No. 25-5265 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JESSICA M. GRAULAU MALDONADO,
Appellant

v.

ORANGE COUNTY PUBLIC LIBRARY SYSTEM,
Appellee

On Petition For Writ of Certiorari
To the Florida Sixth District Court of Appeal

PETITION FOR WRIT OF CERTIORARI

BRIEF FOR APPELLANT

Jessica M. Graulau Maldonado,
Appellant
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QUESTION PRESENTED

The Supreme Court of Florida denied review and rehearing due lack of jurisdiction due state appellate court did not provide any basis explanation on its decision. The state court of appeal affirmed a state trial court's decision based on federal case law dismissing a negligence tort premises jury case under federal summary judgment standard. The trial court interpreted and construed a federal precedent as if provide discretion to grant summary judgment under federal standard base on an objected video in the existence of genuine dispute of material fact after determined credibility of join eyewitness and weighed on evidences.

The question presented is:

Whether in holding that under federal summary judgment standard there is discretion to dismiss a jury negligence claim after determine credibility of witness and weigh on evidence regardless any genuine dispute of material facts, does the trial court's decision violate due process right under Fourteenth Amendment in direct conflict with this Court's decisions in *Celotex Corp. v. Catrett*; *Anderson v. Liberty Lobby, Inc.*; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*; *Scott v. Harris*; and contrary to Florida Supreme Court opinion *McCain v. Florida Power Corporation*?

RELATED CASES

- *Jessica M. Graulau Maldonado v. Orange County Public Library System,* No. 2017-CA-6079, Florida 9th Judicial Circuit Court. Judgment entered June 2, 2023.
- *Jessica M. Graulau Maldonado v. Orange County Public Library System,* No. 6D23-2807, Florida 6th District Court of Appeal. Judgment entered October 15, 2024.
- *Jessica M. Graulau Maldonado v. Orange County Public Library System,* No. SC2025-0619, Supreme Court of Florida. Judgment entered May 6, 2025.
- *Jessica M. Graulau Maldonado v. Orange County Public Library System,* No. 5D18-2800, Florida 5 District Court of Appeal. Judgment entered May 31, 2019.

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Florida Sixth District Court of Appeal per curiam decision entered without opinion [Pet. App. 1a] and mandate [Pet. App. 2a], are both unpublished. Order [Pet. App. 3a] and Judgment [Pet. App. 7a] issued by Florida Ninth Judicial Circuit are both not for publication. Florida Fifth District Court of Appeal Per Curiam Opinion [Pet. App. 11a] and Mandate [Pet. App. 14a] are published.

BASIS OF JURISDICTION

1. *Appellate Jurisdiction; Conflict of Law; Basis & Balance Tests.* The decision of Supreme Court of Florida [Pet. App. 9a] entered on May 6, 2025 denying review and rehearing with legal basis explanation qualifies as a final judgment to provide jurisdiction. This petition is proper after first the Florida's Sixth District Court of Appeal on October 15TH, 2024 decided the issues in per curiam affirmance [Pet. App. 1a] without state any basis explanation. *See Clay v. Sun Insurance Office Ltd.,* 363 U.S. 207, 212 (1960)(before the Court pass over the question first the court of appeal must decided the issues). Here petitioner invokes the Court's appellate jurisdiction under 28 U.S.C. §1257; U.S. Const. Art. III, §2, Clause 2 to review the decision of state court of appeal affirming state trial court's final order [Pet. App. 3a] and judgment [Pet. App. 7a] which is not independent applying federal summary judgment standard resting on grounds based on federal case law without any state-law appearing on the face of the order [Pet. App. 3a] as confirmed in hearing transcript [Pet. App. 236a, Tr. p. 14 lns. 21-25]. *See Glossip v. Oklahoma,*

604 U.S. ___ (2025)(granting review due state law ground is not clear from the face of the opinion); *Michigan v. Long,* 463 U.S. 1032 (1983)(granted review due state court's decision rested even in part upon federal grounds). Jurisdiction is sought to resolve conflict with relevant decisions from this Court and from the Supreme Court of Florida establishing principles governing federal summary judgment standard which is a matter of great public importance that requires the Court's supervisory intervention. *See Alden v. Maine,* 527 U.S. 706 (1999)(granted review when conflict between court's relevant decisions); *Wilsonart, LLC v. Lopez,* 308 So. 3d 961, 964 (Fla. 2020)(summary judgment standard is a question of great public importance). There is no contention over Florida comparative negligence system and tort negligence law applicability under federal summary judgment standard that withstand the jurisdictional "rational basis test". A review will not disrupt the approved "balance test" between federal-state courts given by the Congress authority under 18 U.S.C. §242 that prohibit state court from deprive fundamental constitutional rights of due process and equal protection of law.

2. *Stare Decisis; Federal Question Jurisdiction; Grable Rule.* The decision from state lower tribunal rested on federal law applying *stare decisis* which is a "fundamental principle" subject to review. *See United States v. Wells,* 85 M.J. 154 (2023)(granted review under stare decisis doctrine to promote consistency in legal principles); *State v. Dwyer,* 332 So. 2d 333 (Fla. 1976)(stare decisis is a fundamental principle of Florida law). There is concurrent federal question jurisdiction under

Grable Rule due the contested federal issues are embedded in state-law, *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.,* 545 U.S. 308 (2005)(federal question jurisdiction will lie over state-law claims between non-diverse parties that contest substantial federal issue).

3. *State Waiver Immunity; No Certification Jurisdiction; Forum.* There is personal jurisdiction over the State of Florida as party acting through its lesser municipal non-for-profit corporation in this tort negligence claim filed under waiver immunity statute that provides for the Court's review having appellate jurisdiction. *See* Florida Statute §768.28 (Florida waive sovereign immunity in tort actions with right to appeal any determination to the court with appropriate jurisdiction); *Alden Id.* (sovereign immunity does not bar suit against state's lesser entities such municipal corporations). Defense claiming sovereign immunity is barred per court's order dated 12/17/2019 on record [Pet. App. 15a, R. 98-99]. Also there is waiver by litigation after the State invoked federal summary judgment standard asserting grounds under federal case law within motion [Pet. App. 107a, p. 4] and in oral argument at hearing [Pet. App. 236a, Tr. p. 7 lns. 20-25]. *See Lapides v. Board of Regents*, 535 U.S. 613 (2002)(would be inconsistent when during litigation invoke federal ground contending it extent to the case and then claim immunity). There is no certification jurisdiction due this Court is the only federal forum available for review the federal issues presented, and there are controlling precedents from Supreme Court of Florida that settled the matter pertaining state law. *See Doe v.*

Pryor, 344 F. 3d 1282, 1286 (11th Cir. 2003)(U.S. Supreme Court is the only federal court whose decision bind state courts); Fla. Sat. §25.031 (certify question of law determinative in a cause when there are no controlling precedents from Supreme Court of Florida). Certiorari review on merits would be in aim of the Florida executive "constitutional duty to take care that the laws be faithfully executed", quoting Florida Governor Ron DeSantis Executive Order No. 23-197 (regarding investigation of former circuit judge Jeffrey L. Ashton who made final judgment in this case). Service has been made upon the office of Florida's Governor and Attorney General. This petition is not frivolous made in aid of the Court's appellate jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1. No state shall deny to any person within its jurisdiction the equal protection of the laws nor shall any state deprive any person of property without due process of law.

§768.28 Fla. Stat.-Florida's Tort Negligence Law. (1) Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury caused by the negligent or wrongful act or omission--(5) The state and its agencies shall be liable for tort claims.

§768.81(2) Fla. Stat.-Florida's Comparative Negligence System. In negligence action contributory fault chargeable to the claimant does not bar recovery.

Rule 56-Summary Judgment, Federal Rules of Civil Procedure. No discretion to grant summary judgment in the existence of genuine dispute as to any material fact.

Rule 1.510-Summary Judgment, Florida Rules of Civil Procedure. The rule is amended to adopt Fed. R. Civ. P. 56. The "federal summary judgment standard" refers to the principles announced in *Celotex Corp. v. Catrett*; *Anderson v. Liberty*

Lobby, Inc.; and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, and case law interpreting Rule 56.

Celotex Corp. v. Catrett, 477 U.S. 317 (1986)(Summary judgment cannot be entered in the existence of genuine dispute as to any material fact)

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)(At summary judgment state a judge should not weight on evidence for determine the truth of a matter that is within the jury's functions)

Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)(Genuine dispute of material fact exist when record taken as whole could lead for a reasonable jury to find for nonmoving party)

Scott v. Harris, 550 U.S. 372, 380 (2007)(courts are required to view the facts and draw reasonable inferences in the light most favorable to the party opposing the summary judgment motion--a video cannot be used for summary judgment if there are allegations or indications of such video been doctored or altered in any way, or there is any contention the video depict different of what actually happened)

Wilsonart, LLC v. Lopez, No. SC19-1336 (Fla. Dec. 31, 2020) [Complete verbatim citation appears on Pet. App. 326a]

In re: Amendments to Florida Rule of Civil Procedure 1.510, No. SC20-1490 (Fla. Apr. 29, 2021) [Complete verbatim citation appears on Pet. App. 309a]

STATEMENT OF THE CASE

I. Relevant Facts

1. *Background and Nature of the Case.* Petitioner (hereinafter Mrs. Graulau) visited the southeast branch of Respondent Florida's Orange County Public Library System (hereinafter Library); during this visit while she was making copies at the Library's photocopier (hereinafter Copier) the bottom drawer's door of the Copier suddenly flew opened in her path causing her to trip and fall without any warning [Pet. App. 3a p. 1 par. 2]. The Florida Fifth District Court of Appeal held that this

claim sufficiently established *prima facie* case for negligence [Pet. App. 11a]. After the fall, the Library's manager Mrs. Maritza Alicea (hereinafter Mrs. Alicea) approached Mrs. Graulau and provided with ice pack first aid medical assistance for her blue/purple bruises on both knees as the manager reported in join evidences Incident Report [Pet. App. 152a Ex. 3]; and Patron Accident Report Form Submission [Pet. App. 152a Ex. 4]. These reports were prepared by the manager on her own testimony based on what she saw on the Library's video without any assistance from or information provided by Mrs. Graulau as testified during continue deposition [Pet. App. 280a Ex. 1 Tr. p. 55 lns. 5-8] and at hearing [Pet. App. 236a p. 27 lns.11-16] also declared in Defendant's Verified Answers to Plaintiff's First Interrogatory [Pet. App. 15a R. 250-264 Att. 1 par. 4-5]. Record shows Mrs. Alicea is also a join eyewitness called to testified at trial listed in Defendant's Witness Schedule [Pet. App. 191a Notice Dated 4/24/2023 Att. 4 par. 1].

2. *Regulations On Florida's Municipal Corporation.* As a state government municipally corporation the Library is required to maintain a contract to provide maintenance for the Copier that must obtain through bid auction. Prior Mrs. Graulau's incident, the Library's obtained a contract [Pet. App. 191a Ex. 1] with the company Kyocera (d.b.a. EGP, Inc.) for a term from March 1, 2007 to February 28, 2010 providing that the Library is responsible to request maintenance and inspections for the Copier as judge conceded at hearing [Pet. App. 236a Tr. p. 42 lns. 1-4]. In addition this contract provides that it cannot be automatic renewed neither

can be renewed for more than two additional one-year terms [Pet. App. 191a Ex.1 p. 3 par. 2]. Library allowed this contract to expired on February 28th of 2013 [Pet. App. 191a Ex. 4], then regardless continued operating the Copier for public use without having a valid contract to provide maintenance for more than 20 months before Mrs. Graulau incident occurred on November 7th, 2014. Despite received prior knowledge about problems with the Copier reported by the Library in Work Order List [Pet. App. 152a Ex. 5 [2]], Library's never requested a single inspection or any maintenance for the Copier as informed at hearing [Pet. App. 236a p. 42 lns. 1-3] and declared by Kyocera's President[3] in statement listed in Plaintiff's Schedule of Evidence [Pet. App. 15a R. 1350-1353 Ex. O]. Resulted from Mrs. Graulau's incident, the Library placed a work order for repair describing the Copier's problem: "Copier door came open on it's own and tripped a patron. Door has been tapped shut", as shows in Work Order List [Pet. App. 152a Ex. 5]; admitted by the Library in Defendant's Response to Request for Admissions [Pet. App. 15a R. 461-463 p. 2 par. 4]. The Kyocera Repair Invoice [Pet. App. 152a Ex. 6] shows the Copier was repaired resulted from Mrs. Graulau's incident which is conceded in the court's final order [Pet. App. 3a p. 2 par. 12] and at hearing [Pet. App. 236a Tr. p. 41 lns. 9-10]. Thereafter, another repair was requested for subsequent similar problems with Copier's loose parts described as: "Copier both trays are loose & won't stay in place",

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[2] Work order description 8/13/2012: "Copier has cut wires"; 9/10/2012: "tray moves while printing".

[3] Record show Kyocera's President was called by Mrs. Graulau to testify at trial by court's subpoena [Pet. App. 15a R. 749-750, 1184].

as shows Work Order List [Pet. App. 152a Ex. 5]; and Kyocera Repair Invoice [Pet. App. 152a Ex. 7] proving the Copier was repaired again.

II. Procedural History

Relevant Decisions Below; Defenses; Discovery; Final Disposition. The Florida Fifth District Court of Appeal reversed [Pet. App. 11a] trial court's order [Pet. App. 15a R. 1617-1619] granting Library's motion to dismiss under Fla. R. Civ. P. Rule 1.140(b) commanding [Pet. App. 14a] that further proceedings must be held in accordance with applicable laws [Pet. App. 14a]. In trial court's order [Pet. App. 15a R. 98-99] on motion to strike 17 affirmative defenses, the only three remaining defenses were: Defense #1) plaintiff's contributory negligence under Florida Statue §768.81; Defense #2) deduction of benefits from collateral sources; and Defense #3) plaintiff's knew or should have know about the danger [Pet. App. 15a R. 90-94]. Parties attended mediation without been able to resolve [Pet. App. 15a R. 680]; parties did not reached an agreement for defendant's settlement offer of $1,000 plus incurred medical bills [Pet. App. 15a R. 147]; parties have been afforded adequate time after engaged discovery for more than three years. Thereafter, Library filed a motion to dismiss by summary judgment [Pet. App. 107a] mainly based on an objected video. The court dismissed by summary judgment the two counts for negligence: Count #1) Library's breach of duty in care by failure to provide reasonable care in maintenance for the Copier before the incident occurred; and Count #2) Library's breach of duty to warn by failure to provide notice about the

Copier's danger condition that in the exercise of reasonable care would have discovered (constructive notice). The court granted summary judgment mostly based on the following: 1) objected video depicts different of what Mrs. Graulau has claimed; and 2) Mrs. Graulau cannot prove what was the specific defect with the Copier's door, that even if she could prove it, can't prove existed for such period that Library should have been on constructive notice [Pet. App. 3a].

On year 2023 was established Florida Sixth District Court of Appeal that became the new venue for appeals from Florida's Ninth Judicial Circuit Court. The Florida Sixth District Court of Appeal was called upon same federal issues found within the briefs filed on appeal [Pet. App. 36a, 89a]. The Supreme Court of Florida denied review and rehearing on these federal issues due lack of subject matter jurisdiction only because the court of appeal did not provided any basis explanation [Pet. App. 9a].

III. Legal Background

1. *Florida's Comparative Negligence System.* In year 2023 was modified Florida's pure comparative negligence system with respect recovery of remedies but only after first the fact-finder hear the question(s) of negligence to thereafter determine apportion percent of fault under "50 Percent Bar Rule" preserving the Legislature intention for the statute to protect the due process constitutional right, Fla. Stat. §768.81 (2024) (claimant's contributory fault does not bar recovery--In all cases the Legislature intends this act be construed consistent with the due process

provisions of the State Constitution and the Constitution of the United States). Florida legal landscape also abridges all binding federal case law principles established for rights protected under due process and equal protection clauses of the Fourteenth Amendment. *See State v. Dwyer Id.* (holding that all precedents of the U.S. Supreme Court bind in Florida courts extended to trial court level).

2. *Florida Adopted Federal Summary Judgment Standard.* In binding precedent *Lopez v. Wilsonart, LLC*, 275 So. 3d 831 (Fla. 5th DCA 2019)(affirmed in *Wilsonart* [Pet. App. 326a]), state court of appeal reversed summary judgment after opined the lower tribunal erred in its interpretation of this Court established principle in *Scott v. Harris*, 550 U.S. 372 (2007). The court of appeal held that the trial court improperly weighed video evidence in determine credibility of witness which are exclusive functions of the jury. *Lopez Id.* (by finding that video evidence negate eyewitness testimony the trial court improperly weighed competing evidence on material facts). The appellate court certified question to Florida Supreme Court asking if under Florida's summary judgment standard should be an exception when a video complete negates or refutes any conflicting evidence? The Supreme Court of Florida answered: NO, without reaching any conclusion about the application of *Harris*, and *sua sponte* certified question for amend Florida's summary judgment Rule 1.510 of Florida Rules of Civil Procedures to adopt Federal Summary Judgment Standard by incorporation of Rule 56 of Federal Rules of Civil Procedures. *See Wilsonart Id.* (adopting federal summary judgment standard

without rescinding or reinterpreting existing Florida's jurisprudence underlying state' summary judgment standard; we do not reach any conclusion about the application of the U.S. Supreme Court decision in *Harris*) (emphasis added) [Pet. App. 326a]; *In re: Amendments to Florida Rule of Civil Procedure 1.510*, No. SC20-1490 (Fla. Apr. 29, 2021)(Amending Fla. R. Civ. P. 1.510 to adopt federal summary judgment standard by incorporation to the text rule Fed. R. Civ. P. 56) [Pet. App. 309a].

3. *Established Principles For Federal Summary Judgment Standard.* The party invoking jurisdiction under a federal standard bears the burden of establishing standing; at summary judgment stage cannot rest on mere allegations but must prove the specific facts with evidence. *See Clapper v. Amnesty Int'l. USA,* 133 S. Ct. 1138, 1148-49 (2013). "In determine whether a genuine dispute of material fact exists, the court must draw all factual inferences and view the evidence in a light more favorable to the non-moving party and must resolve any reasonable doubts in favor of the non-moving party", quoting *Skop v. City of Atlanta,* 485 F. 3d 1130, 1136 (11th Cir. 2007). *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 249 (1986). A variant under federal standard is that Florida is a fact-pleading jurisdiction what brings summary judgment into conformity with identical rule requirements for grounds must be asserted in same manner as prescribed for assert defenses/objections in motion to dismiss under Rule 1.140(b). See Fla. R. Civ. P. 1.510 (Committee Notes-1976 Amendment. Summary judgment rule is into

conformity with identical provisions in Rule 1.140(b) with respect to motion to dismiss); Fla. R. Civ. P. 1.140 (Committee Notes-2007 Amendment. This rule is similar to Federal Rules of Civil Procedure Rule 12(a)-Defenses and Objections) (emphasis added).

4. *Florida Negligence Tort Law.* Florida follows Restatement (Second) of Tort within the reach of review over the established principles created by federal-state courts. On appeal the Fifth District Court of Appeal opined for this case that "a business owner owes two duties to a business invitee: (1) to use reasonable care to keep its premises reasonably safe and (2) to warn of latent or concealed perils that wer known or should have been known to the owner and which the invitee could not discover through the exercise of due care", quoting *Maldonado v. Orange Cnty. Pub. Library,* 273 So. 3d 278 (Fla. 5DCA 2019). "Negligence per se is a violation of any statute which establishes a duty to take precautions to protect a particular class of persons from particular injury or type of injury. See 65 C.J.S. Negligence § 19(3)", quoting *DeJesus v. Seaboard Coast Line Railroad Company,* 281 So. 2d 198 (1973). "The Restatement (Second) of Torts has noted its immaterial that the defendant could not foresee the precise manner in which the injury occurred or its exact extent", quoting *McCain v. Florida Power Corporation,* 593 So. 2d 500 (Fla. 1992). "The existence of an unsafe condition creates a rebuttable presumption that premises owner did not maintain the premises in a reasonable safe condition", quoting *Owens v. Publix Supermarkets, Inc.,* 802 So. 2d 315 (Fla. 2001). Although

Florida's government is the defendant party, under the state negligence tort law the Library is negligent in the same manner as private business in accordance with Florida Statute §768.28 (Florida State is liable in same manner as private individual).

REASONS FOR GRANTING THE PETITION

I. No Discretion to Enter Summary Judgment in this Case.

1. *Genuine Dispute Over Material Facts.* **ON DISPUTE** whether what caused the Copier's door to open which is material to the "dependent intervening causation" an element to allocated percent of fault and apportion damages that is genuine due the jury is require to determine credibility of testimonies and weighing the following evidences on the record:

- Incident Report [Pet. App. 152a Ex. 3] and Patron Accident Report Form Submission [Pet. App. 152a Ex. 4] with statement provided and prepared by Manager Mrs. Alicea about Copier's door opened on its own;
- Work Order List [Pet. App. 152a Ex. 5] with description of the incident as: Copier's door opened on its own;
- Defendant's Response to Request for Admission [Pet. App. 15a R. 461-463 par. 4] admitting those documents statement;
- Kyocera Repair Invoice [Pet. App. 152a Ex. 6] with statement provided by Library's Purchase Manager Mrs. Pam Bergner about Copier's door opened on its own;

- Plaintiff's Answers to Interrogatory [Pet. App. 15a R. 154-161] and Plaintiff's Response to Defendant's First Request to Produce [Pet. App. 152a p. 6 par. d] with testimony about Copier's door opened was what caused the fall;
- Mrs. Graulau's Deposition [Pet. App. 107a Ex. D] with testimony about Copier's door opened on its own; and the video does not depict her nor depict her foot opening the Copier's door;
- Mrs. Graulau's Affidavit [Pet. App. 152a Ex. 1 par. 9] and Damian Cruz's Affidavit [Pet. App. 152a Ex. 2 par. 7] each providing testimony about that Mrs. Graulau cannot be depicted on the video; and the video does not depict a foot opening the Copier's door.

What caused the door to open? is a question related to a "dependent intervening causation" within the chain of events between the Library's negligence and Mrs. Graulau's injuries only for the jury to decide. In *McCain* the Supreme Court of Florida held that where reasonable persons could differ whether the facts established proximate causation or whether the injury was foreseeable, then the resolution of the issue must be left to the fact finder. A "dependent intervene causation" is an element to determine contributory negligence but does not bar recovery because it is required for the jury first find liabilities pursuant Fla. Stat. §768.81(2) (In a negligence action contributory fault chargeable to the claimant does not bar recovery). *See Gibson v. Avis Rent-A-Car System,* 386 So. 2d 520 (Fla. 1980)(whether an intervening cause is foreseeable is for the trier of the facts).

Notwithstanding, the Library's liability as tortfeasor under a statute does not depend upon whether his negligent acts were the direct cause of Mrs. Graulau's injuries as long as the injuries incurred within the reasonably foreseeable consequences of the Library tortfeasor's conduct which must had been incurred *before* the incident. *McCain Id.*

ON DISPUTE whether if the Library was negligent or not which is material to the issue of "proximate causation" an element to establish violation of statute (legal cause) imposing the duty of reasonable care in maintenance and to warn that is genuine due the jury is required to make factual findings about Library's failure to request at least one inspection and maintenance for the Copier (proximate cause) after received prior knowledge about problems with the Copier (constructive notice); failure to maintain a valid contract to provide service maintenance for the Copier (proximate cause); failure to warn that in the exercise of reasonable care would have discover the danger to protect Mrs. Graulau (foreseeability). This dispute of material facts is genuine due any reasonable jury would find in favor of Mrs. Graulau after determine credibility of testimonies and weigh the following evidences:

- Defendant's Response to Request to Produce [Pet. App. 15a R. 194-199 par. 11] showing Library did not requested a single inspection or maintenance for the Copier;

- Kyocera's President Declaration [Pet. App. 15a R. 1350-1353 Ex. O] declaring Library never requested any inspection or maintenance for the Copier;
- Library's Contract for Copier Service [Pet. App. 191a Ex. 1] proving the Library was the party responsible to request inspections and maintenance for the Copier;
- Library's Expired Renewal of Contract for Copier Service [Pet. App. 191a Ex. 4] proving contract expired over a year prior the incident and during this time the Library allowed the Copier for public use without having a valid contract for maintenance the Copier while it was under its control;
- Library Inventory List [Pet. App. 152a Ex. 8] proving timeframe for period that the Library was under the solely control of the Copier for public use;
- EGP's Delivery Ticket [Pet. App. 152a Ex. 9] proving the Library allowed the Copier public use for another year after the incident while it was under their control;
- Work Order List [Pet. App. 152a Ex. 5] proving Copier's problems reported since year 2012 prior the incident and additional problems reported after the incident with more loosing parts;
- Library's Report of Copier's Repairs [Pet. App. 191a Notice Dated 4/24/2023 Ex. 1, 2, 3] proving repairs done to the Copier for problems reported prior the incident;
- Kyocera Repair Invoice [Pet. App. 152a Ex. 6] proving the Copier was repaired as result of the incident;

- Kyocera Repair Invoice [Pet. App. 152a Ex. 7] proving repairs done to the Copier for problems reported after the incident.

2. *Factual Disputes Are Genuine; Fairness Balance Test.* In this case the evidences and testimonies satisfy the federal standard under "genuine issue test" for disputes over preliminary facts because as a matter of law the record suffice those facts are within the providence of jury functions pursuant Fla. Stat. §90.958- Functions of Jury (when admissibility depends upon the existence of a preliminary fact, the trier of the fact shall determine the contents of the evidences). After weight evidences on record identified in above paragraphs, any reasonable jury would find in favor of Mrs. Graulau. *See Matsushita Electric Industrial Co. v. Zenith Radio Corp.,* 475 U.S. 574 (1986)(genuine dispute of material fact exist when record taken as whole could lead for a reasonable jury to find for nonmoving party). "The correct test for the existence of a genuine factual dispute is whether the evidence is such that a reasonable jury could return verdict for the nonmoving party. Anderson, 477 U.S. at 248", quoting *In re: Amendments To Florida Rule 1.510* [Pet. App. 309a p. 7]. Derived from the text language on trial court's final order [Pet. App. 3a p. 2 par. 12 "Plaintiff's reliance on the submissions from the repair company repairing the door after the underlying incident show that something was done following the incident"], explicitly the court considered Mrs. Graulau's evidence Kyocera Repair Invoice [Pet. App. 152a Ex. 6] for make final determination in this case. Thus, this evidence is deemed not excluded by the court

after relied on it in making ruling and is concluded admitted under legal exemptions under state law identical to the exceptions found in federal rule. *See Powers v. J.B. Michael & Co.,* 329 F. 2d 674 (6th Cir. 1964)(sustaining the admission of evidence that defendant subsequently put out signs to show that the portion of the road was under defendant's control); *Boeing Airplane Co. v. Brown*, 291 F.2d 310 (9th Cir. 1961)(admitting evidence of subsequent design for purpose of showing that design changes and safeguards were feasible); Fla. Stat. §90.407 (This rule does not require the exclusion of evidence when offered for purpose of proving ownership, control, controverted feasibility of precaution measures or impeachment); Fed. R. Evi. 407 (the court may admit this evidence for purpose of impeachment or the feasibility of precautionary measures-Notes of Advisory Committee On Rules-1997 Amendment.--Evidence of subsequent measures subject to exclusion on Rule 403 grounds when the dangers of prejudice or confusion substantially outweigh the probative value of the evidence). See *Chase v. General Motors Corp.*, 856 F.2d 17 , 21–22 (4th Cir. 1988)(it should be noted that evidence of subsequent remedial measures may be admissible pursuant to the second sentence of Rule 407). The others Copier's repairs done prior the incident reported in Library's Report of Copier Repairs [Pet. App. 191a Notice Dated 4/24/2023 Ex. 1, 2, 3]; and repairs done after the incident in Kyocera Repair Invoice [Pet. App. 152a Ex. 7], are admissible out of the scope of the subsequent remedy exclusion. This Court has established the principle that there is no discretion to

enter summary judgment when there is a genuine issue as to any material fact. *See Celotex Id.* There is no discretion to enter summary judgment when there is a genuine issue as to any material fact created by evidence on record that reasonable a jury could find in favor of Mrs. Graulau, Fed. R. Civ. P. 56; Fla. R. Civ. P. 1.510.

II. Video Should Not Be Used for Summary Judgment; Harris Rule.

1. Video exception under Harris Rule. In final order [Pet. App. 3a] was not asserted the specific federal case law the court relied to enter summary judgment under federal standard video rule. Florida Supreme Court in *Wilsonart* held: "we see no reason to adopt an ad hoc video evidence exception on the eve of amendment" [Pet. App. 326a p. 5]; meaning no need because there is a video exception under the federal standard. In *Wilsonart* was affirmed the binding court of appeal's opinion holding that *Harris* does not overrule any of the principles under *Celotex* trilogy about lower tribunal cannot weight on evidences nor determine credibility of witness or enter summary judgment in the existence of genuine dispute of material facts. *See Lopez v. Wilsonart, LLC,* 275 So. 3d 831 (Fla. 5DCA 2019):

> "the trial court erred when it concluded that the video evidence blatantly contradicts the eye witness testimony and the opinion of plaintiff's expert. The court relied on Scott v. Harris , 550 U.S. 372, 127 S. Ct 1769, 1776, 167 L.Ed.2d 686 (2007)--By finding that video evidence negate eyewitness testimony the trial court improperly weighed competing evidence on material facts"; affirmed in *Wilsonart* [Pet. App. 326a].

As *Harris* speaks for itself, there is a video evidence exception when there are allegations or indications the video has been doctored or altered <u>in any way</u> or there's <u>any contention</u> that the video *depict different of what actually happened.*

Like here, that's the core of the contentions at summary judgment about Mrs. Graulau cannot be depicted in the video which the court knew this fact was conceded by counsel at deposition [Pet. App. 107a Ex. D Tr. p. 82 lns. 14-17 "Q. Attorney can you see my face yon the video? A. No]. This fact is also confirmed by testimony in Damian Cruz's Affidavit [Pet. App. 152a Ex. 2 p. 2 par. 7] declaring cannot depict Mrs. Graulau on the video. The court also acknowledged the video does not depict Mrs. Alicea; or when Mrs. Graulau was crying; or when Mrs. Alicea provided Mrs. Graulau with first medical assistance ice pack that she applied on her knees bruises or when she gave her the incident report; or when other Library's employee secured the Copier's door with clear tape as reported in Work Order List [Pet. App. 152a Ex.5 date 11/10/2014: "Door has been tapped shut"] and Kyocera Repair Invoice [Pet. App. 152a Ex. 6 Description: "Door has been tapped shut"]. Indication of the video been doctored or altered is evident from the fact that the video shows a different time 10:45 A.M. [Pet. App. 107a Ex. B ¶4 "video with a time stamp of 10:45 A.M."] from when the incident actually occurred at 10:25 A.M. (20 minutes difference) as reported Incident Report [Pet. App. 152a Ex. 3]; Patron Incident Report Submission Form [Pet. App. 152a Ex. 4] also testified in Mrs. Graulau's Affidavit [Pet. App. 152a Ex. 1 p. 3 par. 10].

For purpose of ruling on summary judgment under federal standard the principle established in *Harris* for video exception preclude the trial court from entry summary judgment in this case. This is truer considering the court

previously ruled the objections on the video as premature because the video was not offered nor admitted yet into evidence on record despite the defense confirmed would use it to request summary judgment [Pet. App. 280a Ex. 2 Tr. p. 11 lns. 16-25]. Means the video was not admitted as evidence neither was part of the record at summary judgment stage. The objections to the video were reasserted in Mrs. Graulau's second motion in limine [Pet. App. 15a R. 927-944] filed after motion for summary judgment [Pet. App. 15a R. 805-884]. The video is not a self-authenticated evidence pursuant Fla. Stat. §90.902; and authentication is a requirement for its admissibility pursuant Fla. Stat. §90.901. The video is also within the scope of ground for exclusion base on prejudice and confusion under state-law identical to Federal Rule of Evidence 403, pursuant Fla. Stat. §90.403- Exclusion On Grounds Of Prejudice or Confusion (relevant evidence inadmissible if its probative value is substantially overweight by danger of prejudice, confusion of issues misleading the jury or needless presentation of cumulative evidence). "This Court had made clear that when evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief", *Payne* v. *Tennessee*, 501 U.S. 808, 825 (1991). *Harris* applies in this case but with respect to the video exception under the established principle that prevent the court grant summary judgment base on the video having indications of been doctored/altered and was

objected by Mrs. Graulau on the ground it does not depict what actually happened; conceded in trial court's final order [Pet. App. 3a p. 2 ¶7 ¶10].

2. *Unsupported Attorney's Theory; Lawyer Is Not Witness.* The controversy about what is depicted in the objected video is mainly based on counsel's baseless formulated theory of fact contradicted by evidences on record proving contrary from what attorney has theorized which is a prohibited in civil practice pursuant Fla. Stat. §57.105-Sanctions for Raising Unsupported Claims or Defenses. Since the attorney is prevented to furnish private testimony on behalf client, opposing counsel's own opinion about what is depicted on the video is immaterial unless she is disqualify as lawyer in this case to offer her testimony before the jury. See Rules Regulating the Florida Bar, West's Florida Statutes Annoted., FL ST Bar Rule 4-3.7.Lawyer as Witness. Among the evidences proving to the contrary of attorney's theory are testimony from its own client eyewitness manager Mrs. Alicea who provided a written statement *based on same video* in the Incident Report [Pet. App. 152a Ex. 3]; Patron Accident Report Form Submission [Pet. App. 152a Ex. 4] base on what Mrs. Alicea saw on this video as testified by Mrs. Graulau at continue deposition [Pet. App. 280a Ex. 1 Tr. p. 55 lns. 5-15]. Notwithstanding, the video cannot depict Library breach of duty of care occurred *before* the incident. The issue over the objected video is governed by discovery general provisions that provide safeguards requiring the Court to protect Mrs. Graulau against attorney disclosure of her own mental impressions, conclusions, opinions, or legal theories concerning

litigation in accordance with Fla. R. Civ. P. 1.280(c)(4)(the court must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation).

3. *Court's Abuse of Discretion; Violation of Due Process Right.* The court abused discretion by incorrectly interpreted and construed a federal case law as if provides discretion in this case to grant summary judgment under federal standard base on the objected video that does not depict what actually occurred as the trial court's held in final order [Pet. App. 3a p. 2 ¶7 ¶10]. *See Aycock v. R.J. Reynolds Tobacco Co.,* 769 F. 3d 1063, 1068 (11th Cir. 2014)(A district court abuses its discretion when applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner or follows improper procedures in making a determination). No "fairmind" jurist would grant summary judgment in a negligence tort case by jury base on controverted unsupported counsel's own opinion about what is depicted on a video in the existence of valid objections with record full of admissible evidences proving to the contrary. *See Harrington* v. *Richter*, 562 U.S. 86, 101 (2011)(An unreasonable application, in turn, is one with which no fairminded jurist would agree). After provided for the defense attorney to act in both capacities (Advocate and Witness) by allowed asserting unsupported counsel's own believe of what is depicted on the video, the trial court undermined the fairness of the judicial process in violation of Mrs. Graulau due process rights. Accordingly,

the issue of the video is genuine and the case should have been allowed to proceed at trial for jury determination on the material facts in dispute.

III. Library Not Legally Entitle to Obtain Summary Judgment.

1. Asserted Defenses Does Not Support Summary Judgment. Under federal standard there is no discretion to grant summary judgment under the defenses asserted in this case. Both, Florida Rule 1.510 and Federal Rule 56, provides for summary judgment be sought on the defenses asserted; none of the asserted in this case provides for summary judgment: Defense #1) comparative fault does not bar recovery; Defense #2) there no collateral sources in this case; Defense #3) there is no duty of notice imposed over Mrs. Graulau that bars the negligence claim [Pet. App. 15a R. 90-94]. Summary judgment cannot be granted on the defenses already strike by the court in order [Pet. App. 15a R. 98-99]. The asserted defenses are pertaining to the prima facie negligence already settle in this case by the Fifth District Court of Appeal [Pet. App. 11a] holding that the cause of action has been claimed as the loose bottom drawer of the photocopier that suddenly flew open in her path (actual cause in fact), and the Library's alleged failure to maintain and inspect the photocopier (legal cause). There is no legal basis under the defenses asserted that can prove or disprove Mrs. Graulau's prima facie case. On contrast, evidences on record suffice under the "but for test" the legal presumption the Copier's door was loose implied by the fact that indeed something was repaired Kyocera Repair Invoice [Pet. App. 152a Ex. 6] and also from later reported problems with another

loose parts of the Copier reported in Work Order List [Pet. App. 152a Ex. 5 date 11/24/2014 Description: "both trays are loose & won't stay in place"]; Kyocera Repair Invoice [Pet. App. 152a Ex. 7 Description: "both trays are loose & won't stay in place"]. Tested by: If nothing wrong with the copier but then why the need of repair? If the Copier's door was not loose but then why manager reported and Mrs. Graulau testified the Copier's door was loose? If the Copier's trays were subsequently reported to been loose but then the door was also loose in alike manner? "Sufficient proof, albeit circumstantial in nature, existed to allow the trial court to properly submit the question of defendant's negligence to the jury", quoting *Montgomery v. Florida Jitney Jungle Stores, Inc.,* 281 So. 2 302 (1973). Even if would have excluded the Kyocera Repair Invoice [Pet. App. 152a Ex. 6], this only will prove more unfairness because then the court used hearing held on 5/1/2023 [Pet. App. 15a R. 1361-1361 "Court's Minute"] to grant Defendant's Motion In Limine filed on 4/20/2023 [Pet. App. 15a R. 1191-1193] seeking exclusion of Kyocera Repair Invoice [Pet. App. 152a Ex. 6] with less than 10 days before the hearing without the court allows for Mrs. Graulau to have the 30 days provided by rule for adequate opportunity to file a response and lay grounds for exemption to challenge the exclusion. *See Powers Id.* (no automatic exclusion when a genuine issue is present that allows the opposing party to lay the groundwork for exclusion). None of the evidences submitted in support of summary judgment could possible prove or

disprove the prima facie case neither could prove Library was not negligent as argued next.

2. *Summary Judgment Not Supported by Admissible Evidences.* Besides the objected video, the other evidences submitted by the Library in support of summary judgment were two affidavits among was the Brian Dornbush's Affidavit [Pet. App. 107a Ex. C] objected as inadmissible hearsay [Pet. App. 152a p. 8 par. 9]. Affidavit of Brian Dornbush was made with lack of personal knowledge what make it inadmissible hearsay and therefore the court cannot used it to grant summary judgment in this case pursuant Fla. Stat. §90.604 (a witness may not testify when lack of personal knowledge); Fla. R. Civ. P. 1.510(c)(4); Fed. R. Civ. P. 56(c)(4). Lack of personal knowledge is proven by the fact when the incident occurred Mr. Dornbush was not the Library's Facilities and Operation Manager due this position was then occupied by the incumbent CEO Steve Powell who remained in that position until was recently elected CEO on year 2022. Lack of personal knowledge also proved by contradicted testimony provided by Mr. Dornbush's boss, Library's CFO Mr. Kristopher Shoemaker, who testified under oath that it was Maritza Alicea not Mrs. Graulau who wrote the incident report [Pet. App. 15a R. 250-264 Att. 1 par. 4-5]; also contradicted by Mrs. Graulau's testimony. Hearsay evidence is inadmissible pursuant Fla. Stat. §90.802. Other Affidavit of Craig Goetzke [Pet. App. 107a Ex. B] cannot prove or disprove negligence in this case. The remaining evidence submitted to support summary judgment was the transcript of Mrs.

Graulau's deposition used to introduce the objected video not offered/taken/admitted into evidence yet that was furnished as exhibit of the deposition. Neither Mrs. Graulau's deposition nor the objected video can prove or disprove Library's negligence occurred before the incident. Therefore, Library is not legally entitled to obtain summary judgment because did not establish with irrefutable evidence that Mrs. Graulau as a matter of law cannot prevail. This Court opined when there is no evidence to support, summary judgment is not available. *Celotex*, 477 U.S. at 323.

3. *Not a Defective Product Claim.* Motion for summary judgment is without merit in law and fact because this case is not about Copier's door defect. Rather is about Library's negligence in provide reasonable due care to maintain its premises safe for public use. Improperly, the court misconstrued and motion for summary judgment disguised a ground basis for defective product arguing that Mrs. Graulau is required to prove whether if there was a specific defect with the Copier's door in order to succeed in her negligence claim for breach in due care; and that Library's constructive notice can only be assesses in the existence of that specific defect of the door. But these arguments fails because for negligence cases the Supreme Court of Florida has established "it's not required to catalog and expressly proscribe every conceivable risk in order for give rise to a duty of care; reasonable general foresight is the core of the duty element; immaterial that the defendant could not the precise manner in which the injury occurred or its exact extent", quoting *McCain Id.* The degreed of the suffered injuries proves that the unsafe condition of the Copier was

danger enough for Library be liable for violation of statute. Why or what caused the Copier's door to open? (dependent intervening causation in fact); What Library could have done to discover and prevent the Copier's danger condition? (foreseeability), those are questions that do not provide basis under federal summary judgment standard. The negligence counts pled on the complaint were not asserted based on Mrs. Graulau's presumption/inference of the door's specific defect was what caused her to fall [Pet. App. 107a p. 1 "Introduction"]. In the complaint it was claimed that Mrs. Graulau's injuries were resulted from the Library's breach of duty as the court of appeal has already settled [Pet. App. 11a]. The prima facie stage have direct relevance with summary judgment because resolved this case is not based on speculation as incorrectly alleged in motion for summary judgment; and provides a streamline for the court below by setting a roadmap of what needs to be proven and what the jury is required to determine in this action. This streamline by binding opinion is also a framework to determine court's abuse of discretion in this case. *See White v. Woodall,* 572 U.S. 415, 419 (2014)(state court unreasonable applied clearly established federal law when its shows the court unreasonably applied the holding as opposed to the dicta); *Howes v. Field*, 565 U.S. 499, 505 (2012)(same citation).

IV. Lower Tribunal's Decision Erroneous Contrary to Law.

1. *Court's Decision In direct Conflict With Binding Precedents.* An affirmance [Pet. App. 1a] without any basis explanation carry forward same errors

of law, preserved or not, subject to review. *See United States v. Tovarchavez*, 78 M.J. 452 (2018)(holding that all errors of law-preserved or not-are subject to review). The trial court's decision is in direct conflict for being contrary to summary judgment standard principles established in binding precedents. *Gibson Id.* (holding that conflict exists when courts misapplies the law and/or relies on a decision which situation is materially at variance with the one under review). Conflict appears on the face of the trial court's final order [Pet. App. 3a] base on the following:

a. Conflict after the court weighed on video evidence to make the presumption of fact about events did not happened only because are not depicted in the objected video. Pursuant Fla. Stat. §90.302, "the existence or nonexistence of a presumed fact shall be determined by the trier of the fact from the evidence without regard to the presumption". The court wrongly concluded that these events did not happen only because are not depicted on the video [Pet. App. 3a p. 2 par. 7]. The judge's unreasonable presumption shows his lack of fitness to perform juristic tasks with fairness. This is because any capable jury could find that these events occurred out of the time-recording of the video; and the video could have been doctored/altered after shows a different time from when the incident occurred. *See Hervey v. Alfonso,* 650 So. 2d at 646 (Fla. 2DCA 1995)(even when the facts are uncontroverted the entry of summary judgment is likewise erroneous if different inferences can be drawn reasonable from those facts). The events described on final order [Pet. App. 3a p. 2 par. 3] about Mrs. Graulau was

approached by Mrs. Alicea who wrote the report base on her own observations of the objected video, are proved by Incident Report [Pet. App. 152a Ex. 3] which is part of the pleading included as Exhibit in the complaint [Pet. App. 15a R. 1525-1551 Ex. 1]; Mrs. Graulau's Deposition [Pet. App. 107a Ex. D, App. 280a Ex. 1]; Mrs. Graulau's Affidavit [Pet. App. 152a Ex. 1]. The court failed to believe admitted evidence not objected by the defense and did not draw all inference in favor of Mrs. Graulau. Thus the trail court's decision is in direct conflict for is contrary to what the Court required in *Anderson Id.* (court must denied summary judgment if evidence is so one-sided that one party must prevail as a matter of law--the evidence of the non-moving is to be believed, and all justifiable inferences are to be drawn in their favor--at summary judgment state a judge should not weight on evidence for determine the truth of a matter that is within the jury's functions). The lower tribunal's decision based on the video is contrary to law because *Harris* preclude the court from rely on a video objected as doctored/altered and there are allegations that such video does not depict what actually happened.

b. Conflict after the court improperly made determination for not believe Mrs. Graulau's factual assertions found in the complaint; improperly questioned doubt the credibility of Mrs. Graulau as eyewitness; improperly questioned doubt the credibility of Mrs. Alicea as join eyewitness called to testified at trial [Pet. App. 15a R. 1065-1068 "Court's Subpoena"] who testimony is not disputed

or objected by the defense. The testimonies from Mrs. Graulau are supported by deposition [Pet. App. 107a Ex. D; 280a Ex. 1] and affidavit [Pet. App. 152a Ex. 1]. Mrs. Alicea's statement of the events is found in evidences Incident Report [Pet. App. 152a Ex. 3] and Patron Incident Report Submission Form [Pet. App. 152a Ex. 4]. By this, the trial court acted contrary to the established by this Court in *Anderson,* 477 U.S. at 255; contrary to binding precedent *Montgomery Id.; Mariana Gracia v. Security First Insurance Company,* No. 5D21-1456 (Fla. 5DCA 2021)(credibility determinations and weighing the evidence are jury functions, not those of a judge when ruling on a motion for summary judgment. Anderson; see also A.L. ex rel. D.L. v. Walt Disney Parks & Resorts US); *A.L. ex rel. D.L. v. Walt Disney Parks & Resorts US, Inc.,* 900 F. 3d 1270, 1289 (11 Cir. 2018)(Under federal summary judgment standard the court does not weigh conflicting evidence or determine credibility of witness); *Sierra v. Shevin,* 767 So. 2d 524, 525 (Fla. 3DCA 2000)(In ruling on a motion for summary judgment a court may neither adjudge the credibility of the witness nor weight the evidence); *Lopez v. Wilsonart Id.* (same citation).

Where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate.

2. *Court's Abuse of Discretion; Violation Equal Protection Right.* By dismissing this case by summary judgment in the existence of genuine dispute of

material facts; and by weighing on evidences and determine credibility of witness, the court clearly abused discretion under federal standard and discriminated after failed to apply equally the law in violation of due process rights available for Mrs. Graulau under the Fourteenth Amendment, U.S. Constitution and Florida's Constitution. *See Aycock Id.* (A district court abuses its discretion if makes findings of fact that are clearly erroneous). Court's abuse of discretion violate the due process fairness and equal protection because "summary judgment is not a vehicle for resolving factual disputes", quoting 10 Charles A. Wright, Arthur R. Miller Mary K. Kane, *Federal Practice and Procedure: Civil § 2712*, at 574 (2d ed. 1983). Neither summary judgment is a vehicle for determine admissibility of an objected video [Pet. App. 3a p. 2 par. 5 "The surveillance video of the incident is admissible evidence"]. It is against procedural fairness for the court ruled as premature the objections to the video holding the video has not been taken/introduced into evidence yet despite the defense confirmed will use it to request summary judgment [Pet. App. 280a Ex. 2 Tr. p. 11 lns. 16-25]; court's minute of hearing [Pet. App. 15a R. 732]. Then use hearing for summary judgment to rule over objections to the video [Pet. App. 3a p. 2 par. 9 "The court finds that Plaintiff's position regarding the surveillance video stating she cannot depict her is not a refutation of the surveillance video"] without first rule over the second motion in limine to exclude the video [Pet. App. 15a R. 927-944]. This is beyond unreasonable and unfair that should be deemed bias against a pro se *pauper*. Summary judgment hinges on

whether there is an issue within the provenance of the jury that the evidences on record taken as a whole suffice for a reasonable jury return verdict in favor of the non-moving party. In determine abuse of discretion should be considered the safeguards for court take extra care by examined the whole record before enter summary judgment against a pro se litigant, together with the Court long established "fundamental principle" to protect due process fairness for litigant have access to present a valid claim to a jury without struggles, Fed. R. Civ. P. 56 (Committee Notes of Rule-2010 Amendment. The court take extra care with pro se litigants and seek to reassure itself by examination of the record before granting summary judgment against a pro se litigant) transferred by incorporation to Fla. R. Civ. P. 1.510. *See Haines v. Kerner,* 404 U.S. 519 (1972)(the "fundamental principle" for allowing litigants as pro se to ensure access to the court without struggle). No jurist with basic sense of fairness and equality would adjudge in same manner. *See Montgomery Id.* (This principle was enunciated in First Gulf Beach Bank & Trust Company v. Alvarez which also involved a slip and fall injury: 'The trial judge properly allowed the case to go to the jury and enter judgment on its verdict). The court not only deprived Mrs. Graulau from basic procedural rights, ripped-off the jury from their functions vested by law and duties imposed under Constitution. Any reasonable court would conclude that a jury could find the Library's liable in some degree for their actions and/or omissions; would apportion

for the Library a percent for liabilities; and would grant damages in favor of Mrs. Graulau.

CONCLUSION

FOR ALL THE ABOVE Mrs. Graulau pray for the Court grant this petition and provide as relief REVERSE court of appeal's decision [Pet. App. 1a] and mandate [Pet. App. 2a]; VACATE trial court's final order [Pet. App. 3a] and judgment [Pet. App. 7a]; and REMAND for the case be reinstated to hold further proceeding in consistent with this Court's opinion.

RESPECTFULLY submitted on July 26th of 2025 by:

Signature: _____
Jessica Graulau, Appellant