UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0622

September Term, 2015

STEVEN R. BRIGHT

v.

WAREHOUSE SERVICES, INC., et al.

Meredith,
Reed,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 28, 2016

Steven Bright, appellant, contends that the Circuit Court for Cecil County erred in granting motions for summary judgment filed by appellees Trea Broadlands, LLC, and Michelin North America, Inc., and in granting, at the conclusion of the plaintiff's case at trial, the motion for judgment filed by appellee Warehouse Services, Inc.

QUESTIONS PRESENTED

Appellant presents three questions for our review, which we have reordered:

1. Did the trial court err in granting Defendant WSI's [Warehouse Services, Inc.'s] Motion for Judgment at the close of the Plaintiff's case?

2. Did the trial court err in granting summary judgment in favor of Defendant Trea Broadlands and against Plaintiff on the issue of control over the subject property?

3. Did the trial court err in granting summary judgment in favor of Defendant Michelin and against Plaintiff on the issue of control of the subject property?

For the reasons that follow, we answer "no" to Question 1, and, as a consequence, we need not reach Questions 2 and 3. We will affirm the Circuit Court for Cecil County.

FACTS AND PROCEDURAL HISTORY

During the time relevant to this case, appellant worked as a forklift operator for Sun Logistics, Inc. ("SLG"). Appellant's work location was a massive warehouse located in Cecil County. The warehouse was owned by Trea Broadlands, LLC, and leased to Michelin North America, Inc. Michelin contracted with Warehouse Services, Inc. ("WSI") to operate the warehouse, and WSI apparently contracted with SLG to load and unload pallets of Michelin tires. Incoming tires would be delivered to the warehouse via tractor-trailers, and removed from the trucks via forklift, and placed in the warehouse while awaiting sales

orders. Outgoing tires would be moved, via forklift, from the warehouse onto tractor-trailers for delivery to their destination.

Construing the evidence in a light most favorable to the appellant, the record reveals that appellant was working as a forklift operator during the night shift on May 3, 2010. Appellant testified that the forklifts he would operate at the warehouse were "massive . . . bigger than the average forklift." The usual routine would involve a forklift operator picking up a pallet of tires from the warehouse. A tractor-trailer would be backed up to a bay, with the trailer's back doors opened to receive the pallets of tires. A steel dock plate would connect the warehouse floor and the trailer bed. The forklift operator would then drive the forklift from the warehouse, across the dock plate, into the trailer, where another employee known as a "loader," who had been standing on the forklift or pallet, would unload the tires. Once the loader was finished, the forklift operator would shift into reverse and back the forklift out of the trailer, back across the dock plate, and back into the warehouse. Appellant testified that, because the loaders were compensated based upon the pounds they loaded or unloaded, it was important to the loaders that the forklift operators work quickly.

Appellant testified that, on the night of May 3, 2010, he was operating a forklift at Bay 8, which he testified he "rarely used because everybody in the warehouse knew that . . . when you would drive over this ramp the steel plate would move, and [it would] make this enormous banging noise that would echo throughout the warehouse." When he was asked if he was aware if any WSI employees noticed this noise at Bay 8, he replied:

> No. No. They were not part — you know, that was not their operation. WSI was not part of loading and unloading, and nobody from up top ever paid any

> attention. We just were — like I said, it was just kind of put it to the side and try to avoid it.

Bright described the dock plate in more detail:

> These ramps are a little more technical than the average ramps. From what I understand they were hydraulic; and they would push a button; it would raise — or raise up and then come back down and go into the — connect to the trailer.
>
> * * *
>
> It's a steel-plated, probably five foot by five foot is my best guesstimate, steel-plated ramp. . . . It's not a ramp. I mean, we call it a ramp, but there's no ramp. I mean, it sits flat in the warehouse hydraulic in position. We have the warehouse concrete where it meets the — one end of the plate. It's surrounded by concrete on the side of the plate. Then the outside of the plate is just open.

Appellant testified that the dock plate at Bay 8 would "move" and make "an enormous banging noise" when a forklift crossed over:

> I guess if you can imagine it was literally just a bang. I mean, it was the ste[e]l plate. **I don't know how — I'm not an engineer. I don't know exactly how these ramps work.** I know they're hydraulic, but the ramp was — was moving and hitting something underneath, the hydraulic system or something, I don't know; but was moving enough to where **it would just bang, you know, because it was — it was moving.**
>
> It wasn't still like the rest of them. The rest of them all set, you know, square, and, you know, were even and all that. But it was just a — it was a very loud bang. You could hear it throughout the warehouse. . . . I mean, probably not the entire warehouse, it was massive, but where everybody was working, you know, everybody knew if somebody was working on Bay 8 because you could overhear this bang bang, bang bang, bang bang.

(Emphasis added.) Despite the notorious banging that occurred at Bay 8, appellant "didn't believe it was unsafe" prior to his experience on May 3.

Regarding the specific incident in question, appellant testified:

[BY APPELLANT]: Okay. It's towards the end of our shift. We've probably got less than an hour. The shift never just ended on a certain time. It was whenever everything was loaded. And the loaders were paid by the pound. So we as forklift drivers were encouraged to work very quickly for these guys, because they wanted to get home. It didn't matter. They weren't getting paid by the hour. So it was pedal to the metal the whole time on this forklift, get it going and get it done. So I'm flying in and out of this truck.

[BY APPELLANT'S COUNSEL]: You are what?

A. Flying, driving very quickly as usual as I did every night. I'd been there for eight months and I'd operated a forklift before. I was pretty good at it. Because the guys would kind of pick, you know, had their favorites. The loaders had their favorites of who to load, to drive the forklift.

And I drove into the truck. He [the loader] had done his unloading. He was off the pallet. And it was in the front of the truck. So, I'm reversing out of the back of the truck, gaining speed of course; and once I went over the transition back into the warehouse —

Q. And when you say transition, can you just tell us what you're describing?

A. The steel plate that connects from the warehouse to the tractor trailer.

Q. Okay.

A. **Something happened.** I'm assuming it had dropped a little bit.

[BY APPELLEE'S COUNSEL]: Objection.

[BY THE COURT]: Sustained. He can —

[BY APPELLANT'S COUNSEL]: **What did you feel?**

A. **Well, a huge drop and a jolt, like a bang. Like, you know, there is no suspension on the forklift, so you can feel every little thing.** And there's nothing to protect you. There's no springs, there's no shocks, you know. So it's baboom, **and I bounced up in the cab and came**

> **back down, and I started feeling, you know, immediately a burning sensation in my back; but I didn't get out and really look at it.** I was busy elsewhere.

(Emphasis added.)

Appellant finished his shift, reported the accident to his supervisor (who did not testify), and then went to Union Hospital for treatment. He acknowledged that he had "no knowledge" of what happened to cause him to drop, nor of how far he dropped, although he agreed that he had testified in deposition that it was something less than six inches. His "best guesstimate" was that he was traveling about ten miles an hour, in reverse, when the "bang" and the "jolt" happened. He conceded: "I don't know exactly what happened."

Appellant was the only witness to testify about the condition of the loading dock and Bay 8. He called two medical experts to discuss his damages, but there was no expert testimony to explain what caused the "bang" and the "jolt" that he contended caused his injuries and damages, and appellant himself did not know what had happened. No witness — not even appellant — examined the ramp to investigate whether it was in any manner defective, dangerous, or in need of repair.

At the conclusion of appellant's case in chief, WSI made a motion for judgment pursuant to Maryland Rule 2-519. The court found that appellant had "failed to prove that [appellee] knew of the defect and had an opportunity, if in fact there was a defect, to fix it." The court granted the motion and explained:

> I don't see how the banging noise can be associated or could be contributed [sic] in this case that there was anything defective with that particular loading ramp. The banging noise is only a banging noise, . . . but there is . . . **no**

> **evidence** that even if it was heard, **the banging had anything to do with the facts of this case. There's no indication that there is a defect.**

(Emphasis added.)

STANDARD OF REVIEW

When a motion for judgment is made 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." Rule 2-519(b). We explained in *Smithfield Packing Co., Inc. v. Evely*, 169 Md. App. 578, 591-92 (2006):

> Under Maryland Rule 2-519(a) "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." Subsection (b) of the Rule discusses the disposition of the motion. That section provides:
>
> > When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. When a motion for judgment is made under any other circumstances, the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made.
>
> *See also Spengler v. Sears, Roebuck & Co.*, 163 Md. App. 220, 235, 878 A.2d 628 (2005). The motion in this case was made during a jury trial; therefore, according to the Rule, the trial court, in deciding the motion, was to consider the evidence and inferences therefrom in a light most favorable to [the non-moving party].
>
> In reviewing a grant or a denial of a motion for judgment, we apply the same analysis as the trial court. See *University of Baltimore v. Iz,* 123 Md. App. 135, 149, 716 A.2d 1107 (1998); *Spengler*, 163 Md. App. at 235, 878 A.2d 628. "We consider all the evidence, including the inferences reasonable and logically drawn therefrom, in a light most favorable to the non-moving party." *Iz*, 123 Md. App. at 149, 716 A.2d 1107 (citing *Nationwide Mut. Fire Ins. Co. v. Tufts*, 118 Md. App. 180, 189, 702 A.2d 422 (1997)); *see also*

Spengler, 163 Md. App. at 235, 878 A.2d 628 ("we 'assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom, in light most favorable to the party against whom the motion is made.'") (citations omitted); *Houston v. Safeway Stores, Inc*., 346 Md. 503, 521, 697 A.2d 851 (1997)("When reviewing a judgment n.o.v., 'this Court must resolve all conflicts in the evidence in favor of the plaintiff and must assume the truth of all evidence and inferences as may naturally and legitimately be deduced therefrom which tend to support the plaintiff's right to recover-that is, the evidence must be viewed in the light most favorable to the plaintiff.'") (citations omitted). This standard also applies to our review of a motion for Judgment n.o.v. *Iz,* 123 Md. App. at 149, 716 A.2d 1107 (citations omitted).

Thus, "'[i]f there is any legally relevant and competent evidence, however slight, from which a rational mind could infer a fact in issue, then a trial court would be invading the province of the jury by declaring a directed verdict.'" *Houston*, 346 Md. at 521, 697 A.2d 851 (citing *Impala Platinum v. Impala Sales*, 283 Md. 296, 389 A.2d 887 (1978)); see also *Iz*, 123 Md. App. at 149, 716 A.2d 1107 (where the evidence is "legally sufficient to generate a jury question, we may affirm the trial court's denial of the motion."). The opposite is also true, *i.e.*, where the evidence is not sufficient to generate a jury question, or stated differently when the evidence "permits but one conclusion, the question is one of law and the motion must be granted." *Iz*, 123 Md. App. at 149, 716 A.2d 1107 citing *James v. General Motors Corp*., 74 Md. App. 479, 484, 538 A.2d 782 (1988); *see Houston*, 346 Md. at 521, 697 A.2d 851, *Spengler*, 163 Md. App. at 235, 878 A.2d 628.

DISCUSSION

I. Appellee WSI was entitled to judgment

In this appeal, appellant contends that the trial court erred in granting appellee's motion for judgment at the conclusion of appellant's case. Appellant argues that the court erred in finding that there was not sufficient evidence that appellee "had actual or constructive notice that the loading dock ramp had a defect and that the [appellant's] accident was a foreseeable risk posed by the defect," pointing to his testimony that he rarely used Bay 8 because "everybody in the warehouse knew" that the ramp at that location "would move"

and "make this enormous banging noise that would echo throughout the warehouse." He argues that he "never saw any inspections" of the premises, and that this was "evidence that [appellee] simply ignored the potential problems at bay 8 or the area."

Appellant further argues that "[t]his is not a case where expert testimony is required before a jury can decide whether the loading dock at bay 8 posed an unreasonably dangerous condition or whether [appellee's] accident was foreseeable" because, in appellant's mind, "[t]he nature of the defect and accident at the loading ramp" — which he himself could not explain, as he was "not an engineer" and did not "know exactly how these ramps work" — "does not require knowledge of technical or complicated matters and is within the common knowledge of a jury." We disagree.

As in any negligence case, appellant was obligated to present evidence to show that he was owed a duty by appellee, a breach of that duty, and damages caused by that breach of duty: "To maintain an action in negligence, the plaintiff must assert in the complaint the following elements: '(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.'" *Valentine v. On Target, Inc*., 353 Md. 544, 549 (1999) (citations omitted.) In *Rivas v. Oxon Hill Joint Venture*, 130 Md. App. 101, 109 (2000), we said:

> In Maryland, it is well-established premises liability law that the duty of care that is owed by the owner of property to one who enters on the property depends upon the entrant's legal status. Ordinarily, one entering onto the property of another will occupy the status of invitee, licensee by invitation,

> bare licensee, or trespasser. "An invitee is a person 'on the property for a purpose related to the possessor's business.'" He is owed a duty of ordinary care to keep the property safe.

(Citations omitted.)

It is not disputed in this case that appellant was a business invitee, and was owed a duty of ordinary care to keep the property safe. However, the mere happening of an unusual event on appellee's property does not automatically entitle appellant to recover. As we noted in *Rehn v. Westfield America*, 153 Md. App. 586, 593 (2003):

> Nevertheless, "[s]torekeepers are not insurers of their customers' safety, and no presumption of negligence arises merely because an injury was sustained on a storekeeper's premises." *Giant Food, Inc. v. Mitchell*, 334 Md. 633, 636, 640 A.2d 1134 (1994). "**The burden is upon the customer to show that the proprietor . . . had actual or constructive knowledge" that the dangerous condition existed.** *Moulden v. Greenbelt Consumer Servs., Inc*., 239 Md. 229, 232, 210 A.2d 724 (1965); *see Tennant* [*v. Shoppers Food Warehouse MD Corp.*], 115 Md. App. [381] at 389, 693 A.2d 370 [(1997)]. When another patron creates the danger, the proprietor may be liable if it has actual notice and sufficient opportunity to either correct the problem or warn its other customers about it. *See Rawls v. Hochschild, Kohn & Co.*, 207 Md. 113, 117-18, 113 A.2d 405 (1955); *Tennant,* 115 Md. App. at 389, 693 A.2d 370. **The evidence must show not only that a dangerous condition existed, but also that the proprietor "had actual or constructive knowledge of it**, and that that knowledge was gained in sufficient time to give the owner the opportunity to remove it or to warn the invitee." *Keene v. Arlan's Dep't Store of Baltimore, Inc.*, 35 Md. App. 250, 256, 370 A.2d 124 (1977).

In this case, appellant contends that his testimony regarding a "loud banging noise" was sufficient evidence to prove that there was some kind of "defect in a loading dock ramp at bay 8 [that] presented an unreasonably dangerous condition," and that his testimony on this point was sufficient to defeat appellee's motion for judgment. But appellant could not

identify what the "defect" was. Nor was there evidence that anyone else actually did, or should have, recognized the "loud banging noise" described by appellant as indicative of some kind of dangerous defect in the dock plate. There was no evidence of any testing or examination of the dock plate at Bay 8. Even appellant himself never inspected the dock plate to try to ascertain what may have caused the bump he described. There was no explanation by anyone of a defect that may have caused appellant's claimed injuries.

Appellant testified that he was "flying, driving very quickly as usual . . . reversing out the back of the truck, gaining speed of course," and when he traversed the dock plate, "something happened." Without more, this testimony fails to establish the presence of a dangerous condition, let alone that there was some action appellee should have taken to fix it or that some period of time existed in which appellee should have discovered a dangerous condition and fixed it. Because appellant failed to offer sufficient evidence to generate a jury question regarding the cause of his back injury, the trial court did not err in granting the motion for judgment.

II. The grant of summary judgment to Trea Broadlands and Michelin

Appellant is also appealing the pretrial grant of the motions for summary judgment filed by Trea Broadlands, the warehouse's owner, and Michelin, the warehouse's lessee. Appellees argue that we need not address that issue if we affirm the grant of the motion for judgment, because any error in granting the motions for summary judgment pretrial would have been harmless in light of the grant of the motion for judgment at trial, and because

appellant has not put forth any argument on appeal that the result of the case would have been any different had Trea Broadlands and Michelin still been in the case at trial.

We agree with appellees that the affirmance of the grant of the motion for judgment at the close of appellant's case moots the questions appellant raises about the grants of summary judgment in favor of Trea Broadlands and Michelin. The premise of appellant's argument as to Questions 2 and 3 is that summary judgment was inappropriate because there was still a genuine dispute of fact regarding the scope of control (and any responsibility for repairs) retained by Trea Broadlands and Michelin. But the grant of the motion for judgment in favor of WSI on the ground that there was not sufficient evidence to support a finding that there was a dangerous condition on the premises at Bay 8 makes it unnecessary for us to consider whether either Trea Broadlands or Michelin had any duty with respect to the alleged condition.

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