Circuit Court for Prince George's County
Case No. C-16-CV-23-001321

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1080

September Term, 2024

EDOUARD GAY

v.

HIGH SIERRA POOLS, INC., ET AL.

Friedman,
Shaw,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: February 3, 2026

*This is an unreported opinion. This 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).

This is an appeal from a judgment entered by the Circuit Court for Prince George's County. Appellant Edouard Gay brought a negligence claim against Appellees Panco Management of Maryland, LLC and High Sierra Pools, Inc., following an injury he sustained when a lifeguard chair collapsed underneath him as he attempted to jump from it into his apartment complex's pool. The apartment complex was owned by Panco Management of Maryland, LLC, and High Sierra Pools, Inc. managed and maintained the pool and pool staff.

A jury trial began on July 15, 2024, and at the close of Appellant's case, Appellees moved for judgment, arguing that Appellant had failed to establish negligence. The trial court granted the motions and entered judgment in favor of Appellees. Appellant noted this timely appeal, and he presents two questions for our review:

1. Did the trial court err in finding that the three elements of res ipsa loquitur were not satisfied as a matter of law?

2. Did the trial court abuse its discretion by requiring a higher standard of proof than Maryland demands for res ipsa loquitur?

For the following reasons, we hold the court did not err and we affirm the judgment.

BACKGROUND

On July 4, 2022, Edouard Gay, a resident of Foxfire Apartments, located in Prince George's County, Maryland, was injured when he attempted to jump into his apartment's pool from a lifeguard chair. Appellant filed a negligence claim against Panco Management of Maryland LLC, the owner and operator of the apartment complex and High Sierra Pools,

Inc., the company that managed and maintained the pool and staff in the Circuit Court for Prince George's County. The matter proceeded to a jury trial on July 15, 2024.

As his first witness, Appellant called Orville Rhoden, a commercial truck driver who was his co-worker. Mr. Rhoden testified that, on July 4, 2022, he and Appellant went to the pool before midday and swam. They saw two lifeguards on duty and several people swimming. Mr. Rhoden observed five individuals repeatedly jump from the lifeguard chair into the pool. One of the lifeguards, Julianne Acosta, invited Appellant to jump off the lifeguard chair and Appellant accepted the invitation. As Appellant reached the top of the chair and was preparing to turn around to jump, the chair collapsed, and Appellant's feet were pierced by the broken chair. On cross-examination, when asked "did the chair seem dangerous?" Mr. Rhoden responded: "I wouldn't take a jump, so I can't say it was dangerous."

Ms. Shannon Cooper, the property manager for Panco Management, LLC testified that the pool at Foxfire Apartments is a private pool operated for the apartment residents and their guests and that the gates to the pool are locked when the pool is closed. Ms. Cooper stated that Panco Management, LLC contracted with High Sierra Pools, Inc., an independent contractor, to manage the pool. Ms. Cooper testified that, as property manager, she oversees the independent contractors, including High Sierra Pools, Inc. As part of that process, Ms. Cooper signs off on High Sierra Pool Inc.'s inspection reports of the pool area, acknowledging that the inspections were done. She identified reports submitted on June 15, 2021; June 21, 2022; June 26, 2022; and June 28, 2022. She testified

that she signed off on each report. Ms. Cooper also identified an inspection report dated July 4, 2022, and testified that she received the inspection report by email; it had her name on it; and it was for the day of the incident. Ms. Cooper testified that the report stated that the inspection was not completed on that day. Ms. Cooper stated that she is traditionally not present when inspections are being conducted. She stated that she had no knowledge of any inspections that were done on July 1, July 2, and July 3. Ms. Cooper also testified that she did not know how old the lifeguard chair was when it collapsed. On cross examination, Ms. Cooper reiterated that she did not work for High Sierra Pools, Inc. She stated that Panco Management, LLC does not have pool expertise and relies on High Sierra Pools Inc's expertise to keep the pool safe.

Appellant then testified. He stated that on July 4, 2022, he and Mr. Rhoden walked to the pool and upon their arrival they observed people swimming. They then entered the pool and swam. During their time there, they saw two young boys jumping off the lifeguard chair, along with three other individuals. Mr. Gay testified he walked over to the chair and a lifeguard asked him if he wanted to jump. Mr. Gay accepted the invitation, and as he climbed the steps of the chair, the chair platform broke, and he hit the top step and every step going down. Mr. Gay explained that although he had reached the top step, he was unable to complete his jump.

On cross examination, Mr. Gay testified that, in his teenage years, he worked as a lifeguard and during that time, he allowed people to jump from the lifeguard chairs. He stated that there was nothing wrong with doing so. Mr. Gay was asked whether the pool

rules stated that he used the pool at his own risk. Mr. Gay testified that he was not aware that his lease covered pool use and that he did not look at his lease thoroughly.

On redirect examination, Mr. Gay stated that, while working as a lifeguard, he sat on a lifeguard chair, the chair did support his weight, and it was not dangerous to stand on it. Mr. Gay stated that, on the day of the incident, he did observe a sign prohibiting diving. He testified that because the lifeguard was letting people jump off the chair and invited him to do so, he decided to jump.

Following his testimony, Appellant closed his case in chief and both Appellees moved for judgment, arguing that Appellant had not established negligence. High Sierra Pools, Inc. argued that Appellant had not established that the lifeguards were at fault or that there was a defect in the lifeguard chair. High Sierra Pools, Inc. also argued that Appellant was not entitled to a res ipsa loquitor instruction.

> **[High Sierra Pools, Inc.'s Counsel]:** The third potential theory is--- and Plaintiff put this in their jury instructions, is a res ipsa type instruction, and that doesn't get them there either. They can't get that instruction. They would need to show that the artifice that caused the injury is in the exclusive control of the defense. And the testimony was, it wasn't. Certainly not my client. There's other people climbing the chair. The pool is locked at night. There's no evidence whatsoever that the support, a res ipsa instruction, that this just happens and it happens to be my client's fault. So for all these reasons, the Court should enter judgment because there's been no testimony that the lifeguard did something wrong. In fact, the testimony is the converse. There's been no testimony as to the chair, nor anything linking up these inspections to the accident and the plaintiff is not entitled to a res ipsa instruction.

Panco Management, LLC adopted High Sierra Pools, Inc.'s arguments and then stated:

> **[Panco Management, LLC's Counsel]:** First of all, I do want to adopt Mr. Liskow's motion as well. I'll just try to address issues that are relevant only to Panco. Panco was an independent contract relationship with High Sierra

> Pools. The operative documents indicate this and specifically designate no contract, or contractee. There's been, I guess, no evidence of any respondeat superior. In other words, there was no indication that if the lifeguards did something, I'm not saying they did, they could be agents of Panco. And there's also no evidence that Panco, rather than the pool company, undertook any inspection, other than that signing sheets to say, "Yeah it was done." So with respect to Panco and the independent relationship it has with High Sierra, I do not see any basis for imputing liability based on the record we have. So for that reason, that would be my first request for dismissal would be that there's no evidence of respondeat superior given the independent contract relationship**.**

Appellant's counsel, in response, argued that the elements of res ipsa loquitur had been established. Citing *Blankenship v. Wagner*, he argued that the first requirement was satisfied because the occurrence ordinarily would not have happened without negligence. With regard to the exclusive control element, Appellant's counsel relied on Ms. Cooper's testimony that the pool was private and limited to residents and their guests. Appellant argued that Appellee Panco Management, LLC controlled who came in and who came out; the gates were locked; and only authorized people, including the people they hired, namely, High Sierra personnel were present at the pool. Appellant also argued that the third element had been established in that it was more likely than not that no act by the plaintiff, a third party, or an intervening force caused the injury. Appellant referenced testimony that Appellant merely stood on the stairs. Appellant's counsel asserted that the resolution of the case was a matter for the jury. As to assumption of the risk, Appellant argued:

> **[Appellant's Counsel]:** And, Your Honor, this case clearly establishes that for assumption of risk to apply, it's not just that he could have -- my client could have known of the risk, or should have known of the risk, it's that he must have known of the risk. And based on the testimony, there's no evidence

> whatsoever that he must have known that the steps on this lifeguard stand would collapse. There's no evidence whatsoever that he assumed that risk that the lifeguard stand would crumble beneath him.

Following the arguments of counsel, the court recessed. The next day, the court announced its decision:

> **THE COURT**: So, Mr. Liskow is correct. Clearly the law in Maryland with regard to the doctrine of res ipsa loquitur is that there are three circumstances that have to be shown by the evidence. The first is that it must appear that the accident was of such a nature that it would not ordinarily occur without the Defendant's negligence. The second circumstance that must be shown is that the plaintiff has to demonstrate that the apparatus, or instrument, that caused the injury was in the Defendant's exclusive control, as Mr. Liskow pointed out. And thirdly, that it must appear from the evidence that no action on the part of the plaintiff, or third party, or other intervening force, might just have as well caused the injury. So, in looking at the evidence in this case, the Court does not believe that those three circumstances exists as shown by the evidence.
>
> With regard to the first factor, that the accident was of such a nature that it would ordinarily occur without the defendant's negligence, the Court does not believe that one could say that in this case, given the nature or the out of the ordinary nature in which the chair was being used repeatedly, that an accident like this, or an accident like this, would not occur without the defendant's negligence. Of course, there's no evidence. That's the whole purpose of res ipsa, that there's no other evidence that suggests that the accident occurred without defendants' negligence. But in this case, you have the situation where, even in the plaintiff's pleading, its complaint, it's asserted that as many as ten people had utilized—had climbed up the chair and were diving into the water off of the chair. This clearly is not a diving board. This was a lifeguard chair, but it was not being utilized that way.
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> So I think the first circumstance, the first factor, I think one would have to strain to find that the factor actually does exist. But even if the Court were to find that the factor does exist, I think the next two factors are—the evidence here is even more compelling that the circumstances do not exist.
>
> Again, the second factor, or the second circumstance, is that the plaintiff has to demonstrate that the apparatus is within the Defendants' exclusive control. Now, I did take an opportunity to read the Blankenship case, which is the

case that the Plaintiff cited and asked the Court to look at. I think this is a case that factually is entirely different from Blankenship. Blankenship was a case in which the plaintiff was an appliance delivery person. He delivered a refrigerator, he along with another co-worker. They entered the Defendant's home. They tried to take a very heavy refrigerator up the stairs. One of the stairs collapsed. Not the plaintiff in that case, but the co-worker, his foot went through the stair, which caused the plaintiff to lose his balance.

In that particular case it was clear that the apparatus, or the instrument in that case, the stair was within the exclusive control of the defendant, the homeowner. Now again, in this case is that there were multiple people who climbed up the ladder. Now, I understand that according to the testimony and the evidence in this case, that the lifeguard allowed them to do that. But the fact is and therein lies the problem because there's no evidence of a causal connection—there's no evidence proving causation.

It could have easily been the fact that ten people got on this lifeguard chair and they were using the chair as a diving board. That very well, very plausibly, may have been the case why this chair, by the time Mr. Gay got up there, why it broke, why it collapsed. We don't know because there's no evidence, there's no expert testimony as to the condition of the chair. There's no expert testimony whatsover as to what caused that chair to break.

It simply—the argument is simply it had to be due to negligence because these things don't happen without negligence. Well, the Court disagrees, respectfully, with the plaintiff in this case and I find that it could have been a myriad of things that were outside of what may have been the Defendant's negligence that caused this chair to break.

As to the third factor, again, that third circumstance requires that it has to appear from the evidence that no action on the part of the Plaintiff, or a third party, or other intervening force, might just as well have caused the injury. And again, and I reiterate, the evidence of this case, this is not a Blankenship case at all. In Blankenship, there was no—they went into the residence for the first time. They were taking the fridge up the stairs and the step broke and that's it.

This was a situation where Mr. Gay himself sat there and watched. And he watched ten people climb up that chair. And I found it quite—and Mr. Gay testified, he said, "I wanted to go up there because I noticed that their splashes weren't being enough." The other folks that went on the chair and they jumped into the water from the chair; their splashes weren't big enough. So

> I wanted to, basically, show them, you know, how to splash in the water. That's essentially what he said in his testimony.
>
> And then Mr. Rhoden, who was Mr. Gay's witness in this case, he said, "I wasn't going to get up there because I found it to be dangerous myself. So clearly there was something going and I believe it certainly can be inferred from the evidence that the activity that was taking place on this particular apparatus on this chair was such that even the Plaintiff's own witness recognized that there was potential danger involved in getting on the chair.
>
> And it doesn't take much evidence to generate an alternative as to causation here as to why the accident occurred. And I think that the record here is replete with evidence that a third party, or other intervening force, might just as well have caused the injury. And for those reasons, the court finds that res ipsa does not apply in this particular case. And because res ipsa does not apply, the Court finds that the plaintiff has failed to meet its burden. And, therefore, the Motion for Judgment with respect to both Defendants is granted.

Counsel for Appellant asked to be heard and he urged the court to reserve its ruling, arguing that there were factual issues that were more properly resolved by a jury. The court declined the request. Appellant timely appealed.

STANDARD OF REVIEW

A trial court's decision to grant a motion for judgment in a civil case is reviewed without deference. *Sugarman v. Liles*, 460 Md. 396, 413 (2018). "We assume the truth of all credible evidence, and all fairly deducible inferences therefrom, in the light most favorable to the party against whom the motion is made." *Mayor and City Council of Balt. v. Stokes*, 217 Md. App. 471, 491 (2014).

DISCUSSION

I. The trial court did not err in finding that Appellant had not established the elements of res ipsa loquitur as a matter of law.

Appellant argues that the collapse of the lifeguard chair satisfied the requirements of a res ipsa loquitur prima facie case. He asserts that "lifeguard chairs are specifically engineered, designed and construct to withstand not only the static weight of routine use but also the dynamic forces of emergency water entry." He contends that the evidence established that Appellees had exclusive control of the chair and that neither his actions nor those of a third party caused the chair to collapse.

Appellees argue that the lifeguard chair could have collapsed without any negligence by the owner or lifeguards, that it could have been a defect in the design or manufacture of the chair, or because of its age, or wear. Appellees contend that the use of the chair by third parties negates exclusive control and that Appellant's misuse of the chair was a potential cause of his accident.

"Res ipsa loquitur (literally, "the thing speaks for itself") is a negligence doctrine that allows a plaintiff to establish a prima facie case when direct evidence of the cause of the accident is unavailable and the circumstantial evidence permits the drawing of an inference by the factfinder that the defendant's negligence was the cause." *District of Columbia v. Singleton*, 425 Md. 398, 407 (2012). The doctrine provides a plaintiff the opportunity to establish a *prima facie* case "when he could not otherwise satisfy the traditional requirements for proof of negligence." *Pahanish v. Western Trails, Inc.*, 69 Md. App. 342, 359 (1986). In order to establish negligence under the doctrine, three conditions

must be satisfied: (1) the occurrence must be one which does not ordinarily happen in the absence of negligence; (2) the instrumentality must have been within the defendant's exclusive control; and (3) no action or omission of the plaintiff was the cause of the event. *Id.* at 360.

To determine whether there is a connection between the circumstances proved and the conclusion sought and whether an event is of the kind that does not occur unless someone has been negligent, the court looks to common sense and human experience. *Norris v. Ross Stores, Inc.*, 159 Md. App. 323, 331 (2004). If "the . . . evidence introduced by the plaintiff or the defendant shows that everything relative to the case is known, . . . and that the injury might have been caused by something other than defendant's negligence, the plaintiff will not be allowed to avail himself of the doctrine." *Blankenship v. Wagner*, 261 Md. 37, 46 (1971). "Where the probabilities are at best evenly divided between negligence and its absence, it becomes the duty of the court to [conclude] that there is no sufficient proof." *Gleason v. Jack Alan Enter.*, 36 Md. App. at 562 (1977) (quoting *Leikach v. Royal Crown*, 261 Md. 541, 549-50 (1977).

The exclusive-control condition requires evidence that demonstrates that "no third party or other intervening force contributed more probably than not to the accident." *Singleton*, 425 Md. at 408. In proving the absence of the plaintiff's negligence, or other, more probable causes of the accident, "the plaintiff is not required to exclude every possible cause for his injuries other than negligence; he is only required to show a greater likelihood that his injury was caused by the defendant's negligence than by some other cause." *Id.* at

409 (citation modified). When the three elements are satisfied, a jury may properly infer negligence from the circumstances of the accident itself. *Dove Elevator Co. v. Swann*, 334 Md. 231, 236 (1994). The three elements of the doctrine interrelate.

Here, the evidence adduced at trial, included testimony that, prior to Appellant's attempted jump, at least five individuals repeatedly jumped off the lifeguard chair. Appellant produced no testimony regarding the engineering, design or construction of the lifeguard chair, its ordinary use and no evidence of the age or condition of the chair. There was no evidence that jumping from a lifeguard chair repeatedly within a short time span was a use intended for individuals or lifeguards. There, also, were no witnesses presented to explain the functions of such a chair. While Appellant described his prior use as a lifeguard, he did not testify that the chair he jumped from on the day of the incident was the same type or similar to those used by him in his teenage years.

We observe that Appellant testified that individuals, other than Appellees' employees, used the chair to jump into the pool, and thus, there was not exclusive and uninterrupted control. We agree with the trial court that Appellant did not establish a sufficient causal connection and we note that, even, if Appellant established exclusive control, he did not satisfy the remaining requirements.

We also agree with the trial court that Appellant's actions may have caused or contributed to the chair collapsing. The court stated:

> This was a situation where Mr. Gay himself sat there and watched. And he watched ten people climb up that chair. And I found it quite—and Mr. Gay testified, he said, "I wanted to go up there because I noticed that their splashes weren't being enough. The other folks that went on the chair and they jumped

> into the water from the chair; their splashes weren't big enough. So I wanted to, basically, show them, you know, how to splash in the water. That's essentially what he said in his testimony.

In sum, the three elements required for a prima facie res ipsa loquitur case were not satisfied and thus, the court did not err in granting judgment.

II. **The court did not require Appellant to adhere to a higher standard of proof.**

Appellant argues that the court held that direct evidence and expert evidence was required and, therefore, the court improperly raised Appellant's burden of proof. He contends the court required the elimination of all possibilities and the court expanded the exclusive control element by focusing on physical access and not maintenance responsibility.

In our view, Appellant mischaracterizes the court's ruling. The Court, in describing the possible causes of the accidents stated:

> It could have easily been the fact that ten people got on this lifeguard chair and they were using the chair as a diving board. That very well, very plausibly, may have been the case why this chair, by the time Mr. Gay got up there, why it broke, why it collapsed. We don't know because there's no evidence, there's no expert testimony as to the condition of the chair. There's no expert testimony whatsover as to what caused that chair to break.

The Court did not state that direct or expert evidence was required. It simply noted that there was no such evidence. We, further, found nothing in the record indicating that the court determined that all possibilities must have been resolved. Rather, the court plainly stated that "it could have been a myriad of things that were outside of what may have been the Defendant's negligence that caused this chair to break."

When a party seeks to establish a prima facie case of res ipsa loquitur, their burden is to prove the defendant's negligence. While clearly, res ipsa is centered on circumstantial evidence that permits the drawing of an inference, the evidence must not be speculative. Here, Appellant's failure to produce sufficient available and explanatory evidence precluded him from invoking res ipsa loquitur. *See, e.g.*, *Singleton*, 425 Md. at 415-16.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.