Circuit Court for Baltimore County
Case No. 03-C-18-004376

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1272

September Term, 2019

ANITA SMITH

v.

BAY FRONT, LLC

Kehoe,
Leahy,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: June 15, 2021

Anita Smith appeals from the grant of summary judgment by the Circuit Court of Baltimore County on July 31, 2019, in favor of appellee Bay Front, LLC ("Bay Front"). Ms. Smith filed a negligence complaint against Bay Front to recover damages for injuries she suffered on March 4, 2018, when the interior wooden steps, in the townhome in which she and her children resided, collapsed as she descended on her way to the basement. Ms. Smith and her family were leasing the townhome from Bay Front at the time.

In granting Bay Front's motion for summary judgment, the circuit court found that, in absence of any evidence that Bay Front knew or should have known that the staircase was defective or in need of repair, it could not be held liable for Ms. Smith's injuries resulting from the collapse of the steps within the townhome 18 months into the leasehold. The court rejected Ms. Smith's res ipsa loquitor argument because the landlord relinquished the right to possession of the interior of the townhome to Ms. Smith, and therefore, Bay Front did not have exclusive control of the steps, as required for application of the doctrine. Ms. Smith filed a timely appeal and presents one question with sub-parts[1] for our review, which we have recast as follows:

[1] Smith phrased their question presented as follows:

I. "Whether the circuit court committed reversible error by granting appellee's motion for summary judgment?"

   A. "Whether the circuit court committed reversible error by determining that the case of Mathews v. Amberwood Associates Ltd. Partnership, Inc., applied to appellant's case?"

> Did the circuit court err in granting the motion for summary judgment on the ground that Bay Front did not have notice of the defect and that the doctrine of res ipsa loquitor did not apply?

Finding no error with the judgment of the circuit court, we affirm.

BACKGROUND

The Falling Staircase

In 2018, Anita Smith was a resident and lessee of property, located at 2108 Cockspur Road in Baltimore, Maryland, owned by Bay Front. On or about March 4, 2018, Ms. Smith was walking down an interior staircase of the property to the basement, which she had typically done about six times a week, when the staircase "sudden[ly] and unexpected[ly]" collapsed. Ms. Smith fell as a result and allegedly suffered "severe personal injury."

Prior to the staircase collapsing, there had not been any modifications or changes to the basement stairs since Ms. Smith leased the property. Ms. Smith noticed that the stairs would squeak but never complained to Bay Front because she did not "think anything of it." She also did not notice any other issues with the staircase. After the fall, Ms. Smith contacted the property manager for the first time regarding the stairs and informed her that the staircase had collapsed.

On April 30, 2018, Ms. Smith filed a "Complaint and Demand for Jury Trial." In her complaint, she alleged that she was a "business invitee" of Bay Front and that the company was solely "responsible for the inspection, maintenance, care and repair of the

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B. "Whether the circuit court committed reversible error by determining that the doctrine of res ips[a] loquitor did not apply to appellant's case?"

premises . . . including the inspection, maintenance, care and repair of the said basement steps[.]" Ms. Smith also alleged that the steps were in the exclusive control of Bay Front and that the company "had a legal duty to keep the subject premises and its defective steps at issue, in a reasonable safe condition for use by its customers and invitees, including [Ms. Smith], and to exercise reasonable care to discover, correct or warn customers and invitees, including [Ms. Smith], of any danger, hazards or defective conditions existing upon said premises." Based on these claims, she asserted a single count of negligence against Bay Front and sought $500,000.00 in damages.

Discovery

The parties proceeded with discovery. Ms. Smith designated expert witnesses—chiropractors and internists—to testify regarding her injuries and damages. Specifically, she anticipated that, among other topics, "each medical provider will testify regarding the treatment received by [Ms. Smith] as a result of the incident that is the subject of this action; . . . the nature and extent of any permanent injury sustained by [Ms. Smith] and the reasonableness and cost of any future medical treatment." Both parties also submitted answers to interrogatories.

On October 12, 2018, Bay Front deposed Ms. Smith. During the deposition, she explained that she did not inform the landlord of any issues with the basement steps, prior to the incident, because she had only noticed a light squeak. She further testified that she had previously contacted Victor Moxey, the "maintenance man" on "numerous occasions" to address issues with the property. For example, Ms. Smith called Mr. Moxey to address

a leaking sink. However, she testified that she did not inform Mr. Moxey, or any other agents of Bay Front, of any issues with the stability of the steps, because while "[t]hey squeaked really bad," she "didn't think anything of it." Following discovery, Bay Front filled a motion for summary judgment.

Motion for Summary Judgment

On December 21, 2018, Bay Front moved for summary judgment. In its motion, Bay Front asserted that Ms. Smith "failed to establish any actionable negligence on the part of [] Bay Front" for two reasons. First, according to Bay Front, Ms. Smith never provided the company with "*any* notice[,]" either actual or constructive, that the steps were in disrepair. Bay Front conceded that "[a]lthough the stairs did suddenly collapse, there is no evidence that these stairs collapsed due to any defect or poor upkeep on the part of [] Bay Front." Second, Bay Front contended that, in the alternative, even if it had conducted a reasonable inspection of the steps prior to the incident, there is no evidence that they would have discovered the existence of a defect. The company further asserted that Ms. Smith or her "daughter and her 340-pound son, who each weekly [sic] walked up and down the basement steps for laundry purposes, never complained to management about the steps." Thus, Bay Front contended that "the law cannot hold [Bay Front] liable for 'dangerous conditions' of which only extraordinary foresight or burdensomely frequent inspections could have prevented."

In her opposition, Ms. Smith argued that summary judgment was improper because material facts, and the susceptible inferences from those facts, were in dispute.

Particularly, she asserted that the question of whether the allegedly defective stairwell is a "hidden danger that requires a warning is specifically a jury issue." According to Ms. Smith, the law "cited by [Bay Front] has no application to the case at issue." Rather, she contended, "this case is a classic application of the doctrine of res ipsa loquitor as it applies to a case involving collapsed steps." Ms. Smith stressed that she "has not sought to prove or attempt[ed] to prove [Bay Front]'s negligence by any means, other than application of the doctrine of res ipsa loquitor[.]"

Bay Front replied, averring that Ms. Smith had "not proffered *any* evidence as to the cause of the incident" and that the company had "no notice that the steps were in anything but good condition." Turning to the doctrine of res ipsa loquitor, Bay Front contended that the "doctrine is inapplicable to the present action" because Ms. Smith failed to prove that the injury occurred "by a casualty of a sort which usually does not occur in the absence of negligence"; that the staircase was "within [Bay Front]'s exclusive control"; and, that the steps collapsed "under circumstances indicating that it was not caused by any involuntary act or neglect of the plaintiff."

Motions Hearing

At the hearing on Bay Front's motion for summary judgment, the parties reiterated the arguments presented in their briefs. Bay Front maintained that the doctrine of res ipsa loquitor should not apply because Bay Front did not have "exclusive possession of the instrumentality of the injury." In the alternative, Bay Front argued that even under a traditional negligence analysis, without application of res ipsa loquitor, the elements

required to prove negligence would not be satisfied because Bay Front did not have actual or constructive notice. Bay Front explained that it did not have exclusive control over the staircase because, "[t]his is a case where the [] fall took place on the interior steps of a home that was rented to [Ms. Smith]. No other tenants in that property. She is the one . . . who has the tenancy there, who is in possession of the property and certainly not [Bay Front]."

Ms. Smith responded that the use of res ipsa loquitor was not intended to be a substitute for "a complete legal theory;" rather, it was intended to be "a[n] evidentiary substitute that allows the Plaintiff to provide evidence in the sense where none will be apparent for the Plaintiff to ever have." Ms. Smith urged that the photographs attached to pleading should show to the court that, "it's the jury's providence in this case to take a look at those photographs and along with the instruction about res ipsa loquitur" and "do with it [] what they might. In this case I think it's a -- is a finding of negligence."

The court questioned counsel whether under Maryland premises liability law, as articulated in *Matthews v. Amberwood*, 351 Md. 544 (1998), the landlord is not required to repair the interior of a leased premises that is not shared as "common area" with other tenants. The trial judge observed that, based on his understanding of *Matthews*, regarding the interior of a leased premises "the landlord is essentially not in a position to know of any defects in the premises that he's not on notice of." The court further stated:

> I mean -- and I'm looking at *Matthews versus Amberwood,* 351 Md. 544, which is a 1998 case out of the Court of Appeals. Essentially the common 1aw on a lease is that the leased premises, not the common area, is the -- is the tenants. And the -- you know, the landlord is essentially not in a position

> to know of any defects in the premises that he's not on notice of. So if he, under the lease, retains an obligation to repair water heaters and furnaces and things like that and they explode, you know, there's a defect, he should have been on notice. A collapsing staircase, it's like a ceiling that drops or a wall that falls in.

The court then explained that "res ipsa [loquitor] has to do with proof" and

> here you don't have [it] --and -- and -- and this is a question, but, I mean, you don't allege the staircase was eaten by bugs, sawed through on a repair improperly, designed poorly, repaired poorly, constructed poorly, misused in advance of your client taking tenancy, you don't have any of that. And what you're saying is the mere fact that the staircase collapses, I think it's 18 months into the tenancy, that in and of itself is sufficient to generate an issue where they then have to explain how or why that occurred.

The trial judge noted that the principle of res ipsa loquitor may apply if the staircase was located on the exterior of the house because the staircase would not have been within the within the control of the tenant. The trial judge explained "[a]n exterior staircase, anybody can go up and down."

Before issuing its ruling**,** the court presented a hypothetical and discussed:

> You rent a house -- as an example, you rent a house and there's an exterior staircase. There could be people that come and go up and down the exterior of the -- the staircase, and there are things wrong with the staircase. The landlord, without entering the leased premises, can look from the street and see the leased staircase is leaning, it's shaky, whatever. Without having a duty to inspect it, it's observable.
>
> But on the interior of a premises, how – how is the [Bay Front] under any obligation at all where he --he gives up his right to possession of the premises when he leases it to [Ms. Smith]?

Following that discussion, the judge announced his ruling from the bench:

> All right. I . . . understand [] [Ms. Smith]'s argument in opposition, I just disagree that that's the [s]tate of current Maryland law. I'm relying on *Matthews versus Amberwood*, 351 Md. 544, that in absence of an allegation

> or any proof of a defective condition in the premises that the landlord has been put on notice of, that the interior of the premises is -- he relinquishes control when he leases it to the Plaintiff. And in absence of notice of a -- a deficiency, [Ms. Smith] cannot maintain her cause of action.
>
> I understand counsel's argument that it is a matter of proof that he can rely on the -- the doctrine of res ipsa loquitur, but [] I don't think that's enough to get him past the motion.
>
> So for that reason I am going to grant the Defendant's motion for summary judgment. I'll sign an order to that effect.

On July 31, 2019, the same day as the hearing, the court entered a written judgment ordering, in pertinent part: "[Bay Front]'s Motion for Summary Judgment is GRANTED and [Ms. Smith]'s Complaint is dismissed with prejudice[.]" On August 26, 2019, Ms. Smith timely filed her Notice of Appeal to this Court.

STANDARD OF REVIEW

Summary judgment is proper where the trial court determines that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Md. Rule 2-501. Accordingly, we review the circuit court's legal determination without deference. *Thomas v. Shear*, 247 Md. App. 430, 447 (2020) (citing *Andrews & Lawrence Prof.'s Servs., LLC v. Mills*, 467 Md. 126, 146 (2020)). We "independently review the record to determine whether the parties properly generated a dispute of material fact, and, if not, whether the moving party is entitled to judgment as a matter of law." *Kennedy Krieger Inst., Inc.* v. *Partlow*, 460 Md. 607, 632 (2018) (quoting *Chateau Foghorn LP v. Hosford*, 455 Md. 462, 482 (2017)). In doing so, "[w]e review the record in the light most favorable to the nonmoving party and construe any reasonable

inferences that may be drawn from the facts against the moving party." *Id.* at 632-33 (quoting *Chateau Foghorn LP*, 455 Md. at 482). Further, "[i]t is a settled principle of Maryland appellate procedure that ordinarily the appellate court will review a grant of summary judgment only upon the grounds relied upon by the trial court." *Hamilton v. Kirson*, 439 Md. 501, 523 (2014) (citation omitted).

DISCUSSION

I.

Parties' Contentions

Ms. Smith contends that the circuit court erred in granting Bay Front's motion for summary judgment. Although she concedes that the court correctly relied on "Maryland law, as set forth and cited in the [] motion, regarding the standard for granting summary judgment under [Maryland] [R]ule 2-501," she disagrees with the court's interpretation of the facts and whether those facts are material and in dispute. Specifically, Ms. Smith states that the circuit court's decision to grant summary judgment was not proper because "even if it appears that the relevant facts are undisputed, [] those undisputed facts are susceptible to inferences supporting the position of the party opposing summary judgment[.]" Ms. Smith relies heavily on *Blankenship v. Wagner*, 261 Md. 37 (1971) in support of her argument that the doctrine of res ipsa loquitor should apply in this case. She then leaps to the contention that, because the doctrine applies, based on "reasonable inferences from the facts," a judgment of law could not have been properly made "except by the trier of fact[.]"

Bay Front responds that the circuit court properly relied on *Matthews v. Amberwood Associates Ltd. Partnership, Inc.*, 351 Md. 544 (1998), in finding that the doctrine of res ipsa loquitor did not apply because, among other reasons, Ms. Smith failed to present facts that Bay Front had actual or constructive notice of the condition of the staircase. Specifically, Bay Front points out that if the company "had received notice of a specific danger and subsequently failed to remedy the danger, the inaction would have constituted [Bay Front]'s dereliction of its duties to [Ms. Smith,]" similar to the Court's conclusion in *Matthews*. However, Bay Front avers that, unlike the case in *Matthews,* there was no evidence that Bay Front had any notice of any potential defects with the stairs in Ms. Smith's townhome. Additionally, Bay Front argues that the doctrine of res ipsa loquitor does not apply because the basement staircase was not in the company's exclusive control. Lastly, Bay Front contends that "*Blakenship* is factually inapposite" to the present case and does not address the issue of exclusive control, which is essential to the instant case.

II.

Analysis

Negligence and Premises Liability

First, we must acknowledge that "[p]remises liability is based on common-law principles of negligence[.]" *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 316 (2019). Accordingly, in a case involving premises liability, "a plaintiff must establish the four elements required in any negligence action[.]" *Id.* In *Valentine v. On Target, Inc.*, the Court of Appeals instructed:

> To maintain an action in negligence, the plaintiff must assert in the complaint the following 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."

353 Md. 544, 549 (1999).

In *Macias*, we explained that "the analysis we must undertake in premises-liability cases is distinct from other classes of negligence at the outset because the duty owed by the possessor or owner of property to a person injured on the property is determined by the entrant's legal status at the time of the incident." 243 Md. App. at 316. In conducting this analysis, "[w]e apply the general common-law classifications of invitee, social guest (or licensee by invitation), and trespasser (or bare licensee)." *Id.* at 317. The Court of Appeals has defined an invitee as an individual "invited or permitted to enter or remain on another's property for purposes connected with or related to the owner's business.'" *Bramble v. Thompson*, 264 Md. 518, 521 (1972).

"[T]he highest duty is owed to invitees[.]" *Macias,* 243 Md. App. at 317. A possessor or owner of property must "'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.'" *Id.* (citing *Deboy v. City of Crisfield*, 167 Md. App. 548, 555 (2006)). In *Macias* we also emphasized that a "property owner will be liable to *an invitee* in negligence if (1) the owner 'controlled the dangerous or defective condition;' (2) the owner knew or should have known of the dangerous or defective condition; and (3) 'the harm

suffered was a foreseeable result of that condition.'" *Id.* (citing *Hansberger v. Smith*, 229 Md. App. 1, 21 (2016) (internal citation omitted)) (emphasis added). In order for an invitee to "establish a breach of duty, the plaintiff carries the burden to show 'that the defendant had actual or constructive knowledge of the dangerous condition and that the knowledge was gained in sufficient time to give [the defendant] the opportunity to remove it or to warn the invitee.'" *Id*. (*citing Rehn v. Westfield Am.*, 153 Md. App. 586, 593 (2003)).

Ms. Smith contends that she was an invitee on the property owned by Bay Front and therefore she was owed the highest duty of care. However, in *Macias*, we held that condominium "owners and their guests occupy the legal status of invitee when they are in the common areas of the complex over which the condominium association maintains control." 43 Md. App. at 327. Here the staircase was not in a common area. Therefore, Ms. Smith has the burden to show that the Bay Front had actual or constructive knowledge of the dangerous condition and that the knowledge was gained in sufficient time for Bay Front to rectify it or to warn her of the defective staircase. *See id.* at 318.

In *Matthews v. Amberwood Associates Ltd. Partnership, Inc.,* the Court of Appeals examined the distinction between the duty imposed, under Maryland law, upon a landlord to maintain the common areas, versus the "duty which a landlord owes to a tenant, and the tenant's guests, within the tenant's apartment or other leased premises." 351 Md. 544, 553-570 (1998). Specifically, the Court addressed the following question:

> Whether a landlord of an apartment complex owes a duty to social guests of a tenant who, while in the tenant's apartment, are injured or killed by a highly dangerous pit bull dog kept by the tenant, when the landlord knew of the dog's presence and was aware of the dog's dangerousness, when the presence

> of the dog was in violation of the lease, and where the landlord could have taken steps to abate the danger.

Id. at 548. The Court of Appeals instructed, "whether a landlord owes a duty to his or her tenants and their guests with respect to dangerous or defective conditions on the property, of which the landlord has notice, depends upon the circumstances presented." *Id.* at 553.

The Court observed that in a "multi-unit facility, the landlord ordinarily has a duty to maintain the common areas in a reasonably safe condition," *id.* at 553-54; however, "a landlord is not ordinarily liable to a tenant or guest of a tenant for injuries from a hazardous condition in the leased premises that comes into existence after the tenant has taken possession." *Id.* at 555; *see also Marshall v. Price*, 162 Md. 687, 689 (1932) ("The law is well settled that, when the owner has parted with his control, the tenant has the burden of the proper keeping of the premises, in the absence of an agreement to the contrary; and for any nuisance created by the tenant the landlord is not responsible"). The Court further instructed:

> The principal rationale for the general rule that the landlord is not ordinarily liable for injuries caused by defects or dangerous conditions in the leased premises is that the landlord "has parted with control," *Marshall v. Price, supra*, 162 Md. at 689, 161 A. at 172. Moreover, as illustrated by the *Shields* opinion, 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. *See, e.g., Scott v. Watson, supra*, 278 Md. at 165-166, 359 A.2d at 552 (landlord may be liable for "injuries sustained by tenants as a result of criminal acts committed by others in the common areas within the landlord's control"); *Macke Laundry Service Co. v. Weber, supra*, 267 Md. at 431, 298 A.2d at 30 ("Our decisions have consistently held a landlord liable for ...

> failure to remedy defects ... over which he retains control"); *Langley Park Apartments v. Lund, supra*, 234 Md. at 407, 199 A.2d at 623 (where the landlord "reserves under his control the passageways and stairways, and other parts of the property for the common use of all the tenants he must then exercise ordinary care and diligence to maintain the retained portions in a reasonably safe condition"); *Elmar Gardens, Inc. v. Odell*, 227 Md. 454, 457, 177 A.2d 263, 265 (1962) (landlord has a duty with regard to areas "under his control"); *Landay v. Cohn, supra*, 220 Md. at 27, 150 A.2d at 740-741.

Matthews, 351 Md. at 556-57. Accordingly, the Court held "[u]nder the circumstances . . . and the prior cases in this Court emphasizing the factor of a landlord's control, it is not unreasonable to impose upon the landlord a duty owed to guests who are either on the leased premises or the common areas." *Id.* at 560.

Returning to the case before us, it is clear from the record that Bay Front had relinquished its control of the staircase to Ms. Smith 18 months prior to the incident. As discussed above, this Court will not ordinarily hold a landlord or property owner liable for a hazardous condition that "comes into existence after the tenant has taken possession." *Matthews*, 351 Md. at 555.

Furthermore, the record supports the circuit court's determination that Bay Front did not have constructive or actual notice of any defect in the stairs prior to their collapse. We have made clear that in order to "establish a breach of duty, the plaintiff carries the burden to show 'that the defendant had actual or constructive knowledge of the dangerous condition and that the knowledge was gained in sufficient time to give [the defendant] the opportunity to remove it or to warn the invitee.'" *Macias,* 243 Md. App. at 317 (citing *Rehn*, 153 Md. App. at 593). Ms. Smith testified under oath that before her fall, she noticed that the stairs would squeak but never complained to Bay Front because she did not "think

anything of it." She also stated that she did not notice any other issues with the staircase, although she used the stairs multiple times a week. It was not until after the fall, when Ms. Smith contacted the property manager, that Bay Front received notice of a problem with the stairs for the first time.

As the Court explained in *Matthews*, "a landlord is not ordinarily liable to a tenant or guest of a tenant for injuries from a hazardous condition in the leased premises *that comes into existence after the tenant has taken possession*." *Id.* at 555(emphasis added). Accordingly, we agree with the circuit court, that "in absence of an allegation or any proof of a defective condition in the premises that the landlord ha[d] been put on notice of" Ms. Smith could not maintain her action after Bay Front relinquished control of the property more than 18 months prior to incident.

The Doctrine of Res Ipsa Loquitor

Before this court, as in the circuit court, Ms. Smith's sole theory of negligence rests on the doctrine of res ipsa loquitor. In negligence cases, a plaintiff may invoke the doctrine of res ipsa loquitor to "rely on the inference of negligence to be deduced from all the circumstances" where there is no direct proof of negligence. *Hickory Transfer Co. v. Nezbed*, 202 Md. 253, 262 (1953). The phrase "res ipsa loquitur" means "the thing speaks for itself," *Benedick v. Potts*, 88 Md. 52, 55 (1898), and "allows a plaintiff the opportunity to establish a *prima facie* case 'when he could not otherwise satisfy the traditional requirements for proof of negligence.'" *Dover Elevator Co. v. Swann*, 334 Md. 231, 236 (1994) (citation omitted).

The doctrine is applicable when "the instrumentality causing injury is in the exclusive control of the defendant, and it is assumed [the negligent party] is in the best position to explain how the accident happened." *Peterson v. Underwood*, 258 Md. 9, 19 (1970) (citation omitted). "Exclusive control" is required because the doctrine works to compel the potential negligent party to produce evidence relating to the cause of the plaintiff's injury. *See Blankenship*, 261 Md. at 37, 41, 46. The doctrine of res ipsa loquitor will not be applied unless the alleged negligent party had exclusive control over the instrumentality causing injury because "[t]he rule is not applied by the courts except where the facts and the demands of justice make its application essential, depending upon the facts and circumstances in each particular case." *Id.* at 41.

In *District of Columbia v. Singleton,* the Court of Appeals established that, in order to invoke res ipsa loquitor successfully "the plaintiff must establish that the accident was '(1) of a kind that does not ordinarily occur absent negligence, (2) that was caused by an instrumentality exclusively in the defendant's control, and (3) that was not caused by an act or omission of the plaintiff.'" 425 Md. 398, 408 (2012) (quoting *Holzhauer v. Saks & Co.*, 346 Md. 328, 335-36 (1997)). When a plaintiff satisfies these three elements, the doctrine permits, but does not require, the jury "to infer a defendant's negligence without the aid of any direct evidence. Even when the doctrine applies, however, the burden of proving the defendant's negligence remains upon the plaintiff." *Dover*, 334 Md. at 236 (citations omitted). Res ipsa loquitor does not shift the burden of proof or create a rebuttable presumption. In order to be entitled to a "permissible inference" of the

defendant's negligence, the plaintiff must prove each element of the doctrine by a preponderance of the evidence. *See Hicks*, 25 Md. App. at 527-33.

In *Gillespie v. Ruby Tuesday, Inc.*, the plaintiff filed suit after a lamp fell from the ceiling and struck her while she was eating lunch at a Ruby Tuesday restaurant. 861 F. Supp. 2d 637, 639-40, 643-44 (2012). The plaintiff photographed the area after the incident, but Ruby Tuesday failed to preserve the fallen lamp. *Id.* at 69. The United States District Court for the District of Maryland ruled that plaintiff was entitled to the inference "'of actionable negligence in some unspecified way based on circumstantial evidence of events, even though the plaintiff [is] unable to prove a specific act.'" *Id.* at 642 (citing *Page v. Nat'l R.R. Passenger Corp.,* 200 Md. App. 463, 483-84 (2011)). Relying on *Norris v. Ross Stores, Inc.* 159 Md. App. 323, 332-333 (2004), the Court reasoned that the plaintiff demonstrated Ruby Tuesday's exclusive control by establishing that the lamp had been hanging in its restaurant and that she did not need to prove the actual mechanism that caused the injurious incident. *Id.* at 643. The court found that a falling lamp was not the type of incident that ordinarily happens absent negligence, comparing it to:

> when a pile of blocks topples onto a passerby, *Leidenfrost v. Atlantic Masonry,* 235 Md. 244, 201 A.2d 336 (1964); when steps crumble beneath a person's feet, *Blankenship v. Wagner,* 261 Md. 37, 273 A.2d 412 (1971); when a soda bottle explodes and strikes its owner in the eye, *Leikach v. Royal Crown Bottling Co. of Baltimore,* 261 Md. 541, 276 A.2d 81 (1971); and when glass shelves in a grocery store shatter onto a shopper, *Norris,* 159 Md. App. 323, 859 A.2d 266.

Id. at 644.

The plaintiffs in the foregoing cases were permitted an inference of actionable negligence against the property owner because the cause of their injuries was determined to be within the property owners' exclusive control. Maryland cases recognize, however, that not all property is within the owner's exclusive control. In *Holzhauer*, for example, the Court of Appeals held that an injured shopper was not entitled to a res ipsa loquitor inference when his injury was caused by an escalator that stopped abruptly and without explanation. 346 Md. at 331, 335-36. The Court held that there was an "explanation for the abrupt stop" that was "equally likely" as the owner's negligence. *Id.* at 336. The escalator had two emergency stop buttons that any person present could press, and, although there was no evidence that someone pressed one of the buttons, the facts "need only show that something other than [the owner's] negligence was just as likely to cause the escalator to stop." *Id.* "Hundreds of Saks & Co.'s customers have unlimited access to the emergency buttons each day[,]" the Court reasoned. *Id.* at 337-38. The Court explained that res ipsa loquitor was "often" inapplicable "when the opportunity for third-party interference prevented a finding that the defendant maintained exclusive control of the injury-causing instrumentality." *Id.* (citations omitted). The Court then ruled that the inference is impermissible when "'the opportunity for interference by others weakens the probability that the injury is attributable to the defendant's act or omission.'" *Id.* (quoting *Lee v. Housing Auth. of Balt.*, 203 Md. 453, 462 (1954)).

Blankenship v. Wagner, 261 Md. 37 (1971)—the primary case upon which Ms. Smith relies—does not assist Ms. Smith under the facts presented here. In *Blankenship*,

when a deliveryman and his coworker were delivering a refrigerator into the respondents' home, the deliveryman suffered injuries when one of the steps of an exterior staircase broke. *Id.* at 39. The staircase was located on the rear exterior of the house, connected to a porch that had been constructed by the respondents a few years prior to when the injury occurred. In its analysis, the Court of Appeals concluded that the broken step:

> does not fall neatly into the "classic pattern" of res ipsa [loquitor] cases in which someone is struck by a falling object.
>
> * * *
>
> Nonetheless, it comes within the ambit of the doctrine and similar situations are not unknown to tort law in this country. In the cases of *DiMare v. Cresci*, 58 Cal.2d 292, 23 Cal. Rptr. 772, 373 P.2d 860 (1962), a woman descending **an exterior stairway** in her apartment house was injured when one of the steps collapsed and she fell through. The court held that res ipsa loquitur was applicable, stating that steps do not ordinarily collapse unless the person having the duty to maintain and inspect them was negligent. In the earlier case of *Katz v. Goldring*, 237 App. Div. 824, 260 N.Y.S. 796 (1932), the New York Court held in a per curiam opinion that res ipsa loquitur applied when a plumber's helper who was moving a washtub out of an apartment in the defendant's tenement house was injured as he paused to rest on a landing and it collapsed.

Id. at 42-43 (emphasis added). Relying on these cases, the Court found the deliveryman "proved the construction, maintenance and exclusive control of the steps to be within the dominion of the [respondents]." *Id*. at 43. Therefore, the Court determined that the doctrine of res ipsa loquitor applied. *Id*.

As the term res ipsa loquitor suggests, the inference applies only when "the thing" speaks for itself. *See Benedick*, 88 Md. at 55. In *Blankenship*, "the thing" was an exterior staircase step that broke while the deliveryman and his coworker were delivering a

refrigerator into the defendants' house. *See Blankenship*, 261 Md. at 39. Here, an interior staircase used by and within the control of Ms. Smith and her family during the lease term, is "the thing" being analyzed. The central distinction between *Blankenship* and the instant case turns on the party that had exclusive control over the staircase. In *Blankenship*, the staircase was in the exclusive control of the *defendants* and there was no evidence presented that the *plaintiff* had ever even seen or traversed those steps before. *Id*. Here, the interior staircase located within the leased townhome was in the exclusive control of the *plaintiff*, Ms. Smith.

As we discussed, the use of res ipsa loquitor is justified in circumstances when "the instrumentality causing injury is in the *exclusive control* of the defendant." *Peterson,* 258 Md. at 19. Exclusive control is required because the doctrine compels the alleged negligent party to produce evidence relating to the cause of the plaintiff's injury, that the plaintiff otherwise would not have because the instrument that caused the injury was in the defendant's control. *Blankenship*, 261 Md. at 41. The circuit court correctly pointed out, "the landlord relinquishes control when he leases it to the Plaintiff. And in absence of notice of a -- a deficiency, the [] Plaintiff cannot maintain her cause of action." *See Marshall*, 162 Md. at 689. We agree. We affirm the circuit court's decision to grant summary judgment in favor of the appellee in this case.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.