

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1063

CA 23-00107

PRESENT: SMITH, J.P., CURRAN, BANNISTER, GREENWOOD, AND NOWAK, JJ.

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ALAN DENTICO AND LEANNE DENTICO,  
PLAINTIFFS-APPELLANTS-RESPONDENTS,

V

MEMORANDUM AND ORDER

TURNER CONSTRUCTION COMPANY, DEFENDANT,  
AND SBRA, INC., FORMERLY KNOWN AS SHEPLEY  
BULFINCH, INC., DEFENDANT-RESPONDENT-APPELLANT.

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GROSS SHUMAN, P.C., BUFFALO (SCOTT M. PHILBIN OF COUNSEL), FOR  
PLAINTIFFS-APPELLANTS-RESPONDENTS.

BYRNE & O'NEILL, LLP, NEW YORK CITY (MICHAEL J. BYRNE OF COUNSEL), FOR  
DEFENDANT-RESPONDENT-APPELLANT.

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Appeal and cross-appeal from an order of the Supreme Court, Erie County (Timothy J. Walker, A.J.), entered December 21, 2022. The order denied in part the motion of defendant SBRA, Inc., formerly known as Shepley Bulfinch, Inc. to preclude certain testimony and denied plaintiffs' cross-motion in limine.

It is hereby ORDERED that said appeal and cross-appeal are unanimously dismissed without costs.

Memorandum: Plaintiffs commenced this action seeking damages for injuries allegedly sustained by Alan Dentico (plaintiff) when he fell while exiting a door at the hospital where he worked as a maintenance groundskeeper. There was a three-foot height differential from the floor from which plaintiff was exiting and the ground on the opposite side of the door. Defendant SBRA, Inc., formerly known as Shepley Bulfinch, Inc. (SBRA), was the architect who designed the hospital, including the three-foot elevation differential at the subject doorway. Plaintiffs appeal and SBRA cross-appeals from an order that denied in part the motion in limine of SBRA seeking to preclude plaintiffs' proposed expert from testifying at trial regarding alleged violations by SBRA of certain building codes, and that denied plaintiffs' cross-motion in limine seeking an order precluding SBRA from offering, or moving to preclude, certain evidence.

"Generally, an order [ruling on] a motion in limine, even when 'made in advance of trial on motion papers[,] constitutes, at best, an advisory opinion which is neither appealable as of right nor by permission' " (*Thome v Benchmark Main Tr. Assoc., LLC*, 125 AD3d 1283, 1285 [4th Dept 2015]; see *Harris v Rome Mem. Hosp.*, 219 AD3d 1129,

1131 [4th Dept 2023])). Here, no appeal lies as of right from the order inasmuch as it "merely adjudicates the admissibility of evidence and does not affect a substantial right" (*Of Does 3-6 v Kenmore-Town of Tonawanda Union Free Sch. Dist.*, 204 AD3d 1450, 1451 [4th Dept 2022] [internal quotation marks omitted]; see CPLR 5701 [a] [2] [v]). Consequently, the appeal and cross-appeal must be dismissed (see *Shahram v St. Elizabeth School*, 21 AD3d 1377, 1378 [4th Dept 2005]).

Entered: February 9, 2024

Ann Dillon Flynn  
Clerk of the Court