UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 290

September Term, 2016

MCC MILLWORK INC., ET AL,

v.

SLOCUM ADHESIVES CORP., ET AL.

Beachley,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, specially assigned),

JJ.

Opinion by Thieme, J.

Filed: August 2, 2017

This appeal arises out of a decision by the Circuit Court for Montgomery County granting summary judgment in favor of Slocum Adhesives Corporation ("Slocum") and Professional Finishes, Inc. ("Professional"), appellees, and against MCC Millwork & Cabinet Corporation, The Cabinet Shop, Inc., Van-Walker Woodworking, Inc., Interior Building Systems Corporation, and Washington Woodworking Company, LLC, (referred to collectively as the "woodworking companies"), appellants. The case began on December 30, 2014, when all of the woodworking companies except Interior Building Systems Corporation filed a complaint against Slocum and Professional asserting claims for breach of warranty, breach of contract, and negligence arising out of the failure of adhesives that were manufactured by Slocum and distributed by Professional. Thereafter, a first amended complaint was filed and Interior Building Systems Corporation was added as plaintiff. The first amended complaint was subsequently amended by interlineation so as to dismiss Brunswick Woodworking Company, Inc. as a plaintiff.[1]

Both Slocum and Professional filed motions for summary judgment. After a March 2, 2016 hearing on both motions for summary judgment, the circuit court requested that the parties submit supplemental memoranda on the issue of the woodworking companies' claims of manufacturing and design defects. The court granted both motions for summary judgment and entered judgments in favor of Professional and Slocum. The court did not provide any memoranda or otherwise explain the reasons for its decisions. This timely appeal followed.

[1] In March 2016, the woodworking companies' second amended complaint was struck by the court.

QUESTION PRESENTED

The sole question presented for our consideration is whether the circuit court erred in granting summary judgment in favor of Slocum and Professional. For the reasons set forth below, we shall hold that the circuit court erred in granting summary judgment in favor of Slocum with respect to the claim for negligence. In all other respects, we shall affirm.

FACTUAL BACKGROUND

All of the woodworking companies are in the business of manufacturing, creating, and installing custom laminate and woodwork in Maryland and Virginia. Slocum creates, distributes, and sells adhesive products for the purpose of bonding materials such as wood, plastic, and metal veneers to base products typically made of wood or wood byproduct. Professional either repackages or relabels and then sells or distributes adhesive products manufactured by Slocum and others. This case arises out of claims by the woodworking companies that certain adhesive products manufactured by Slocum and sold to them by Professional failed to adhere properly, resulting in economic loss.

Beginning in 2012, the woodworking companies purchased and used adhesive products manufactured by Slocum and marketed by Professional as Everbond Rapid Set Red and Everbond Rapid Set Clear. There was no dispute that Professional relabeled the adhesive products it obtained from Slocum, that the only difference between the labels used by Slocum and those used by Professional was the name of the company, and that Slocum's name did not appear on the labels. At no time relevant to this case were written instructions provided for the application or use of the adhesives by either Slocum or Professional. The

label on the adhesive products included a notice that provided, in part, "we make no warranty of any kind (including damage or injury) as to the results to be obtained, whether or not used in accordance with the directions or claimed to be so[,]" and "[w]e guarantee the standard quality of this material and its adherence to our specifications, if any, but we expressly disclaim responsibility for its use."

The woodworking companies alleged that after using the adhesive products manufactured by Slocum and sold by Professional, they experienced "failures for various commercial and residential contracts" including the "total delamination of solid surface materials bonded to various substrates . . . including wood, MDF, plywood, metal and other products." They claimed that they incurred economic losses resulting from the cost of repairing the work they had done for their clients. Upon notification, Professional was advised by Slocum that the failures were caused by the improper application of the adhesives. Based on the information received from Slocum, Professional advised the woodworking companies that the application pressure was too high. The woodworking companies claimed that they had consistently applied the adhesives with pressures that were standard in the industry. Eventually, after multiple product failures, the woodworking companies ceased using the products.

All of the Everbond adhesives sold by Professional to the woodworking companies were purchased from Slocum in sealed 55-gallon drums and 5-gallon buckets. Professional did not dispute that it produced between 30 and 60 five-gallon containers by pouring adhesive from 55-gallon containers into five-gallon containers, but at the hearing on the motions for summary judgment, the woodworking companies conceded that because

failures occurred with adhesives obtained from sealed 55-gallon containers, any defect in the adhesives could not have been caused by the repackaging process employed by Professional.

In their first amended complaint, the woodworking companies asserted claims against both Slocum and Professional for breach of contract, breach of warranty, and negligence. They alleged that prior to the time the adhesive products were distributed, Slocum reformulated them "to meet environmental regulations governing adhesives and volatile organic compounds as published by the Environmental Protection Agency," which led to a change in the application rates. They asserted that "the materials manufactured by Slocum may have been altered either in consistency or concentration by Professional prior to delivery" to them, thereby "impacting on the adhesive properties of the product." The woodworking companies claimed that they were not given notice of this change or instructions regarding changes to the proper application rates.

The breach of contract claim was based on the woodworking companies' assertion that the failure of Slocum and Professional to advise them of the manner of usage and application rates amounted to the breach of an implied contract. Eventually, the woodworking companies conceded that their breach of contract claim against Slocum failed because they had no direct contact with that company.

The breach of warranty claim was based on the assertion that Slocum and Professional failed to provide the woodworking companies with any disclaimer of warranties and that, by the implied warranty of fitness for a particular purpose, Slocum and Professional had warranted that the product would be sufficient for the purpose for which

it was advertised and used, namely bonding surfaces such as laminate or wood to other substrates.

The negligence claim was based on the woodworking companies' assertion that Slocum and Professional owed a duty to exercise due care in the production and marketing of its products, including a requirement to provide application instructions. The woodworking companies also alleged that Slocum and Professional failed to exercise due care when they materially altered the formulation and/or application requirements without notifying users of those changes.

After the completion of discovery, both Professional and Slocum filed motions for summary judgment. Professional argued that it was entitled to summary judgment because it met all of the criteria required by the sealed container defense set forth in Md. Code (2013 Repl. Vol., 2015 Supp.), § 5-405 of the Courts and Judicial Proceedings Article ("CJP").[2] The woodworking companies challenged Professional's reliance on the sealed

[2] Section 5-405 provides, in relevant part:

> (b) *Elements of defense to action against product's seller.* – It shall be a defense to an action against a seller of a product for property damage or personal injury allegedly caused by the defective design or manufacture of a product if the seller establishes that:
>
> (1) The product was acquired and then sold or leased by the seller in a sealed container or in an unaltered form;
>
> (2) The seller had no knowledge of the defect;
>
> (3) The seller in the performance of the duties he performed or while the product was in his possession could not have discovered the defect while exercising reasonable care;
>
> (4) The seller did not manufacture, produce, design, or designate the specifications for the product which conduct was the proximate and substantial cause of the claimant's injury; and

container defense because between 30 and 60 five-gallon containers of adhesive were poured from 55 gallon containers into five gallon containers and then relabeled. They maintained that Professional's relabeling of the product without disclosing the manufacturer constituted an alteration of the product, that segregation of the component chemicals of the adhesive might have occurred from improper storage by Professional, and that Professional continued to sell the product after it learned from the woodworking companies that there were problems with delamination and adhesion.

With respect to the breach of warranty claim, Slocum argued that it had validly disclaimed all warranties when it sold its products to Professional. As for the implied warranty of fitness for a particular purpose, Slocum claimed that its label, which Professional either removed or covered up with its own label, explicitly disclaimed all warranties. There was no dispute, however, that Professional reproduced the same disclaimer used by Slocum on its own labels.

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(5) The seller did not alter, modify, assemble, or mishandle the product while in the seller's possession in a manner which was the proximate and substantial cause of the claimant's injury.

(c) *Defense not available.* – The defense provided in subsection (b) of this section is not available if:

* * *

(6) The seller made any express warranties, the breach of which were the proximate and substantial cause of the claimant's injury.

(d) *Summary judgment; reinstatement of action.* – (1) Except in an action based on an expressed indemnity agreement, if the seller shows by unrebutted facts that he has satisfied subsection (b) of this section and that subsection (c) of this section does not apply, summary judgment shall be entered in his favor as to the original or third party actions.

With respect to the woodworking companies' claims for negligence, Slocum asserted that the first amended complaint did not include any claim that it manufactured an adhesive that was defective in design or manufacture and that the claim for negligence was limited to the allegation that it failed to provide application instructions for the adhesive. Slocum denied materially modifying or reformulating the adhesives at issue, and argued that Professional and the woodworking companies were sophisticated users, which served as a defense to both the negligent failure to warn and breach of warranty claims.

Both Slocum and Professional argued that the woodworking companies failed to identify an expert witness to testify about the applicable standard of care, and that the expert they did designate, Charles Anderson, Ph.D., employed flawed methodology, lacked a sufficient factual foundation for any opinions as to whether Slocum or Professional breached any duty it might have had toward the woodworking companies, and failed to offer any testimony concerning the type of instructions that should have accompanied the cans of adhesives.

On March 2, 2016, a hearing was held on the motions for summary judgment. During the course of that hearing, the woodworking companies conceded that they had no claim for breach of contract against Slocum and acknowledged that it was irrelevant whether Slocum or Professional provided application instructions because the adhesive itself was defective. They clarified that they merely raised the failure to provide application instructions in the alternative because Slocum had told Professional that high air pressure in the application process was the cause of the product's failure. The woodworking companies asserted that their primary complaint was that Slocum failed to exercise due

care when it materially altered the formulation of its adhesive product. The court asked the parties to file supplemental memoranda on the issue of manufacturing and design defects by Slocum, which they did. In two subsequent orders, the court granted summary judgment in favor of Professional and Slocum.

We shall include additional facts as necessary in our discussion of the issue presented.

STANDARD OF REVIEW

Maryland Rule 2-501(e) provides that summary judgment may be granted when "there is no genuine dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." In *Windesheim v. Larocca*, the Court of Appeals set forth the appropriate standard of review in appeals arising from a circuit court's grant of summary judgment:

> We review the Circuit Court's grant of summary judgment as a matter of law. Before determining whether the Circuit Court was legally correct in entering judgment as a matter of law in favor of [appellees], we independently review the record to determine whether there were any genuine disputes of material fact. A genuine dispute of material fact exists when there is evidence "upon which the jury could reasonably find for the plaintiff." "We 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."

Windesheim, 443 Md. 312, 326 (2015)(internal citations omitted).

As the trial court did not provide any reasoning as to why summary judgment was proper in this case, we are reminded of our statement in *Bond v. NIBCO*:

> It would certainly be preferable to have before us the basis for the circuit court's order. This would not only give us the benefit of the circuit court's reasoning as to why summary judgment was proper but also make it

> clear whether the lower court found any of the asserted grounds lacked merit, *i.e.*, did not support the grant of summary judgment. In the absence of any such discussion, we must assume that the circuit court carefully considered all of the asserted grounds and determined that all or at least enough of them as to merit the grant of summary judgment were meritorious.

Bond, 96 Md. App. 127, 133 (1993). With these standards in mind, we turn to the issues presented.

DISCUSSION

I.

A. Professional Finishes

The woodworking companies contend that the circuit court erred in granting summary judgment in favor of Professional under the sealed container defense because it failed to establish the first three required elements of that defense. Specifically, they argue that the adhesive product was not sold in a sealed container in unaltered form, that it continued to sell the product after being placed on inquiry notice that a defect might exist, that it had actual knowledge of a defect in the adhesive product, and that it failed to notify its customers that high pressure applications of the adhesive product were to be avoided. We disagree and explain.

In order for a seller to avoid liability for property damage or personal injury caused by the defective design or manufacture of a product, the seller must establish that (1) the product was acquired and then sold or leased by the seller in a sealed container or in an unaltered form; (2) the seller had no knowledge of the defect; (3) the seller, in the performance of the duties performed, or while the product was in its possession, could not have discovered the defect while exercising reasonable care; (4) the seller did not

manufacture, produce, design, or designate the specifications for the product which was the proximate and substantial cause of the claimant's injury; and (5) the seller did not alter, modify, assemble, or mishandle the product while in the seller's possession in a manner which was the proximate and substantial cause of the claimant's injury. CJP § 5-405(b).

In the instant case, although there was evidence that Professional had transferred some adhesives from 55-gallon drums into 5-gallon containers, the woodworking companies conceded that any defect in the adhesive product could not have been caused by any repackaging of the product by Professional because adhesive from unopened 55-gallon drums also resulted in the product failures experienced by the woodworking companies. As a result, Professional established the first requirement of the sealed container defense, that the product was acquired and then sold or leased by it in a sealed container or in an unaltered form.

As for the second requirement, that Professional had no knowledge of the defect, there is no evidence that it had knowledge of the adhesive failures until they were reported by the woodworking companies. The fact that Slocum ultimately notified Professional that the newly formulated adhesive, created to comply with new government regulations, required application with a lower pressure than other adhesives, did not constitute a defect in the product itself. Similarly, the woodworking companies' contention that the third required element of the sealed container defense was not met because Professional had actual notice of a defect in the product and failed to advise that high pressure applications were to be avoided, is without merit. At the hearing on the motions for summary judgment, the woodworking companies specifically acknowledged that it was immaterial whether

Professional provided application instructions because the adhesive material was defective from the "get-go."

For these reasons, we find that the sealed container defense applied to Professional and, as a result, the circuit court did not err in granting summary judgment in its favor. *See Reed v. Sears, Roebuck & Co.*, 934 F.Supp. 713, 717-18 (D. Md. 1996)(there are no restrictions placed on the nature of the action that may be dismissed once a seller has established the requisite elements of the sealed container defense).

B. Slocum Adhesives Corporation

The woodworking companies acknowledged that, with respect to Slocum, no cause of action for breach of contract existed due to a lack of privity, but they disputed that Slocum was entitled to judgment as a matter of law on the warranty and negligence claims. For the reasons set forth below, we conclude that the circuit court did not err in granting summary judgment with respect to the woodworking companies' claims for breach of implied warranty of fitness for a particular purpose, but erred in granting summary judgment with respect to the claim for negligence.

1. Breach of Implied Warranty of Fitness for Particular Purpose

In the first amended complaint, the woodworking companies alleged that Slocum breached an implied warranty of fitness for a particular purpose, namely that the adhesive products would be sufficient to bond surfaces such as laminate to wood or other substrates. In moving for summary judgment, Slocum argued that "it had no way of knowing the manner" in which the woodworking companies would use the adhesive. It also argued that

it did not offer any warranties, and had expressly disclaimed all warranties, by virtue of the notice on the label of the adhesive products that provided:

> NOTICE: Our recommendations for the use of this product are based on tests believed to be reliable. However, as the use of the product is beyond our control, we make no warranty of any kind (including damage or injury) as to the results to be obtained, whether or not used in accordance with the directions or claimed so to be. We guarantee the standard quality of this material and its adherence to our specifications, if any, but we expressly disclaim responsibility for its use.

Implied warranties of fitness for a particular use are governed, in part, by § 2-315 of the Commercial Law Article, which provides:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Md. Code (2013 Repl. Vol.) , § 2-315 of the Commercial Law Article ("CL").

In order to establish an implied warranty of fitness for a particular purpose, the woodworking companies were required to establish the following elements:

> (1) The seller must have reason to know the buyer's particular purpose.
>
> (2) The seller must have reason to know that the buyer is relying on the seller's skill or judgment to furnish appropriate goods.
>
> (3) The buyer must, in fact, rely upon the seller's skill or judgment.

Ford Motor Co. v. General Accident Ins. Co., 365 Md. 321, 342 (2001).

The official comment to CL § 2-315, which is Maryland's codification of the Uniform Commercial Code, explains:

> A "particular purpose" differs from the ordinary purpose for which goods are used in that it envisages a specific use by the buyer which is peculiar to the

> nature of his business whereas the ordinary purposes for which the goods are used are those envisaged in the concept of merchantability and to uses which are customarily made of the goods in question.

CL § 2-315, comment 2. Stated otherwise, the particular purpose "must be distinguishable from the normal use of the goods" and "[t]he purpose must be peculiar to the buyer as distinguished from the ordinary or general use to which the goods would be put by the ordinary buyer." *Ford Motor Co.*, 365 Md. at 343 (and cases cited therein).

In addition to establishing a particular purpose, the woodworking companies were required to establish that Slocum "had reason to know, at the time of sale, that the purchaser was relying on the seller's expertise to select an appropriate product for that purpose." *Id.* On that point, the Court of Appeals has noted that:

> The need to establish specific knowledge on the part of the seller often may create a near requirement of direct dealing, if not actual privity, *see Wood Products, Inc. v. CMI Corp.*, 651 F.Supp. 641, 649 (D.Md. 1986)(seeking to apply Maryland law and stating that "[p]rivity is … required in an action for breach of express warranty or an implied warranty of fitness for a particular purpose in which only economic loss is claimed"). It is often impossible for a seller to learn of a particular purpose of a buyer, and for a buyer to rely upon a seller to select the right product, without some direct dealing between such buyer and seller.

Id. at 343-44.

On this ground, the warranty of implied fitness for a particular purpose "sharply contrasts with the warranty of merchantability, which involves an inherent defect in the goods that existed before they left the hands of the manufacturer." *Id.* at 344 (citation omitted).

In the case at hand, there was a failure of proof of knowledge and particular purpose. The woodworking companies purchased the adhesive products from Professional, not

directly from Slocum. Although privity is not required, there was no evidence to show that Slocum knew or had reason to know the particular purpose for which the companies were using the adhesive. All that was alleged in the first amended complaint was that the woodworking companies purchased from Professional adhesive products sold by Slocum and that those adhesives failed to adhere. Nowhere in the complaint did the woodworking companies allege that they purchased the adhesive products for a "particular purpose" that in any way differed from the "ordinary purpose" for which the adhesive might be used. *See Bond*, 96 Md. App. at 137-38 (plaintiffs failed to state a claim for breach of implied warranty of fitness for a particular purpose because there was no allegation that leaky faucets were purchased for a particular purpose that differed from the ordinary purpose of faucets). In effect, they asserted only that they purchased an adhesive that did not adhere. For these reasons, the circuit court did not err in granting summary judgment in favor of Slocum with respect to the claim for breach of warranty of fitness for a particular purpose.

2. Negligence

The woodworking companies argue that the circuit court erred in granting summary judgment in favor of Slocum with respect to the negligence claim. As a preliminary matter, Slocum argues that the woodworking companies never asserted that there was a manufacturing defect with respect to the adhesives. We disagree. In their first amended complaint, the woodworking companies alleged that Slocum had a duty "to exercise due care in the production" of its adhesive products and "failed to exercise due care when they materially altered its formulation[.]" That the first amended complaint also made allegations about notice of the change in the formulation of the adhesive and failure to

provide instructions with regard to how to apply the adhesive, does not negate the claim that Slocum failed to exercise due care in the production of the adhesives.

We pause to note that Slocum maintains that it did not alter its formulation, but that it developed a new adhesive to comply with certain government regulations. Whether the adhesive sold to the woodworking companies was an altered formulation or a new product is a question of fact that we shall not resolve. Further, with respect to allegations made by the woodworking companies that Slocum failed to provide application instructions, those claims were abandoned at the hearing on the motion for summary judgment, when the following occurred:

> THE COURT: Okay, so what does [Anderson] say causes the adhesive to fail?
>
> [PLAINTIFFS' COUNSEL]: The migration of the product, which is the molecular level migration of this product back to its original unblended form. He has said that since day one. He said it in his deposition. It's in his report. The stuff that's mixed up, which is allegedly contact cement, you spray it on. As it dries it unbonds. The molecules come apart and go back home, basically. And what you have now is powder. You don't have the blended product that you're supposed to have that makes glue.
>
> Q.: And so does he say that that's a manufacturing defect, so that's unrelated to the application process?
>
> A.: Correct. That's exactly what he said.
>
> Q.: So it has nothing to do with the application process.
>
> A.: It had nothing to do with the application process. It was Slocum –
>
> Q.: So then it doesn't make any difference whether they gave you any application instructions or not, because the thing was defective from the get-go.

A.: Correct. We pled alternatives because Slocum told Professional Finishes that high air pressure causes this product to flash off. My expert hasn't said that. It's Slocum who's telling Professional that.

Q.: So your case is not based upon a theory that the problem with the adhesive was that it was applied under high pressure, which was the norm for the prior adhesive, that the application had nothing to do with it. The reasons that it doesn't work is because the product from the get-go is defective.

A.: Correct. We introduced the instruction issue because it's Slocum's defense, which it had been since the beginning, that you applied it wrong. Well, you never told us how to apply it, so if we applied it wrong, it's your problem. But we have never alleged that we applied it wrong. We applied it just like we were told to by Professional Finishes, which this is a substitute contact cement that will substitute in for what you were using before, that is now EPA and Maryland VOC compliant.

Q.: Well, if you're saying they never really even told you how to apply it, you applied it as you'd always been applying it –

A.: Correct.

Q.: -- which had always been successful in the past.

A.: That's correct.

Q.: And they didn't notify you of any change.

A.: That is correct. But that's their defense, and we say well, wait a minute, in defense to that, you didn't tell us there's a difference. That's not our case in chief. Our case is this stuff, whatever came out of this can was anything but glue.

As for whether there was a genuine dispute of material fact with respect to the claim of negligence based on a manufacturing defect, our review of the record demonstrates that there was. The woodworking companies retained Charles Anderson, Ph.D., as an expert witness. In his deposition, Anderson opined that what was "happening fatally" to the adhesive was "that things are separating out and they are changing in terms of the structures

and the internal bonding of the molecules, et cetera, this change of polymers." He examined three samples, two of which were obtained from Slocum for the purpose of analysis, and one repackaged red adhesive that was obtained from Professional. He examined the samples after they had aged and found that:

> there were indications of material segregating out and forming new structures and the Professional Finishes adhesive forming things that looked almost like particles in the adhesive, sort of balls of material that were particulate like, forming rod-like structures in the material and forming various filaments of material instead of being uniform in appearance and a, you know, solid that's somewhat soft and whatnot.
>
> It was at that point brittle and it looked very different. At that point it also looked a great deal like some of the failed samples that we had been given. There was a particularly good match with one of them.

When asked if he had reached an opinion as to why the adhesive failed, Anderson stated that instead of remaining evenly mixed, the component materials "separated out from one another" and "no longer had that balance of materials that was supposed to provide them with both the cohesiveness and the adhesive stickiness and also the flexibility that they needed, so it became brittle."

Similarly, in his written report analyzing the percent of solids in three samples of adhesives, Anderson concluded that "[t]his segregation of materials in the failed adhesive samples was characteristic of the failures. Because the additives are not dispersed evenly throughout the rubber solids in the final dried adhesive, they are also not able to inhibit crystallization of the SBS material."

Lastly, in an affidavit, Anderson testified, in part, as follows:

> 8. That based upon my analysis of the adhesives performed [sic], there was a silicone contaminant present in samples tested of adhesives.

> 9. That the introduction of a silicone contaminant represents a defect in the quality control standards of a manufacturer, or in the handling standards by an intermediary.
>
> 10. That the adhesive crystallized over a short period of time which negated any adhesive properties and demonstrated the lack of compatibility of materials and or manufacturing quality controls.
>
> 11. That the percentages of solids found in the two Red adhesives provided were significantly outside the expected quantity of 41.7%.
>
> 12. That three samples of adhesives were tested from two different sources and were found to have chemical compositions similar to the adhesives that failed.
>
> 13. That in my expert opinion, three disparate samples are adequate to draw a conclusion based upon the circumstances of these failures.
>
> 14. That the failures that occurred were nearly identical in nature, and all were to a reasonable degree of professional probability, the result of a defect in manufacturing, or the result of improper repackaging.

Although the affidavit contained a statement that Anderson had "personal knowledge of the facts, matters, and specifications set forth herein[,]" the affirmation at the conclusion of the affidavit provided, "I hereby affirm under the penalties of perjury that the foregoing is true to the best of my knowledge, information and belief." After the hearing on the motions for summary judgment, the woodworking companies submitted an amended affidavit, in which Anderson amended statements 9 and 14 to state:

> 9. That the introduction of a silicone contaminant which was present in the sample provided by Slocum represents a defect in the quality control standards of a manufacturer.
>
> * * *
>
> 14. That the failures that occurred were nearly identical in nature, and all were to a reasonable degree of professional probability, the result of a [sic]

> defects and/or lack of controls in the manufacturing process and in the original formulation.

The affirmation on Anderson's amended affidavit was changed so as to state, "I hereby affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true."

Although Slocum criticized Anderson's conclusions and methodology, those criticisms go to the weight of his testimony and do not alter the fact that there was a sufficient factual basis to support his opinions. We further note that resolution of Slocum's challenges to Anderson's credibility are for the trier of fact to resolve. *Laing v. Volkswagen of America, Inc.*, 180 Md. App. 136, 152 (2008)(citing *Syme v. Marks Rentals, Inc.*, 70 Md. App. 235, 238 (1987)). The record shows that there was clearly a genuine dispute of material fact upon which a jury could reasonably find for the woodworking companies. As a result, the trial court's entry of summary judgment in favor of Slocum on the negligence claim was erroneous.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND REVERSED IN PART; CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS; COSTS TO BE PAID BY APPELLEE SLOCUM ADHESIVES CORPORATION.