homes*, 232 Md. App. at 713 ("'[S]light proof is all that is necessary' for the element of causation to be submitted to the jury[.]'") (quoting *Peterson*, 258 Md. at 20).

Finally, there was also legally sufficient evidence for the jury to find that Appellants' negligence was the legal cause of Cano's injuries because it is foreseeable that use of insufficient fasteners to support the stringer of a staircase may cause its later collapse and, in so doing, injure anyone who might be on or under the stairs. Gardner explained that the collapse was caused by "[t]he manner in which the stair was installed, specifically the stringer, which . . . was attached to the landing in a manner which was *not structurally sufficient* by use of corbel blocks and [deck] *screws*." (Emphasis added). This construction did "not meet industry standards" and was "inappropriate"; the industry standard to make a stringer "flush to the header" is to use "a hanger[,]" not corbel blocks. Although no "specific[]" building code provision or industry standard mandates use of a through bolt when corbel blocks are used to support a stringer, Gardner explained that use of a corbel for this purpose was "unusual[,]" that the 2009 international building code *did* require that "connections . . . be able to withstand the applied loads" and that, by analogy, "if this were a deck on a house, the code does require . . . the structural piece that holds . . . the rest of the deck up [to be] *bolted* onto the house[.]" (Emphasis added). In the event corbel blocks *are* used in place of a hanger, Gardner said that the "appropriate" hardware to form the connection to the header would be "multiple" "lag bolt[s]" or "through bolt[s.]" Instead, Appellants used "deck screws," which are not a "structural screw[.]" Gardner's testimony

demonstrated that a relatively weak connection is formed when a corbel block is attached to a stairway's header using deck screws, as compared to the connection formed when a hanger is used or, alternatively, the connection formed by a corbel block that is fastened using multiple through bolts. Gardner stated the wood rot would not have "come into play" if "through bolts" were used, and the stairway would not have "failed" if an "appropriate stringer hanger" was used.

From these facts, a reasonable fact finder could conclude that Appellants' use of deck screws to connect the corbel blocks fell below industry standards and that the failure to use a more structurally sound technique foreseeably risked the safety of individuals who, in the future, would use the stairway.

To be sure, evidence of subsequent remedial measures provided circumstantial evidence that the danger was foreseeable; however, Cano did not rely solely on this evidence to establish proximate cause. *See Wilson*, 317 Md. at 299. In particular, Gardner said that Mariani added a "through bolt" and "steel angle" "to correct and strengthen the corbel blocks that were installed at the time of [the] original construction[,]" because there was "concern[] about" those similarly constructed portions of the stairway that "didn't fail[.]"

"[I]f there is any evidence, no matter how slight, that is legally sufficient to generate a jury question[,]" then a motion for judgment must be denied. *See Steamfitters*, 469 Md. at 716 (quotation omitted). We hold that Cano presented legally sufficient evidence on the

issues of cause in fact and legal cause; therefore, the trial court properly denied the Appellants' motion for judgment. *See Steamfitters*, 469 Md. at 726. (quotation omitted).

CONCLUSION

We hold that Appellants failed to preserve their objections to contested exhibits under Maryland Rules 5-407 and 5-403, and there was legally sufficient evidence on the issues of breach of duty and proximate causation for the case to proceed to the jury. Therefore, we affirm the judgment of the trial court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.