Circuit Court for Harford County
Case No. 12-C-16-003108

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1960

September Term, 2017

JOYCE ELLIOTT

v.

AZZ, LLC, et al.

Meredith,*
Nazarian,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 25, 2021

*Meredith, Timothy E., J., now retired, participated in the hearing of this case while an active member of this Court, and after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

*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.

Joyce Elliott, appellant, sued AZZ, LLC ("AZZ"), appellee, the operator of a restaurant in Harford County named "Sapore Di Mare," for personal injuries Ms. Elliott sustained when she fell in a hole on the neighboring property after dining at AZZ's restaurant. The Circuit Court for Harford County granted AZZ's motion for summary judgment. Ms. Elliott appealed.

QUESTIONS PRESENTED

In her brief, appellant presented the following questions:

> I. Whether the Circuit Court committed reversible error by granting appellees' motions for summary judgment?
>
> A. Whether the Circuit Court committed reversible [error] by determining that the appellee AZZ did not owe the appellant any duty of care?
>
> B. Whether the Circuit Court committed reversible error by determining that appellee AZZ did not have actual or constructive knowledge of a defective or dangerous condition?
>
> C. Whether the Circuit Court committed reversible error by determining that appellant was contributorily negligent?
>
> D. Whether the Circuit Court committed reversible error by determining that appellant had assumed the risk?

Because we perceive no facts that supported liability on the part of AZZ to Ms. Elliott, we conclude that the circuit court did not err in granting AZZ's motion for summary judgment. It is undisputed that AZZ did not own (and never owned) the property upon which Ms. Elliott fell, and there was no admissible evidence filed in opposition to the motion for summary judgment that would support a finding of liability on the part of AZZ. Because we conclude that there was insufficient evidence to support

liability on the part of AZZ, we do not need to reach the questions Ms. Elliott posed relative to contributory negligence and assumption of risk.[1]

STANDARD OF REVIEW

In *Evergreen Assocs., LLC v. Crawford*, 214 Md. App. 179, 184-85 (2013), we described the standard for appellate review of a grant of summary judgment as follows:

> This Court's review of a trial court's grant of summary judgment is well established:
>
>> The question of whether a trial court's grant of summary judgment was proper is a question of law subject to *de novo* review on appeal. Summary judgment is appropriate when there is no genuine dispute as to any material fact and the party in whose favor judgment is entered is entitled to judgment as a matter of law. On appeal, the appellate court will review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts against the moving party. In reviewing a grant of summary judgment under Maryland Rule 2–501, we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.
>
> *Worsham v. Ehrlich,* 181 Md. App. 711, 723, 957 A.2d 161, *cert. denied,* 406 Md. 747, 962 A.2d 373 (2008) (internal citations omitted).

[1]If we were to address the issues of contributory negligence and assumption of risk, we would not affirm the grant of summary judgment on the basis of either theory of defense. *See Thomas v. Panco Management of Maryland, LLC*, 423 Md. 387, 401 (2011) ("the permissible inferences from the undisputed evidence do not clearly establish that the risk of danger was fully known to and understood by the Petitioner"). And, although "[t]o walk blindly or unlooking in a strange environment, when there is no need to do so, is to be negligent as a matter of law," *Hutzler Bros. v. Taylor*, 247 Md. 228, 239 (1967), the question of contributory negligence is normally one for the jury. *Id.*

The Court of Appeals provided this guidance for reviewing a motion for summary judgment in *Arroyo v. Board of Educ. of Howard County*, 381 Md. 646, 654-55 (2004), stating in pertinent part:

> The trial court, in accordance with Maryland Rule 2–501(e), shall grant a motion for summary judgment "if the motion and response show that there is no genuine dispute as to any material fact and that [the moving party] is entitled to judgment as a matter of law" (alteration added). The purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact which is sufficiently material to be tried. Thus, once the moving party has provided the court with sufficient grounds for summary judgment, the non-moving party must produce sufficient evidence to the trial court that a genuine dispute as to a material fact exists. This requires produc[ing] facts under oath, based on the personal knowledge of the affiant to defeat the motion. Bald, unsupported statements or conclusions of law are insufficient.

(Citations to cases and internal quotation marks omitted.) *Accord Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 162 (2004) ("Once the moving party provides the trial court with a prima facie basis in support of the motion for summary judgment, the non-moving party is obliged to produce sufficient facts admissible in evidence, if it can, demonstrating that a genuine dispute as to a material fact or facts exists. These tendered facts should be given under oath, based on the personal knowledge of an affiant.").

This Court similarly observed in *Zilichikhis v. Montgomery County*, 223 Md. App. 158, 179-80 (2015):

> **The party opposing the motion for summary judgment must demonstrate the existence of a genuine dispute as to a material fact "'*by producing factual assertions, under oath*, based on the *personal knowledge* of the one swearing out an affidavit, giving a deposition, or answering interrogatories.'"** *Reiter v. ACandS, Inc.*, 179 Md. App. 645, 660, 947 A.2d 570 (2008), *aff'd sub nom. Reiter v. Pneumo Abex, LLC*, 417 Md. 57, 8 A.3d 725 (2010) (quoting *Miller v. Ratner*, 114 Md. App. 18, 27,

> 688 A.2d 976 (1997)) (emphasis from *Miller*). For this reason, a party's interrogatory answers are insufficient to generate a genuine issue of fact if those answers are "made 'to the best of [the witness's] information, knowledge and belief,' rather than on the basis of personal knowledge." 104 *W. Washington St. II Corp. v. City of Hagerstown*, 173 Md. App. 553, 573, 920 A.2d 482 (2007) (citing *Fletcher v. Flournoy*, 198 Md. 53, 58, 81 A.2d 232 (1951)); *see also Lowman v. Consol. Rail Corp.*, 68 Md. App. 64, 73–74, 509 A.2d 1239 (1986).

(Bold emphasis added.)[2]

FACTS AND PROCEDURAL HISTORY

Based upon the admissible evidence that was filed in support of, and in opposition to, the motion for summary judgment filed by AZZ, considered in the light most favorable to appellant as the non-moving party, we glean the following facts.

Sapore Di Mare is an Italian restaurant owned and operated by AZZ, located at 504 Joppa Farm Road in Joppa, Harford County. It has operated in that location since 2002. The restaurant is situated on property that is adjacent to property owned by Goody's Too, LLC (”Goody's"). From approximately 2001 to 2009, Goody's operated a carryout restaurant at 506 Joppa Farm Road, but, beginning in 2009, a food vendor trading as "Jamaican Me Crazy" took over the operation of the carryout restaurant as a tenant of Goody's, and sold pit beef, hamburgers, and snowballs from the small building

[2] In opposing AZZ's motion for summary judgment, appellant relied in part upon statements made in her own answers to interrogatories. Failing to satisfy the prerequisite of personal knowledge described in *Zilichikhis*, Ms. Elliott's answers to interrogatories did not purport to be based upon the personal knowledge of Ms. Elliott alone, and the oath she signed affirmed only that the answers were "true and correct to the best of my knowledge, information and belief," not that she herself was competent to testify to the facts contained therein. Accordingly, we have not considered the statements she made in her answers to interrogatories.

at that address. That tenant ceased operating on December 1, 2015 (*i.e.*, about 40 days before Ms. Elliott's fall).

The Goody's property had its own parking lot, and a large grassy lawn or field that extended from Goody's parking lot to the curb of the parking lot on AZZ's property.

Ms. Elliott lived in the vicinity of Sapore Di Mare, but had never dined there until she and her husband decided to go there with their adult son sometime between 5:30 and 6:30 p.m. on January 9, 2016. When they drove up to the restaurant, Mr. Elliott dropped off Ms. Elliott and their son at the entrance to Sapore Di Mare, and Mr. Elliott looked for a parking spot. He saw no available spot in the restaurant's lot, and decided to exit that parking lot and park in the parking lot on Goody's property. Mr. Elliott then walked across the grassy area of the Goody's lot to the front door of Sapore Di Mare, and met Ms. Elliott and their son inside. (We note that, in the Elliotts' depositions that were attached to the motion for summary judgment, Ms. Elliott recalled that their son had stayed in the vehicle until after it was parked. Because this discrepancy is immaterial, we have arbitrarily recited Mr. Elliott's version of that detail.)

Both Mr. Elliott and his wife testified that he asked the hostess or waitress who greeted him in the restaurant whether it was "okay" to park on the neighboring parking lot. In Mr. Elliott's deposition, he described that conversation as follows:

> Q. And when you came in, did you speak to anybody in terms of someone who you thought was working for the restaurant?
>
> A. I spoke to the hostess and asked was it okay that I parked there.

* * *

> Q. And you asked her if it was okay to park where? Did you indicate where you had parked?
>
> A. Yeah. I kind of pointed and said I'm parked over there, is that okay. And she said everybody does or something like that.
>
> Q. I'm sorry, she said what?
>
> A. She said everybody does.

Ms. Elliott testified during her deposition that she heard her husband ask about parking, and similarly recalled that he was told by a woman at AZZ's restaurant that it was okay to park on the Goody's parking lot:

> Q. Now, how did you know where the car was parked?
>
> A. Well, I knew it was parked there because when my husband met us – my husband and son met us at the door and we were waiting to be seated, my husband asked the person that was seating us if it was okay to park there and she said, "yes, we don't have any problems." So we waited for that conversation before we sat down at the table. So I knew where the – where he was parked at then [sic] because it's all glass front.
>
> Q. . . . [Y]ou said your husband asked the person who seated you whether it was okay to park –
>
> A. Yes, because there was other cars there and he just wanted to be sure it was okay.
>
> Q. And do you know the name of the person who seated you?
>
> A. No, I don't.
>
> * * *
>
> A. . . . [W]hen we were standing at the door and he was pointing, "Is it okay to park there?" That's when I looked over – that's how I knew where the car was.

* * *

> Q. Were you under the impression that the grass area was owned by the restaurant?
>
> A. That’s why my – no. I didn’t know who owned the grass part, but that’s why, you know, my husband asked if it was okay, but I don’t know who owns that grass area.
>
> * * *
>
> Q. And with regard to the business next door where your husband parked –
>
> A. Yes.
>
> Q. – did you or your husband have any intent on doing any business at that location?
>
> A. No. It wasn’t opened.
>
> Q. It was closed at that time?
>
> A. It was closed at that time.
>
> Q. So there would be no reason for you to do any business at that location?
>
> A. No.
>
> Q. Your only intent was to go to the restaurant?
>
> A. Yes.

After the Elliotts finished dining, they left the restaurant and headed toward their car. Rather than stay on the paved portions of the parking lots and sidewalks, they chose to cut across the grass area of the property owned by Goody’s. After taking just a few steps onto the grass area, Ms. Elliott’s foot landed in a depression, and that caused her to lose her balance and fall. She described the accident in her deposition as follows:

Q. . . . [W]as some area of the area on the grassy section between the two restaurants in shadow where you couldn't see where you were walking?

A. No. I didn't see any shadows. . . . There was no shadows.

Q. So none of the grassy [area] between the two restaurants was dark?

A. No.

* * *

Q. So describe for me after you said you stepped down in to that grassy area somewhere near the bush, what happened?

A. . . . [W]e were walking across and my right foot went into a hole, just my right foot, and I leaned over to the right and fell down. When I fell down, I couldn't get up. That's when I noticed there was a hole there. . . . [A]nd so I didn't see the hole ahead [of] time, but afterwards I had to lift my foot out of the hole. . . .

* * *

Q. So after your right foot got stuck in that hole, did your body fall to the ground?

A. Yes. Yes.

Q. And which –

A. Yes. I fell this – to the right.

Q. Okay. So your body fell on the grass or on the parking lot cement?

A. On the grass.

* * *

Q. So it was fairly shortly after you got on to the grassy area that your foot got stuck in the hole?

A. Like about – like you said, about a – between a[n] arm's length and –

> Q. And a body length?
>
> A. And a body length.

During Mr. Elliott's deposition, he gave a similar description of his wife's fall:

> Q. Well, tell me what happened when you attempted to cross the grassy field.
>
> A. We had taken about three to four steps, maybe five, and my wife went down in a clump and screamed in pain.
>
> * * *
>
> Q. And you said you think you all took three, four, five steps?
>
> A. Yeah. We hadn't gone but a couple of steps when she fell.
>
> Q. Well, a couple. You said a couple and you said five. I mean, in terms of distance can you –
>
> A. Four or five steps.
>
> Q. And then you said she tripped and screamed in pain?
>
> A. She fell.
>
> Q. Fell.
>
> A. She didn't trip, she went straight down.
>
> * * *
>
> Q. So you didn't see any problem on the grass before she fell?
>
> A. No. It looked like a field, a plot of land.
>
> * * *
>
> Q. Did you, after your wife fell, come to determine what you believe caused her to fall?

> A. Well she knew she had stepped in a hole.
>
> * * *
>
> Q. And could you give us an estimate of the dimension of the hole?
>
> A. (Indicating)
>
> Q. Sort of a little bit bigger than a grapefruit size?
>
> A. A little bit bigger than a grapefruit, yeah. Maybe about that deep.
>
> Q. About, what is that? Eight, ten inches?
>
> A. Maybe seven, eight inches deep.
>
> * * *
>
> Q. Was there anything in the hole or was it just a dirt filled hole?
>
> A. There was no dirt in it. I mean, it was grass that you could see where the grass had got pushed down in the hole when she stepped in it. So it was just grown over, I guess.

Although both Ms. Elliott and Mr. Elliott testified that Mr. Elliott had inquired of a hostess in Sapore Di Mare if it was okay to park in the lot on Goody's property, they both also admitted that they did not seek or receive permission *from Goody's* to park on Goody's lot, and they did not assert that *anyone* told them that it was okay to cut across the grassy area of Goody's property.

Ms. Elliott filed suit against AZZ, alleging that that entity knew or should have known of the condition that caused her to fall when she walked across the grassy area. In an amended complaint later filed, she alleged that AZZ was "responsible for the custodial maintenance of the premises located at and/or adjacent to 504 Joppa Farm Road," and

was therefore responsible for the "grass covered and defective hole which proximately caused the Plaintiff to slip and fall and sustain personal injury."

During discovery, a boundary survey was conducted that established that the entire grassy area is on the property owned by Goody's. AZZ filed a third party claim against Goody's. But Ms. Elliott never asserted a direct claim against Goody's.

In depositions of the principal LLC members of both AZZ and Goody's, representatives of both entities denied that there was any arrangement for AZZ to care for and maintain the grass area owned by Goody's. And the LLC member of Goody's denied that she had ever given permission for any of AZZ's patrons or employees to park on the Goody's lot. She also asserted during her deposition that she had always maintained the grassy area.

AZZ moved for summary judgment, asserting that it could have no liability for a slip and fall of one of its patrons that occurred on the property of a neighboring business owner. Goody's moved for summary judgment on AZZ's third party claim, arguing that it had no relationship to Ms. Elliott, and could not be held liable to indemnify AZZ for her fall upon Goody's premises.

To counter the exculpatory deposition testimony of the members of the AZZ and Goody's LLCs, Ms. Elliott offered two theories. First, she produced a 2012 Google photo of the grassy area that showed a spindly shrub or bush (that the litigants' attorneys referred to as "the Charlie Brown bush"). Appellant's theory was that someone had removed that spindly plant at some point after 2012 but had not properly filled in the

void, and that created the depression that caused Ms. Elliott to fall. Appellant's only evidence proffered in support of its theory—that AZZ was responsible for improperly removing that bush and thereby creating a dangerous condition on the grassy area—was deposition testimony of an employee of AZZ named Abigail Wilson.

Ms. Wilson testified that she had worked at AZZ's restaurant for about two years prior to Ms. Elliott's fall in January 2016. When asked by appellant's counsel if her employer (AZZ) "would allow customers to park over on Goody's" lot, she replied: "I don't recall it ever coming up while I was there but I don't – there is nothing like stopping anybody from parking there." She said she had had people ask her if they could park across the street, "but I've never had anybody ask me about parking over there" on Goody's lot. She further denied ever hearing "any of the employees or the owners" of the restaurant tell patrons that they could park on the Goody's lot:

> Q. When you were, I think, working in the restaurant, did you ever hear any of the employees or the owners, if they are not employees, advise patrons that they could park on the Goody's lot?
>
> A. I never heard them say that they could, but, again, there was no indication that you couldn't also.
>
> Q. Because it was just a parking lot?
>
> A. Yes.

When asked for her recollection about "who would maintain" the "grassy strip of land between Sapore Di Mare and Goody's," she replied:

> A. The only people I have ever seen maintain it is one of the cooks from the back, Jimmy. . . . I have only ever seen him like mow the grass and do the landscaping for the lot and the company, but – or I – maybe when

> I was working day shift I saw some other like independent Hispanic males in the back. I'm not sure what their role was, if they also had a part in that. I don't know what they were doing, but I've never seen an actual company like take care of it.

Ms. Wilson testified that Sapore Di Mare did not have either a lawn mower or edging equipment or shovels on site, and she was then asked "how was Jimmy mowing the lot"?

> A. He would – I saw him like bring stuff with his – in his truck, like the – he has a truck, and he would bring the lawnmower and I guess whatever else equipment he would need.
>
> Q. Are you aware how Jimmy was paid?
>
> A. No.
>
> * * *
>
> Q. . . . Jimmy, the guy who is taking care of the grass, do [the owners or managers of AZZ] know him?
>
> A. Yes. Yeah. He was an employee from the back. Like from the kitchen area. Not a server.

With respect to the removal of the Charlie Brown bush, Ms. Wilson gave this testimony at her deposition:

> Q. Had . . . either one of those bushes ever been removed.
>
> A. I know they aren't there anymore. So they must have been removed, yes.
>
> Q. Do you know – do you know who removed them?
>
> A. No, I don't.
>
> Q. Do you know whether it was Jimmy?

> A. He's the only person I've ever seen do anything to the lot. So logically I would say it was him, but I did not see him, or I had no knowledge of him removing it.
>
> Q. . . . [D]o you know Jimmy's last name?
>
> A. No. . . . I don't – I don't know if Jimmy is even his real name. That's just what we called him.
>
> * * *
>
> Q. . . . If you are on the street looking at the restaurant, which grassy area are you referring to that Jimmy took care of?
>
> A. Well, all of it. Yeah, I don't know specifically what he had been instructed to take care of, but I've seen him on both sides of the restaurant.
>
> Q. So both – if you are looking at the restaurant, both the left and the right side?
>
> A. Yes.
>
> Q. Okay. And would Jimmy also take care of the tree lawn sort of in front of the restaurant?
>
> A. I assume, but I – I don't know.
>
> Q. You never saw him taking care of the tree lawn?
>
> A. No.
>
> Q. . . . [L]ook at this picture. . . .[T]here are some bushes to the left of the restaurant. Is that part of what Jimmy would take care of? Did you ever see him –
>
> A. I've never seen him take care of it, but I don't know whether he was instructed.

Ms. Wilson also testified: "I've heard through the grapevine that . . . some people had issues" and "had like tripped in the hole that was there." She was then asked: "Who

was that?" She responded: "Lisa Mitchel. Lisa Mitchel. But, yeah, I mean, that's just what I heard, but I don't – you know. . . . Like she didn't tell me, ..." When asked if that information about people falling had been made known to AZZ principals Giuseppe or Peppe Costagliola, she answered: "Not that I know of."

The circuit court granted both motions for summary judgment. Ms. Elliott appealed the grant of AZZ's motion for summary judgment. No appeal was filed with respect to the grant of the Goody's motion for summary judgment.

DISCUSSION

In *Wagner v. Doehring*, 315 Md. 97 (1989), the Court of Appeals provided this overview of law relative to a property owner's liability in tort to persons who might be injured upon the owner's premises:

> In Maryland, the liability of an owner of real property is dependent upon the standard of care owed an individual. The standard of care, in turn, depends upon the individual's status while on the real property. *Rowley v. City of Baltimore,* 305 Md. 456, 464, 505 A.2d 494, 498 (1986); *Sherman v. Suburban Trust Co.,* 282 Md. 238, 241-242, 384 A.2d 76, 79 (1978); *Bramble v. Thompson,* 264 Md. 518, 521, 287 A.2d 265, 267 (1972). The status may be that of invitee, licensee by invitation, bare licensee, or trespasser. A landowner must use reasonable and ordinary care to keep the premises safe for an invitee, defined as one permitted to remain on the premises for purposes related to the owner's business. *Bramble,* 264 Md. at 521, 287 A.2d at 267. A licensee by invitation is a social guest and is owed a duty of reasonable care and must be warned of known dangerous conditions that cannot reasonably be discovered. *Id.* at 521-522, 287 A.2d at 267. A bare licensee is one who enters upon property, not as a social guest, but for his or her own convenience or purpose and with the landowner's consent. *Mech v. Hearst Corp.,* 64 Md. App. 422, 426, 496 A.2d 1099, 1101 (1985), *cert. denied,* 305 Md. 175, 501 A.2d 1323 (1986). No duty is owed to a bare licensee except that he or she may not be wantonly or willfully injured or entrapped, nor may the occupier of land "create new and undisclosed sources of danger without warning the

> licensee." *Sherman,* 282 Md. at 242, 384 A.2d at 79. Under some circumstances, the landowner may be liable to a bare licensee for a dangerous condition known to the landowner. *See* W. Prosser, *The Law of Torts* § 60, at 417-418 (W. Keeton 5th ed. 1984).
>
> Finally, **a trespasser is one who intentionally and without consent or privilege enters another's property**. *Id.* [264 Md.] at 522, 287 A.2d at 267. **No duty is owed, except to refrain from willfully or wantonly injuring or entrapping the trespasser.** *Id.* This rule of limited liability to trespassers permits "a person to use his own land in his own way, without the burden of watching for and protecting those who come there without permission or right." W. Prosser, *supra,* § 58, at 395 [footnote omitted].

Id. at 101-103 (emphasis added; footnote omitted). *Accord DeBoy v. City of Crisfield*, 167 Md. App. 548, 555 (2006) ("the landowner or occupier owes no duty to licensees or trespassers, except to abstain from willful or wanton misconduct or entrapment.").

The undisputed evidence in this case established that AZZ is not the owner of the property upon which Ms. Elliott fell. Although Ms. Elliott and her husband and son were business invitees of AZZ and were owed a duty of care by AZZ *while they were on the premises of AZZ*, that duty did not extend beyond the property upon which AZZ conducted its business. Consequently, the duty AZZ owed to Ms. Elliott—the duty described in *Wagner* as "[a] landowner must use reasonable and ordinary care to keep the premises safe for an invitee, defined as one permitted to remain on the premises for purposes related to the owner's business"—was no longer applicable once she and her family elected to enter upon the adjacent property owned by another, unrelated LLC. Because Ms. Elliott had no intention of conducting business upon the property owned by Goody's, and had no permission from Goody's to be walking across that property, she was owed only the minimal duty owed a trespasser. That is, Goody's owed her no duty

except "to refrain from willfully or wantonly injuring or entrapping" her. Indeed, she implicitly acknowledged that she was owed no duty by Goody's; she never asserted a claim against Goody's.

But Ms. Elliott urges us to view the evidence in the record as sufficient to prove that AZZ—although it was not the owner of the grassy area where the fall occurred—had acquired a possessory interest by having one of its cooks cut the grass. She asserts in her brief:

> It is further Appellant's position that Appellee AZZ owed the Appellant a duty of care as an occupier of the premises where Appellant fell and became injured, despite Appellee AZZ not being the actual owner of those premises. Up to and through the time of Appellant's fall and injury, Appellee AZZ had been occupying, possessing and using Appellee Goody's grassy strip and overflow parking lot through permissive and/or prescriptive use.

Her argument continues: "[I]t is not particularly relevant whether Appellee AZZ actually owned the land upon which Plaintiff fell. What is relevant is that Appellee was using and maintaining the land as its own."

But there was no admissible evidence to support the supposition that AZZ had been "occupying, possessing and using" the grassy strip in a manner that would have met the definition of "possessor of land" that Ms. Elliott quotes from the RESTATEMENT (SECOND) OF TORTS § 328E (1965), namely:

> A possessor of land is:
>
> > (a) a person who is in occupation of the land with intent to control it or

> (b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or
>
> (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b).

AZZ's use of the Goody's land in this case would satisfy neither of those three definitions of a "possessor of land." At most, and considering the evidence in the light most favorable to the appellant, there was *some* evidence that AZZ's patrons and employees sometimes parked on the Goody's site when AZZ's lot was full. But *there was no evidence* that the patrons and employees did so with permission from Goody's or pursuant to any claim of right. And AZZ had not been in business for a long enough period to acquire any prescriptive easement or rights over the Goody's premises.

As we alluded to above, Maryland Rule 2-501(b) provides that, in order to defeat a motion for summary judgment, the opposing party must proffer facts that would be admissible in evidence to demonstrate the existence of a "genuine dispute" of a "material fact." Rule 2-501(b) states:

> A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

Abigail Wilson's testimony that she had observed one of AZZ's cooks occasionally mowing the grassy area was not sufficient to establish that AZZ "occupied"

the property that Goody's owned or that AZZ had notice of the hole where Ms. Elliott fell. Ms. Wilson's testimony was based upon so much supposition that it was not sufficient to generate a genuine dispute about AZZ's degree of control, occupation, or possession of the land, much less its knowledge of the hole that was on the property in January 2016.

When asked whether AZZ allowed its customers to park on the Goody's lot, Ms. Wilson testified that she did not "recall it coming up while [she] was there." She testified that she had had customers ask her if they were permitted to park "across the street," but that she had "never had anybody ask me about parking over there" on the Goody's parking lot.

Although she testified she had seen an AZZ kitchen worker known as "Jimmy" cut the grass on both sides of the building (which would presumably include the grassy area where the fall occurred), she admitted that she did not know who paid Jimmy to do the lawn work, she did not know what his instructions were, she did not know who removed the small bush, she did not know if Jimmy removed the Charlie Brown bush, she did not know Jimmy's last name, and she did not even know if "Jimmy" was really his first name.

With respect to a tripping hazard on the grassy area, Ms. Wilson testified that she had "heard through the grapevine" that co-employee Lisa Mitchel had fallen in that area, but Ms. Wilson had no first-hand knowledge about that. She did not personally witness any fall, and Lisa Mitchel had not told her about it. And, when Ms. Wilson was asked if

that information had been communicated to the owners of AZZ, she acknowledged: "Not that I know of."

In *Beatty v. Trailmaster Products, Inc*., 330 Md. 726, 737-39 (1993), the Court of Appeals described the burden a party opposing a motion for summary judgment must satisfy by providing the motion court with facts which would be admissible in evidence. The *Beatty* Court said:

> Our cases recognize that in order to defeat a motion for summary judgment, the opposing party **must show that there is a genuine dispute as to a material fact by proffering facts which would be admissible in evidence**. *See Hoffman Chev. v. Wash. Co. Nat'l Sav.,* 297 Md. 691, 711–15, 467 A.2d 758 (1983); *Shaffer v. Lohr,* 264 Md. 397, 404, 287 A.2d 42 (1972); *Broadfording Ch. v. Western Md. Ry.,* 262 Md. 84, 89, 277 A.2d 276 (1971). **Consequently, mere general allegations which do not show facts in detail and with precision are insufficient to prevent summary judgment**. *Lynx, Inc. v. Ordnance Products,* 273 Md. 1, 7–8, 327 A.2d 502 (1974). Moreover, a person opposing summary judgment cannot merely allude to the existence of a document and thereby hope to raise the specter of dispute over a material fact which would defeat a motion for summary judgment. *Brown v. Suburban Cadillac, Inc.,* 260 Md. 251, 256–57, 272 A.2d 42 (1971).
>
> We take particular cognizance of the recent trilogy of cases decided by the Supreme Court in which it confirmed many of the above principles. *See Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). As the Supreme Court said in *Anderson, supra,* 477 U.S. at 247–48, 106 S.Ct. at 2509–10, the "mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." (Emphasis in original.) Thus, when a movant has carried its burden, the party opposing summary judgment "must do more than simply show there is some metaphysical doubt as to the material facts." *Matsushita, supra,* 475 U.S. at 586, 106 S.Ct. at 1356. **In other words, the mere existence of a scintilla of evidence in support of the plaintiffs' claim is**

> **insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff.** *Anderson, supra,* 477 U.S. at 252, 106 S.Ct. at 2512. We recognized in *Clea v. City of Baltimore,* 312 Md. 662, 678, 541 A.2d 1303 (1988), that while a court must resolve all inferences in favor of the party opposing summary judgment, "[t]hose inferences . . . must be *reasonable* ones." (Emphasis in original.) In that case, we quoted Professor Wright, as follows:
>
> > "It is frequently said that summary judgment should not be granted if there is the 'slightest doubt' as to the facts. Such statements are a rather misleading gloss on a rule that speaks in terms of 'genuine issue as to any material fact,' and would, if taken literally, mean that there could hardly ever be a summary judgment, for at least a slight doubt can be developed as to practically all things human. A better formulation would be that the party opposing the motion is to be given the benefit of all reasonable doubts in determining whether a genuine issue exists."
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> 312 Md. at 678, 541 A.2d 1303, quoting C. Wright, *The Law of Federal Courts* § 99, at 666–667 (1983).

(Footnote omitted; emphasis added.)

This Court provided similar guidance in *Carter v. Aramark Sports and Entertainment Services, Inc*., 153 Md. App. 210, 225 (2003), stating:

> "[C]onclusory statements, conjecture, or speculation by the party resisting the motion will not defeat summary judgment[,]" and an "opposing party's facts must be material and of a substantial nature, not fanciful, frivolous, gauzy, spurious, irrelevant, gossamer inferences, conjectural, speculative, nor merely suspicions." *Opals On Ice Lingerie v. Bodylines Inc.,* 320 F.3d 362, 370 n. 3 (2d Cir.2003) (quoting *Contemporary Mission, Inc. v. United States Postal Service,* 648 F.2d 97, 107 n. 14 (2d Cir.1981) (quoting 6 J. MOORE, FEDERAL PRACTICE ¶ 56.15(3) at 56–486 to 56–487 (2d ed. 1976))).

Our review of the deposition testimony and photographs presented in support of, and in opposition to, AZZ's motion for summary judgment persuades us that, even when

the record is viewed in the light most favorable to the non-moving party, there was no genuine dispute of any material fact, and AZZ was entitled to a judgment in its favor as a matter of. law.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.