Circuit Court for Montgomery County
Case No. C-15-CV-23-001380

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2372

September Term, 2024

AMELIE CHRISTELLE DONGMO MEGNIGUE, ET AL.

v.

MANDANA DAROOGAR-KERMANI

Berger,
Leahy,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 7, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case arises following the Circuit Court for Montgomery County's grant of a motion for summary judgment. Amelie Christelle Dongmo Megnigue and Christian Landry Saah Kongnou (the "Leasing Appellants"), and seven additional individuals (collectively "Appellants") brought suit against the Leasing Appellants' landlord, Mandana Daroogar-Kermani ("Appellee") following the collapse of the deck of the home that the Leasing Appellants rented from Appellee. Appellants alleged that Appellee was negligent in her failure to inspect the deck and ensure its safety. Appellants retained an expert witness to provide a report about the deck's collapse in connection with their case. Appellee filed a motion in *limine* to preclude the expert witness from offering certain legal conclusions in his testimony regarding Appellee's liability. Appellee also filed a motion for summary judgment. The circuit court granted both the motion in *limine* and the motion for summary judgement. This timely appeal followed.

QUESTIONS PRESENTED

Appellants present two questions for our review, which we have recast and rephrased as follows:[1]

> I. Whether the circuit court abused its discretion by granting Appellee's motion in *limine* without a hearing.

[1] Appellants phrased the questions as follows:

> 1. Did the Trial Court abuse its discretion by granting the appellee's Motion in Limine to exclude the appellants' expert witness, without a hearing when one was requested?
>
> 2. Did the Trial Court commit reversible error by granting summary judgment to the appellee, despite the existence of genuine dispute of material facts?

II. Whether the circuit court committed legal error when it granted summary judgment in favor of Appellee.

For the following reasons, we affirm.

BACKGROUND

The Leasing Appellants began leasing a property in Germantown, Maryland from Appellee and her husband in 2019.[2] The property was a two-story residential townhouse with an attached backyard deck which was raised above the ground. The deck was constructed of wood and enclosed on three sides by a railing,[3] with the fourth side attached to the house and accessible by a back door. Appellee and her husband purchased the home in 2004; at the time of the purchase, the deck had already been installed.

On June 26, 2020, Appellee was notified via text message that there was some sort of issue with the deck. In the context of discussing a possible purchase of the property by the Leasing Appellants, Appellee received a text message that stated "We will have to pay someone to redo the deck because it is old. The deck is shaking." At some point thereafter, Appellee sent a technician to the property who fixed a loose railing -- indicating that the text message from the Leasing Appellants referred to a loose railing on the deck. Appellee did not receive any further communication citing any additional defects or alleging any safety issues with the deck.

[2] Appellee's husband, Ali Roshan-Manesh, was the Leasing Appellants' original landlord. By the parties' own testimony, communication regarding the property typically went through Mr. Roshan-Manesh. Mr. Roshan-Manesh was deceased by the time this lawsuit commenced.

[3] Throughout their briefs, the parties refer to both the "railing" and the "baluster." Both terms appear to describe the same barrier that encloses the deck.

On June 27, 2021, the Leasing Appellants hosted a barbecue at their home for friends and family, which was attended by the other seven Appellants. While all nine Appellants were on the deck, the deck became detached from the house and collapsed. Appellants alleged various physical and emotional injuries as a result of the deck collapse.

Appellants filed their Complaint on April 4, 2023. In the Complaint, the Leasing Appellants alleged that they had notified Appellee on multiple occasions that the deck was "old and shaky," that Appellee hired an individual to "fix the deck," and that after the repairs were completed, Appellee assured the Leasing Appellants that the deck was "now free of any danger and was safe for use." Appellants alleged that Appellee negligently failed to inspect and maintain the deck, despite the Leasing Appellants' complaints that the deck was "old and shaky."

As litigation proceeded, Leasing Appellant Dongmo Megnigue and Appellee each provided depositions and answers to interrogatories. In response to Appellants' interrogatories, Appellee acknowledged that the Leasing Appellants had indicated that the railing on the deck was loose but stated that no additional complaints were made by the Leasing Appellants about the deck. Appellee's deposition testimony was to the same effect, and she stated: "I want to emphasize that they never said the fence or the deck was unsafe." During Ms. Dongmo Megnigue's deposition, she acknowledged that the first time she notified Appellee or her husband about problems with the deck related to a few loose balusters. Ms. Dongmo Megnigue then testified as follows:

> [COUNSEL FOR APPELLEE]: Other than the bars that we highlighted being loose in the -- in Exhibit 1, did you ever

> contact your landlord, whether it be the male or the female, about any other issues with the deck?
>
> [MS. DONGMO MEGNIGUE]: No.
>
> [COUNSEL FOR APPELLEE]: Did you feel unsafe on the deck?
>
> [MS. DONGMO MEGNIGUE]: At which point?
>
> [COUNSEL FOR APPELLEE]: Prior to the collapse?
>
> [MS. DONGMO MEGNIGUE]: No.
>
> * * *
>
> [COUNSEL FOR APPELLEE]: So prior to the act -- prior to the collapse on June 26th -- June 27th, 2021, you felt safe walking out onto the deck to use it?
>
> [MS. DONGMO MEGNIGUE]: Yes.

In Ms. Dongmo Megnigue's response to Appellee's interrogatories, Ms. Dongmo Megnigue affirmed that "[e]xcept the text messages between [her] and [Appellee] regarding the defective deck, [Ms. Dongmo Megnigue] is not aware of any written or oral statement concerning the subject matter of this action[.]" The only text message mentioned throughout the litigation was the June 26, 2020 message that the deck was shaking. Appellee allegedly did not receive a copy of the text message until a later date.

Appellants retained an expert witness, Brent Leisenring, a Professional Engineer, to create a report and provide testimony regarding the deck collapse. To prepare his report, Mr. Leisenring reviewed the interrogatories, depositions, and photographs and notes from the inspection that occurred following the collapse. In his report, Mr. Leisenring opined that the deck collapsed because it was not properly connected to the house which "violated

applicable standards for safe deck construction." Mr. Leisenring's report further included a section entitled "Review of the Actions of the Landlord/Owner," in which Mr. Leisenring concluded that Appellee's failure to regularly inspect the deck and maintain the deck in a reasonably safe condition "was improper and in violation of the standard of care for a reasonable property owner." Mr. Leisenring further opined that each of these failures "was a cause of the incident deck collapse."

On October 23, 2024, Appellee filed a motion in *limine* to preclude Mr. Leisenring from offering testimony as to Appellee's "legal duty, breach, and/or causal connection to the deck collapse at the property." Appellee did not dispute Mr. Leisenring's qualifications regarding the construction of the deck, but did take issue with Mr. Leisenring drawing legal conclusions as to Appellee's liability, as this would "usurp the jury of its role as the trier of fact." In response, Appellants argued that expert testimony was "necessary to educate the jury about the appropriate standard of [care.]" Appellants requested a hearing on the motion. On January 8, 2025, the court granted the motion in *limine* without a hearing, ordering that Mr. Leisenring be "precluded from testifying at trial on matters related to [Appellee's] legal duty, breach, and/or causal connection to the deck collapse at the property." Nevertheless, Mr. Leisenring was still permitted to testify about the deck collapse itself.

Appellee also filed a motion for summary judgment on October 23, 2024, alleging that Appellants failed to raise a genuine issue of material fact because Appellee had no notice of the unsafe condition of the deck, nor did she have any duty to inspect the deck for defects. In response, Appellants alleged that there was a disputed fact as to whether

Appellee was provided with notice that the deck was not safe. Appellants alleged that in the June 26, 2020 text message, Ms. Dongmo Megnigue complained "yet again" about the deck being old and shaking. Appellants also stated that the Leasing Appellants "reported several times that the [deck] was shaking. . . . There were several repairs done on the deck because of [Leasing Appellants'] complaint." Appellants did not provide any additional information as to the prior complaints or repairs that were allegedly made. Rather, Appellants only support for such contentions was an affidavit by Ms. Dongmo Megnigue where she alleged for the first time that she had complained about the deck shaking on several occasions, with the "last written complaint" being the June 26, 2020 text message.

The court held a hearing on January 23, 2025 regarding Appellee's motion for summary judgment. First, Appellee noted that she had filed a motion to strike Ms. Dongmo Megnigue's affidavit because it materially contradicted her prior testimony. The court struck the affidavit "with respect to any oral conversation that suggest[s] that [Ms. Dongmo Megnigue] told [Appellee] or her husband that the deck was shaking." The court then addressed the summary judgment arguments. After hearing arguments from both parties, the court noted that the question before it was "simply whether there's . . . any genuine dispute of material fact regarding whether the defendant had notice of the condition that ultimately led to the deck's collapse." The court issued the following determination:

> On this record, the only direct evidence of notice, actual notice, is the isolated statement in the text message that simply says the deck is shaking. Well, two sentences. We will have to pay someone to redo the deck because it is old. The deck is shaking. That's really, I think, insufficient to constitute actual notice, even if that's not contradicted in any way. That's simply not sufficient, in my view, and I don't think any

> reasonable juror could conclude otherwise, that the deck was in such a condition that it was dangerous and likely to fall. And that's particularly true in light of the testimony and deposition by [Ms. Dongmo Megnigue] concerning the condition of the deck prior to its collapse. And that testimony is clear. It's direct. It's not subject to interpretation.
>
> [Ms. Dongmo Megnigue] never believed the deck to be unsafe, and she would not have allowed eight other people to go out onto that deck a year later if she believed that deck to be unsafe. If she didn't believe the deck to be unsafe, then there was nothing that would suggest that her statement, the deck is shaking, was intended to put the defendant on notice of a dangerous condition. Clearly, the evidence in this case is that [Ms. Dongmo Megnigue] didn't believe that there was anything unsafe or dangerous about that deck.

The court went on the address whether Appellee had constructive notice regarding the unsafe condition of the deck. Quoting *Colbert v. Mayor & City Council of Baltimore*, 235 Md. App. 581 (2018), which involved a municipality, the court noted that "constructive notice is notice that the law imputes based on the circumstances of the case" and that "a municipality is charged with constructive notice when the evidence shows that as a result of the nature of the defective condition or the length of time it has existed, the municipality would have learned of its existence by exercising reasonable care." The court continued:

> There's nothing in this record that would have created notice and a duty to inspect or repair based upon the age of the deck alone and the fact that one or more of the balusters were loose and needed to be replaced. That's a far cry from any notice that the deck was so defective that it was unsafe and needed to be repaired. And I have reviewed the *Ross v. Belzer* case, which talked about the facts of the purported notice in that case not being sufficiently specific to put the landlord on notice. I agree here. There simply wasn't anything that even remotely suggested that the condition of the [deck] was such that it was unsafe. To the contrary, everything suggests to the contrary that it was safe because, in fact, the [Leasing

> Appellants] continued using the deck a year later and had nine people on the deck for a barbecue. They believed it was safe. They certainly would not have allowed their guests out there. And, in fact, [Ms. Dongmo Megnigue] was out there on that deck with their friends at this social event, some barbecue, and exposed herself to injury.
>
> So that all cuts against the statement in the text message suggesting that the statement, the deck shaking, meant it was unsafe. I don't think anybody could reasonably infer from that that the deck was in such a condition that it was dangerous and unsafe to be on. A reasonable person, likely would not have gone out on the deck herself, and likely would not have allowed other people out on that deck if they truly believed that whatever the shaking was caused it to be unsafe. Again, I think *Ross v. Belzer* is instructive in that regard. I think it needs to be more specific than that to give rise to constructive notice.
>
> So based on the circumstances of this case, it appears as though there's no constructive notice. I don't think that there is any genuine dispute of material fact about the notice issue. I'm therefore going to grant the [Appellee's] motion for summary judgment, and I'll enter judgment in favor of the [Appellee] and against the [Appellants] in this action, and I'll sign an order that's consistent with that determination.

The court then entered an order granting Appellee's motion for summary judgment. This appeal followed.

STANDARD OF REVIEW

"Appellate courts review a trial court's decision concerning the admissibility of expert testimony under Maryland Rule 5-702 for abuse of discretion." *Katz, Abosch, Windesheim, Gershman & Freedman, P.A. v. Parkway Neuroscience & Spine Inst., LLC*, 485 Md. 335, 360-61 (2023) (citing *Rochkind v. Stevenson*, 471 Md. 1, 10-11 (2020) and *State v. Matthews*, 479 Md. 278, 305-06 (2022)). An abuse of discretion occurs "where no reasonable person would take the view adopted by the trial court." *Oglesby v. Balt. Sch.*

Assocs., 484 Md. 296, 327 (2023) (internal quotations omitted). "Under this standard, an appellate court does not reverse simply because the . . . court would not have made the same ruling. Rather, the trial court's decision must be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Matthews*, 479 Md. at 305 (internal citations and quotations omitted).

Summary judgment is appropriate "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." Maryland Rule 2-501(f). "We review the circuit court's grant of summary judgment without deference." *Macias v. Summit Mgmt., Inc*., 243 Md. App. 294, 312 (2019). In doing so, "we must first ascertain, independently, whether a dispute of material fact exists in the record on appeal." *Id.* at 313. "A material fact is one that, depending on how it is decided by the trier of fact, will affect the outcome of the case. The burden is on the party opposing a motion for summary judgment to show disputed material facts with precision[.]" *Id.* at 315 (internal citations and quotations omitted). "[M]ere general allegations which do not show facts in detail and with precision are insufficient to prevent summary judgment." *O'Connor v. Balt. Cnty.*, 382 Md. 102, 111 (2004). "[W]e review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Williams v. Mayor of Balt. City*, 245 Md. App. 428, 442 (2020). "[O]rdinarily, an appellate court will review a grant of summary judgment only upon the grounds relied upon by the trial court." *Id.* at 442-43.

DISCUSSION

I. The circuit court did not err in granting Appellee's motion in *limine* to preclude certain expert testimony without a hearing.

Appellants first contend that the circuit court erred when it failed to hold a hearing on Appellee's motion in *limine* to exclude certain testimony by Mr. Leisenring. Appellants argue that a hearing was required to determine the admissibility of Mr. Leisenring's testimony, and the circuit court erred by failing to hold a hearing despite Appellants request. Appellants further maintain that the court deprived them of "the opportunity to present evidence supporting the experts' qualifications and the reliability of the experts' opinions." Appellee argues that the circuit court was not required to hold a hearing on this non-dispositive motion in *limine*. Furthermore, because the motion concerned only the parts of Mr. Leisenring's report that made legal conclusions pertaining to Appellee's liability -- rather than the parts of Mr. Leisenring's report and testimony about the deck's construction and collapse -- a hearing was particularly unnecessary.

Maryland Rule 5-702 governs the admissibility of expert testimony. Rule 5-702 provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine
>
> (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
>
> (2) the appropriateness of the expert testimony on the particular subject, and

> (3) whether a sufficient factual basis exists to support the expert testimony.

Maryland Rule 5-702. The text of Rule 5-702 does not explicitly require a hearing on the admissibility of expert testimony.

"Expert testimony is admissible only if it is relevant, and such evidence is relevant if the jury will find the testimony helpful in resolving the issues in the case. In addition, outside of the realm of legal malpractice, expert witnesses ordinarily may not give opinions on questions of law." *Alban v. Fiels*, 210 Md. App. 1, 22 (2013) (internal citations and quotations omitted) (affirming the circuit court's striking of the expert witness's legal conclusions in a negligence case following a vehicle collision). *See also Solomon v. State Bd. Of Physician Quality Assur.*, 155 Md. App. 687, 706 (2003) (noting that "it is the general rule that an expert witness may not opine on questions of law, except for those concerning the law of another jurisdiction"). Accordingly, Mr. Leisenring was not permitted to opine on questions of law, such as the legal duty owed by Appellee to Appellants, or Appellee's potential breach of such a duty, as those are matters solely within the purview of the jury and doing so would usurp the jury's role as factfinder.

Regarding the requirement of a hearing, Maryland Rule 2-311(f) provides:

> A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing." The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

Thus, unless mandated by statute, the court has the discretion to determine whether to provide a hearing on motions filed by the parties, even if a hearing is requested. *See Miller v. Mathias*, 428 Md. 419, 443 (2012) (noting that Rule 2-311(f) "mandates a hearing only if a party requests one *and* if the court 'render[s] a decision that is dispositive of a claim or defense.'"). Appellee's motion in *limine* to strike Mr. Leisenring's testimony was filed under Maryland Rule 5-702 which does not require a hearing. As such, a hearing would only be obligatory if the motion was dispositive of Appellants' claims or defenses.

"[A] dispositive decision is one that conclusively settles a matter." *Pelletier v. Burson*, 213 Md. App. 284, 292 (2013). This Court has explained that "the words 'claim' and 'defense' [are] to be narrowly construed, and 'that these terms are [not] to include the arguments made in order to obtain or thwart collateral litigation matters[.]'" *Shelton v. Kirson*, 119 Md. App. 325, 329-30 (1998) (quoting *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 485 (1991)). "For a decision to be deemed dispositive of a claim or defense within the contemplation of Rule 2-311(f), it must actually and formally dispose of the claim or defense. It is not enough to argue that it is the functional equivalent of a dispositive decision or that it lays the inevitable predicate for such a decision." *Shelton*, 119 Md. App. at 330.

In our view, *Logan v. LSP Marketing Corp.*, 196 Md. App. 684 (2010) is particularly instructive. In *Logan*, the appellant failed to respond to interrogatories or identify expert witnesses and the subject matter of their testimony in a timely manner. *Id*. at 690-91. The appellee filed a motion for sanctions, seeking dismissal of the action, or in the alternative, exclusion of all but one of the appellant's experts. *Id.* at 693. The appellant filed an

opposition to the motion for sanctions, in which he requested a hearing on the matter. *Id.* at 694. The circuit court granted the motion to exclude all but one of the appellant's experts and ultimately granted summary judgment in favor of the appellee. *Id*. at 694-95. On appeal, the appellant contended that ruling on the motion for sanctions without a hearing was improper because "the ruling on this motion ultimately adjudicated [his] claims." *Id*. at 695. This Court rejected the appellant's claim because "[a]lthough the grant of summary judgment may have resulted from earlier discovery rulings, the court did not directly dismiss the case when it granted [the appellee's] motion for sanctions. As such, the court did not abuse its discretion by ruling on the motion without holding a hearing." *Id*. at 697.

Likewise, in the present instance, the circuit court granted the motion in *limine* to prohibit Mr. Leisenring's testimony only as it pertained to Appellee's "legal duty, breach, and/or causal connection to the deck collapse at the property." Appellee conceded that Mr. Leisenring was "qualified to testify as to the construction of the deck" and Mr. Leisenring was still permitted to testify accordingly. Precluding Mr. Leisenring from testifying as to the legal conclusions he reached in his report did not dispose of Appellants' negligence claim; rather, it properly reserved the role of determining Appellee's liability for the jury. As in *Logan*, the dispositive action was the ultimate grant of summary judgment in favor of Appellee. "Although the grant of summary judgment may have resulted from earlier discovery rulings, the court did not directly dismiss the case when it granted" Appellee's motion in *limine* to exclude part of Mr. Leisenring's testimony. *Logan*, 196 Md. App. at 697. "As such, the court did not abuse its discretion by ruling on the motion without holding a hearing." *Id*.

Appellants further state that "the circuit court excluded this expert without providing any written opinion that would have provided the [A]ppellants, and of course, the [A]ppellate [C]ourt, the appropriate window to see if the circuit court properly applied the law governing the admissibility of the expert's testimony. The application of the law is not discretionary, of course!" Nevertheless, Appellants do not point us to any statutory or case law that dictates that the circuit court was required to provide a written opinion after granting Appellee's motion in *limine* to exclude testimony by Mr. Leisenring drawing legal conclusions.

We acknowledge that "[i]t is a well-established principle that [t]rial judges are presumed to know the law and to apply it properly." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (internal quotations omitted). "It is equally well-settled that there is a 'strong presumption that judges properly perform their duties,' and that 'trial judges are not obliged to spell out in words every thought and step of logic.'" *Id*. (quoting *Beales v. State*, 329 Md. 263, 273 (1993)). Accordingly, the circuit court did not abuse its discretion in granting Appellee's motion in *limine* to exclude parts of Mr. Leisenring's testimony without a hearing and without providing a written opinion.

II. The circuit court did not err in granting Appellee's motion for summary judgment.

Appellants further contend that the circuit court erred in granting Appellee's motion for summary judgment because a genuine issue of material fact existed regarding whether Appellee had actual or constructive notice of the unsafe condition of the deck. Appellants argue that the June 26, 2020 text message provided actual notice of the unsafe nature of

the deck, and that Appellee's "failure to conduct regular inspections and address known maintenance issues" constituted constructive notice. Appellee argues that the circuit court correctly found that the text message was insufficient to put Appellee on actual notice that the deck was unsafe because in context, the text message referred to the deck's shaky railing. The Appellee further contends that there was no constructive notice because Appellee did not have control over the leased property and deck and therefore had no duty to inspect the deck.

As noted, Maryland Rule 2-501(f) provides that summary judgment is permitted "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." Thus, if there is no genuine dispute of material fact in Appellants' negligence action against Appellee, summary judgment is appropriate.

> It is well settled in Maryland that under certain conditions a tenant may maintain an action for injuries sustained as a result of a defect in rented premises, despite the absence, at common law, of an implied covenant to repair or a warranty of the fitness for occupancy of leased premises. These conditions are, that there be a contractual undertaking to make repairs, notice of the particular defect, and a reasonable opportunity to correct it. Where these conditions are met, there arises an obligation to use reasonable care to make the repairs, for the negligent breach of which there is a tort liability, subject to the usual rules as to proof of causation and the absence of contributory negligence on the part of the tenant.

McKenzie v. Egge, 207 Md. 1, 6-7 (1955). In such a negligence action against a landlord, "a plaintiff must present evidence that establishes that the landlord knew or had reason to know of a condition on the premises posing an unreasonable risk of physical harm to

persons in the premises." *Brown v. Dermer*, 357 Md. 344, 362 (2000), *overruled in part on other grounds by Brooks v. Lewin Realty III, Inc.*, 378 Md. 70 (2003). This knowledge, *i.e*. notice, may be actual or constructive. *See Joseph v. Bozzuto Mgmt. Co*., 173 Md. App. 305, 315 (2007) (noting that the plaintiff "must prove not only that a dangerous condition existed but also that the [defendant] 'had actual or constructive knowledge of the dangerous condition'" prior to the plaintiff's injury) (quoting *Rehn v. Westfield Am.*, 153 Md. App. 586, 593 (2003)). We shall discuss each actual and constructive notice below.

A. Actual Notice

"Actual notice has been defined as 'knowledge . . . acquired either by personal observation or by communication from third persons, of that condition of things which is alleged to constitute the defect.'" *Colbert v. Mayor and City Council of Balt.*, 235 Md. App. 581, 588 (2018) (citation omitted). Actual notice requires that the landlord be appraised of the precise issue that caused the plaintiff's harm. *See Ross v. Belzer*, 199 Md. 187, 192-93 (1952) (reversing judgment for tenant who had tripped over rubber matting covering the common area steps, because although tenant had previously complained that the area was poorly lit, tenant provided no evidence that she made the landlord aware that the rubber mat was in a defective or unsafe condition prior to the accident).

Appellants allege that the June 26, 2020 text message to Appellee put Appellee on actual notice that the deck was unsafe. The text message, however, only provided that, if the Leasing Appellants were to purchase the home, they would need to "pay someone to redo the deck because it is old. The deck is shaking." Considering that a technician repaired the railings and Appellants did not lodge another complaint about the deck with

Appellee, the "shaking" of the deck was with reference to the railing. Ms. Dongmo Megnigue's own deposition testimony confirmed that the railings were what had been loose and shaking. Appellants, however, were not injured by loose railings; Appellants' own expert report alleged that the deck collapsed because it was not properly attached to the house.

Appellants made no complaints to Appellee that related to the connection between the deck and the house and made no further complaints about the deck after the June 26, 2020 text message. The circuit court specifically found Appellants behavior the day of the barbecue convincing, because Appellants hosted and attended a barbecue on the deck, which they would not have done if they believed that the deck was in any way unsafe. In Ms. Dongmo Megnigue's deposition, she confirmed that she never felt unsafe on the deck prior to the collapse. Thus, because Appellants, by their own admission, did not feel unsafe on the deck prior to its collapse -- and the only complaint by the Leasing Appellants to the Appellee concerned the loose railings -- the circuit court did not err in determining that Appellee had no actual notice of the dangerous condition of the deck.

B. Constructive Notice

"Constructive notice is notice that the law imputes based on the circumstances of the case." *Colbert*, 235 Md. App. at 588. To establish constructive notice, a plaintiff must show that the defendant, "by the exercise of reasonable care, . . . could have discovered the condition in time." *Macias v. Summit Mgmt., Inc*., 243 Md. App. 294, 306, 322 (2019); *see also Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 389-90 (1997) ("The mere existence of a defect or danger is generally insufficient 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."). "Knowledge of a condition which involves unreasonable risk of physical harm to persons on the land may not be imputed to a landlord merely from general knowledge that other properties of like age, construction, or design might possibly contain such hazardous conditions. Likewise, a landlord is under no duty to inspect the premises in order to determine whether such conditions exist." *Richwind Joint Venture v. Brunson*, 335 Md. 661, 677 (1994), *overruled on other grounds by Brooks*, 378 Md. 70.

"[W]hen a landlord has turned over control of a leased premises to a tenant, it ordinarily has no obligation to maintain the leased premises for the safety of the tenant." *Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship*, 375 Md. 522, 537 (2003). *See also Matthews v. Amberwood Associates Ltd. P'ship, Inc.*, 351 Md. 544, 557 (1998) (noting that "a common thread running through many of our cases involving circumstances in which landlords have been held liable (*i.e.*, common areas, pre-existing defective conditions in the leased premises, a contract under which the landlord and tenant agree that the landlord shall rectify a defective condition) is the landlord's ability to exercise a degree of control over the defective or dangerous condition and to take steps to prevent injuries arising therefrom"). Indeed, we shall affirm summary judgement if, "as of the date of the [Appellants'] injury, the [Appellee] did not have control over the portion of the premises where 'the dangerous or defective condition' existed and thus had no duty to inspect." *Ward v. Hartley*, 168 Md. App. 209, 219 (2006) (quoting *Hemmings*, 375 Md. at 537).

In the context of a covenant of quiet enjoyment, the Supreme Court has held that the Court's concern in determining control by the landlord should be "not so much on whether the landlord has approved the conduct of the tenant as whether he is in a position to *correct* or *terminate* it. Where, through lease provisions or otherwise, he has that ability, the thought is that he ought not to be able to escape his obligation under a covenant of quiet enjoyment by steadfastly refusing to exercise his authority." *Bocchini v. Gorn Mgmt. Co.*, 69 Md. App. 1, 12 (1986). In that context, "[t]he insertion in a lease of a restriction against excessive noise or other offensive conduct is precisely for the purpose of enabling the landlord to control that conduct." *Id*. Likewise, for a landlord to exercise control over leased premises to give rise to a duty to correct a disturbance or dangerous condition, the landlord must be "in a position to correct or terminate" that disturbance or dangerous condition. This could be proven by a lease provision or otherwise. Accordingly, a plaintiff must prove that a landlord maintained control over the leased premises, and either knew or should have known about the dangerous condition and failed to take corrective action.

Appellants contention that Appellee "had constructive knowledge of the defect based on her failure to conduct regular inspections and address known maintenance issues" is without merit. Appellants provide no support for the assertion that Appellee had a duty to conduct regular safety or maintenance inspections of the premises, such as pointing to any lease provision that would indicate that Appellee had any authority or control over the deck that would assign such a duty.

Assuming, *arguendo*, that Appellee maintained control over the deck, Appellants still failed to prove that Appellee, "by the exercise of reasonable care, . . . could have

discovered the condition in time" to warn Appellants or rectify the situation. *Macias*, 243 Md. App. at 306. By their own admission and actions on the day of the incident, Appellants did not believe that the deck was dangerous until it collapsed. The Leasing Appellants did not present evidence -- aside from Ms. Dongmo Megnigue's stricken affidavit asserting that she repeatedly informed Appellee that the deck was unsafe -- from which a reasonable jury could find that Appellee had actual or constructive knowledge that the deck was going to detach from the house and collapse under Appellants. If Appellants themselves did not believe the deck to be dangerous, it is implausible that Appellee should have known the same. Accordingly, the circuit court did not err because there was no genuine dispute of material fact regarding whether Appellee had either actual or constructive notice that the deck was unsafe.

CONCLUSION

The circuit court did not abuse its discretion in declining to hold a hearing before granting Appellee's motion in *limine* to exclude certain portions of the expert's testimony. Furthermore, the court did not err in granting summary judgment for Appellee after finding that there was no question of material fact regarding whether Appellee had notice of the condition of the deck. Accordingly, we affirm.

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