UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0701

September Term, 2014

DONALD P. TALLMADGE

v.

K-C BUILDING ASSOCIATION OF BOWIE, INC.

Leahy,
Reed,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, James R.

Filed: May 12, 2015

On January 29, 2013, Donald P. Tallmadge, appellant, instituted this premises liability action in the Circuit Court for Prince George's County. In his initial and amended complaints, appellant sought compensation from K-C Building Association of Bowie, Inc., appellee, and others for injuries he sustained as a result of a slip and fall at the Knights of Columbus building in Bowie (Boswell Hall or the building).[1] On May 23, 2014, on appellee's motion, the circuit court entered summary judgment against appellant. In this appeal from the adverse judgment, appellant questions whether the circuit court erred, and asks this Court to reverse and remand for trial.[2] We discern no error and shall affirm.

Background Facts and Proceedings

At all relevant times, appellee was the owner of Boswell Hall. The building was leased to CWC; the Sacred Heart Council, the local chapter of the Knights of Columbus; and St. John & Newman Assembly. The tenants paid rent to appellee pursuant to oral agreements. Appellee, CWC, and the Sacred Heart Council are Maryland corporations. The

[1] In addition to appellee, appellant sued Rodney A. Short a/k/a Short Cleaning & Services Company (Rodney Short) and Columbian Way Corporation (CWC). After the court granted summary judgment in favor of appellee, the court entered a consent judgment in favor of appellant and against Rodney Short and CWC in the amount of $37,323.70.

[2] In his brief, appellant states the operative question to be:

> Whether the Circuit Court for Prince George's County, Maryland committed reversible error in granting the Appellee's Motion for Summary Judgment given that the Appellee, as the landowner who had not relinquished control of the premises, owed a duty of ordinary care to the Appellant, a business invitee.

three entities are interrelated with at least some of the same officers and directors, but they were treated as separate legal entities.

On November 28, 2010, appellant fell in a hallway of Boswell Hall. In 2010, Rodney Short and his employees performed cleaning services in the building pursuant to a "cleaning contract" with CWC, dated January 8, 2009. Rodney Short was responsible for performing the various janitorial activities described in the contract, such as vacuuming the building, servicing the rest rooms, mopping, and cleaning the hallways. The building's "hall manager" was responsible for monitoring the performance of Rodney Short's cleaning crew and reporting to CWC's board of directors Appellee owned the cleaning supplies, including mops and buckets**,** that were used by Rodney Short and his crew**.**

At the time of his fall, appellant was a "Brother Knight" and a part-time financial secretary for the Sacred Heart Council. On November 28, 2010, appellant was in Boswell Hall as a volunteer to help decorate the building for an upcoming "Deck the Hall" Christmas party. He had responded to a request for volunteers issued by Paul Mullenhoff, Grand Knight of Sacred Heart Council. Mr. Mullenhoff was also a member of the board of directors of both appellee and CWC.

As an employee of the Sacred Heart Council, appellant was aware that Rodney Short had been contracted to clean the floors of Boswell Hall. On November 28, 2010, according to records of alarm codes, Rodney Short entered Boswell Hall at 10 a.m. Appellant arrived

at the building at approximately 10:40 a.m., and walked toward his office. He fell in a hallway at approximately 10:45 a.m. He did not recall seeing a cleaning crew but did remember seeing a bucket and being aware of activity in the "Cardinal Room," the largest room in the building.

Appellant "never knew" what caused him to fall. He testified that, at some point after his fall, someone "alluded to the fact that there was water on the floor." He did not see any water on the floor and did not recall any of his clothing being wet.

It is unclear when Mr. Mullenhoff arrived at Boswell Hall. He testified that he arrived at approximately 11 a.m., but inferentially it could have been after 10 a.m. and prior to appellant's fall. At some point after appellant's fall, at his request, Mr. Mullenhoff wrote a "To Whom It May Concern" letter. In the letter, Mr. Mullenhoff stated that he was at the entrance to Boswell Hall greeting new arrivals when he heard a call for help. He responded to assist appellant. Also in the letter, he stated: "I observed one of the younger members moving a mop bucket containing water in the hallway where I later observed Don [Tallmadge]." Presumably, this statement referred to a point in time prior to appellant's fall. Finally, he stated that, "During and after all the commotion, I pointed out to some of the brothers who were present that the floor where Don fell was wet/damp and a skid mark from Don's foot was clearly visible on the wet/damp floor. There were no signs positioned near the wet area to indicate a hazardous condition existed. It appeared that water had spilled on

the floor and been wiped with a mop or the floor was just wiped by a wet mop but it remained wet."

In his deposition, Mr. Mullenhoff testified:

> The fact of the matter was it was supposition on my part completely. It's the fact that there was a mop bucket, that I observed the floor was damp, that I could see the skid mark. You had to be at a proper angle. You could see the skid mark from Don's [Tallmadge's] foot of where it had slid on the floor.
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> So if you put it all together analytically, you say, Oh, there must have been some kind of moisture on the floor.

Mr. Mullenhoff's observations of the moisture and skid mark occurred after appellant's fall.

In his complaint, as amended, appellant alleged that (1) appellee was negligent and (2) Rodney Short was appellee's agent. On March 12, 2014, appellee moved for summary judgment. Appellee argued that it owed no duty to appellant, and in the alternative, there was no evidence of a breach of duty. Appellee also argued that there was no evidence that Rodney Short was an agent of appellee.

On May 19, the morning of trial, the court held a hearing on the motion. The court granted the motion, explaining that it granted the motion for

> the reasons articulated by [appellee's counsel] just now and in her arguments and in the briefs filed with the Court, including the motions for summary judgment, and her opposition.

The court expressly concluded that there was no duty and no evidence of a breach of any duty.

Additional facts will be included as needed.

DISCUSSION

Contentions

Appellant contends that appellee never relinquished control of Boswell Hall and that he was a "business invitee, or at the very least, a social guest/licensee by invitation." Thus, appellee owed him a duty of ordinary care "based on the theory of premises liability because it never relinquished control of the Premises." Appellant also contends that appellee is liable for Rodney Short's negligence under the doctrine of "respondeat superior."

Appellee responds that the circuit court was correct in holding that it did not owe a duty to appellant because it had "ceded" control over the hallway cleaning to CWC, the employer of Rodney Short. Appellee avers that CWC and it are "separate and distinct corporate entities," and the actions of an agent of one can not be attributed to the other. Appellee concludes that the invitation to appellant was extended by CWC, and as to appellee, appellant was a bare licensee. In the alternative, assuming that appellee owed appellant a duty to keep the premises reasonably safe, it did not breach that duty because it lacked notice of any defect, *viz*., there was no notice that the floor was in a condition that caused appellant to fall. Finally, appellee further contends that there is "no evidence whatsoever that Short was acting as an agent, servant or employee of [appellee] at the time of the accident."

Standard of Review

Maryland Rule 2-501 governs summary judgment motions, and Rule 2-501(f) provides in pertinent part that "[t]he court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine issue of material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Our review of the circuit court's ruling on summary judgment is plenary. *Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship*, 375 Md. 522, 533 (2003). In short, "[t]he question of whether a trial court's grant of summary judgment was proper is a question of law subject to *de novo* review on appeal." *Worsham v. Ehrlich*, 181 Md. App. 711, 723, *cert. denied*, 406 Md. 747 (2008). An appellate court reviews the record in the light most favorable to the non-moving party, construing any reasonable inferences that may be drawn from the facts against the moving party. *Id*. In conducting this independent review of the record, we "evaluate the facts and pleadings employing the same standard as does the circuit court, and will not defer to that court's conclusions of law." *Mohammad v. Toyota Motor Sales, U.S.A., Inc.*, 179 Md. App. 693, 703 (2008). Further, "[o]ur review of the trial court's grant of summary judgment is limited ordinarily to the legal grounds relied upon explicitly in its disposition." *Baker v. Montgomery County*, 427 Md. 691, 706 (2012); *Faith v. Keefer*, 127 Md. App. 706, 734, *cert. denied*, 357 Md. 191 (1999). "In addition, where the lower court relied on several alternative independent grounds in reaching its decision, we must determine

that at least one of those independent grounds was properly decided in order to affirm that decision." *Monumental Life Ins. Co. v. U.S. Fid. & Guar. Co*., 94 Md. App. 505, 523 (citations omitted), *cert. denied*, 330 Md. 319 (1993).

Discussion

The elements for a claim of negligence in Maryland are long-established:

> In order to establish a claim for negligence under Maryland law, a party must prove four elements: "(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 the duty."

Sterling v. Johns Hopkins Hospital, 145 Md. App. 161, 169 (citations, internal quotation marks, footnote and emphasis omitted)), *cert. denied*, 371 Md. 264 (2002). *Accord, 100 Inv. Ltd. P'ship v. Columbia Town Ctr. Title Co.*, 430 Md. 197, 212–13 (2013).

The threshold requirement is the existence of a duty. *See id.* "[F]or without a duty, no action in negligence will lie." *Evergreen Associates, LLC v. Crawford*, 214 Md. App. 179, 187 (2013) (citation and internal quotation marks omitted). "[U]nder current Maryland law the extent of the duty depends upon the status of the plaintiff[] at the time of the accident." *Casper v. Charles F. Smith & Son, Inc.*, 316 Md. 573, 578 (1989) (citing cases). *See Deboy v. City of Crisfield*, 167 Md. App. 548, 555 (2009). As set forth by the Court of Appeals:

> A landowner must use reasonable and ordinary care to keep the premises safe for an invitee, defined as one permitted to remain on the premises for purposes related to the owner's business. A licensee by invitation is a social guest and is owed a duty of reasonable care and must be warned of known dangerous conditions that cannot reasonably be discovered. A bare licensee is one who enters upon property, not as a social guest, but for his or her own convenience or purpose and with the landowner's consent. No duty is owed to a bare licensee except that he or she may not be wantonly or willfully injured or entrapped, nor may the occupier of land create new and undisclosed sources of danger without warning the licensee. Under some circumstances, the landowner may be liable to a bare licensee for a dangerous condition known to the landowner.
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> Finally, a trespasser is one who intentionally and without consent or privilege enters another's property. No duty is owed, except to refrain from willfully or wantonly injuring or entrapping the trespasser. This rule of limited liability to trespassers permits a person to use his own land in his own way, without the burden of watching for and protecting those who come there without permission or right.

Wagner v. Doehring, 315 Md. 97, 102 (1989) (citations and internal quotation marks omitted). The existence of a duty constitutes a question of law. *See Hemmings*, 375 Md. at 536. *See* Restatement (Second) of Torts § 328B(b) and (c) (1965).

With respect to status as an invitee, this Court has reiterated:

> In negligence actions . . . [t]he highest duty is that owed to an invitee; it is the duty to use reasonable and ordinary care to keep [the] premises safe for the invitee and to protect [the invitee] from injury caused by an unreasonable risk which the invitee, by exercising ordinary care for [the invitee's] own safety will not discover. By contrast, the landowner or occupier owes no duty

> to licensees or trespassers, except to abstain from willful or wanton misconduct or entrapment.
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> Invitee status can be established under one of two doctrines: (1) mutual benefit or (2) implied invitation. Under the mutual benefit theory, the invitee generally enters a business establishment for the purpose of purchasing goods or services. This theory places great weight upon the entrant's subjective intent, and inquires into whether the entrant intended to benefit the landowner in some manner.

Deboy v. City of Crisfield, 167 Md. App. at 555 (citations and internal quotation marks omitted).

The *Hemmings* Court stated that the landlord's duty "depends on the existence of three circumstances:"

> (1) the landlord controlled the dangerous or defective condition; (2) the landlord had knowledge or should have had knowledge of the injury causing condition; and (3) the harm suffered was a foreseeable result of that condition.

Hemmings, 375 Md. at 537. Quoting from an earlier decision by the Court of Appeals, the *Hemmings* Court added:

> [A] common thread running through many of our cases involving circumstances in which landlords have been held liable (*i.e.*, common areas, pre-existing defective conditions in the leased premises, a contract under which the landlord and tenant agree that the landlord shall rectify a defective condition) is the landlord's ability to exercise a degree of control over the defective or dangerous condition and to take steps to prevent injuries arising therefrom.

Hemmings, 375 Md. at 537 (quoting *Matthews v. Amberwood Associates Ltd. P'ship, Inc.*, 351 Md. 544, 557 (1998)). The Court of Appeals in *Hemmings* also emphasized that "when a landlord *has* turned over control of a leased premises to a tenant, it ordinarily has no obligation to maintain the leased premises for the safety of the tenant." *Id.*

We shall assume that appellee owed a duty to keep the premises reasonably safe. Thus, it is unnecessary to resolve whether appellant was on the premises as a licensee or invitee or whether appellee retained control over the hallway. Similarly, it is unnecessary to discuss the concept of nondelegable duty because appellee did not hire Rodney Short. *See, e.g., Rowley v. Mayor and City Council of Baltimore*, 305 Md. 456, 466 (1986) ("[W]here one invites another to come onto premises ostensibly maintained by him, his duty to the invitee cannot be circumscribed by the employment of an independent contractor."). *See generally*, Restatement (Second) of Torts §§ 422, 425 (1965). Further, we have no occasion to address the extensive discussions in the briefs about "piercing the corporate veil." At oral argument, despite the references to the interrelationships of the parties in his brief, counsel for appellant stated that appellant is not asserting that theory; rather he is asserting that appellee is responsible as landlord and owner of the building.

The question then becomes whether there is sufficient evidence from which a jury could conclude that (1) appellee had the requisite knowledge of any condition, or timely awareness thereof, so as to "discover and correct it by the exercise of ordinary care," *see*

Mathews v. Amberwood Associates Ltd. Partnership, Inc., 351 Md. 544, 554 (1998), and/or,

(2) Rodney Short was the agent of appellee.

Knowledge of the danger

Section 343 of the Restatement (Second) of Torts provides in part:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
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> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitee, and
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> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
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> (c) fails to exercise reasonable care to protect them against the danger.

The "duties of a business invitor thus include the obligation to warn invitees of known hidden dangers, a duty to inspect, and a duty to take reasonable precautions against foreseeable dangers." *Maans v. Giant of Maryland*, 161 Md. App. 620, 627 (2005) (citation and internal quotation marks omitted). Nevertheless, an owner of premises is "not an insurer of the invitee's safety." *Id*. Further, "no presumption of negligence arises merely because an injury was sustained on the [owner's] premises." *Rehn v. Westfield America*, 153 Md. App. 586, 593 (2003).

Appellant bears the burden of demonstrating that appellee either created the dangerous condition or that appellee had actual or constructive knowledge of its existence prior to the injury. *See Richardson v. Nwadiuko*, 184 Md. App. 481, 495 (2009). In addition, the evidence must show that the owner's "knowledge was gained in sufficient time to give the owner the opportunity to remove it or to warn the invitee." *Rehn v. Westfield*, 153 Md. App. at 593 (citation and internal quotation makes omitted).

Appellant has presented no evidence that would create a genuine issue of material fact that appellee created the condition where appellant fell, or that it knew, or by the exercise of reasonable care could know, of the condition of the floor in time to correct it. Indeed, there is at best only a scintilla of inferential evidence that there was water on the floor; that it caused or contributed to appellant's fall; and that the water or moisture was on the floor prior to appellant's fall. Assuming those inferences can be drawn, there is no basis on which to reasonably conclude *when* the water or moisture was placed on the floor. As stated in *Richardson v. Nwadiuko*, 184 Md. App. at 498, "there was no showing that [defendant] knew of the slippery condition or that the condition had existed long enough that [defendant] had constructive notice of it."

The Court's decision in *Mondawmin Corporation v. Kres*, 258 Md. 307 (1970) is inapposite. Mrs. Kres slipped while descending a wet stairway at the Mondawmin Mall. She had not seen anything wet on the stairs prior to the fall. The steps were adjacent to an

interior fountain, and there was evidence that an employee of a nearby store noticed that, prior to the accident, part of the stairway was wet. He had, on a prior occasion, warned a Mondawmin manager about the effect of the fountain spray on the stairs, and had advised that the "ornamental spray" from the fountain "should be lowered 'to eliminate the steps getting wet.'" *Kres*, 258 Md. at 312. An architect had testified that the position of the spray nozzles could "certainly have caused a wetting of the area." *Id*., 258 Md. at 313.

The Court of Appeals ruled that there was sufficient evidence to satisfy the "knowledge" requirement, *viz*., sufficient evidence that would permit a reasonable jury to conclude that Mondawmin knew or should have known of a dangerous condition and was under a duty to warn Mrs. Kres. Such facts, attendant to an "institutional" hazard or defect, are not present in the case before us. On the record before us, the Court's opinion in *Kres* offers no assistance to appellant.

Additionally, there is no evidence whatsoever that Rodney Short was an employee or agent of appellee.

Conclusion

Assuming appellee owed appellant a duty, there is no evidence of a breach of that duty.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.