UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0828

September Term, 2015

I-CHUN JENNY LIN

v.

COURTYARD MARRIOTT CORPORATION

Krauser, C.J.,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: February 22, 2017

I-Chun Jenny Lin, appellant, brought a negligence action, in the Circuit Court for Montgomery County, against Courtyard Management Corporation, appellee, and related corporate entities,[1] alleging that she had suffered bedbug bites, while staying at a Marriott Hotel, managed by Courtyard. The circuit court subsequently granted summary judgment in favor of Courtyard Management, holding that there was no evidence that Courtyard had either actual or constructive notice that Lin's room was infested with bedbugs, either prior to, or during her three night stay at the hotel, and thus, whatever injuries Lin sustained from those bites could not be attributed to Courtyard's purported negligence.

On appeal, Lin presents two issues for our review. Rephrased to facilitate that review, they are:

I. Did the circuit court err in granting summary judgment, in favor of Courtyard as to Lin's negligence claim, on the ground that Courtyard had neither actual, nor constructive notice of the bedbug problem?

II. Did Courtyard violate M.C.L.A. § 125.474, and, if it did, did that violation create a presumption of negligence by Courtyard, precluding summary judgment?

For the reasons set forth below, we affirm.

[1] The complaint that Lin filed also named Courtyard Management's parent company, Marriott International, Inc., as well as the owner of the hotel at the time, CBM Two Hotels, LP, as defendants. Marriott and CBM also moved for summary judgment below, contending that they did not, in fact, exercise actual possession and control over the hotel, and therefore, they could not be held liable for the bedbug bites. Although the trial court granted summary judgment in favor of them as well as Courtyard, Lin noted an appeal only from the court's ruling as to Courtyard Management.

BACKGROUND

Lin claims that she suffered bedbug bites while staying, from May 7 to May 10, in 2014, at a "Courtyard by Marriott Hotel," managed by Courtyard Management Corporation in Romulus, Michigan. The hotel records show, however, that before Lin's stay at the hotel, the hotel underwent two scheduled inspections. The first was performed by a third party vendor, LRA Worldwide, on March 27, 2014, forty-one days prior to Lin's stay. Its report, following that inspection, stated that all guest rooms were "free of pests." The second inspection was performed on April 30, 2014, seven days before the commencement of Lin's stay at the hotel.

On that day, the hotel's guest rooms, including Lin's room, underwent the quarterly General Clean Preventative Maintenance ("GCPM") procedure, which involved flipping and rotating the mattresses in each hotel guest room, and inspecting them, as well as the box springs, bedframes, and headboards, for pests. That inspection was, according to the hotel's assistant manager, intended to "make sure that everything is in the best working order," and, if the inspection revealed insects, then the room "wouldn't be in the best working order." The GCPM inspection did not indicate the presence of any pests in any of the rooms, including the room Lin was to occupy.

In addition to the LRA Worldwide and GCPM inspections, the hotel rooms, including Lin's room, were regularly cleaned by the hotel's housekeeping staff, who had a "basic knowledge" of bedbugs, according to the hotel's assistant manager, and "kn[e]w

about the signs of bed bugs," such as, "blood on the sheets," or "discoloration . . . along the mattress." Those "signs" typically include, as other witnesses indicated, "little brown and red spots" left by the feces of bedbugs and the blood of those bitten by the bugs, as well as eggs, shed skins, and bedbug carcasses.

Indeed, looking for bedbugs is "one of many things on a list of things" housekeeping is "looking for when they are in [a] room," stated the hotel's assistant manager. And, if housekeepers find "something outside of the ordinary" they, he said, are to "contact either their supervisor or manager." Moreover, all rooms, according to that assistant manager, undergo "regular" inspection by hotel supervisors as well. Those supervisors inspect "at least one to two [rooms] per day." Finally, "operations managers"[2] perform a daily inspection of one room each housekeeper cleaned. Bedbugs, in particular, are "one of the things" on the inspection list that supervisors and operation managers are to look for.

Just before Lin's stay, on the morning of May 7, 2014, Tasha Simon, who was, at the time, a temporary employee of Courtyard, cleaned Lin's room. She started working, for Courtyard at the Marriott hotel in question, on a temporary basis, in April or May of 2014. Although she was only a temporary employee and had received no training from Courtyard in bedbug inspection procedures, she had encountered bedbugs at a hotel where she had previously worked. There, an exterminator, while working on a room that had been

[2] The record does not explicitly reveal what duties Courtyard's operations managers had.

infested with bedbugs, "showed [her] what it looked like when he ran across one," as well as "what to look for." Specifically, he showed her "the little brown and red spots" and "the little shells" bedbugs leave behind.

Moreover, "prior to May 10, 2014," the last day of Lin's stay, according to Courtyard's assistant manager, no guest of Lin's room, or those in close proximity to it, had complained of bedbugs. Moreover, from March 1 to May 7, 2014, forty-one guests had stayed in room 243, four of whom Lin later interviewed. None of those four complained of bedbugs, nor, according to Courtyard's records, did the other thirty-seven.

Lin's stay began on Wednesday, May 7, 2014. When she first entered her room after checking-in, she found nothing out of the ordinary, and the bedding was, in her words, "clean," and "free of stain." But, the next day, she did notice red blotchy marks on her skin, though she found no stains on her sheets or any other indication of bedbugs. Then, later that day, she noticed "bumps" on her wrist, which she described as a "red blotchy, sort of skin patch" on her wrist.

Despite those marks, she neither reported her skin condition to the hotel, nor did she permit housekeeping to clean her room that day. The next morning, however, she observed more red blotches on her skin, but, again, did not report her condition to anyone at the hotel, and, once more, denied housekeeping staff access to her room. In fact, she did not observe bedbugs at any time and did not inform anyone at the hotel of the possible presence of bedbugs in her room until the end of her stay. Nor did she, at any time, permit the hotel's

housekeeping staff to enter her room to clean it, or later offer any explanation as to why she denied housekeeping that access. Then, on Saturday, May 10th, the last day of her stay, she said she woke up "covered in bites," and, subsequently, when she was checking out of the hotel at about 4:45 a.m. that morning, she showed her wrist to the front desk clerk, and informed the clerk that she was "covered in bug bites," and that the hotel "may have a bedbug problem."

After Lin checked out, the hotel, later that day, took her room, room 243, together with rooms 241, 245, 143, and 343 out of service. Rooms 143 and 343 were rooms directly above, and below, Lin's room. That night, the assistant manager of the hotel, was informed of Lin's bedbug complaint. The next day, Sunday, May 11th, that assistant manager contacted the hotel, and requested that staff examine room 243. When they did, they found "potential evidence" of bedbugs inside room 243, the room where Lin stayed, but did not identify what that evidence was, and that room was, according to the assistant manager, then taken out of service.

The following day, Monday, May 12th, the hotel's engineer checked the room. He found no evidence of any bedbugs on, or in, the mattress of the bed, or the box spring. He did find, however, "one or two tiny dead bugs," though they did not appear to be bedbugs. Although, Courtyard did, in response to a discovery inquiry, "admit" the "presence of bed bugs" following her "bed bug" complaint to staff, noting that an inspection of Lin's room revealed "2 to 4 tiny bugs," it later explained, at the motions hearing below, that this was

not an admission to the presence of bedbugs, but only an admission that unidentified dead bugs were discovered upon inspection of room 243 after Lin had left the hotel.[3]

That same day, Ecolab, the hotel's pest control company, received a service call from Courtyard. When Tim Hordeski, the hotel's assigned Ecolab service technician, arrived at Lin's room, the bedding had, in the meantime, been removed and discarded. And, although he found no evidence of bedbugs in the room, he indicated, in the "Bed Bug Inspection and Treatment Agreement," that is, the service agreement between Ecolab and the hotel, that the room was "infested," but, apparently did so only as a precautionary measure. In fact, he later told the hotel that "no bedbugs" had been "found" in Lin's room, but, as a precautionary step, "they wanted to go ahead with the service anyway." "It's customer safeguarding by doing this, even though there was no activity found," he explained. Then, on that same day, as well as on the day after, May 13th, and the 26th of May, Hordeski treated the room with various insecticides, and, after the final treatment on May 26th, he noted "no bb found." The room was ultimately placed back into service.[4]

[3] Whether room 243, in fact, had a bedbug infestation, is irrelevant here, because the trial court's ruling did not turn on whether or not bedbugs were found in Lin's room.

[4] According to the hotel's assistant manager, the delay in returning what had been Lin's room to service was because Courtyard did not receive replacement mattresses and box springs for that room until June of that year.

After Lin checked out, on May 10th, she counted, over the next few days, more than 100 bites on her body. She thereafter sought medical attention on three occasions. At the conclusion of her first medical appointment, on May 12, 2014, two days after her departure from the hotel, she was diagnosed with nothing more specific than "insect bites." Then, at her second medical appointment, on May 20, 2014, she was diagnosed, by Mercy B. Lim, M.D., with "scabies,"[5] which is caused by an "itch mite," specifically, sarcoptes scabiei, and not bedbugs. THE AMERICAN HERITAGE STEDMAN'S MEDICAL DICTIONARY 738, 739 (2001). But, four months later, on September 29th, 2014, Arden Edwards, M.D., opined, in an affidavit, secured by Lin, that she had "sustained bedbug bites."

Summary Judgment Proceedings

Lin filed a negligence complaint against Marriott International, Inc., CBM Two Hotels LP, and Courtyard Management Corporation in the Montgomery County Circuit Court. When discovery had been completed, Courtyard, Marriott, and CBM filed separate motions for summary judgment.[6] Courtyard asserted, in its motion, that there was no evidence supporting a finding that Courtyard knew, or should have known, of the alleged

[5] Scabies is a "contagious skin disease caused by *Sarcoptes scabiei* and characterized by intense itching." THE AMERICAN HERITAGE STEDMAN'S MEDICAL DICTIONARY 738 (2001). Sarcoptes scabiei is an "itch mite, varieties of which affect humans and various animals and cause scabies and mange." *Id.* at 739. An itch mite is a "parasitic mite that burrows into the skin and causes scabies." *Id.* at 437.

[6] As previously noted, Lin's appeal is limited to the ruling as to Courtyard.

bedbug infestation of Lin's room prior to her stay, as the hotel's housekeeping staff had found no evidence of bedbugs in her room, and there were no complaints of bedbugs by previous guests of the room, who had occupied it shortly before Lin took possession of it.

Following a hearing on all three motions for summary judgment, the circuit court, applying Michigan substantive law, granted summary judgment in favor of each defendant. In granting Courtyard's motion, the court stated:

> [T]he real issue is whether there was any notice to the Defendant [Courtyard Management] . . . . And all the evidence was that . . . there were no signs, there were no complaints, there was no visible staining on the sheets, and, of course, there was no complaint by the plaintiff, even during the first day, or two, or three until she was literally walking out, checking out to go to the airport.
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> But it's a negligence case. I find that there is no genuine issue of material facts, so I'm going to grant all three motions for summary judgment.

From that ruling, Lin noted this appeal.

I.

Lin contends that the circuit court erred in granting summary judgment in favor of Courtyard on the grounds that it had neither actual nor constructive notice of a bedbug infestation of her room, either prior to or during her stay.

Standard of Review

Maryland Rule 2-501 provides that summary judgment shall be entered "in favor of . . . the moving party if the motion and response show that there is no genuine dispute as

to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Therefore, "[t]o defeat a motion for summary judgment, the party opposing the motion must present admissible evidence to show the existence of a dispute of material fact." *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 386 (1997). And, if the nonmoving party fails "to make a sufficient showing on an essential element" of its claim, for which it has the burden of proof, summary judgment is appropriate. *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 386 (2010) (internal citation and quotation marks omitted).

Analysis

To begin with, "[w]hen an accident occurs in another state[,] substantive rights of the parties, even though they are domiciled in Maryland, are to be determined by the law of the state in which the alleged tort took place." *White v. King*, 244 Md. 348, 352 (1966). Consequently, as Lin sustained her alleged injuries in Michigan, we shall apply, as did the circuit court, Michigan substantive law to her negligence claim.

To prove negligence, in Michigan, as in Maryland, one must establish: "1) the defendant owed the plaintiff a legal duty, 2) the defendant breached the legal duty, 3) the plaintiff suffered damages, and 4) the defendant's breach was a proximate cause of plaintiff's damages." *Hill v. Sears, Roebuck & Co.*, 492 Mich. 651, 660 (2012); *Rosenblatt v. Exxon Co., U.S.A.*, 335 Md. 58, 76 (1994).

The parties agree that Lin was an "invitee" of the hotel, that is, she was a person "entering upon the property of another for business purposes," *Stitt v. Holland Abundant Life Fellowship*, 614 N.W.2d 88, 92 (Mich. 2000), as amended (Sept. 19, 2000), at the time of her alleged injury, and that, under Michigan law, "an owner of land owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Buhalis v. Trinity Continuing Care Services*, 822 N.W.2d 254, 258 (Mich. Ct. App. 2012) (citations omitted). But, "[t]he mere existence of a defect or danger is not enough to establish liability, unless it is shown to be of such a character or of such duration that the jury may reasonably conclude that due care would have discovered it." *Kroll v. Katz*, 132 N.W.2d 27, 32 (Mich. 1965) (citation omitted). In other words, to prevail, an invitee must show not only the existence of a defect or danger, but that the party responsible for maintaining the premises had either actual or constructive notice of the defect or danger. *Stitt v. Holland Abundant Life Fellowship*, 614 N.W.2d 88, 92 (Mich. 2000).

On appeal, Lin primarily relies on *Grandberry-Lovette v. Garascia*, 844 N.W.2d 178 (Mich. Ct. App. 2014), as she did below. In that case, the Michigan Court of Appeals instructed that "inextricably linked to the concept of constructive notice" is the property owner's duty "to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards." *Id.* (citation omitted). Consequently, "knowledge of the dangerous condition" will be imputed "to the premises possessor if the

premises possessor should have discovered the dangerous condition in the exercise of reasonable care." *Id.* at 185. That is to say, that *Grandberry-Lovette* held that, for a defendant property owner to prevail on a motion for summary judgment, he must present evidence of his inspection of his property, and show that it was "the type of inspection that a reasonably prudent premises possessor would have undertaken under the same circumstances [that] would not have revealed the dangerous condition at issue." *Id.*

However, the Supreme Court of Michigan recently reexamined the "notice" element of a premises liability claim in the context of a summary judgment motion in *Lowrey v. LMPS & LMPJ, Inc.*, — N.W.2d —, 2016 WL 7233686 (Mich. Dec. 13, 2016) (per curiam). In that opinion, the Court overruled *Grandberry-Lovette* "to the extent" that it stood for the proposition "regarding a defendant's burden of proof on a motion for summary disposition, or the elements necessary to prove constructive notice." Indeed, the moving defendant property owner, it declared, is not required "to present evidence of a routine or reasonable inspection under the instant circumstances to prove a premises owner's lack of constructive notice of a dangerous condition on its property." *Id.* Rather, a defendant property owner may prevail on a motion for summary judgment if a plaintiff simply "failed to present sufficient evidence of notice." *Id.* That is to say, that the burden does not shift to the defendant to present evidence "of a routine or reasonable inspection . . . to prove a premises owner's lack of constructive notice," but the burden is on the

plaintiff to "establish that defendant, as a premises owner, possessed actual or constructive notice of the dangerous condition."

Lin failed to meet that burden, and, consequently, the circuit court did not err in granting Courtyard summary judgment on the grounds that it lacked either actual or constructive notice of bedbugs either prior to or during Lin's stay.[7]

As for actual notice, there were no signs of bedbugs in Lin's room prior to her stay, no previous guest of the room had complained of bedbugs in that room, nor did either the LRA or GCPM inspection find bedbugs in the room, nor did any hotel staff member observe bedbugs in Lin's room prior to her stay. Moreover, Lin, herself, did not observe any bedbugs during her stay, or complain of such a problem to the hotel, until she was checking-out. Furthermore, Lin conceded that, during her stay, her sheets remained free of the signs of a bedbug infestation, that is, the "spotting" that appears on bedding as a result of the blood stains and fecal matter bedbugs deposit during feeding. Finally, Lin admits that she denied housekeeping staff access to her room during her stay, who, presumably, would have been able to detect, during cleaning of that room, any signs of a bedbug infestation.

[7] Although, arguably, Courtyard admitted, in response to a discovery inquiry, to discovering "2 to 4 tiny bugs" in Lin's room after her stay, we assume, for the purposes of this opinion, that the "2 to 4" bugs found in the room after Lin's stay were bedbugs, that has no bearing on this appeal's pivotal question: Whether there was evidence that Courtyard had either actual or constructive notice of bedbugs in room 243 before or during the time that Lin occupied that room.

Lin suggests that the absence of previous complaints can be explained by the hotel failing to document any previous complaints of bedbug bites. In support of this speculative observation, she identifies Courtyard's answer to Request for Production No. 3, in which she asked for "all incident reports of complaints or notifications you received regarding the presence of bedbugs in any guest room or other location at the hotel between May 7, 2013 and August 7, 2014." Courtyard answered, "none." Because that answer failed to take note of her own complaint, it shows, claims Lin, that the hotel did not keep records of any guest's bedbug complaints. But, given the significant records of her own complaint kept by Courtyard, including emails to Lin from Courtyard, and Hordeski's service receipts, that answer presumably omits mention of Lin's own record, as she already knew of them.

In any event, there is no evidence that anyone observed, or complained of bedbugs either before or during Lin's stay, until Lin did so upon checking out of the hotel early in the morning on May 10th. Consequently, there is nothing to support Lin's claims that Courtyard had actual notice of the purported bedbug infestation of her room prior to her departure from the hotel. Nor did Lin present any evidence that Courtyard had constructive notice of the bedbug infestation of her room, that is, that the infestation was "of such a character, or had existed for a sufficient time, that a reasonable premises possessor would have discovered it." *Lowrey v. LMPS & LMPJ, Inc.*, — N.W.2d —, 2016 WL 7233686 (Mich. Dec. 13, 2016) (per curiam).

In *Lowrey*, the Michigan Supreme Court reviewed and reversed a decision of Michigan's intermediate appellate court, which had reversed the grant of summary judgment by the trial court. Lowrey had slipped and fell on an allegedly wet step of stairs at a restaurant owned and operated by the defendant. The trial court granted the defendant's motion for summary judgment, holding that Lowrey failed to "raise a genuine issue of material fact regarding whether defendant had actual or constructive knowledge of the condition of the stairs." *Id.* But, Michigan's intermediate appellate court reversed that ruling, noting that the defendant "had failed to present evidence that it lacked notice of the hazardous condition because it had not presented evidence of what a reasonable inspection would have entailed under the circumstances." *Id.*

The Michigan Supreme Court thereafter reversed the intermediate appellate court, thereby reinstating the trial court's grant of summary judgment. In so ruling, Michigan's highest Court pointed out that, as to constructive notice, Lowrey "and her friends traversed the stairs several times during the evening without incident, evidence which would tend to support the conclusion that the hazardous condition that caused plaintiff's fall had not been present on the steps for the entirety of the evening." *Id.* Moreover, the Court noted that Lowrey "presented no evidence that the hazardous condition . . . was of such a character that the defendant should have had notice of it." *Id.* And, therefore she failed to present any evidence of "an essential element of her claim," specifically, the "defendant's notice of the hazardous condition." *Id.*

Lin provides a fair amount of information of the hazard bedbugs represent. According to the "Bed Bug Combat Manual," provided by her expert, bedbugs "travel by being transported by man" and can be described "as the consummate stowaways," and, "[d]ue to their diminutive size, it is relatively easy for bedbugs to crawl onto or into any item that travels with us, and . . . the probability that they will become discovered is slim."

But the pivotal issue is the duration of the purported bedbug infestation of Lin's room. And, as to its longevity, no previous occupant of Lin's room complained of bedbugs, and no individual, including Lin, observed bedbugs in her room before or during her stay, nor did any of the inspections, prior to her stay, reveal a bedbug infestation. As in *Lowrey*, that evidence "would tend to support the conclusion that the hazardous condition that caused plaintiff's [harm] had not been present" for a significant period of time, and, therefore, precludes a finding of constructive notice.

Furthermore, Lin asserts the fact that Hordeski, the hotel's assigned Ecolab service technician, treated her room three times following her departure and that this repeated treatment supports the conclusion that Lin's room had a "heavy infestation" of bedbugs before her stay. But Hordeski did not observe any bedbugs in the room, and stated that service was not applied to treat Lin's room because of a discovered bedbug infestation, but because Courtyard "wanted to go ahead with the service anyway" as a precautionary measure. He further explained that "it's customer safeguarding by doing this, even though there was no activity found." Moreover, Hordeski's three treatments, according to the

"Ecolab Bed Bug Customer Partnership," were standard procedure. That procedure consists of an initial service, followed by both a 24-hour and 2-week "follow-up" service, which is precisely what Hordeski did.

In sum, Lin failed to present any evidence that Courtyard had either actual or constructive notice of the purported bedbug infestation. Accordingly, the circuit court did not err in granting defendant Courtyard's motion for summary judgment on that ground.

II.

Statutory Violation; Presumption of Negligence

Lin claims, in the last pages of her brief, that Courtyard violated a Michigan law concerning the cleanliness of dwellings, M.C.L.A § 125.474, which mandates that "[e]very dwelling and every part thereof shall be kept clean and shall also be kept free from any accumulation of dirt, filth, rubbish, garbage or other matter in or on the same," and, furthermore, that "[t]he owner of every dwelling shall be responsible for keeping the building free of vermin." According to Lin, Courtyard's violation of that statute created a *prima facie* case of negligence, precluding summary judgment in its favor.

However, as noted by Courtyard, Lin does not set forth this issue in the "Questions Presented" section of her brief, as required by Maryland Rule 8-504(a)(3), which mandates that a brief shall contain "[a] statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail." We therefore

conclude that Lin waived this issue for appellate review by failing to mention it in the "Questions Presented" section of her brief, and, consequently, we decline to consider it.[8] *See Green v. N. Arundel Hosp. Ass'n, Inc.*, 126 Md. App. 394, 426 (1999) ("Appellants can waive issues for appellate review by failing to mention them in their 'Questions Presented' section of their brief."), *aff'd*, 366 Md. 597 (2001).

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

[8] Although we do not reach this issue, we note that this statute may not extend to bedbug infestations. As appellant's counsel has previously stated, albeit in a paper, introduced into the record by appellee, that "[u]nlike other vermin, [bedbugs] are not associated with filth or unclean environments." Daniel W. Whitney & Melissa A. Graf, *The Prosecution and Defense of Bed Bug Lawsuits*, 25 TOXICS L. REP. 37, 40 (2010). Indeed, in that piece, appellant counsel noted that the "discovery of [bedbugs] in a number of 'swanky' luxury hotels indicates that the relative cleanliness of a place is not the deciding factor in where [bedbugs] choose to take up residence." *Id.*