Circuit Court for Baltimore County
Case No. C-03-CV-21-004164

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 0311

September Term, 2022

Rachel Burke

v.

Kidz Jungle World, LLC

Reed,
Albright,
Wright,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: April 12, 2023

*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.

** On December 14, 2022, the name of the Court of Special Appeals was changed to the Appellate Court of Maryland and the name of the Court of Appeals was changed to the Supreme Court of Maryland.

Rachel Burke ("Appellant") was injured while using a ball pit at an indoor play facility ("Facility"), owned and operated by Kidz Jungle World, LLC (hereinafter "Appellee" or "Kidz Jungle"). A week prior to her injury, Appellant signed a waiver that included an exculpatory clause. Appellant filed a lawsuit against Appellee, asserting strict liability, negligence, and breach of warranty claims and demanded a jury trial. In response, Appellee filed a motion to dismiss for failure to state a claim and/or motion for summary judgment, citing the language of the waiver's exculpatory clause. Following a hearing on the motion, the circuit court granted the motion. Appellant timely appealed.

In bringing her appeal, Appellant presents three questions for appellate review, rephrased for clarity:[1]

[1] In their brief, Appellant presented the following questions:

1. Did the Circuit Court for Baltimore County fail to apply Maryland's stringent and exacting standard for interpreting purported exculpatory clauses when it granted Appellee's Motion to Dismiss based on provisions that were either broadly worded but imprecise or released claims based on specific and narrowly-focused types of negligence – Appellant's negligence, other participants' negligence, and/or Appellee's negligence during rescue operations or in providing medical treatment after incidents – but did not expressly waive claims based on Appellee's general negligence, on a form that was signed at a prior visit to the facility and did not put Appellant on notice that she was giving up her right to sue Appellee for its own negligence at any point in the future?

2. Did the Circuit Court for Baltimore County err as a matter of law when it granted Appellee's Motion for Summary Judgment despite the evidence being susceptible to more than one interpretation or inference, and/or given that a reasonable jury could conclude that Appellant lacked actual knowledge of the specific risks and hidden and concealed hazards at issue?

3. Did the Circuit Court err when it dismissed Appellant's strict liability (Count 1) and breach of warranty (Count 3) counts given that the purported exculpatory clause

I. Did the circuit court err in granting the Appellee's summary judgment motion?

II. Did the circuit court err in dismissing the Appellant's strict liability claim?

III. Did the circuit court err in dismissing the Appellant's breach of warranty claim?

For the following reasons, we answer all three questions in the negative and affirm the circuit court's decision.

FACTUAL & PROCEDURAL BACKGROUND

Kidz Jungle is a limited liability corporation, owned by Adetunji Amao ("Owner"), that operates an children's indoor playground in Randallstown, Maryland. On January 23, 2021, Appellant signed a waiver provided by Appellee, acknowledging,

and agreeing to the conditions therein. The waiver, inter alia, contained stated:

> 3. I, for myself and the participant(s) undersigned, acknowledge and understand that all equipment at Kidz Jungle World, LLC, including slides, stairs, climbing structures, obstacles, interactive panels, soft play structures with moving parts, games, trampolines, and other toys can be hazardous and dangerous. Activities require various degrees of skill and experience. I understand that these activities can result in serious injury, death, illness, and loss of any kind. I understand that such risk cannot be eliminated without jeopardizing the essential qualities of the Activity. I promise to accept and assume all of the risk and responsibilities for loss of any kind, injury, death, and illness to myself and the participant(s) undersigned on the Kidz Jungle World, LLC premises, including those that may arise out of negligence of other participants. I also hereby agree to indemnify, hold harmless and defend Kidz Jungle World, LLC, their employees and agents from any and all claims resulting from injuries, including death, damages and loss sustained by anyone, which arise out of or are in any way associated with my

never mentioned the terms "strict liability" or "breach of warranty" nor used any other such unequivocal terms?

conduct or the conduct of those individuals participating under my supervision and/or the activities of the facility, I acknowledge that myself and the participant(s) undersigned may require medical assistance, which I acknowledge will be at my own expense or the expense of my personal insurers. I represent and affirm that I have adequate and appropriate insurance to provide coverage for such medical expenses.

4. I am aware that there are age and weight limits of certain activities for the safety of different age groups of children at Kidz Jungle World, LLC.

5. In consideration of Kidz Jungle World, LLC allowing my participation and the participation of the undersigned, I, for myself and the participant(s) undersigned and/or legal ward, heirs, administrators, personal representatives, or assigns hereby voluntarily release, waive, and forever discharge and covenant not to sue Kidz Jungle World, LLC and its owners, agents, employees, officers, and all other persons or entities acting on its behalf.

6. I understand the effect of this waiver and acceptance of risk on my legal rights. By signing this release of liability agreement and participating at Kidz Jungle World, LLC, it is my intention to assume all risk of injury and I for myself and the participant(s) undersigned. I hereby fully and forever release and discharge indemnify and hold harmless Kidz Jungle World, LLC, its owners, employees, agents, the property owner and/or all other persons or entities acting on its behalf from any and all liabilities, claims, demands, damages, rights of action, suits or causes of action present or future, whether they be known or unknown, anticipated or unanticipated, resulting from or arising in any way out of my use or intended use of said premises, facilities or equipment to the fullest extent permitted by law. I fully and forever release and discharge the released parties and their employees and agents from any and all negligent acts and omissions in the same, and intend to be legally bound by this release to the fullest extent permitted by law. . . .

I HAVE READ THE ABOVE MEDICAL PERMISSION AUTHORIZATION AND BY SIGNING IT AGREE THAT IT IS MY INTENTION TO EXEPMT (sic) AND RELIEVE KIDZ JUNGLE WORLD, LLC FROM ALL LIABILITY ARISING AS THE RESULT OF THIS MEDICAL AUTHORIZATION. . . .

NOTE: ALL EQUIPMENT IS EXCLUSIVELY DESIGNED FOR CHILDREN ONLY. YOU, AS A PARENT OR GUARDIAN, ARE NOT ALLOWED TO TRY ANY EQUIPMENT OTHER THAN THE LARGE PLAYGROUND STRUCTURE WHICH YOU CAN PLAY WITH YOUR OWN CHILDREN ONLY, NOT WITH OTHER ADULTS.

YOU HAVE THE RIGHT TO REFUSE TO SIGN THIS FORM AND KIDZ JUNGLE WORLD, LLC HAS THE RIGHT TO REFUSE TO LET YOUR CHILD PARTICIPATE IF YOU DO NOT SIGN THIS FORM.

While at the Facility about a week later, Appellant fractured her left foot and suffered other injuries while playing with her minor child in a ball pit. On December 16, 2021, Appellant filed a lawsuit against Appellee, asserting strict liability, negligence, and breach of warranty claims and requested a jury trial and damages "in an amount in excess of the jurisdictional limit of $30,000 (Thirty Thousand Dollars) plus interest and all costs of this action."

On January 13, 2022, Appellee filed a motion to dismiss for failure to state a claim and/or motion for summary judgment. In its motion, Appellee stated that the Appellant voluntarily signed a waiver acknowledging that all equipment at the Facility "can be hazardous and dangerous . . . [A]ctivities [within the Facility] require a various degree of skill and experience . . . [and] can result in serious injury, death, illness, and loss of any kind." Appellee asserted that Appellant assumed the risk. Owner stated in a signed affidavit that Appellant never withdrew the waiver she executed.

On April 18, 2022, following a hearing on the motion, the circuit court granted the motion. On April 22, 2022, Appellant timely appealed.

I. EXCULPATORY CLAUSE

Appellant contends that the circuit court erred in granting the motion for summary judgment because the court "failed to appropriately apply Maryland's stringent and exacting standard for interpreting purported exculpatory clauses." An exculpatory clause

is a clause in a contract that relieves a party from liability for harm caused by his or her own negligence. *College of Notre Dame of Maryland, Inc. v. Morabito Consultants, Inc.*, 132 Md. App. 158, 168 (2000) (citations omitted). "Exculpatory clauses are generally valid, but they must be unequivocal and clear, not merely unambiguous." *Id.* Appellant asserts that the provisions do not clearly exculpate Appellee from claims arising out of its own negligence. Appellant alleges that the "paragraphs do not use the word 'negligence' or other unequivocal terms" and instead use "broadly worded[,] but imprecise language" that is unpermitted in Maryland courts since *Abdolrahman M. Adloo et al., v. H.T. Brown Real Estate, Inc.*, 344 Md. 254 (1996). Appellant asserts that the language of the waiver discharges the Appellee's liability when Appellant is injured due to their own negligence within the Facility but does not discharge the Appellee's liability when the Appellee is at fault for the Appellant's injury. Finally, Appellant alleges that the waiver submitted to the circuit court on January 23, 2021 by Appellant, and received by Appellee on that same day, was a waiver signed for a visit to the Facility on January 23, 2021 and was erroneously applied to the January 30, 2021 visit.

A. Standard of Review

Summary judgment is proper where the circuit court determines that there are: 1) no genuine disputes as to any material fact, and 2) that the moving party is entitled to judgment as a matter of law. *See* Md. Rule 2-501. First, this Court must perform a de novo review whether there were disputes of material fact before the circuit court. *Koste v. Town of Oxford,* 431 Md. 14, 24-25 (2013). "A material fact is one the resolution of which will

alter the outcome of the case." *Dett v. State*, 161 Md. App. 429, 441 (2005), *aff'd*, 391 Md. 81 (2006) (citing *King v. Bankerd*, 303 Md. 98, 111 (1985); *Bagwell v. Peninsula Regional Medical Center*, 106 Md. App. 470, 489 (1995)).

After determining that there are no genuine disputes as to any material fact, appellate courts must conduct a de novo review on whether the moving party was entitled to summary judgment as a matter of law based on the record before the Court. *Cf. Frankel v. Deane*, 480 Md. 682, 700 (2022); *Dett*, 161 Md. App. at 441 (citing *O'Connor v. Baltimore Co.*, 382 Md. 102, 110 (2004); *Hines v. French*, 157 Md. App. 536, 549–50 (2004)).

B. Analysis

First, this Court addresses Appellant's argument that she was not put on notice that the waiver she signed prior to her injury would apply to future visits. In her brief, Appellant stated that on January 23, 2021, she

> brought her six-year[-]old son and another minor child to [Facility] . . . purchased tickets and filled out and signed [the Waiver]. She . . . used the facility without incident. On January 30, 2021, Appellant and her son returned to [Facility]. Appellant purchased tickets but was not asked to sign a waiver form.

Appellant argues that the waiver does not "contain a provision stating that its waiver continued to bind Appellant in perpetuity, nor did it indicate that it would continue until she withdrew from it." However, Appellant does not raise this issue or these facts in their originally filed lawsuit or in the hearing before the circuit court. Thus, the Appellant's contention that the waiver was signed for a different visit on a different day and Appellee "did not put Appellant on notice" that the waiver would apply to future visits is unpreserved for appeal.

Maryland Rule 8-131(a) provides, in pertinent part: "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"

> The purpose of Md. Rule 8-131(a) is "'to ensure fairness for all parties in a case and to promote the orderly administration of law.'" *State v. Bell*, 334 Md. 178, 189 (1994) (quoting *Brice v. State*, 254 Md. 655, 661 (1969)). Fairness and the orderly administration of justice is advanced "by 'requiring counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings.'" *Bell*, 334 Md. at 189 (quoting *Clayman v. Prince George's County*, 266 Md. 409, 416 (1972)). For those reasons, Md. Rule 8-131(a) requires an appellant who desires to contest a court's ruling or other error on appeal to have made a timely objection at trial. The failure to do so bars the appellant from obtaining review of the claimed error, as a matter of right.
>
> From time to time, however, an appellant will ask the appellate court to excuse the failure of a timely objection by resorting to the language of Md. Rule 8-131(a) that the appellate court "ordinarily" will not decide an issue "unless it plainly appears on the record to have been raised in or decided by the trial court[.]" We have made clear that the word "ordinarily" has the limited purpose of granting to the appellate court the prerogative to address the merits of an unpreserved issue, in the appropriate case. *See Bell*, 334 Md. at 188. Such prerogative to review an unpreserved claim of error, however, is to be rarely exercised and only when doing so furthers, rather than undermines, the purposes of the rule. *Jones v. State*, 379 Md. 704, 714 (2004); *Conyers v. State*, 354 Md. 132, 150-51 (1999) (discussing the narrow circumstances under which this Court will exercise its discretion to review an unpreserved issue).

Robinson v. State, 410 Md. 91, 103-4 (2009). The few cases where the court has exercised their discretion to review unpreserved issues are cases where prejudicial error was found and the failure to preserve the issue was not a matter of trial tactics. *Conyers* at 150. This case does not warrant such exception, because arguendo, the plain language of the waiver states unambiguously that the pertinent clauses apply to present or future claims. *See*

Seigneur v. National Fitness Institute, Inc., 132 Md. App. 271, 280 (2000) (stating that courts are almost universal in holding that health clubs may limit their liability for future negligence if they do so unambiguously). The waiver states:

> 5. In consideration of Kidz Jungle World, LLC allowing my participation and the participation of the undersigned, I, for myself and the participant(s) undersigned and/or legal ward, heirs, administrators, personal representatives, or assigns hereby **voluntarily release, waive, and forever discharge and covenant** not to sue [Appellant].
>
> 6. I understand the effect of this waiver and acceptance of risk on my legal rights. By signing this release of liability agreement and participating at Kidz Jungle World, LLC, it is my intention to assume all risk of injury and I for myself and the participant(s) undersigned. **I hereby fully and forever release** and discharge indemnify and hold harmless [Appellant] from any and all liabilities, claims, demands, damages, rights of action, suits or causes of action **present or future**, whether they be known or unknown, anticipated or unanticipated, resulting from or arising in any way out of my use or intended use of said premises, facilities or equipment to the fullest extent permitted by law. **I fully and forever** release and discharge the released parties and their employees and agents from any and all negligent acts and omissions in the same, and intend to be legally bound by this release to the fullest extent permitted by law. . . .

Thus, by the plain language of the waiver, Appellant's argument stating she was not on notice that the waiver would apply to future visits, even if it was preserved for appeal, would not be material or affect the outcome of the Appellant's case.

Next, Appellant relies on *Abdolrahman M. Adloo et al., v. H.T. Brown Real Estate, Inc.*, 344 Md. 254 (1996), to argue that the exculpatory clause in the waiver was unclear and ambiguous. In *Adloo,* Respondent received a phone call from a person posing to be real estate "agent," who stated his intent to "show the petitioners' home that afternoon," secured the lock-box information and ultimately stole property totaling $40,000 from the home. *Id.* at 258-59. The name used by the imposter was not registered to the Maryland

Real Estate Commission as a licensed agent and the number given to the respondent's employee did not belong to the stated real estate brokerage. *Id.* at 258. The Respondent argued that the listing agreement, which contained the following clause:

> Neither REALTOR nor his agents or sub-agents are responsible for vandalism, theft or damage of any nature whatsoever to the property, nor is REALTOR responsible for the custody of the property, its management, maintenance, upkeep or repair.

Id. at 257; and the lock-box authorization that contained the following provision:

> SELLER further acknowledges that neither Listing or Selling BROKER nor their agents are an insurer against the loss of personal property; SELLER agrees to waive and releases BROKER and his agents and/or cooperating agents and brokers from any responsibility therefore [sic].

Id. at 258; shielded Respondent from liability. The Supreme Court of Maryland[2] disagreed, deeming the clauses as unclear and ambiguous to the applicability of the situation presented. *Adloo,* 344 Md. at 261-62; 268-69. The Court held that the clauses may logically be interpreted as applying only to those situations where there was no negligence on the part of the respondent. *Id.* at 267-68.

In construing the waiver signed by the Appellant, this Court is required to give legal effect to all of its unambiguous provisions. *Seigneur*, 132 Md. App. at 278. Our primary concern when interpreting a contract is to effectuate the parties' intentions. *Nicholson Air Services, Inc. v. Board of County Comm'rs of Allegany County*, 120 Md.App. 47, 63 (1998). Moreover, when interpreting a contract, the court "places itself in the same situation as the parties who made the contract, so as to view the circumstances as they

[2] On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland.

viewed them and to judge the meaning of the words and the correct application of the language to the things described." *Canaras v. Lift Truck Services*, 272 Md. 337, 352 (1974).

In *Adloo*, the exculpatory clause did not clearly indicate that the injured party was releasing the other party from liability from its own negligence. *See Adloo* at 261-62; 268-69. This is not the case in this instance. The waiver signed by Appellant states:

> I, for myself and the participant(s) undersigned, acknowledge and understand that all equipment at Kidz Jungle World, LLC, including slides, stairs, **climbing structures, obstacles, interactive panels, soft play structures with moving parts, games, trampolines, and other toys can be hazardous and dangerous.** Activities require various degrees of skill and experience. **I understand that these activities can result in serious injury, death, illness, and loss of any kind.** I understand that such risk cannot be eliminated without jeopardizing the essential qualities of the Activity. **I promise to accept and assume all of the risk and responsibilities for loss of any kind, injury,** death, and illness **to myself** and the participant(s) undersigned **on the Kidz Jungle World, LLC premises**, including those that may arise out of negligence of other participants.

The waiver properly contemplates the injury that Appellant sustained and thus Appellee's waiver is exculpated from liability under the waiver that Appellant signed.

Appellant also argues that the paragraphs do not use the word "negligence" or other unequivocal terms. However, in Maryland, for an exculpatory clause to be valid, it "need not contain or use the word 'negligence' or any other 'magic words.'" *Seigneur*, 132 Md. App. at 280 (quoting *Adloo* at 254) (citations omitted).

> An exculpatory clause "is sufficient to insulate the party from his or her own negligence 'as long as [its] language . . . clearly and specifically indicates the intent to release the defendant from liability for personal injury caused by the defendant's negligence . . . . '"

Seigneur, 132 Md. App. at 280 (quoting *Adloo*, 344 at 266) (citations omitted). In the

instant case, there is no suggestion that the waiver between Appellant and Appellee is the product of fraud, mistake, undue influence, overreaching, or the like. As quoted prior and under these circumstances, we hold that this contract provision within the waiver express a clear intention by the parties to release Appellee from liability for acts of negligence at the Facility.

Adloo also outlines three circumstances in which exculpatory clauses in contracts are invalid and will not be enforced because it is in the public interest:

> when a party to the contract attempts to avoid liability for intentional conduct or harm caused by reckless, wanton, or gross behavior; when the contract results from grossly unequal bargaining power; and when the transaction is one adversely affecting the public interest.

Adloo, 344 Md. at 260. The *Seigneur* Court clarifies:

> [I]n the determination of whether the enforcement of an exculpatory clause would be against public policy, the courts consider whether the party seeking exoneration offered services of great importance to the public, which were a practical necessity for some members of the public. As indicated above, courts have found generally that the furnishing of gymnasium or health spa services is not an activity of great public importance nor of a practical necessity.

Seigneur, 132 at 284. Here, the Facility – a children's entertainment gymnasium – is not an activity of public importance or public necessity, as clarified by the *Seigneur* Court. *See id.* at 284-285 (stating that these services to the public do not provide essential services, though they "are a good idea and no doubt contribute to the health of the individual participants and the community at large. But ultimately, they are not essential to the state or its citizens. And any analogy to schools, hospitals, housing (public or private) and public utilities therefore fails."). There is no overriding public interest which would demand that

the contract provision, that both parties signed voluntarily, be rendered ineffectual. *See Id.* at 285.

Thus, this Court finds that where there no genuine disputes as to any material fact, the Appellee was entitled to summary judgment as a matter of law based on the record before the Court.

II. STRICT LIABILITY AND BREACH OF WARRANTY CLAIMS

A. Parties' Contentions

Appellant contends that the circuit court erred in dismissing their strict liability and breach of warranty claims. Appellant argues that the "exculpatory clause at issue in this case did not mention strict liability or breach of warranty claims and, thus, did not exculpate Appellee for those claims."

At the hearing before the circuit court, in response to the strict liability and breach of warranty claims, Appellee states that rather than selling a product and placing it in the stream of commerce, Appellee is selling an experience. Thus, the strict liability and breach of warranty claims were inapplicable to the case at bar because they were not selling a product.

B. Standard of Review

In considering a motion to dismiss for failure to state a claim upon which relief may be granted, the Supreme Court of Maryland states:

> a court must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, i.e., the allegations do not state a cause

> of action for which relief may be granted. *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 121–22 (2007); *Sprenger v. Pub. Serv. Comm'n*, 400 Md. 1, 21 (2007); *Pendleton v. State*, 398 Md. 447, 458–60 (2007); *Converge Servs. Group, LLC v. Curran*, 383 Md. 462, 475 (2004); *Fioretti v. Maryland State Bd. of Dental Exam'rs*, 351 Md. 66, 71–72 (1998). Consideration of the universe of "facts" pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any. *Curran*, 383 Md. at 475. The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice. *Adamson v. Corr. Med. Servs.*, Inc., 359 Md. 238, 246 (2000); *Bobo v. State*, 346 Md. 706, 708–09 (1997). Upon appellate review, the trial court's decision to grant such a motion is analyzed to determine whether the court was legally correct. *Sprenger*, 400 Md. at 21; *Benson v. State*, 389 Md. 615, 626 (2005); *Fioretti*, 351 Md. at 71.

RRC Ne., LLC v. BAA Maryland, Inc., 413 Md. 638, 643–44 (2010).

C. Analysis

Strict liability in tort is a doctrine that limits its application to cases involving animal conduct, ultrahazardous or abnormally dangerous activities, and products liability. Appellant's claims relate to products liability because Appellant contends that the exculpatory clause did not limit liability for strict products liability or breach of warranty claims. Appellant's claims are misplaced.

As set forth in the Restatement (Second) of Torts § 402A (Am. L. Inst. 2022), states:

> (1) **One who sells any product** in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
>
> (a) **the seller is engaged in the business of selling such a product**, and
>
> (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.
>
> (2) The rule stated in Subsection (1) applies although
>
> (a) the seller has exercised all possible care in the preparation and sale of his product, and

> (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

Id. (emphasis added); *see also Lloyd v. General Motors Corp.*, 397 Md. 108, 132-133 (2007).

The rule is applicable to "any person engaged in the business of selling products for use or consumption." *Id.* cmt. f. Appellee is not engaged in the business of selling a product. A product is defined as "[a] good distributed commercially that is (1) tangible personal property, (2) the result of a fabrication or production process, and (3) passed through the distribution channel before the consumption of the good." *Products*, BLACK'S LAW DICTIONARY (2nd ed. 1995). Appellee is not in the business of selling the equipment in which Appellant was injured. Instead, Appellee is selling an entertainment service at their Facility. Thus, the theory of strict products liability is inapplicable, and the circuit court rightfully dismissed the claim.

For those same reasons, Appellant's claims regarding implied and express warranties are also inapplicable. Regarding implied warranties, under the Maryland Uniform Commercial Code, codified at Maryland Code (1975, 2002 Replacement Vol.) § 2–314 of the Commercial Law Article, "a warranty that the goods shall be merchantable is implied in a contract for their sale if the **seller is a merchant with respect to goods of that kind.**" *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 157 (2007) (emphasis added). As this Court has stated:

> In order to recover for a breach of implied warranty of merchantability, the plaintiff must establish that:
>
> (1) a warranty existed;

> (2) the product did not conform to the warranty [and thus the warranty was breached]; and
> (3) the breach of warranty by the seller was the cause of the injury to the user or third party.
>
> The elements necessary to assert a breach of implied warranty claim are similar to those required for strict liability tort claims.

Id. (citations omitted). In the case before this Court, Appellee is not a seller of a good in which the Appellant was injured, and Appellee is thus not a merchant and Appellant's claim regarding express warranties fails.

For that same reason, Appellant's claim regarding express warranties also fails. An express warranty is one where a merchant explicitly warrants the condition of a sold product and possibly outlines the remedies if the product is defective. *See Joswick v. Chesapeake Mobile Homes, Inc.*, 362 Md. 261, 265 (2001). Appellee is not a merchant in the business of selling products in which the Appellee was injured. Thus, this Court holds the circuit court did not err in dismissing Appellant's claims regarding strict liability and breach of warranty claims.

CONCLUSION

Accordingly, we affirm the judgment of the Circuit Court for Baltimore County.

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