Circuit Court for Baltimore City
Case No. 24-C-17-004504

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1615

September Term, 2019

JUA'DREK ADDISON

v.

BALTIMORE SCHOOLS ASSOCIATES, LLLP, et al.

Leahy,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: November 20, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Jua'Drek Addison, appellant,[1] appeals from the entry of summary judgment by the Circuit Court for Baltimore City in favor of Baltimore School Associates, LLLP; Crowninshield Management Corp.; Jolly Company, Inc.; and the Estate of Mendel Friedman (collectively, "BSA"), appellees. Addison sought compensation for lead paint-related injuries that he sustained, allegedly from exposure to lead paint at 2000 East North Avenue (the Property), a property formerly leased and managed by Appellees. Addison contends that the circuit court erred because it relied on grounds presented for the first time at oral argument on the motion and, with respect to his negligence count, in ruling that he did not present legally sufficient evidence to establish that the Property was "a substantially contributing source of Appellant's blood lead levels."[2] Alternatively, he argues that the court abused its discretion in denying his motion to alter or amend the judgment after he proffered an expert affidavit to remedy any deficiencies in the evidence he submitted in opposition to the motion for summary judgment.

For reasons that follow, we conclude that the circuit court did not err in granting summary judgment on belatedly raised grounds but did erroneously treat the evidence proffered by Addison as inadmissible and, therefore, insufficient to defeat summary judgment. We cannot affirm for reasons other than those given; therefore, we do not reach

[1] Because Mr. Johnson's mother and aunt share his last name, we shall occasionally refer to him by his first name for clarity.

[2] In his complaint, Addison alleged negligence, violation of the Consumer Protection Act, and negligent misrepresentation. On appeal, he challenges the circuit court's ruling only as to the negligence count.

the question of substantive evidentiary sufficiency. We shall reverse the judgment without prejudice to the right of Appellees to refile a motion for summary judgment.

BACKGROUND

Addison filed a complaint asserting causes of action for negligence, violation of the Consumer Protection Act, and negligent misrepresentation. He alleged that, as a young child, "born October 31, 1996[,]" he was injured by exposure to deteriorated " lead-based paint" when he "resided, visited, and spent significant amounts of time" at both a BSA property (the "Property") located at "2000 East North Avenue, Apt. 111, Baltimore, Maryland from approximately 1997 through 2000[,]" and at 1730 Normal Avenue, another property unrelated to BSA, "from approximately 2001 to 2002." In the negligence count, Addison alleged that Appellees violated housing "statutes, rules and regulations" in the Baltimore City Code, including article 13, sections 702, 703, and 706.

BSA answered that "[n]o act or omission by BSA was the proximate cause of any damages suffered by" Addison. Following discovery, BSA moved for summary judgment on all claims.

Standards Governing Negligence Liability For Lead Paint-Related Injuries

In *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 264 (2017), the Court of Appeals set forth the analysis to be applied to an alleged violation of a housing code, as follows:

> Section 702 requires all occupied dwellings to "be kept in good repair, in safe condition, and fit for human habitation." Section 703(2)(c) provides that a dwelling is in "good repair" if, in relevant part, "[a]ll walls, ceilings, woodwork, doors and windows [are] kept clean and free of any flaking, loose or peeling paint." Section 706 provides that any "interior loose or peeling . . . paint shall be removed" and prohibits the use of lead-based paint in the

> interior of any dwelling. Under Maryland's common-law Statute or Ordinance Rule, [a lead paint injury plaintiff] can make out a *prima facie* case of negligence based upon a violation of the Housing Code by demonstrating (1) the violation of a section of the Housing Code "designed to protect a specific class of persons which includes the plaintiff," and (2) "that the violation proximately caused the injury complained of." *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 79 (2003). In *Brooks v. Lewin Realty III*, we held that these provisions of the Housing Code were enacted to protect children from lead-based paint poisoning. *Id.* at 81 (citation omitted).

Rogers addressed whether the Circuit Court for Baltimore City erred in granting summary judgment in favor of the owner of a property where the plaintiff allegedly was exposed to lead. The Court applied the following analytical framework:

> To survive a motion for summary judgment, Rogers must produce enough evidence to satisfy both prongs of the Statute or Ordinance Rule to a reasonable probability. To satisfy the first prong, Rogers must demonstrate that it is reasonably probable that the subject property contained lead-based paint in violation of the Housing Code. To satisfy the second prong, he must establish that it is reasonably probable that the lead in the subject property caused his elevated blood lead levels, and that his elevated blood lead levels caused him injury. In *Ross v. Housing Authority of Baltimore City*, 430 Md. 648 (2013), we described this negligence theory as requiring three separate links: "(1) the link between the defendant's property and the plaintiff's exposure to lead; (2) the link between specific exposure to lead and the elevated blood lead levels[;] and (3) the link between those blood lead levels and the injuries allegedly suffered by the plaintiff." *Id.* at 668. For brevity, we will refer to these links as (1) source, (2) source causation, and (3) medical causation. . . .
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> To defeat a motion for summary judgment, a plaintiff must demonstrate only a reasonable probability as to each of these links—he is not required to conclusively establish them. In *Rowhouses, Inc. v. Smith*, 446 Md. 611 (2016), we sought to shed light on the meaning of "reasonable probability." We explained that "for purposes of causation in lead-based paint cases at the summary judgment phase, a reasonable probability requires a showing that is less than 'more likely than not,' but more than a mere 'possibility.'" *Id.* at 655 (footnote omitted). Additionally, "the subject property is a reasonable probable source of a plaintiff's lead exposure where there is a **fair likelihood** that the subject property contained lead-based paint and was a source of [ ] lead exposure." *Id.* at 657 (emphasis added).

> Maryland appellate courts have recognized two ways in which a lead paint plaintiff can establish the subject property as a reasonably probable source of his lead exposure and resulting elevated blood lead levels. First, in *Dow v. L & R Properties, Inc*., the Court of Special Appeals held that a plaintiff can defeat a motion for summary judgment by presenting evidence that the subject property is the only possible source of the plaintiff's lead exposure. 144 Md. App. [67, 75-76 (2002)]. In other words, the plaintiff can present sufficient evidence of source and source causation through the process of elimination. The *Dow* plaintiff lived in the subject property "from the time she was two months old until after she was diagnosed" with lead poisoning. *Id.* at 75. The intermediate appellate court reasoned that an affidavit indicating that the plaintiff spent all of her time in the home, "coupled with the undisputed fact that homes built before 1950 often contain lead-based paint, could indeed support an inference that the paint in question contained lead." *Id.* at 76. In *Rowhouses*, we explained that under a *Dow* causation theory, circumstantial evidence, such as testimony that prior residences did not contain flaking paint, is enough to rule out other possible sources of lead exposure. 446 Md. at 661-62.
>
> Second, a plaintiff can survive summary judgment on the issues of source and source causation by presenting evidence related solely to the subject property. ***If there are multiple possible sources of lead exposure, he can put forth enough evidence to establish that it is reasonably probable that the subject property contributed to his lead poisoning. The plaintiff can "rule in" the subject property as a reasonably probable source through either direct or circumstantial evidence.*** [*Hamilton v.*] *Kirson*, 439 Md. [501, 527-28 (2014)] (citations omitted).
>
> Under this second theory of causation, the plaintiff is not required to eliminate all other possible sources of lead exposure. *Id*. When a plaintiff may have been exposed to lead in multiple properties, his burden of proof does not change—he is still only required to show that the subject property was a reasonably probable source of his injury-causing exposure. *Id.* As . . . explained in *Hamilton v. Dackman*, 213 Md. App. 589 (2013), ***when a trial court is evaluating a defendant's motion for summary judgment, the question is "not whether the [subject] property is the probable source, but whether it is a probable source of the lead paint that allegedly caused [the plaintiff's] injuries."*** *Id.* at 617 (emphasis in original). . . . ***[A]s a matter of law, it is possible for a plaintiff to "create a genuine issue of fact that a property probably was responsible for something less than all of a plaintiff's demonstrated lead exposure."*** *Id.* at 616.

Rogers, 453 Md. at 264-67 (italicized bold highlighting added).

Motion for Summary Judgment

In its motion for summary judgment, BSA argued that Addison "has not presented evidence that any alleged lead-based paint at the Property, if any, was a substantial contributing factor in causing his alleged injuries." "Specifically," BSA asserted, "there is no evidence that [Addison] experienced an elevated blood lead level ('BLL') as a result of the Property because it was undisputed that [he] did not reside at the Property at the time of any of his document[ed] BLL test results[,]" which were dated "September 20, 2000 and . . . November 13, 2002."

To support its motion, BSA cited the allegations set forth in Addison's complaint and presented the following exhibits:

(1) Public school registration records signed under penalty of perjury by Addison's mother, Juanita Addison, identifying her address on August 25, 2000, as 1525 McKean Avenue, Baltimore, and her address two months later, on October 5, 2000, as 1730 Normal Avenue, Baltimore.

(2) Deposition testimony by Juanita Addison that she moved to Baltimore from South Carolina in 2000 and was living on McKean Avenue in August 2000. She moved directly from the McKean Avenue address to the Normal Avenue address, sometime between August and October of 2000. She also testified that she returned to South Carolina when she was pregnant with her younger child but returned in early 2002. She could not recall how long they lived at McKean Avenue before they moved to Normal Avenue.

(3) Results from two blood lead level tests, showing that Addison had an elevated BLL of 12 μg/dL on September 20, 2000 (no accompanying address), and a BLL of 4 μg/dL on November 13, 2002, when his listed address was on Normal Avenue.[3]

[3]Blood lead levels are measured in micrograms per deciliter (μg/dL) of blood. *See Standard Surveillance Definitions and Classifications, Centers for Disease Control and Prevention*, https://www.cdc.gov/nceh/lead/data/definitions.htm (last updated Nov. 18,

(4) Documents of Crowninshield Management Corporation ("Crowninshield") regarding "Move-In Move-Out Inspection" for Apartment 111, 2000 East North Avenue, signed by "resident" "Gloria Addison," who is Addison's aunt. For the initial move-in date of June 5, 1998, there are entries of "Newly Painted" handwritten next to "walls" in the kitchen, bathroom, living and dining room, and both bedrooms. In addition, the inspection report notes "Previous tenant left apartment in excellent condition."

(5) Crowninshield "Annual Unit Inspection" reports on Apartment 111, for inspections performed on October 19, 1999, and October 27, 2000. Both were signed by Gloria Addison and indicate no "repairs needed" after she "inspected the apartment and found it to be in good condition[,]"

In its written memorandum, BSA argued that there was no evidence establishing that Addison was exposed to lead while he was concurrently visiting North Avenue while residing at either McKean Avenue or Normal Avenue. Because Addison's elevated BLL test result on September 20, 2000, must be viewed in light of the evidence that he "was not residing at the Property at the time of either of his documented BLL tests[,]" BSA asserted that Addison "failed to produce sufficient evidence to show that the Property was a substantial contributing factor in the development of his alleged injuries."

Addison's Opposition

In his written opposition, Addison argued that he had "produced significant evidence that 2000 East North Avenue contained lead-based paint and was a substantial

2016) [https://perma.cc/K4A8-ZDKG]. As of 2012, the Centers for Disease Control and Prevention considers blood lead levels greater than 5 μg/dL to be elevated. *Id*.

Levitas v. Christian, 454 Md. 233, 238 n.3 (2017).

contributing source of [his] lead exposure and that he was injured as a result of that exposure." He also proffered that

> Paul T. Rogers, M.D., Plaintiff's medical expert, will opine to a reasonable degree of medical certainty that 2000 East North Avenue contained lead-based paint and lead-based paint hazards in areas where there was deteriorated paint. He will also opine that 2000 East North Avenue was a substantial contributing source of [Addison's] elevated blood lead level which substantially contributed to his injuries.

In support of his opposition to summary judgment, Addison submitted the following documentary exhibits:

(1) A "Property Card" for "2000 E. North Ave." showing it was designated as "School #99" dated "5-31-1890" and leased to "Baltimore School Associates for 51½ years [from] March 15, 1979."

(2) A Crowninshield "tenant folder" for Gloria Addison at "2000 E. North Avenue, Apartment 111[,]" which includes the following documents:

   (a) Gloria Addison's lease agreement dated "6/5/98," and accompanying "move-in" documents dated "6-9-98" identifying the occupants of Apartment 111 as Gloria and her two-year-old son.
   (b) An undated "Housing Application" for a person whose name is blacked out, showing a "present address" of "1730 Normal Ave." and listing as a second occupant "Jua'Drek Addison" with a birthdate of "10/31/96."
   (c) A document titled "BALTIMORE SCHOOLHOUSE APARTMENTS" listing "COLUMBUS SCHOOL" at "2000 E. North Ave." consisting of five one-bedroom apartments and 32 two-bedrooms.
   (d) Copies of Jua'Drek Addison's birth certificate and social security card.
   (e) Crowinshield housing documents, including a housing application from Gloria Addison, hand-dated "8-5-97," with supporting employment, public assistance, and food stamps information.
   (f) The same unit inspection documents from 1998-2000, for Apartment 111 that BSA previously submitted in support of its motion.
   (g) Documents stating Gloria Addison vacated Apartment 111 on February 28, 2001.
   (h) "DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS," signed and dated by Gloria Addison on "6-9-98," for "Apt. 111," stating that Crowninshield "has no actual knowledge of lead-based paint and/or lead-based hazards in the housing" and

"no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing."

(i) An "Addendum to Lease" signed and dated by Gloria Addison on "9/26/00[,]" stating "sister and nephew moved in[.]" An accompanying notice of rent adjustment, based on "review of your income and family composition," showing Jua'Drek Addison as a member of the household.

(j) An earlier lease addendum signed and dated by Gloria Addison on "04/05/00," and accompanying documents, identifying the household members as only Gloria and her four-year-old son.

(k) An excerpt from deposition testimony by Juanita Addison, recounting that when they "originally" came to Baltimore, she and Jua'Drek stayed with her sister at "2000 East, Baltimore" [sic] and that "wherever [they] were living," they visited that Property "[e]very day." When asked what she "recall[ed] about the condition of the paint at that property[,]" she testified, "There was peeling paint. It was a dangerous neighborhood, but we stayed inside most of the time." On cross-examination, she admitted that "much of the day Jua'Drek would be in school[.]"

(3) An article dated March 4, 2002, printed from the *Baltimore Sun* website, titled "Rest of Schoolhouse Apartments to close," reporting that "[i]n January, the city announced it would shutter Schoolhouse Apartments at 2000 E. North Ave." and two other locations, "which were in the worst condition."

(4) Maryland Department of the Environment ("MDE") records for 2000 East North Avenue, showing that on February 21, 1995, BSA registered the rental property with the Lead Poisoning Prevention Program ("LPPP"), identifying lead hazard insurance policies for twelve specific units on the second and third floors, not including Apartment 111. The LPPP registration was renewed annually. In addition, MDE inspection certificates for Apartment 208 on May 5, 1998, indicated lead that "meets standard" in multiple locations, including in dust on the floor. The MDE document categorized that inspection as "Full Risk Reduction" and noted that the building, which was constructed before 1950, received "lead paint risk reduction" certificates, rather than lead-free certificates.

(5) A report by Green Street Environmental that on April 17-18, 2012, testing conducted at 2000 East North Avenue, ten years after the apartments were closed, revealed 77 interior areas that tested positive for lead-based paint, including plaster walls, tin ceiling, and window sills, casings, and troughs. Those locations were identified on diagrams of each floor in the building, but the diagrams do not show the location of the former apartment units in the building.

(6) An "Environmental Health Exposure and Disease Assessment" by Dr. Paul T. Rogers, M.D., dated April 7, 2019. Dr. Rogers identified the three locations where Addison lived as 2000 East North Avenue, 1525 McKean Avenue, and 1730 Normal Avenue.

With respect to 2000 East North Avenue, the report states that is where Addison "lived . . . from early in 2000 until [approximately] 10/2000 when his mother moved back to South Carolina[.]" According to Dr. Rogers, "[t]his property (School House Building) was built in 1913 (Zillow) and had a 90% risk of lead-based paint . . . and over 90% risk of the lead-based paint having a higher concentration of lead of 50%[.]" The report further states that "[t]here was deteriorated paint and dust at this property noted the day Mr. Addison and his family moved in." Dr. Rogers noted the "property was registered with MDE Lead Poisoning Prevention Program 2/6/1995" and an "Inspection Certificate 11/28/01 said this property was not lead free[.]" Although "[d]ust sampling 5/6/1998 met dust clearance samples at that time[,]" the analysis conducted by Green Street on 4/17/12 "documented the presence of LBP (lead-based paint) on numerous components of the interior[.]"

In contrast, the report states, when Addison lived at 1525 McKean Avenue "from late 2000 for about a year[,]" there was "[n]o deteriorated paint[.]"

At 1730 Normal Avenue, where Addison lived from approximately "10/2001 until 2002[,]" the report states that there was also "a 90% risk" of LBP at a concentration above standards during that time. That property also "was registered with MDE" and an "Inspection Certificate 11/28/01 said this property was not lead free" but "[n]o deteriorated paint was reported at this property when Mr. Addison lived there."

Dr. Rogers stated that "[w]hile Mr. Addison lived in a lead contaminated environment there must be an exposure pathway for the neurotoxicant to enter his body." Citing an academic source, Dr. Rogers stated, "[l]ead has been shown mainly to be transferred into a child by hand to mouth activity when exposed to lead dust[.]"

Dr. Rogers considered the September 20, 2000, test showing that at nearly four years old, Addison's BLL was 12 μg/dL and 120 ppb while he was living at "2000 East North Ave.," and the November 13, 2002, test showing that at six years old, his BLL was 4 μg/dL and 40 ppb while living at "1739 Normal Ave."

After reviewing Addison's medical and educational records, Dr. Rogers diagnosed him with "neurodevelopmental disabilities or brain injuries" from

exposure "to lead paint hazard when he frequently visited a lead contaminated environment."

Dr. Rogers summarized his conclusions as follows:

> Based on the facts provided to me, Mr. Addison had extensive exposure to lead based paint at 2000 East North Avenue and 1730 Normal Avenue that caused his elevated blood lead levels and subsequent poisoning. The elevated blood lead levels were a substantial contributing factor to his neurodevelopmental disabilities or injuries.

In his legal memorandum, Addison explained that 2000 East North Avenue was one of the "Schoolhouse Apartments" in "a century-old Baltimore City building, built in 1891[,]" which had been "part of an effort to convert vacant schools, here School #99, into affordable projects[.]" By the time the Housing Authority of Baltimore closed all the Schoolhouse Apartments in 2002, they "were in 'poor condition.'" Pointing to "'lead paint risk reduction' certificates" indicating that "the building was not lead-free[,]" the 2012 environmental assessment report from Green Street identifying "77 areas of lead-based paint on the interior of" the building, and Dr. Rogers's report, Addison argued there was "[t]here is sufficient evidence, both direct and circumstantial, regarding the presence of lead-based paint at the Property while [Addison] lived in and visited 2000 E. North Avenue" and that Addison "suffered an elevated blood lead level while visiting the Property[.]"

Motion Hearing

On June 28, 2019, the scheduled hearing date for BSA's motion, counsel for Addison did not appear. After hearing argument from counsel for BSA, the court granted

the motion. The following day, however, the court vacated that order and scheduled another motion hearing.[4]

At the July 31 motion hearing, counsel for BSA argued there was insufficient evidence that Apartment 111 was a source of Addison's lead exposure or a substantial contributing factor in his injuries. Citing Juanita Addison's deposition testimony, BSA pointed out that although "she brought her son to her sister's apartment when she was visiting for some unknown length of time after school, but before she went home[,]" and "there was some peeling in some unknown part of the building, generally, at some unknown time[,]" there was "[n]o evidence of any chipping, flaking, peeling paint specifically in unit 111" or "any portion of the building at the time [Addison] was present or even before he had his one elevated blood lead level[.]"

Counsel for BSA pointed out that Addison's own documentary exhibits show that "apartment 111 is one of 37 apartment units" for which "[t]here's been absolutely no testing[.]" Moreover, "inspection records for the specific unit that were executed by [Addison's] aunt . . . . all attest that the apartment was in good condition during her entire residency."

BSA argued that Addison also failed to present any evidence that he "played with or otherwise ingested any paint chips in his aunt's apartment." Although his mother testified that there was "peeling paint," counsel for BSA argued that "it's totally speculative as to where the chipping [sic] paint was, [and] there's no testimony that the child was ever

[4] At the second motion hearing, the court noted that there was some "procedural quirk that led to that vacating the order[.]"

in any proximity to it, that the child ever ingested chipping paint, no evidence of the time spent at the property or that it was the only source of lead exposure." Instead, it was "undisputed . . . that the child was in school at the time and living at another property in the days that he may have gone to visit his aunt's house."

Challenging Dr. Rogers's report, counsel for BSA argued that it was not "premised on sufficient and reliable facts for a number of reasons[,]" including that it was predicated on a mistaken "belief that Mr. Addison lived at 2000 East North Avenue from early 2000 until October of 2000" and on the mistaken premise that "there was chipping paint on the day they moved in" even though "there is no support for that in the record." Counsel contrasted this evidentiary record to *Dow*, where "the Mother's testimony was, quote, there was chipping and peeling paint in the areas where the child played and that the child placed paint chips in her mouth and . . . spent most of the day in the home while she lived there and did not have contact with other sources of lead during that time period[.]" Counsel for BSA argued that "all that [Addison] will show you here is it is a mere possibility based on sheer speculation and conjecture," which falls short of the "reasonable likelihood or probability" standard for surviving summary judgment.

Counsel for Addison, pointing out that his client "was at 2000 East North Avenue every day" as a visitor, complained that "the only issue raised" in BSA's motion and moving papers was that Addison "can't prove his case because he's a visitor to the property and not a resident of the property." Conceding that Addison's "address history" is "fuzzy," counsel maintained that all the documentary evidence was "consistent" that his aunt lived there and "that's where Juanita Addison was bringing her son to visit her on a daily basis."

After claiming that BSA "didn't raise" the issue of "whether there was lead in the property[,]" counsel nevertheless argued that "[t]here was no dispute as to whether there was chipping paint in the property[.]" Citing the Green Street testing and *Hamilton v. Kirson*, 439 Md. 501 (2014), counsel argued that Addison's proffered documents circumstantially "ruled in" 2000 East North Avenue as a source of his lead exposure.

Even if there was no evidence of lead specifically within Apartment 111, counsel argued that there was no dispute "that there's lead virtually everywhere else" in the building. According to counsel, his client did not "have to eat paint chips, but the deteriorated paint chips in the property can turn into dust and dust is also, is the primary source of exposure for lead."

Counsel argued that the Green Street Environmental test results from April 2012, when viewed in light of the MDE certificates showing the property was not lead-free, the reports describing the 19th century building as "dilapidated" and among "the worst conditions of all" properties shut down in 2002, and Dr. Rogers's opinions regarding source and source causation, were sufficient to defeat summary judgment. Conceding that "the apartment units aren't numbered the way they were when they were residential units[,]" so "I don't have unit 111 having lead there," counsel maintained that under *Hamilton v. Kirson*, the test results from other locations throughout the building constituted circumstantial evidence that Apartment 111 also had lead paint. In counsel's view, those test results were sufficient to establish *prima facie* that the building was a source of lead exposure, particularly when viewed in light of the deposition testimony that there was peeling paint and that the building was constructed in 1891.

With respect to source causation, counsel for Addison argued that exposure at the Property was a substantial contributing factor to Addison's BLL based on "how often he was in that property; the testimony of chipping paint in the property; [and] … support from the records that XRF testing has showed that lead-based paint existed in the property." Regarding the possibility of other sources of lead exposure, counsel for Addison invoked *Hamilton v. Dackman*, 213 Md. App. 589 (2013), arguing that "the fact that a lead exposed child might have lived or spent time in more than one lead-based painted property should not foreclose that child from pursuing any one of those potential sources as long as he is able to rule in the subject property in the first place" based on "an appropriate combination of direct or circumstantial evidence establishing the probability of exposure by that plaintiff in that property." Counsel contended that in this case, as in *Hamilton v. Dackman* and *Christian v. Levitas*, 454 Md. 233 (2017), Dr. Rogers predicated his source and causation opinions on environmental "testing showing lead paint at the property" that Addison "was visiting[.]"

In rebuttal, counsel for BSA emphasized the admission made by opposing counsel that "I don't have lead in unit 111." In counsel's view, this case "is distinguishable from some of the cases [Addison] cited" because it was uncontroverted that "this is a property" that was converted from a school into residences, so that "the apartments were built in 1979, years after lead paint was banned." Consequently, according to counsel, "the logic of the neighboring rowhouse may have lead paint doesn't apply in this case[,]" counsel argued, referring to the hypothetical scenario in *Hamilton v. Kirson*, illustrating how

circumstantial evidence of lead in neighboring properties might be sufficient to "rule in" a subject property.

When the motion court asked "why is there lead all over the place when they did the testing after[,]" counsel for BSA pointed out that "there may be areas where there are not apartments[.]" In any event, counsel continued, the fact that Addison did not prove the tested areas are where Addison "lived, visited, was ever in proximity to" is "why summary judgment is appropriate in this case."

Alternatively, [a]nother reason Dr. Rogers's report failed to raise a genuine dispute of material fact, BSA argued, was that he predicated his opinion on the "categorically false" premise that "Addison lived" at 2000 East North Avenue "from early in 2000 until approximately October 2000 when his mother moved back to South Carolina[.]" Counsel cited Juanita Addison's contradictory deposition testimony, as well as her admission that when they visited her sister, Jua'Drek was in school "much of the day."

Furthermore, BSA argued that "[t]here's no evidence" that the child "was ever in proximity to" any "chipping, flaking, peeling paint[.]" Because "[t]here's no evidence he ever played with it" or "ingested it[,] [i]t's speculation upon speculation upon speculation."

Counsel for Addison responded that, based on his "blood lead level at the time he was visiting a property with deteriorating paint, a doctor is going to say that's evidence that he was exposed and ingested the deteriorated lead paint." Citing *Rogers*, counsel argued that "[i]n this case, we certainly have met [the] threshold" for evidence that "rule[s] in a property" as "a substantial contributing source to his lead exposure."

The motion court then asked counsel for Addison, if he was "not calling someone regarding the lead in the building[,]" then "why am I considering this? I need evidence that's admissible at trial for a summary judgment. So why am I looking at this inspection report from 2012?"

Counsel for Addison answered that the Green Street test results constitute "evidence that's admissible at trial because it forms the basis of Dr. Rogers' opinions as to the source of lead exposure." In addition to relying on "questionnaires" designed to elicit information about where the child was living, counsel argued, "Dr. Rogers can base his opinion on the Green Street testing to see that . . . there are elevated levels of XRF testing in the property and he can base his opinion that lead existed in the property" on those testing results.

Counsel for BSA objected "to relying on an expert report for an expert that's not being called at trial," and who in turn is "relying on some expert report from another expert that hasn't been produced and isn't being called in this trial." In addition, counsel emphasized that Dr. Rogers had relied on "facts" that turned out to be false, including when Addison may have "lived there" and whether "that there was deteriorated paint and dust at this property noted the day Mr. Addison and his family moved in." Nor had Addison "produced an affidavit from Dr. Rogers in support of" of his report. Counsel argued the court should not "consider the report," but if it did, the report "is not specific to unit 111" and there is no evidence that Addison, who was "four years old at the time," was "crawling around" or "in proximity to any paint or ever playing with any paint chips." Given the "number of factual and analytical gaps here[,]" and that it was Addison's "burden" to

present evidence sufficient to establish a reasonable probability that he was exposed to lead when visiting 2000 East North Avenue, summary judgment was warranted.

Order Granting Summary Judgment

After taking the matter under advisement, the motion court granted summary judgment on all counts in favor of BSA, explaining its reasoning in a memorandum opinion. The court concluded that BSA's "focus" on the fact that Addison was not a resident of Apartment 111 was "misplace[d]" because "a regular visitor to a property could be impacted by lead hazards" given that Md. Code § 6-801(p) defines a "person at risk" of lead injuries as "a child . . . who resides or regularly spends at least 24 hours per week in an affected property." Nevertheless, the court understood that "the bottom line" of BSA's position was that Addison "cannot establish that the Property was a substantial contributing factor in causing his alleged injuries because there is no evidence that he experienced any elevated blood level as a result of exposure at the Property."

The court next concluded that, "[w]ith the exception of two pages of deposition testimony, none of [Addison's] exhibits are admissible in evidence" because "[t]here is no affidavit or sworn deposition testimony to authenticate any of the exhibits, or to establish a foundation that any of the exhibits fall within exceptions to the hearsay rule." (Footnote omitted.) Regarding Dr. Rogers's report, in addition to being inadmissible, the court stated that "the opinions in the report are not expressed to a reasonable degree of medical probability[.]" Specifically, the doctor's medical causation opinion that Addison's "elevated blood lead levels were a substantial contributing factor to his neurodevelopmental disabilities or injuries" did not "meet the legal standard for

establishing causation under" applicable case law given that there was no accompanying source causation opinion to a reasonable degree of medical certainty that 2000 East North Avenue "was a substantial contributing factor to [Addison's] exposure to lead."

Consequently, the court ruled, the "the only admissible evidence . . . that has any bearing on the issue of causation" is "the deposition testimony of Juanita Addison," who merely explained that her son "was a regular visitor to the Property and that there was peeling paint." (E.359) The court determined that by itself, this "testimony is insufficient to create a genuine dispute of material fact as to causation under *Ross* and *Hamilton.*"

Motion to Alter or Amend

Addison timely moved to alter or amend the judgment, attaching two documents that were not previously presented with his opposition pleadings – BSA's pre-trial statement and an affidavit from Dr. Rogers. Addison argued that the order granting summary judgment on the negligence count should be vacated because it was based on arguments raised for the first time at the motion hearing and, in any event, the newly filed affidavit cured any deficiency in Addison's opposition evidence.

In Addison's view, the "only argument raised in [BSA's] written motion" was that "'he did not have an elevated blood lead level at the time of living there.'" Addison insisted that BSA "did not argue that there was no evidence of lead-based paint in the subject property[,]" that "there was no evidence of deteriorated paint[,]" or "that there were other reasonably probable sources of lead exposure for" Addison. According to Addison, at the motion hearing BSA "made an entirely new argument that the XRF testing . . . is inadmissible because [Addison] would not be calling an 'environmental expert.'" Counsel

observed that, by that time, BSA had stipulated to the authenticity of the test documentation in its pre-trial statement. Because "[t]here was no indication that a factual or evidentiary dispute existed until [BSA] made new arguments at the July 31st hearing[,]" Addison maintained, the motion court should not have required an affidavit from Dr. Rogers "to authenticate" the environmental testing documents.

Alternatively, if BSA's arguments were timely, Addison argued that the affidavit attached to his motion to alter or amend "clears any defect" so that all the documentary exhibits to his opposition should be considered. In that affidavit, Dr. Rogers opined "to a reasonable degree of medical certainty that 2000 E. North Avenue was a substantial contributing source of Mr. Addison's lead exposure" based on "Green Street Environmental . . . X-ray fluorescent (XRF) analysis of the paint components of this property and documented . . . presence of lead-based paint on numerous components of the interior."

In his affidavit, Dr. Rogers acknowledged the lack of direct evidence of Addison's "exposure pathway. He stated, "[w]hile Mr. Addison lived in a lead contaminated environment there must be an exposure pathway for the neurotoxicant lead to enter his body[,] [l]ead has been shown mainly to be transferred into a child by hand to mouth activity when exposed to lead dust." He then cited Juanita Addison's testimony "that the paint at 2000 E. North Avenue [was] in deteriorated condition[] and that [Addison] visited everyday and spent all of [his] time inside."

In opposition, BSA argued that Addison was "seeking an unproverbial third bite at the apple" by making "misplaced and untimely arguments" that "seek[] – yet fail[] – to

cure the evidentiary defects [the motion court] identified in his Order and Memorandum Opinion." BSA denied that Addison was blindsided at the hearing with new arguments, quoting from the hearing transcript showing that its arguments "went well beyond the 'one issue' of visitation." BSA also denied stipulating to the admissibility of the documents attached to Addison's opposition.

BSA maintained that Addison should not be permitted to offer evidence that was not submitted when he filed his opposition to summary judgment. Addison's motion was an improper attempt to "cure the defects" in the inadmissible reports from Dr. Rogers and Green Street, by filing "an untimely affidavit" and raising "arguments that could have been presented before summary judgment was granted. Because Addison "had full access to his own paid expert well-before the filing of BSA's Motion[,]" and "'a motion to alter or amend under Rule 2-534 is not an occasion for a party to make arguments that it neglected to make initially[,]'" *Schlotzhauer v. Morton*, 224 Md. App. 72, 85 (2015), *aff'd*, 449 Md. 217 (2016), BSA argued the court "should not consider any evidence now offered by [Addison] that was not previously presented in opposition to BSA's Motion."

Moreover, BSA continued, even if the court were to consider the "untimely affidavit of Dr. Rogers," that document "still fails to remedy many of the concerns raised by BSA and echoed by the Court." In BSA's view, Dr. Rogers's affidavit was insufficient to warrant vacating the judgment, given that there was "no testing offered by the Plaintiffs specifically of that unit[,]" that "the inspection records . . . executed by the Plaintiff's aunt . . . . all attest that the apartment was in good condition during her entire residency[,]" and that there was "no evidence that Mr. Addison played with or otherwise ingested any paint

chips in his aunt's apartment" or "that the child was ever in proximity to the chipping paint[.]"

The court denied the motion without a hearing. Addison noted this timely appeal.

DISCUSSION

On appeal, Addison contends that the motion court erred in granting summary judgment "based on arguments raised for the first time at [the motion] hearing." In Addison's view, the "grant of summary judgment must be reversed because" BSA's written motion was "limited to" an argument that Addison's elevated BLL could not be linked to 2000 East North Avenue because Addison and his mother were merely visitors. Addison asserts that only after the motion court asked counsel "how the XRF testing would be admitted into evidence without an environmental expert," did BSA argue that it was inadmissible and point to the lack of an affidavit from Dr. Rogers. Addison argues that the motion court erred in thereafter ruling "that the lack of an affidavit from Dr. Rogers was fatal to the admissibility of the XRF testing, Maryland Department of Environment certificates, and other exhibits" because BSA had already "stipulated 'to the authenticity of the documents'" in its Pre-Trial Statement and "[t]here was no indication that a factual or evidentiary dispute existed until [BSA] made new arguments at the July 31st hearing."

BSA maintains that "Mr. Addison does not take issue with the [motion] [c]ourt's finding that the majority of the exhibits he submitted with his Opposition . . . was inadmissible hearsay evidence." Instead, "the faulty premise" underlying Addison's appeal is that "the only issue before the [motion c]ourt on BSA's Motion for Summary Judgment was whether he resided at the Property." In BSA's view, the court correctly

concluded that BSA's motion "was not limited to" that issue. To the contrary, BSA expressly "argued that there was no evidence in the record establishing that the Property was a substantial [contributing] factor in causing his alleged injuries because there was no causal link between the Property and his elevated BLLs." At the motion hearing, therefore, "BSA properly responded to Mr. Addison's opposition and exhibits[,]" and the motion court "correctly concluded that the evidence on which Mr. Addison relied in his [o]pposition was inadmissible."

This court reviews a decision to grant summary judgment "without deference[,]" to determine whether the motion court was legally correct. *See Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 263 (2017). Appellate courts evaluate the summary judgment record "'in the light most favorable to the non-moving party and construe any reasonable inference that may be drawn from the well-plead facts against the moving party.'" *Id*. (quoting *Hamilton v. Kirson*, 439 Md. 501, 522 (2014)). Our review is limited "to the legal grounds relied upon by the [motion] court in granting summary judgment." *Aventis Pasteur, Inc. v. Skevo Filax*, 396 Md. 405, 440-41 (2007). *See Hamilton*, 439 Md. at 523.

When a defendant moves for summary judgment on the ground that there is no dispute regarding one or more facts material to the plaintiff's claim, the opposition must proffer evidence that would be admissible at trial to show that such a dispute exists. *See Rogers*, 453 Md. at 263; Md. Rule 2-501(a). Under Md. Rule 2-501(b),

> [a] response to a motion for summary judgment shall . . . (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the

> dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

The rule also provides that "[a]n affidavit . . . opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit." Md. Rule 2-501(c). Because "an opposing party must present admissible evidence 'upon which the jury could reasonably find for'" him, the Court of Appeals has cautioned that "'general allegations which do not show facts in detail and with precision are insufficient to prevent summary judgment.'" *Rogers*, 453 Md. at 263 (quoting *Hamilton*, 439 Md. at 522-23).

Grounds for Summary Judgment

We are not persuaded by Addison's first contention, which is that the motion court erred in granting summary judgment on grounds not raised by BSA before the motion hearing. We have set forth in detail the written and oral arguments of the parties. Contrary to Addison's contention, the record establishes that BSA's motion for summary judgment was not limited to the narrow issue of Mr. Addison's status as a visitor to the Property.

In its written motion and memorandum, BSA argued that Addison's negligence claim fails because he "has not presented evidence that any alleged lead-based paint at the Property, if any, was a substantial contributing factor in causing his alleged injuries." Citing Addison's elevated BLL from September 20, 2000, and deposition testimony from his mother that he did not reside at 2000 East North Avenue during the period leading up

to that test, BSA asserted that the Property was neither a source of Addison's lead exposure, nor a cause of his lead injuries.

In a section titled "**Causation Standard**," BSA cited lessons from *Ross v. Housing Authority of Baltimore City*, 430 Md. 648 (2013), and *Hamilton*, 439 Md. at 523-24, that a plaintiff in a lead paint case must prove three separate links in the causation chain, "between the defendant's property and the plaintiff's exposure to lead," "between the specific exposure to lead and elevated blood lead level;" and "between those blood lead levels and the injuries allegedly suffered." BSA then quoted from *Hamilton v. Kirson*, 439 Md. at 529-30, for the proposition that

> [t]o connect the dots between a defendant's property and a plaintiff's exposure to lead, the plaintiff must tender facts admissible in evidence that, if believed, establish two separate inferences: (1) that the property contained lead-based paint, and (2) that the lead-based paint at the subject property was a substantial contributor to the victim's exposure to lead.

In addition, BSA pointed out that "[a]lthough reasonable inferences must be drawn in favor of the non-moving party, only facts which would be admissible in evidence may be considered."

BSA expressly challenged Addison to present "evidence sufficient to establish that he had an elevated BLL as a result of the Property" and "to show that the Property was a substantial contributing factor in the development of his alleged injuries." In support, BSA emphasized that there are only "two documented BLLs from his childhood," both of which occurred when Addison "was *not* residing at the Property[.]" This put both Addison and the court on notice that BSA was challenging the first two causation links – source and source causation, thereby triggering Addison's burden to present evidence that 2000 East

North Avenue was a source of lead exposure that was a substantial contributing factor in his elevated BLL on September 20, 2000.

As BSA points out, Addison's own opposition pleadings undercut his claim that he was surprised at the motion hearing. In his legal memorandum opposing summary judgment, Addison argued that there was "sufficient evidence, both direct and circumstantial, regarding the presence of lead-based paint at the Property while [he] lived in and visited 2000 E. North Avenue[,]" that he "suffered an elevated blood lead level while visiting the Property[,]" and that his "lead level caused his injury[.]" According to Addison, his attached exhibits "established that lead-based paint existed at 2000 E. North Avenue at the time that [he] sustained elevated blood levels[.]" In addition, he proffered that "Dr. Rogers will testify in this matter as to the presence of lead-based paint in the property at 2000 East North Avenue based on numerous factors, including, but not limited to, the Green Street Environmental Report that documented 84 areas of lead-based paint at the property."

Addison had an opportunity, at the first motion hearing held thirty days before the second motion hearing, to preview BSA's focus on Addison's failure to produce source and source causation evidence. At the June 28 hearing, counsel for BSA argued that Addison's "opposition is entirely devoid of . . . evidence of chipping, flaking, peeling paint in Unit 111" either "when the Plaintiff was present or . . . before he had his one elevated blood lead level." BSA pointed out the lack of any deposition testimony by Addison's mother that he "played with or otherwise ingested any paint chips while visiting his aunt's apartment." Counsel also argued that Dr. Rogers's report, which was predicated on

incorrect information that Addison was living in Apartment 111 from early 2000 until October 2000 and that there was chipping, flaking paint at the time they moved in, failed to meet his "burden to establish causation and demonstrate an exposure from 2000 North Avenue was the cause of his alleged poisoning." Although counsel for Addison was not present at that hearing, a July 1, 2019, transcript of that hearing was completed thirty days before the next hearing.

We conclude that BSA challenged the sufficiency of Addison's evidence of source causation before the July 31 motion hearing. Consequently, the motion court did not err by granting summary judgment based on issues raised for the first time at the hearing.

Admissibility of Opposition Exhibits

Addison next contends that the court erred in ruling that "[w]ith the exception of two pages of deposition testimony, none of [Addison's] exhibits are admissible in evidence" because he presented "no affidavit or sworn deposition testimony to authenticate any of the exhibits, or to establish a foundation that any of the exhibits fall within exceptions to the hearsay rule." The court specifically identified "several problems" with Addison's reliance "on Dr. Rogers's report, Plaintiff's Exhibit 7, to establish that the Property was the source of lead and that it was a substantial contributing factor to Plaintiff's claimed injuries":

> First, . . . the report is not admissible. . . . Second, the opinions in the report are not expressed to a 'reasonable degree of medical probability' and therefore have no weight in opposition to the Motion for Summary Judgment. . . . Third, the opinion expressed in the report states that Plaintiff's "elevated blood lead levels were a substantial contributing factor to his neurodevelopmental disabilities or injuries"; Dr. Rogers does not state that the Property was a substantial contributing factor to Plaintiff's exposure to

> lead. Thus, even if it were admissible evidence, the report fails to meet the legal standard for establishing causation under *Ross*, *supra*, and *Hamilton*, *supra*.

Addison contends that the court erred in finding "that the lack of an affidavit from Dr. Rogers was fatal to the admissibility of XRF testing, Maryland Department of Environment certificates, and other exhibits," because BSA, in its pre-trial memorandum, stipulated to the authenticity of those key documents. More broadly, Addison contends that the court erred in declining to treat Addison's proffered exhibits, including Dr. Rogers's report and proffered testimony, as admissible evidence. We agree.

In support of his opposition, Addison submitted an excerpt from Juanita Addison's deposition, which raised a dispute as to whether Addison lived at 2000 East North Avenue for some period of time when he and his mother first moved to Baltimore and whether "there was peeling paint" on the premises. According to the deposition testimony that BSA previously submitted in support of its motion, Juanita and her son moved directly from McKean Avenue to Normal Avenue sometime between August and early October 2000, but visited 2000 East North Avenue every day. Construing the admissible deposition testimony in the light most favorable to Addison, the court correctly credited the proffered evidence that when Addison's elevated BLL was discovered, he "was a regular visitor to the Property and . . . there was peeling paint."

Nevertheless, finding no affidavit in support of Addison's opposition and no "foundation that any of the [other] exhibits fall within exceptions to the hearsay rule[,]" the motion court declined to consider them. The court erred in doing so.

First, the court premised its ruling on a mistaken conclusion that Dr. Rogers's report should not be considered because "the opinions in [it] are not expressed to a reasonable degree of medical probability" and "Dr. Rogers does not state that the Property was a substantial contributing factor to [Addison's] exposure to lead." Addison proffered in opposition to the motion that Dr. Rogers would "opine to a reasonable degree of medical certainty that 2000 East North Avenue contained lead-based paint and lead-based paint hazards in areas where there was deteriorated paints" and "that 2000 East North Avenue was a substantial source of [Addison's] elevated blood lead level which substantially contributed to his injuries." In addition, in the "Summary" of his report, Dr. Rogers opined, based on the Green Street Environmental test results: "Based on the facts provided to me, Mr. Addison has extensive exposure to lead based paint at 2000 East North Avenue and 1730 Normal Avenue that caused his elevated blood lead levels and subsequent poisoning." Addison argued that, to the extent that the Green Street Environmental test results formed the basis for Dr. Rogers's opinions on source and source causation, there was sufficient evidence to raise a genuine dispute of material fact regarding those elements of a negligence claim. *Cf. Hamilton*, 439 Md. 501, 522 (2014) ("'in order to defeat a motion for summary judgment, the opposing party must show that there is a genuine dispute as to a material fact by proffering facts which would be admissible in evidence'") (citation omitted).

With respect to the form of opinion, we are unaware of a case that holds an opinion must be excluded if not qualified to a reasonable degree of scientific or medical certainty. *See* Joseph F. Murphy, Jr., *Maryland Evidence Handbook*, § 1404. The issues of causation

in lead paint cases are not novel but rather have been the subject of many reported appellate opinions. We decline to affirm summary judgment on the basis of form of the expert's opinion, particularly where the opposing party expressly proffers that expert's testimony in a form that satisfies the reasonable medical certainty standard.

With respect to the absence of an affidavit, Rule 2-501(a) provides that a motion for summary judgment does not have to be supported by affidavit unless it is based on facts not contained in the record. The purpose of an affidavit is to place before the court a fact or facts that, if testified to at trial, would be admissible. Generally, the affidavit itself is inadmissible. *Cf. Imbraguglio v. Great Atl. & Pac. Tea Co.*, 358 Md. 194, 207 (2000) ("An affidavit suffices in the summary judgment context to place before the court a fact that, if testified to by the affiant at trial, would be admissible, even though the affidavit itself generally is not admissible at trial.").

Subsection (b) provides that a response to the motion shall identify and attach the documents, discovery responses, testimony, or other statements under oath that demonstrate a factual dispute. It also provides that a response asserting the existence of a material fact or controverting a fact contained in the record shall be supported by a statement under oath.

BSA's motion was not supported by an affidavit. It was supported by deposition testimony and school records signed under oath. The remaining documents, identified *supra*, were not supported by affidavit. Likewise, Addison's response was supported by deposition testimony and other documents not under oath, as well as a proffered expert

opinion on source and causation, premised on the Green Street test results and MDE records cited in the expert's written report and submitted with the opposition.

The reports that were submitted placed before the court the facts that presumably would be testified to at trial. There is no requirement that all documents have to be under oath. "An affidavit is not the exclusive way to support a response to a motion for summary judgment." *Hartford Acc. & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217, 263 (1996), *aff'd*, 346 Md. 122 (1997) (citing Paul V. Niemeyer & Linda M. Shuett, *Maryland Rules Commentary* 332 (2nd ed. 1992)). "Instead, a response may be supported by 'any type of evidence that is admissible at trial.'" *Id*. "This is but a corollary of the general principle that 'the party opposing summary judgment must present admissible evidence demonstrating the existence of a material dispute.'" *Id*. at 263-64 (quoting *Bagwell v. Peninsula Regional Med. Ctr.*, 106 Md. App. 470, 488 (1995)). "Thus, a document, otherwise admissible, may be used to show the existence of a factual dispute." *Id*. at 264. *Cf. Sparks State Bank v. Martin*, 81 Md. App. 539, 548 (1990) ("We hold that summary judgment is inappropriate where there are cross-motions for summary judgment, based on a necessarily contradictory factual predicate that is material to both motions. This is so when, as here, the initial motion for summary judgment was not required to be, and was not, supported, by affidavit and the cross motion, though supported by affidavit which the opposing party did not controvert with its own affidavit, has the effect of controverting the allegations of the first.").

Addison complied with subsection (b) of Rule 2-501, by identifying and attaching documents, discovery responses, testimony and proffered testimony, and other statements

under oath that demonstrated a factual dispute. There is no requirement that all opposition documents have to be under oath. *Cf. Hamilton*, 439 Md. at 522 (opposing party may defeat summary judgment "'by proffering facts which would be admissible in evidence'") (citation omitted).

Here, the reports that were submitted with Addison's opposition placed before the court material facts that presumably would be testified to at trial. As Addison indicated by proffering that Dr. Rogers would testify under oath that he reached opinions based on such documents, such evidence maybe admissible at trial as information upon which an expert predicated his or her opinion. *See generally Dackman v. Robinson*, 464Md. 189, 216 (2019) ("When 'the facts or data that an expert relies on are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, they need not be independently admissible at trial.'") (quoting *Levitas v. Christian*, 454 Md. 233, 24 (2017)).

The court did not analyze the legal sufficiency of the evidence before it. The court granted summary judgment based on the lack of an affidavit, not on the admissibility of Dr. Roger's opinions, were they offered into evidence at trial. We decline to affirm summary judgment on this basis. Based on our review of the summary judgment record, we hold that the motion court erred in refusing to consider the documents and expert evidence proffered by Addison in opposition to summary judgment. Because we cannot affirm summary judgment on grounds the motion court did not reach, we reverse the judgment without prejudice to BSA's right, on remand, to refile its motion. *See generally Hamilton*, 439 Md. at 234 ("'it is a settled principle of Maryland appellate procedure that

ordinarily an appellate court will review a grant of summary judgment only upon the grounds relied upon by the trial court.'") (citation omitted).

In light of our disposition of this issue, we need not address the ruling on the motion to alter or amend.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLEES.