Circuit Court for Charles County
Case No. C-08-CV-17-000235

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0191

September Term, 2019

PINNACLE HOTEL MANAGEMENT COMPANY, LLC

v.

WENDY GOETZ

Friedman,
Wells,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: April 8, 2020

This appeal arises following a judgment entered in favor of Ms. Wendy Goetz, appellee, in the Circuit Court for Charles County. Ms. Goetz filed suit against Pinnacle Hotel Management Company ("Pinnacle"), appellant, after suffering injury in one of their managed properties. Ms. Goetz prevailed in the circuit court, and Pinnacle timely entered its appeal. Pinnacle now presents two questions for our review, restated as follows:

1. Did the [circuit] court err by failing to grant Pinnacle's motion for judgment when (a) the plaintiff failed to present evidence sufficient to establish a *prima facie* case of ordinary premises liability; and (b) failed to satisfy all three elements to invoke the doctrine of *res ipsa loquitur*?

2. Whether the [circuit] court err in charging the jury with the *res ipsa loquitur* jury instruction.

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

BACKGROUND

I. THE INJURY

The matter now before us follows an incident that took place in a Residence Inn in Waldorf, Maryland. That Residence Inn is franchised by Marriott and managed by Pinnacle.

The facts as they relate to the underlying incident are relatively straightforward. In September of 2014, Ms. Goetz was staying, along with her coworker Ronnie Howell, in an extended-stay suite in the Residence Inn. The hotel was booked in Howell's name. Both Ms. Goetz and Howell were, at the time, working on a right of way acquisition project—Howell was supervising the acquisition; Ms. Goetz served as a document management specialist. Neither Howell nor Ms. Goetz were residents of Maryland, but rather had been

occupying the Residence Inn for the duration of their work on the project. By the time of the underlying incident, they had been staying in the suite for several months.

One evening,[1] around 9 p.m., Ms. Goetz and Howell were both in the suite. Notably, Ms. Goetz and Howell used the suite as a de facto office. Howell was working at his computer, and Ms. Goetz was in the kitchen area arranging papers. Howell testified that, without warning, he heard a loud sound. When he turned around, he saw that the kitchen cabinet originally positioned over the sink had wholly detached from the wall, falling on Ms. Goetz and pinning her against the counter. Howell testified that the cabinet was "maybe a three by four[,]" "real sturdy[,]" and "pretty heavy[.]" As for Ms. Goetz, Howell testified that

> she was kinda bent over the counter. . . . [S]he was facing the cabinet when it fell. And it fell . . . on top of her, and she was kinda bent over the . . . countertop, and the cabinet was . . . on the back of her shoulder and her head.

Howell went over and moved the cabinet so that Ms. Goetz could free herself.

In the immediate aftermath, Ms. Goetz testified to a momentary loss of consciousness before coming to while sitting on the kitchen floor. She also mentioned a cut and some bruising to her right hand. Neither Howell nor Ms. Goetz took photos of the cabinet or wall immediately following the incident. However, Howell did testify to his own visual inspection of the wall, stating that, in his estimation, the screws holding the

[1] Testimony regarding the precise date of the incident was ambiguous, though by all accounts it occurred in early-to-mid September 2014.

cabinet in place had simply pulled out of the wall.[2] Both denied seeing large chunks of missing plaster or significant holes.

Ms. Goetz testified that she reported the incident to hotel management the following morning, showing them her hand and indicating that she had been knocked unconscious. She denied ever being asked to fill out any kind of incident report. Ms. Goetz reported that a manager did ask if she was okay, but no ambulance was called.

In the ensuing days, Ms. Goetz testified that she experienced loss of balance, headaches, vomiting, and a general sense that she "felt very off." Howell similarly stated that she was acting odd, or "goofy." Ms. Goetz initially sought medical care in Maryland at a local Patient First facility, receiving a physical examination, and later presented at Medstar Southern Maryland Hospital Center, but left before receiving treatment. She returned to her home in Colorado roughly five days after the incident.[3] Upon her return, Ms. Goetz testified to continued vomiting, difficulty speaking, and difficulty typing, as well as more frequent panic attacks, though she noted the attacks themselves predated the incident. Similarly, though she acknowledged suffering from migraines before the issue with the cabinet, she reported afterward that "[t]hey last longer, they hurt worse, they are

[2] Howell testified as follows:

> I don't know why, but they must have—could have been too short, or—but it just take about, I guess, four or six screws, and evidently they just pulled away from the wall, you know? I didn't physically get up there and take a magnifying glass to it and inspect it, but I know that's what happened.

[3] Significantly, Ms. Goetz left before completion of her assignment and, as a result, lost her job.

in different spots on my head[,] [they're] sharper pain . . . [a]nd more frequent." She further cited continued issues with balance, resulting in multiple falls. One such fall, occurring roughly three months after the initial September incident, occurred as she was stepping down from a small curb. It resulted in her falling face first into the ground and suffering a concussion. After that fall, Ms. Goetz visited Dr. William Wagner, who in turn referred her to a neuropsychologist, Dr. Jennifer Geiger. At the time of the circuit court proceedings, she had not returned to work since the September 2014 incident.

II. CIRCUIT COURT PROCEEDINGS

A. WITNESS TESTIMONY

During the circuit court proceedings, the court heard from a number of witnesses. We now turn to the testimony most pertinent to the disposition of the issue before us.

After Howell and Ms. Goetz were called—with their testimony reflecting the account of the event and its aftermath described in Part I, *supra*—Ms. Thompson took the stand. She identified herself as the General Manager for the Residence Inn Marriott in question. Significantly, Ms. Thompson did not occupy the role at the time the incident occurred, acknowledging that she could not speak to the protocol in place prior to her hiring. As part of her duties, she testified that she "oversees all the departments[:] the front desk, breakfast area, housekeeping, and maintenance[,]" as well as "any accounting issues that we may have, ordering supplies, reporting to our corporate office, [and] daily activities . . . ." She further noted that "[a]ny problems or occurrences that happen, that would come

through my office." From Ms. Thompson's testimony, a number of facts were adduced regarding the maintenance and management of the hotel.

The Residence Inn opened in 2009 and is only franchised by Marriott. The fixtures in place by September 2014 were likely those that were in place at the premises' opening. Pinnacle serves as the management company for the premises and is responsible for hiring staff. There is a single maintenance department that handles upkeep for the entire hotel. Delegation to outside contractors is "very rare." The department checks every room according to a preventative maintenance checklist, working through one floor per month. It is tasked with maintaining "everything in the room[,]" "from top to bottom." Ms. Thompson specifically confirmed that it was Pinnacle's "exclusive responsibility" to maintain the kitchen cabinets in the hotel's rooms. Ms. Thompson further spoke to the hotel's reporting protocol in the event of an incident report by a guest, noting that written records are generally created on such occasions. She did state that, in her review, no record existed documenting the September 2014 incident involving Ms. Goetz.

Dr. Wagner, for his part, testified regarding his treatment of Ms. Goetz. As noted above, Dr. Wagner saw Ms. Goetz following a December 2014 fall where she fell face first into the ground after stepping off of a curb. The fall resulted in a concussion. Ms. Goetz initially went to a hospital for treatment and was eventually referred to Dr. Wagner. Ms. Goetz began her treatment with Dr. Wagner roughly a year after the September 2014 cabinet incident.

In describing generally what a concussion entails, he explained:

> [A] concussion sometimes can involve a blow to the head, but not always. A concussion can also be caused by just (inaudible) movements, or jerking, or sort of a displacement in space of the head which can irritate the brain.
>
> And concussions can cause swelling, and a little bit of shear or tear injury on a microscopic basis in the brain, which doesn't often show up on our standard imaging studies, including CT and MRI.

He noted that the symptoms of a concussion include "headaches, sometimes some mild cognitive impairment, dizziness, nausea, forgetfulness, [and] insomnia," among other things.

Dr. Wagner diagnosed Ms. Goetz with "post-concussive syndrome." He explained:

> [the syndrome] is sort of a constellation of symptoms that people—you know, a lot of people, when they have a relatively mild concussion, will recover pretty quickly. However, sometimes the symptoms linger on.
>
> And it's sort of a constellation of symptoms. The ones I already mentioned can also affect balance, and cause dizziness, and so forth. And a constellation of symptoms can linger on for, you know, several months, or sometimes even longer.

Dr. Wagner also noted an impression of disequilibrium syndrome.

Finally, Dr. Wagner noted his referral of Ms. Goetz to Dr. Geiger. He explained that the referral was precipitated by his determination that Ms. Goetz "was having some pretty significant cognitive symptoms." Further, recalling Dr. Geiger's findings, he noted that "[Dr. Geiger] diagnosed mild traumatic brain injury."

B. MOTIONS FOR JUDGMENT

At the close of the plaintiff's case, Pinnacle moved for judgment in its favor. In a bench conference, counsel offered the following argument:

> Your Honor, there hasn't been any evidence that there was negligent maintenance, installation of the cabinet, really any explanation at all as to why the cabinets fell, or whether there was an act or omission by the defendants that would be the cause of the cabinet falling. Assuming all facts in the light most favorable to the plaintiff, that this cabinet did, in fact fall.
>
> Whether it fell or not is obviously a factual dispute based on Ms. Thompson's testimony on behalf of the hotel. But even assuming that it did, there has been no evidence that there is—of any negligence on the part of . . . the defendants.
>
> Again, no testimony that the cabinet was improperly installed, no testimony or no evidence that there was a standard of care in terms of maintaining the cabinet or inspecting the cabinet, that the . . . defendants failed to adhere to. There has really been nothing . . . on that issue, Your Honor.
>
> And so I would move, on the issue of liability, for a judgment in favor of the defendants.

Ms. Goetz' counsel countered with an argument that sounded, in part, in the applicability of *res ipsa loquitur*. He argued, in relevant part:

> [T]he defendants had exclusive control over the maintenance of the cabinet, and they were managing that property for up to five years prior to when my client was in there. . . .
>
> [T]his is almost like a *res ipsa* situation where something just falls out. And it's so unusual. And they have the exclusive maintenance over that—that hotel room.
>
> And there is no evidence that my client did anything contributory or negligent. So that gets us through, I think, on a *res ipsa* approach.

Pinnacle responded in turn, citing case law and challenging the notion that exclusive control existed to support a *res ipsa* theory. Counsel argued:

> To the control issue, if a *res ipsa* argument is being made, there is a case, I think it's [*Lee v. Housing Authority of Baltimore City*, 203 Md. 453 (1954)], where exclusive control can be interrupted by the access, or the availability of access, to the thing that is in contention—in this case, the cabinet. . . .

> [T]he plaintiff, by her own testimony, and that was supported by Mr. Howell, was that they were in that room for months before anything happened. Presumably in this kitchen was a cabinet . . . that they were using very frequently. They certainly could have, and it's a reasonable inference, that they would have been using this kitchen area over the course of those months.
>
> Ms. Goetz responded with the following:
>
> So, there is testimony on the record from Ronnie Howell that the screws pulled out of the wall. That the hotel has exclusive control over those screws in the back of that—I mean, my client might have been using the front of the cabinet to store things, but the actual screws that affix the cabinet to the wall that is something that the property management company has exclusive control over.
>
> And this is . . . one of those events that it—it's the thing speaks for itself. I mean, that's the idea behind *res ipsa loquitur*. . . . [T]here was no evidence presented that my client did anything negligent.

After hearing from counsel, the circuit court briefly articulated its ruling, stating succinctly:

> Okay, so thank you very much for both of your arguments. And at this point, the court, based upon the evidence in the light most favorable, the court is going to deny the defendant's motion for a judgment . . . .
>
> There are certain factual issues that the jury could find in favor of the plaintiff. And as such the court denies the defense motion.

Following the circuit court's denial of the motion for judgment, the defense presented its case, calling a pair of witnesses. At the conclusion of witness testimony, another bench conference was held, and defense counsel renewed its motion for judgment. In this discussion, Goetz focused on *Apper v. Eastgate Associates*, 28 Md. App. 581 (1975), and reiterated the points he made in contesting the initial motion. Pinnacle, in response, continued to rely upon *Lee* in its attempt to establish the proposition that its exclusive

control of the cabinet had been attenuated. Ultimately, the circuit court found Ms. Goetz' argument to be persuasive, ruling as follows:

> The court has heard the arguments from the defense and the plaintiff, and the court has read both cases. And under *Apper v. Eastgate*, it specifically is similar to this case, the motel rented the room and appliances, and it had them under its exclusive control.
>
> With respect to installation and maintenance, it retained such control of the equipment it furnished, notwithstanding that it furnished Apper, in that case, with possession of the equipment while he was a guest, which is similar to while Ms. Goetz was a guest, with possession of the equipment while she was a guest.
>
> So, as a result of that, the court is going to deny your motion.

C. *RES IPSA LOQUITUR* JURY INSTRUCTION

After the close of the presentation of evidence and all motions were resolved, the parties convened to discuss jury instructions. Pinnacle noted an exception specifically to the instruction concerning *res ipsa loquitur*, citing his previous arguments. After a discussion, the jury was instructed, with the circuit court including a *res ipsa* instruction. The court stated:

> The fact that an event happened does not mean that it was caused by negligence. However, if the plaintiff has proven each of the following circumstances, you may conclude that there was negligence: 1) the event would not ordinarily happen without negligence; 2) the cause of the event was within the defendant's exclusive control; and 3) no action or omission of the plaintiff was a cause of the event.

After instructions were administered, the matter was submitted to the jury. Following a relatively brief deliberation, the jury returned its verdict. Finding that Pinnacle was negligent, that Ms. Goetz was not contributorily negligent, and that Ms. Goetz did

suffer injury as a result of the September 2014 incident, the jury awarded $47,712.92 for lost wages and $591,300.00 in non-economic damages. Pinnacle timely filed this appeal.

DISCUSSION

I. STANDARD OF REVIEW

Generally, "[a] party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence." Md. Rule 2-519(a). When a motion for judgment is made at the close of the evidence offered by the plaintiff in a jury trial, "the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made." *Id.* at (b). Similarly, when it comes to appellate review of a trial court's judgment on such a motion, the Court of Appeals has instructed as follows:

> It is well settled that (1) a trial court's denial of a motion for judgment is reviewed *de novo* by the appellate court, and (2) as it conducts its *de novo* review, the appellate court must view the evidence presented to the jury in a light most favorable to the party who prevailed at trial.

Wilkens Square, LLLP v. W.C. Pinkard & Co., Inc., 419 Md. 173, 185 (2011).

Concerning the propriety of a jury instruction, an abuse of discretion standard applies. *Wietzke v. Chesapeake Conference Ass'n*, 421 Md. 355, 371 (2011). "A trial judge exercises discretion by assessing whether the evidence produced at trial warrants a particular instruction on legal principles applicable to that evidence and to the theories of the parties." *Collins v. National R.R. Passenger Corp.*, 417 Md. 217, 228 (2010). Substantial deference is due to the trial court in this regard, and its decision "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion

manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Gunning v. State*, 347 Md. 332, 351-52 (1997) (quoting *In re Don Mc*, 344 Md. 194, 201 (1996)). The proper exercise of discretion is case specific and turns upon the particular circumstances in each instance. *Id.* at 352.

II. "THE THING SPEAKS FOR ITSELF"

Framing the matter as one of straightforward premises liability, Pinnacle argues that Ms. Goetz has failed to make a *prima facie* showing to establish a claim for negligence. Pinnacle asserts that Ms. Goetz "presented no evidence that [Pinnacle] had actual or constructive knowledge regarding the cabinet that would have created an unreasonable risk of harm" and "no evidence as to the cause of the cabinet falling." Insofar as it addresses the applicability of *res ipsa* doctrine, Pinnacle highlights a number of opinions of both this Court and the Court of Appeals to make the point that the passage of time and occupancy of the suite undermines the notion that they had exclusive control of the cabinet. Pinnacle consequently regards Ms. Goetz' argument as largely speculative.

Conversely, Ms. Goetz proceeds by enumerating the elements of *res ipsa loquitur* and arguing that the doctrine does, in fact, apply. Broadly, Ms. Goetz contends that the cabinet's falling is not the kind of incident that occurs in the absence of negligence and further that a court's construction of "exclusive control" is sufficiently broad to encompass Pinnacle's control over the cabinet that caused the injury. Ms. Goetz additionally attempts to differentiate the authority Pinnacle relies upon in making its argument that *res ipsa loquitur* does not apply.

Because of *res ipsa*'s centrality in this appeal, we begin by reviewing the content and scope of the doctrine. *Res ipsa loquitur* has deep roots in the common law. In 1898, Chief Judge McSherry of the Court of Appeals explained its relevance as follows:

> It is true that direct proof of negligence is not necessary. Like any other fact, negligence may be established by the proof of circumstances from which its existence may be inferred. But this inference must, after all, be a legitimate inference, and not a mere speculation or conjecture. There must be a logical relation and connection between the circumstances proved and the conclusion sought to be adduced from them. This principle is never departed from, and, in the very nature of things, it can never be disregarded. *There are instances when the circumstances surrounding an occurrence, and giving a character to it, are held, if unexplained, to indicate the antecedent or coincident existence of negligence as the efficient cause of the injury complained of. These are the instances where the doctrine of res ipsa loquitur is applied.*

Benedick v. Potts, 88 Md. 52, 55 (1898) (emphasis added). In short, "the thing speaks for itself."

At base, the doctrine of *res ipsa loquitur* is concerned with the burden of proof and the sufficiency of evidence. *Bohen v. Glenn L. Martin Co.*, 193 Md. 454, 461 (1949). It serves the purpose of affording a plaintiff the opportunity to establish a *prima facie* case even in those instances where direct evidence as to the cause of the accident is unavailable or where it rests exclusively within the dominion of the defendant. *Holzhauer v. Saks & Co.*, 346 Md. 328, 334 (1997). Thus, where applicable, the doctrine allows for an inference of negligence based only on circumstantial evidence and an assessment of probability. *Joffre v. Canada Dry Ginger Ale*, 222 Md. 1, 7 (1960). That inference should not be confused with the imposition of strict or absolute liability, however. Rather,

> [*r*]*es ipsa loquitur* means that the facts of the occurrence warrant the inference of negligence, not that they compel such an inference; that they furnish circumstantial evidence of negligence where direct evidence of it may be lacking, but it is evidence to be weighed, not necessarily to be accepted as sufficient; that they call for explanation or rebuttal, not necessarily that they require it; that they make a case to be decided by the jury, not that they forestall the verdict.

Potts v. Armour & Co., 183 Md. 483, 487 (1944). As a consequence, though the burden of proof remains vested in the complaining party, the doctrine, where properly applied, is sufficient to bring the question of negligence to the jury and allow them to infer the existence of negligence on the part of the defendant. *Norris v. Ross Stores, Inc.*, 159 Md. App. 323, 331 (2004); *see also Meda v. Brown*, 318 Md. 418, 425 (1990) ("[I]n an appropriate case the jury will be permitted to infer negligence on the part of a defendant from a showing of facts surrounding the happening of the injury, unaided by expert testimony, even though those facts do not show the mechanism of the injury or the precise manner in which the defendant was negligent.")

Though the doctrine is available, it is not meant for broad and liberal application, nor should it be used as an instrument to flout plaintiffs' obligation to meet their burden of proof. "The rule is not applied by the courts except where the facts and demands of justice make its application essential, depending upon the facts and circumstances in each particular case." *Potts*, 183 Md. at 488. Likewise, intentional efforts to constrain the facts and evidence adduced at trial will not be rewarded. *See District of Columbia v. Singleton*, 425 Md. 398, 414 (2012) ("Failing to produce reasonably available and likely probative witnesses, where substantive and direct evidence is otherwise lacking, leads to the

inference that the facts surrounding the happening of the accident were equally accessible to the plaintiff and the defendant. *Res ipsa loquitur* should not be applied in such cases." (citation omitted)); *see also Johnson v. Jackson*, 245 Md. 589, 595 (1967). Thus, certain baseline showings must be made in order to justify the doctrine's application.

As a threshold for applicability, a plaintiff must establish three elements through the available evidence.

First, there must be "a casualty of a kind that does not ordinarily occur absent negligence." *Holzhauer*, 346 Md. at 335. Generally, "the facts and surrounding circumstances [must] tend to show that the injury was the result of some condition or act which ordinarily does not happen if those who have the control or management thereof exercise proper care." *Greeley v. Balt. Transit Co.*, 180 Md. 10, 12 (1941). However, the simple fact that an injury occurred, in the absence of contextual information, cannot justify an inference of negligence. *Benedick*, 88 Md. at 55. Further, establishment of this first element is contravened where it can be shown that another act apart from the defendant's negligence was equally likely to have caused the injury. *See Holzhauer*, 346 Md. at 336.

Second, the casualty complained of must have been "caused by an instrumentality that was exclusively within the defendant's control." *Id.* at 335-36. The Court of Appeals noted in *Lee*:

> The element of control has an important bearing as negativing the hypothesis of an intervening cause beyond the defendant's control, and also as tending to show affirmatively that the cause was one within the power of the defendant to prevent by the exercise of care. Thus, it has been held that the inference is not permissible where . . . the lapse of time and the opportunity

> for interference by others weakens the probability that the injury is attributable to the defendant's act or omission.

203 Md. at 462. As such, courts have held *res ipsa* to be inapposite in a number of cases where the instrumentality responsible for the injury was available for interference by members of the general public. *See, e.g.*, *Holzhauer*, 346 Md. at 337-38. With that said, a plaintiff does not bear the burden of excluding, with certainty, every conceivable cause of their injury aside from the defendant's negligence. Rather, they are charged with the more circumscribed task of demonstrating "whether, by relying on common sense and experience, the incident more probably resulted from the defendant's negligence rather than some other cause." *Norris*, 159 Md. App. at 331.

Third, the casualty must not have been "caused by an act or omission of the plaintiff." *Holzhauer*, 346 Md. at 336.

One particular application of *res ipsa loquitur* by this Court, noted by counsel in the circuit court proceedings, is particularly apt. In *Apper v. Eastgate Associates*, this Court addressed an injury to a motel guest. Leonard Apper was a guest in the Towne Motel, owned by Eastgate Associates. One evening during his stay, Apper took a bath. Once he was done, he attempted to raise himself out of the bathtub by making use of a ceramic handhold fixture set in the wall of the tub. The fixture was meant specifically to help bathers get themselves out of the bathtub. As Apper grabbed the fixture to raise himself out of the tub, it broke away from the wall, striking him across the nose. He fell backward into the tub, hitting his head, neck and back, and falling unconscious. Apper and his wife eventually instituted an action in tort against Eastgate alleging that the accident was the

result of their negligence. After the circuit court granted Eastgate's motion for directed verdict, this Court considered the matter on appeal.

We preliminarily noted that, "because there was no direct evidence on the question, it was necessary that the doctrine of *res ipsa loquitur* be invoked in order to permit the inference" that Eastgate had been negligent. *Id.* at 586-87. Beginning, then, with a consideration of Apper's own negligence, we explained that a party may rebut that supposition by "showing that he has done nothing abnormal with the instrumentality causing the injury and has used it in the manner and for the purpose for which it was intended." *Id.* at 588. Finding that "[t]he evidence [was] clear that Apper did nothing abnormal with the fixture [and] [h]e used it in the manner and for the purpose for which it was intended[,]" we held that "[o]n the evidence Apper could be found to be exonerated from any responsibility for the accident." *Id.* at 589.

Next, we discussed the concept of exclusive control in the context of an entity providing lodging. We explained:

> *The fixture was exclusively under the control and maintenance of Eastgate, and Eastgate had exclusive knowledge of the care exercised in the control and maintenance of that instrumentality.* Apper was a guest in the motel. The motel owed him the duty of providing accommodations that were reasonably safe for the use contemplated, and where it furnished appliances, of furnishing them in such a condition that with ordinary use they would be reasonably safe. The motel rented the room and appliances and it had them under its exclusive control with respect to installation and maintenance. *It retained such control of the equipment it furnished, notwithstanding that it furnished Apper with possession of the equipment while he was a guest.*

Id. at 589-90 (emphasis added).

Finally, discussing the nature of the casualty, we stated:

> Just as [a] barrel could not roll out of a warehouse without some negligence, the [bathtub handhold] could not pull out from the wall without some negligence. The fixture was in the control of Eastgate, and the fact of its pulling loose from the wall was *prima facie* evidence of negligence. Apper was not bound to show directly that it could not have pulled loose without negligence.

On the foregoing analysis, we held that *res ipsa loquitur* was applicable and, noting a tangential technical defect, remanded the case for new trial.

III. ANALYSIS

Pinnacle dedicates some attention at the beginning of its brief to Ms. Goetz' failure to establish a *prima facie* case of negligence through the presentation of affirmative evidence. Because that point is irrelevant should *res ipsa* apply, we look, first, to the doctrine's applicability in the case at bar, and the various defenses Pinnacle offers to dispute its application.

Aware of the threat *Apper* poses to its defense, Pinnacle begins by attempting to differentiate the case. Pinnacle's primary tack in this effort is to highlight the length of time that Goetz and Howell occupied the room, suggesting that this lengthy period along with their presence and usage of the cabinet attenuated Pinnacle's exclusive control of the cabinet when the injury occurred. The argument draws upon the notion articulated in *Holzhauer*, *Leidenfrost v. Atlantic Masonry, Inc.*, 235 Md. 244 (1964), and other cases indicating that the potential for an intervening cause of harm beyond the defendant's control undermines the probability that they are responsible and thus comes as an affront to the presumption of negligence. In *Holzhauer*, the Court of Appeals held that "*res ipsa* [is] inapplicable when the opportunity for third-party interference prevented a finding that

the defendant maintained exclusive control of the injury-causing instrumentality." 346 Md. at 337. In *Leidenfrost*, the Court stated: "Passage of time between the act of negligence and the subsequent injury is a factor to be considered, for it increases the possibility that there was an intervening independent act of a third party which would make the doctrine inapplicable." 235 Md. at 249. In light of this authority, it is not a wholly trivial factual distinction that Ms. Goetz occupied the room for months, whereas the injury in *Apper* occurred on the first night of the plaintiff's stay. The extended period afforded the opportunity for an intervening cause, like the actions of Ms. Goetz or Howell or some other actor, to interfere with the cabinet. This possibility would serve Pinnacle's goal of undermining its exclusive control of the instrumentality. Unfortunately for Pinnacle, there are both particular irrefutable facts and a legal basis for refuting that argument.

As a factual matter, we would make a distinction, properly recognized by trial counsel, between the object that struck Ms. Goetz—*the cabinet*—and the instrumentalities that actually failed—*the screws holding the cabinet in place*. While it may very well be the case that either Howell or Ms. Goetz, or both, made frequent use of the cabinet, that is a different contention than saying that they somehow interfered with the fixtures holding it to the wall. No evidence was adduced in the proceedings below warranting that conclusion. Nor was there any evidence offered that some third-party contractor or other guest may have interfered. This undermines any notion of attenuation. Even if Ms. Goetz or Howell made frequent use of the cabinet during the course of their stay—indeed, even if they filled it to capacity—none of that would be indicative of an interference with the

instrumentality that failed and caused the injury. Further, Pinnacle never disputed its responsibility to maintain the room or its fixtures. To the contrary, testimony was introduced indicating the measures they implemented for maintenance, notwithstanding the fact that its rooms were held out for long-term rental by guests. As a result, their attenuation argument is inapt.

With that said, the kind of "exclusive control" we contemplate in *res ipsa* cases ought not be confused with mere usage. At oral argument, Pinnacle emphasized the length of Howell and Ms. Goetz' stay, which extended over several months. It held this out as an act by which it relinquished its control. That is a proposition that we directly considered and rejected in *Apper*. There we held—in contravention of Pinnacle's position—that a motel "retain[s] control of the equipment it furnishe[s], notwithstanding that it furnishes [guests] with possession of the equipment" during their stays. *Apper*, 28 Md. App. at 590. Thus, what Pinnacle yielded to Ms. Goetz and Howell was not control, but merely use of the premises,[4] and it cannot exculpate itself from potential liability on that basis. For those reasons, *Apper* cannot be rendered so factually or legally distinct that it should not control in this case.

Pinnacle highlights a handful of other cases in support of its position. In *Singleton v. District of Columbia*, the Court of Appeals considered the application of *res ipsa* in a case involving a bus accident. Father and son Wayne and Jaron Singleton brought suit against the District of Columbia when, following a city-sponsored trip to amusement park

[4] For a more thorough explanation of control, possession, and use, see *infra* note 5.

Six Flags of America, the bus transporting them left the road and crashed into a tree. Without offering any evidence as to the events giving rise to the accident, they argued that the mere fact that the bus left the roadway was sufficient to invoke *res ipsa* and send the matter to a jury. In *Ramsey v. D.P.A. Associates*, 265 Md. 319 (1972), the Court considered a matter where a child pressed against a glass door to open it, shattering the door and causing injury to the child. The child's father filed suit on his behalf and sought recovery, in part, on a *res ipsa* theory. Finally, in *Lee v. Housing Authority of Baltimore City*, suit was filed on behalf of Sharon M. Lee, four years old at the time of injury. She suffered severe burns and her mother was killed following the explosion of a gas water heater in the kitchen of their home, owned by the Housing Authority of Baltimore City. She also sought to assert a *res ipsa* theory of recovery.

None of these cases are especially helpful to Pinnacle. Beginning with *Singleton*, we note that the case stands primarily for the proposition that a party may not seek to invoke *res ipsa* after artificially constraining the evidence offered at trial, such as by failing to call known or knowable and available witnesses. Pinnacle directs some attention toward Ms. Goetz' failure to call staff members who worked at the Residence Inn at the time the accident occurred. However, such failure is inapposite in this case because none of those persons were claimed to be present at the time that the accident occurred. The plaintiffs' tactical decision not to call witnesses in *Singleton* was problematic because they offered no evidence as to the attendant circumstances of the accident, rendering any potential inference of negligence entirely speculative and without any factual support derived from

the plaintiffs' case-in-chief. Here, there were only two people present when the injury occurred, Howell and Ms. Goetz, and both testified. Because Ms. Goetz' approach in the case at bar was not comparably evasive to what the Court saw in *Singleton*, insofar as Pinnacle relies upon it we find that reliance to be unfounded.

Ramsey and *Lee* are similarly unhelpful. Both would be applicable only insofar as they address the second *res ipsa* requirement, exclusive control. In *Ramsey*, the Court of Appeals declined to apply *res ipsa* because the glass door at issue was exposed to and used by the public, which the Court held to undermine the landlord's exclusive control. In *Lee*, the Court declined to apply the doctrine for a pair of reasons: first, because "control retained by the Housing Authority, as landlord, was a qualified one, and there was at least the possibility of access by others[,]" *Lee*, 203 Md. at 463; second, because "retention of control was not physical, but consisted only in the retention of the right and duty to adjust and repair it, if it did not function properly[,]" *id.* at 464.

Both cases are quite different factually from the case at bar. The instrumentality at issue here was not exposed to the type of public use identified in *Ramsey*, and consequently there is no comparable probability of third-party interference. As for *Lee*, the difference lies in the fact that this is not a landlord-tenant case. While in that context control is only qualified and limited, here, with a defendant offering temporary lodging, control remains vested in the defendant.[5] *Compare Lee*, 203 Md. at 463-64 *with Apper*, 28 Md. App. at

[5] The Maryland Law Encyclopedia explains the landlord and tenant relationship as follows:

590 ("[The motel] retained such control of the equipment it furnished, notwithstanding that it furnished Apper with possession of the equipment while he was a guest."). *Cf. Nettles v. Emerick*, 22 F. Supp. 441, 442 (1938) ("An innkeeper has a duty to furnish a safe room to his guests and to provide furniture and fixtures therein which may be used by the guests in the ordinary way without danger to the guest[.]"). That point is underscored by the fact that Pinnacle concededly engages in regular preventative maintenance practices. For these reasons, neither case affords Pinnacle much protection.

Finding no reason based upon the authority cited by Pinnacle to hold *res ipsa* inapplicable, we lastly consider whether it was appropriately applied to the case at bar. Regarding the first and third elements, there is little controversy. Pinnacle concedes,

> The landlord and tenant relationship arises from a contract by which one person occupies the real property of another with permission and in subordination to the owner's rights, the occupant being known as the tenant and the person owning the property as the landlord. The relation of landlord and tenant may also arise by operation of law by reason of acts of the parties. The legal relationship between the landlord and the tenant is governed by the contract between the parties, as well as any statutory authority.
>
> The relation of landlord and tenant is distinguished from other relations, such as, for example, the relation of licensor and licensee, partners, and employer and employee. *Thus, a lodger or boarder, for example, is distinguished from a tenant in that, while a tenant has exclusive possession and control of the demised premises, a lodger or boarder merely has the use of the premises without actual or exclusive possession.*

14 Maryland Law Encyclopedia, *Landlord and Tenant* § 1 (emphasis added) (footnotes omitted). *See also McDaniel v. Baranowski*, 419 Md. 560 (2011); *Motels of Md., Inc. v. Baltimore County*, 244 Md. 306 (1966); *Green v. T.A. Shoemaker & Co.*, 111 Md. 69 (1909); *Sandler v. Executive Management Plus*, 203 Md. App. 399 (2012); *Reisterstown Plaza Associates v. General Nutrition Center, Inc.*, 89 Md. App. 232 (1991)

concerning the question of whether the incident was likely to occur absent negligence, that "a cabinet falling off the wall that it is affixed to, does not normally occur[.]" We would take that concession one step further. Based on the facts adduced at trial and the general absence of evidence that there was interference with the screws holding the cabinet in place, we find that the occurrence could fairly have been attributed to Pinnacle's negligence. Likewise, no evidence was introduced indicating that the incident may have been attributable to negligence on the part of Ms. Goetz. Indeed, the closest Pinnacle came to introducing such evidence was a question directed toward Ms. Goetz as to whether the cabinets were overfilled, a proposition which she denied. Lastly, regarding exclusive control, we would simply reiterate that the instrumentality that failed was not the cabinet, which did not break apart, but the screws affixing it to the wall. There was no indication that they were interfered with.

Consequently, we hold that adequate facts were adduced to substantiate the three requisite inferences, *res ipsa loquitur* applied, and Pinnacle's motion for judgment was appropriately denied. Further, because the circuit court did not err in submitting the matter to the jury and the doctrine was applicable, it follows that there was no abuse of discretion in supplying a *res ipsa loquitur* jury instruction.

The judgment of the circuit court is thus affirmed.

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