Circuit Court for Baltimore City
Case No. 24-C-15-000549

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1202

September Term, 2016

ULTIMATE TITLE, LLC

v.

RUSSELL J. LADD, SR., *et al.*

Meredith,
Arthur,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: July 11, 2018

*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.

This appeal follows a three-day bench trial in the Circuit Court of Baltimore City on appellee Russell Ladd Sr.'s ("Ladd Sr.") claim that his real property was transferred fraudulently to a purchaser, appellee K1 Auto Sales, LLC ("K1"). K1 filed third-party claims for contribution and/or indemnification against both the title company, Ultimate Title, LLC ("Ultimate Title"), and the property owner's son, Russell Ladd Jr. ("Ladd Jr."), who posed as his father at the settlement. Ladd Jr. did not respond to K1's complaint and the circuit court entered an order of default against him. After trial, the circuit court found, *inter alia*, that Ladd Jr. forged his father's signature on the sales contract and that Ultimate Title breached the duty it owed to K1. The court ordered that the deed transferring the property to K1 was null and void, *ab initio*, and entered judgment jointly and severally against Ladd Jr. and Ultimate Title for the amount of money K1 spent purchasing and renovating the property. Ultimate Title noted its timely appeal to this court, presenting the following questions for our consideration:

1. "Did the Circuit Court err by denying Ultimate Title's preliminary motion asserting Ladd Sr. was not the real party in interest to file the action and did not have standing?"

2. "Did the Circuit Court err by holding Ultimate Title was liable for negligence when Ultimate Title reasonably relied on a notary public?"

3. "Did the Circuit Court err by holding Ultimate Title failed to meet its burden to prove K1 Auto failed to mitigate damages?"

4. "Did the circuit Court err by granting K1 Auto's preliminary motion to strike Ultimate Title's expert witness?"

We affirm the circuit court's decision on all four issues. We hold that Ultimate Title forfeited the issue that Ladd Sr. was not a real party in interest because it failed to raise the

issue below. Next, we conclude that Ultimate Title failed to demonstrate clear error in the circuit court's finding that Ultimate Title breached its standard of care to K1. Third, we agree with the circuit court that that Ultimate Title never adduced any evidence to demonstrate what reasonable steps K1 should have taken to mitigate damages. Finally, we perceive no abuse of discretion in the trial court's decision to strike Ultimate Title's expert witness.

BACKGROUND

The circuit court tried the case on April 6-8, 2016. The court heard testimony from K1's expert witness, Mr. Robert Lennon,[1] as well as eight fact witnesses: Ladd Sr. and his daughter; David Atkinson and George Bell, K1's co-owners; Ms. Alana Rider, who notarized the forged sale contract; Marion Jones, owner of Ultimate Title and Dawn Torres, a senior processor at Ultimate Title; and Christopher Staiti, Ultimate Title's corporate designee. The following is a summary of the testimony and documentary evidence presented.

A. The Property

James C. Ladd and his wife, Lucille Ladd, were the parents of Ladd Sr. and the grandparents of Ladd Jr. Mr. and Mrs. Ladd held title to real property located at 416 South Stricker Street, Baltimore, Maryland 21223 ("Property") as tenants by the entireties. James

[1] The circuit court recognized Lennon as "an expert in real estate law, in title examinations and evaluations, in real estate settlements and the preparation of settlement documents and conveyancing documents as well as disbursement of funds and the standards, practices and procedures in the real estate industry in Maryland relating to all of those areas."

survived Lucy, but then he passed away in 1999 and the Property became an asset of James's estate ("Estate"). The First and Final Administration Account designated the Property to be conveyed to Ladd Sr., who served as the personal representative of the Estate. But Ladd Sr. never actually deeded the Property to himself.

Beginning in 2000, Ladd Sr. lived on the Property part-time until 2010, at which point he moved out and his son, Ladd Jr., moved in and began to occupy the Property rent-free as his father continued to pay taxes on the Property. Despite this favorable financial arrangement, Ladd Jr. barred his father from the Property.[2]

In October 2013, Ladd Jr. approached his father about selling the Property and agreed to relay the amounts of any offers to Ladd Sr. Sometime in December 2013, Ladd Jr. contacted David Atkinson at K1 about whether he and his business partner, George Bell, were interested in purchasing the Property for cash, a Mercedes, and some other vehicles that K1 owned. Atkinson and Bell were interested in acquiring property for K1 Auto as a tangible asset to borrow against, and they knew Ladd Jr. from their business of buying and selling used cars.

Initially, Ladd Sr. agreed to sell the Property for $50,000, but K1 balked at that price. Ladd Jr. again contacted his father in October 2013, this time asking if he would agree to sell the Property for $30,000. During that conversation, Ladd Jr. asked how much of the proceeds he could keep if he could secure a $30,000 offer for the Property. Ladd Sr.

[2] The trial court noted in its memorandum opinion that "[w]hen Ladd Sr. was asked why he would relent to being barred from his own property, he testified that he and his son share a volatile relationship and he preferred to let the matter go rather than to escalate it any further."

responded by assuring his son that he would not give him a "dime" of the sale proceeds. Ladd Sr. agreed to sell the Property for $30,000 and waited for his son to deliver a sales contract. But unbeknownst to Ladd Sr., K1 had again refused to meet his asking price.

Several more months would pass before Ladd Sr. heard any updates on the sale of the Property. Then, on Father's Day, June 16, 2014, Ladd Sr.'s daughter asked him whether her brother had sold the Property, which led them both to check the land records online and learn that the Property had been transferred to K1. Ladd Sr. immediately called K1 and spoke to Atkinson and told him that he had not authorized the sale and never saw a contract for the sale. Ladd Sr. then hung up, according to his testimony, because Atkinson kept talking over him. Atkinson testified that the focus of this conversation with Ladd Sr. was Ladd Sr. demanding the sale's proceeds and Atkinson telling him to speak to his son because K1 had paid for the Property. Ladd Sr. hired an attorney to investigate the matter and eventually confirmed that someone forged his signature and deeded the Property to K1.

B. The Fraudulent Sale

On March 31, 2014—a few months before the Father's Day phone call—settlement on the sale of the Property occurred. Ultimate Title and its corporate designee, Mr. Chris Staiti, prepared the transferring documents, and Ultimate Title oversaw the closing. Evidence adduced at trial revealed that Ladd Jr. had agreed, purportedly on his father's behalf, to sell the Property to K1. Ladd Jr. created a gmail account, retired.busdriver151@gmail.com, which he used to communicate with Ultimate Title, posing as his father.

Ultimate Title scheduled the settlement as a "split settlement," because Ladd Jr. (posing as Ladd Sr. through retired.busdriver151) claimed that Ultimate Title's Maryland offices were too far for Ladd Sr. to travel to from his home in Delaware. On the day of closing, Ultimate Title emailed retired.busdriver151 the closing documents, including an Affidavit of Residence, the deed transferring the Property to K1, an agreement to reimburse Ultimate Title for closing fees, a limited power of attorney for correcting typographical errors, a notice to K1 regarding ground rent, a judgment affidavit, and an owner's affidavit. Ladd Jr. attended the closing with all these documents purportedly signed by Ladd Sr. and notarized by Alana Rider.

Ms. Rider testified at trial that Ladd Jr. signed the documents in Baltimore County. She knew Ladd Jr. through her boyfriend but did not know he was a junior and did not verify his name on his driver's license. The deed included a certification that it was prepared by, or under the supervision of an attorney, and was signed by Chris Staiti, Esq, who later served as Ultimate Title's corporate designee during discovery and was designated as Ultimate Title's expert witness before trial.[3]

Marion Jones, owner of Ultimate Title, conducted the settlement at closing of the Property and witnessed Ladd Jr. sign the remaining settlement documents. Jones had Ladd Jr. produce his license, but ultimately admitted at trial that she never realized that he was junior and not senior. Although it was supposed to be a split settlement, and Ladd Sr. purportedly could not attend, Ms. Jones testified that she believed the man at the settlement

[3] We note that Mr. Staiti also filed the brief as Ultimate Title's counsel on appeal, but another attorney from his law firm represented Ultimate Title in the proceedings below.

was the actual seller of the Property.

At trial, K1's expert Mr. Lennon testified that, "the documents and the settlement procedures that Ultimate [Title] used were inconsistent with the standard of care that should have been followed . . . in a transaction like this." Mr. Lennon opined that Ultimate Title should have either required Ladd Sr.'s appearance or arranged a procedure with a firm in Delaware, where Ladd Sr. lived, to verify that Ladd Sr. was signing the documents. He added, "I can't understand why he was able to go to Baltimore County, get documents notarized on the date of the settlement, but was unable to go to settlement in Edgewater which is between Delaware and Baltimore County." Additionally, Mr. Lennon did not believe there was any reason for Ladd Jr. to be at the closing since he had no "legal authority to act on behalf of the seller or the estate."

Atkinson and Bell testified that they did not question Ladd Jr.'s role in the closing, although they knew that Ladd Jr. was not, in fact, Ladd Sr. Atkinson averred that Ladd Jr. had assured him that he had the authority to move forward with the sale, and that he and Mr. Bell relied on Ultimate Title's expertise.

Atkinson and Bell signed a note on the same day as the settlement, payable to "Russel J. Ladd, Sr." in the amount of $8,247.91. But the note indicated that payments were to be made at 376 Marley Neck Rd., Glen Burnie, MD 21060, which was to be Ladd Jr.'s place of business starting May 1, 2014.

C. The Complaint and Third-Party Complaint

On February 3, 2015, Ladd Sr. filed a complaint against K1 in the Circuit Court for Baltimore City, alleging that the Property was fraudulently deeded to K1 and seeking to

nullify the transfer and sale. K1 answered Ladd Sr.'s complaint on April 6, denying his claims and asserting eleven affirmative defenses. The circuit court generated a standard-track scheduling order two days later, setting December 8 as a deadline for all discovery and ordered that expert designations "include all information specified in Rule 2-402(g)(1)(A) and (B)." The scheduling order also set September 8 as the deadline for joining additional parties.

Four days before the joinder deadline, on September 4, K1 filed a third-party complaint against Ultimate Title and Ladd Jr.[4] A private process server served Ladd Jr. and Ultimate Title on September 16 and 25, respectively. K1 asserted four counts against Ladd Jr: breach of contract, deceit-false representation, deceit-concealment, and negligent misrepresentation. Against Ultimate Title, K1 asserted one claim for negligence, alleging that Ultimate Title breached its duty to K1 by failing "to act with the care and skill of a reasonably competent title services company," in its preparation and execution of the deed, its failure to have the proper seller execute the settlement documents, its failure to disburse funds to the appropriate seller, and its failure to verify the seller and authenticate the contract of sale. K1 sought more than $75,000 in "contribution and/or indemnification and/or damages" from Ultimate Title and for the amount that K1 may be found liable to Ladd Sr. K1 then filed its expert designation on October 6, 2015.

Neither Ladd Jr. nor Ultimate Title filed an answer to K1's third-party complaint, and K1 filed a Request for Order of Default on December 14, 2015. On December 22,

[4] K1 also filed a "cross claim" on the same day, asserting claims against Ladd Jr. and Ultimate Title identical to those asserted in its third-party complaint.

about three months after K1 sued Ultimate Title, counsel for Ultimate Title responded by entering his appearance and filing a motion to dismiss K1's negligence complaint for failure to state a claim on which relief could be granted. Ultimate Title argued that it owed no duty to K1, that K1's claim was premature since it had not yet suffered any damages, and that K1 failed to articulate compensable damages. K1 filed an opposition to Ultimate Title's motion on December 31, arguing that Ultimate Title misstated the law and the facts and had not even responded to all of the allegations in K1's claim. Further, K1 argued that it was proper to seek indemnity and contribution against a third-party defendant in the same proceeding that would adjudicate damages that K1 owed to another plaintiff. The circuit court denied Ultimate Title's motion to dismiss on February 1, 2016.

Also on February 1, the circuit court entered an order of default against Ladd Jr. in favor of K1. Then, on February 17, Ultimate Title filed a second motion to dismiss, alleging this time that K1 failed to serve it with any exhibits, the case information report, a portion of K1's answer to Ladd Sr., or the pre-trial scheduling report, and sought dismissal with prejudice. K1 responded, denying that several of the documents were missing when it served Ultimate Title, and arguing that Maryland Rules 2-331 and 2-332 do not require it to serve a third party with the scheduling order. K1 also averred that Ultimate Title had actual knowledge of the scheduling order.

On February 26, Ultimate Title filed its pre-trial statement, reasserting its arguments for its dismissal with prejudice, and designating Mr. Staiti as its expert witness.

D. Preliminary Issues

On April 6, just prior to trial, the court heard argument on Ultimate Title's second

motion to dismiss. Ultimate Title advanced the same arguments presented in its memorandum supporting the motion. K1 argued, mainly, that Ultimate Title's second motion to dismiss was five months late from the October 25 deadline for filing its answer. K1 accused Ultimate Title of dilatory tactics, noting that Ultimate Title knew enough to file motions and appear at two pretrial conferences and file a pretrial statement in accordance with the scheduling order.[5] The court ultimately denied Ultimate Title's second motion to dismiss, ruling that because it failed to include them in its earlier motion to dismiss, "Ultimate Title [wa]s not entitled to raise these defenses at this stage[.]"

K1 then moved to strike Mr. Staiti as Ultimate Title's proffered expert witness, arguing that its expert designation came five to six months late and, "more importantly perhaps" because Mr. Staiti had a conflict of interest because he signed off on the deed for Ultimate Title and because K1 paid him $50 at settlement for his legal services. After an extended colloquy, the court granted K1's motion.

Next, Ultimate Title moved for the court to dismiss the case, arguing that Ladd Sr. was not the real party in interest under Maryland Rule 2-201 because the Estate owned the Property. Ultimate Title conceded that Ladd Sr. "could have perceived [*sic*] this action on behalf of the estate in his role as personal representative[,]" but argued that he could not pursue it in his personal capacity. Ladd Sr. responded that Ultimate Title forfeited the issue by not raising it until the day of trial and asserted that he was the owner of the Property

[5] The court inquired of Ultimate Title's counsel during the proceedings below, Ms. Nichole Priolo, also of Staiti and DiBlasio, LLP, why Ultimate Title should not be deemed to have known what was in the court's file, to which she responded, "Your Honor, I just – in this instance, I don't think that that is relevant to this instance right now[.]"

because he inherited it. Ultimate Title retorted that "an issue as to standing is never a late argument[,]" and reiterated its argument that the Estate owned the Property. The court denied Ultimate Title's motion without explanation.

E. The Circuit Court Decision

On July 15, 2016, the circuit court issued a memorandum opinion in which it found that the evidence demonstrated that Ladd Jr. created the retired.busdriver151 email and forged the contract for the Property's sale. It then addressed each party's claims, broken down by individual defendant.

1. Ladd Sr. v. K1

Ladd Sr. claimed that he was the legal and equitable owner of the Property, which was fraudulently deeded from him to K1 to the unjust enrichment of K1. He asked the court to create a constructive trust of the Property for his benefit and to declare the deed to K1 null and void or to order K1 to convey Ladd Sr. all its rights, interests, and title in the Property.

K1 responded by denying that the Property was fraudulently deeded to them, and by asserting that Ladd Sr.'s claims were barred by collateral estoppel, accord and satisfaction, contributory negligence, estoppel, fraud, illegality, payment, release, the statute of frauds, the statute of limitations, and wavier.

The circuit court found that the March 31 deed that Ms. Rider notarized was a forgery that Ladd Jr. signed as Ladd Sr. The court took notice that the signature purporting to be Ladd Sr. on the closing documents differed from Ladd Sr.'s signatures: "Upon reviewing the various signatures offered into evidence, there is a distinct difference

between the signatures Ladd Sr. acknowledged were his own and the signature on the contract of sale. The signature on the contract appears identical to the signature on Ladd Jr.'s license, and therefore the [c]ourt finds that Ladd Jr. indeed signed the contract for sale." Based on this, the court found that the deed was void and title never transferred to K1. To do so, the court determined that substantial justice permitted it to read Ladd Sr.'s constructive trust claim as one for a declaratory judgment, since a constructive trust was unnecessary and because his complaint consistently requested the court set aside the deed as a forgery. Further, the court found that there was no conduct by Ladd Sr. that would have led K1 to believe that he authorized Ladd Jr. to sell the Property on his behalf.

2. K1 v. Ultimate Title

K1 alleged that Ultimate Title was negligent and breached its duty of care in its handling of the settlement, causing damages to K1. For example, K1 demonstrated that it had paid over $1,500 in taxes on the property and over $10,000 to St. Clair's Home Improvement and Repair for work done on the house located on the Property. Ultimate Title contended that it owned no duty to K1 and that it was not negligent because it reasonably relied on a notary.

The circuit court found that Ultimate Title owed K1 a duty because an "intimate nexus existed" between the two based on Ultimate Title's direct communication with K1 and the fact that Ultimate Title "performed a title search and handled the settlement." The court then concluded, based on the testimony of K1's standard-of-care expert, that Ultimate Title breached its duty to K1 to exercise a reasonable degree of skill and diligence by failing to: "confirm the identity of Ladd Sr.," "authenticate the signatures of Ladd Sr.," "facilitate

Ladd Sr.'s participation in the settlement," and "issue title insurance[.]" The court found that this breach caused K1 damages in the form of the Property's purchase price. It awarded K1 $16,676.99 for the purchase price listed for the Property and the corresponding settlement fees.

Aside from damages to account for the purchase price, K1 sought damages for the money it invested into the Property. Ultimate Title argued that if it were to be found negligent, it did not cause K1 to invest resources into renovating the property, and that K1 failed to mitigate its damages by not renting the Property until December 2015 despite Ladd Sr. informing Atkinson that he had not sold K1 the Property. K1's owners testified in response that the Property was uninhabitable at purchase and rehabilitation of the Property began once the city fined them for keeping it in disrepair. The court found that Ultimate Title failed to meet its burden of proving that K1 failed to mitigate its damages and awarded another $25,059.05 for the money it invested in renovations, including its tax and water bill, minus the rent K1 collected.[6] This brought the total damages to $41,736.04.

3. K1 v. Ladd Jr.

K1 filed an action against Ladd Jr., alleging breach of contract, false representation, concealment, and negligent misrepresentation. It obtained an order of default on all its claims against Ladd Jr. and the court entered judgment in the amount of $41,736.04.

[6] The court also rejected Ultimate Title's arguments that K1 was barred from recovery based on either assumption of risk or contributory negligence. Ultimate Title does not press either argument on appeal.

F. Order and Notice of Appeal

Also on July 15, the same day it filed its memorandum opinion, in a separate document the circuit court ordered that the deed purporting to transfer the Property was "void *ab initio* and a nullity" and entered judgment in favor of K1 against Ladd Jr. and Ultimate Title, jointly and severally, in the amount of $41,736.04. On August 15, 2016, Ultimate Title noted its timely appeal to this Court.

DISCUSSION

Ultimate Title raises four issues on appeal. The first issue relates to Ladd Sr.'s complaint against K1; the remaining three relate to K1's third-party complaint against Ultimate Title.

I.

Real Party in Interest

First, Ultimate Title argues that, "based on Article III of the U.S. Constitution, there is no case or controversy" because Ladd Sr. was not the real party in interest since he never deeded the Property to himself, individually, while he was personal representative of the Estate, which was closed in 2000. Because, according to Ultimate Title, the real party in interest—the Estate—did not bring the complaint, the judgment below is a nullity.

Ladd Sr. responds that Ultimate Title forfeited this issue by failing to file an answer to K1's third-party claim against it.[7] On the merits of the claim, Ladd Sr. asserts that he

[7] In his brief to this Court, Ladd Sr. contended that Ultimate Title was challenging his legal capacity to sue or be sued, which is a negative defense that must be raised in a party's answer under Maryland Rule 2-323(f). But at oral argument, his counsel conceded that Ultimate Title was challenging whether he was the real party in interest, not his legal

was "the real party in interest" because he "is the person to properly assert an ownership interest [in the Property]" because the Property was distributed to him by the Estate. Further, had Ultimate Title raised the issue and the court found it meritorious, Maryland Rule 2-201 would have provided for a reasonable amount of time to join or substitute the real party in interest.

A real party in interest with respect to a claim is one who "has the right to assert the claim." *Morton v. Schlotzhauer*, 449 Md. 217, 242 (2016). The person who "has the right to bring and control the action . . . is not necessarily the beneficially interested party." *S. Down Liquors, Inc. v. Hayes*, 323 Md. 4, 7 (1991) (citations and quotation marks omitted). The Court of Appeals in *Hayes* explained that "the command that an action be brought by the real party in interest traces its origin to statutes and rules which were permissive in nature, authorizing plaintiffs such as assignees to bring actions at law in their own names rather than in the names of the assignors." *Id.* at 8 (citations omitted). The real-party-in-interest requirement is found in Maryland Rule 2-201, which provides in pertinent part:

> Every action shall be prosecuted in the name of the real party in interest[.] . . . No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for joinder or substitution of the real party in interest. The joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

In both purpose and effect, the real-party-in-interest rule is distinct from standing

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capacity. *See* CHARLES ALAN WRIGHT & MARY KAY KANE, LAW OF FEDERAL COURTS § 70 at 443 (8th ed. 2017) (explaining that capacity and the real party in interest are "different, but easily confused").

and the case-or-controversy requirement of Article III of the U.S. Constitution.[8] The purpose of jurisdictional standing is to "ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present a court with a dispute that is capable of judicial resolution." *Hand v. Mfrs. & Traders Trust Co.*, 405 Md. 375, 399 (2008) (citation and quotation marks omitted). By contrast, the real-party-in-interest rule is to protect the defendant from multiple claims and judgments. *Schlotzhauer v. Morton*, 224 Md. App. 72, 95-96 (2015), *aff'd,* 449 Md. 217 (2016) (citation omitted).

A look to Federal Rule of Civil Procedure 17(a), the federal counterpart to and blueprint for Maryland Rule 2-201, helps to explain the difference in effect. *Schlotzhauer*, 449 Md. at 241. The United States Court of Appeals for the Sixth Circuit and "[s]everal other circuit courts [of appeal] have acknowledged that there is a distinction between questions of Article III standing and Rule 17(a) real party in interest objections." *Zurich Ins. Co v. Logitrans, Inc.*, 297 F.3d 528, 532 (6th Cir. 2002) (citing *Ensley v. Cody Res., Inc.*, 171 F.3d 315, 319-20 (5th Cir. 1999)) (holding that a closely held corporation had Article III standing to bring claims of *quantum meruit* and that the plaintiff had forfeited

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[8] Maryland courts do not derive their jurisdiction from Article III of the U.S. Constitution. In fact, we have explained that the case-or-controversy requirement under the federal constitution is "more stringent" than its counterpart in Maryland. *Thana v. Bd. of License Comm'rs for Charles Cty.*, 226 Md. App. 555, 568, *cert. denied*, 448 Md. 32 (2016). Maryland courts, however, must still ensure that they possess jurisdiction over a claim. Generally, in Maryland, "for a court to have jurisdiction it must have before it a justiciable issue." *Harford Cty. v. Schultz*, 280 Md. 77, 80 (1977). A controversy is justiciable in Maryland "when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." *Patuxent Oil Co. v. Cty. Comm'rs of Anne Arundel Cty.*, 212 Md. 543, 548 (1957) (citation and quotation marks omitted).

its argument that the corporation was not the real party in interest) (additional citations omitted). Consistent with this, federal courts have held that the real-party-in-interest requirement is non-jurisdictional and may be waived or forfeited while Article III standing may not.[9] *See id.* at 532-33 (collecting cases). Similarly, this Court has held that a party may forfeit the right to challenge whether its party-opponent is the real party in interest. *Pumphrey v. Pumphrey*, 11 Md. App. 287, 293 (1971); *cf. Poteet v. Sauter*, 136 Md. App. 383, 398 n.4 (2001) (rejecting the appellees' contention that the appellant waived her right to rely on the real-party-in-interest rule simply because she had not cited to Rule 2-201 specifically). For example, in *Pumphrey*, an ex-wife sued her ex-husband for unpaid child support and, for the first time on appeal, the ex-husband suggested that his adult son (for whom the child support was owed) was the real party in interest. 11 Md. App. at 292-93. This Court held that the issue was not properly before us because the it was not raised or decided before the trial court. *Id.* at 293.

Returning to the present case, Ultimate Title's conflation of jurisdictional standing and the real-party-in-interest rule informs both why it forfeited its argument and why, even if it had not, the result would remain the same. We begin with forfeiture. Ladd Sr. served Ultimate Title in October 2015. In December 2015 and again in February 2016, Ultimate Title filed motions to dismiss the action with prejudice that did not challenge Ladd Sr.'s

[9] Justice Ginsburg noted recently that "[t]he terms waiver and forfeiture—though often used interchangeably by jurists and litigants—are not synonymous. '[F]orfeiture is the failure to make the timely assertion of a right[;] waiver is the intentional relinquishment or abandonment of a known right.'" *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 17 n.1 (2017) (quoting *U.S. v. Olano*, 507 U.S. 725, 733 (1993)).

status as the real party in interest. It was not until April 2016, on the first day of trial, that Ultimate Title broached the issue for the first time. As the title company for the fraudulent sale at issue, Ultimate Title was in as good of a position as any to know who was and was not the proper party to challenge the sale. Despite this, and despite its two motions to dismiss—filed over the course of five months—Ultimate Title failed to object to the capacity in which Ladd Sr. sued until the day of trial.

Moreover, Maryland Rule 2-201 provides, "*No action shall be dismissed* on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for joinder or substitution of the real party in interest." (Emphasis added). The Court of Appeals has interpreted this rule as

> expressly requir[ing] that, when an action is not commenced by the proper plaintiff, a circuit court must provide a reasonable opportunity to allow the real party in interest to join the action as a co-plaintiff or to take the place of the plaintiff who commenced the action before the court may terminate the action.

Schlotzhauer, 449 Md. at 240. Once the joinder or substitution occurs, "then the 'real party in interest steps into the shoes of the plaintiff who commenced the action.'" *Id.* (quoting PAUL V. NIEMEYER, ET AL. MARYLAND RULES COMMENTARY 134 (3d ed. 2004)). Here, Ladd Sr. is ultimately the owner of the Property by inheritance and the parties do not really dispute this fact. It is clear, then, that had the circuit court entertained and found meritorious Ultimate Title's motion, the proper remedy would have been substitution of parties—not dismissal.

Finally, despite the contention Ultimate Title maintains on appeal, a court is not necessarily deprived of jurisdiction when someone other than the real party in interest

brings an action. Nor is the court's judgment a nullity. We rejected a similar argument in *Schlotzhauer* when the defendant argued that the plaintiff's complaint was a nullity and did not confer jurisdiction on the circuit court because the trustee of the plaintiff's bankruptcy estate was the real party in interest. 224 Md. App. at 93. Judge Arthur, writing for the Court, explained that the defendant's analogy to a complaint brought by a corporation that has forfeited its charter was inapt because, in that instance, "no one has the right to assert the claim until the corporation reinstates its charter." *Id.* By contrast, when it is the trustee and not the bankrupt debtor who is the real party in interest, we held that the trustee "had the right to assert her claim all along. The problem [] was not that no one had the right to assert the claim, but that the person who had the right—*i.e.*, the real party in interest—was not before the court." *Id.*

In sum, we hold that Ultimate Title forfeited its argument that Ladd Sr. was not the real party in interest by failing to raise the issue in a timely fashion. Accordingly, we see no error in the trial rejecting Ultimate Title's last-ditch attempt to dismiss the case.

II.

Negligence

Ultimate Title argues that the circuit court erred in finding that it was negligent because, after confirming that Ms. Rider was an active notary in Maryland, it relied reasonably on her notary seal, acknowledgement, and certificate—the fundamental purpose of which are to prevent fraud. As it did at trial, Ultimate Title relies on *Iglesias v. Pentagon Title & Escrow, LLC*, 206 Md. App. 624, 663-64 (2012), for the proposition that a title company has no duty to confirm the signature of a facially valid, notarized legal

document.[10] Ultimate Title contends that there was no precedent for the circuit court to place significance on the role Ultimate Title played in preparing the notarized document.

In response, K1 distinguishes *Iglesias*, asserting that, in that case, there was no contractual privity between the parties and "no 'red flags' to alert the title company to the fact of the fraudulent power of attorney." In this case, K1 says, the circuit court credited the uncontroverted testimony by its expert that K1 and Ultimate Title were in contractual privity and that there were various red flags, including: the seller was not the owner, the signatures of Ladd Sr. did not match, there was no personal contact between Ladd Sr. and Ultimate Title, and there was supposed to be a split settlement because Ladd Sr. could not come from Delaware to Edgewater or Landover "because of the distance[,]" even though he traveled to Baltimore that same day to sign the deed. K1 contends that "Ultimate Title failed to do anything to resolve these 'red flags' or to verify the identity of the true or actual grantor."

Ultimate Title misunderstands this Court's decision in *Iglesias*, construing it incorrectly to stand for a bright-line rule that a duty never exists to confirm the signature on a facially valid, notarized legal instrument. 206 Md. App. at 624. Our decision in that case was premised on the existence (or lack thereof) of a duty between the litigants. Thus, as we did in *Iglesias*, we will begin our discussion with duty.

The Court of Appeals has explained that "[d]uty is a foundational element in a claim

[10] Ultimate Title also relies on *Poole v. Hyatt*, 344 Md. 619 (1997), but it is unclear why. That case merely holds that a deed will not be set aside when a notary fails to obtain a verbal acknowledgment from the grantor. *Id.* at 636-37.

of negligence[.]" *Pace v. State*, 425 Md. 145, 155 (2012). Whether or not a duty exists is a question of law that requires us to determine if "'the plaintiff's interests are entitled to legal protection against the defendant's conduct.'" *Iglesias*, 206 Md. App. at 637 (quoting PROSSER AND KEETON ON THE LAW OF TORTS § 53 at 357 (5th ed. 1984)). To impose tort liability when the defendant's alleged conduct creates a risk of economic loss, Maryland courts require that an "intimate nexus" exist between the parties. *Jacques v. First Nat'l Bank*, 307 Md. 527, 534 (1986). This requirement "limit[s] the defendant's risk exposure to an actually foreseeable extent, thus permitting a defendant to control the risk to which the defendant is exposed." *Walpert, Smullian & Blumenthal, P.A. v. Katz*, 361 Md. 645, 671 (2000). "Th[e] intimate nexus is satisfied by contractual privity or its equivalent." *Jacques*, 307 Md. at 534-35. In the absence of contractual privity, Maryland courts will find that an intimate nexus—and thus a duty—exists when "the relationship of the litigants [i]s close enough that the defendant knew that the plaintiff was likely to take some action based on what the defendant said or did." *Simmons v. Lennon*, 139 Md. App. 15, 40-41 (2001).

The facts in *Iglesias* are somewhat similar, yet clearly distinguishable from those here. In *Iglesias*, a loan officer engaged in a fraudulent scheme in which he and some accomplices forged notarized powers of attorney to purchase two properties in Iglesias's name. 206 Md. App. at 627-28. After Iglesias discovered the fraud, she sued several parties involved with the real estate settlement, including a negligence action against Pentagon, the title company that conducted the settlements. *Id.* at 628. The circuit court granted summary judgment in favor of Pentagon, finding that the company did not owe a

duty to Iglesias. *Id.* at 629.

On appeal to this Court, Iglesias argued that the circuit court erred in finding that Pentagon did not owe her a duty of care to look beyond the facially valid powers of attorney used to complete the two real estate transactions purportedly on her behalf. *Id.* at 656. Iglesias argued that because Pentagon provided professional services, it owed her a duty of care that required it to ascertain whether she was an actual party to the transaction. *Id.* at 658-59. Her argument was two-part. First, she argued that she was in contractual privity with Pentagon because it was her name and funds used in the transaction. *Id.* at 659-60. Second, she contended that she was in the equivalent of contractual privity with Pentagon based on Pentagon's mistaken belief that she was a party to the transaction as well as the "red flags" that put Pentagon on notice that the powers of attorney were fraudulent, creating a duty on Pentagon's part to investigate whether she was a victim of identity fraud. *Id.* at 659.

This Court concluded that Iglesias was not in contractual privity with Pentagon and that her argument was self-defeating. *Id.* The Court reasoned:

> Iglesias cannot argue, on the one hand, that Pentagon owed her a duty to detect that she was not a true party to the transaction and, on the other hand, that she was in privity with Pentagon because she "paid" for its services out of funds borrowed fraudulently in her name.

Id.

Turning to Iglesias's alternative argument, we determined that Pentagon's mistaken belief was insufficient to create the equivalent privity, in part, because Pentagon did not actually contract with Iglesias's imposter and acted as an agent for the lender, not the buyer.

Id. at 660. We ruled that the "red flags" would be material only "if they served to put Pentagon on notice that Iglesias likely was the victim of identity fraud, thus enlightening Pentagon to the fact that she would be relying upon it to protect her interests." *Id.* at 663 (citation omitted). The "red flags" in that case were insufficient to create privity. In the first transaction, Iglesias argued that Pentagon should have been on notice because the power of attorney was executed the same day as closing and mis-identified the property's location, Iglesias was the sole obligor on the loan despite being named joint owner, and she was substituted as purchaser shortly before closing. *Id.* at 663-64. We concluded that those facts were insufficient to cause a settlement agent to suspect identity fraud or forgery. *Id.* at 664. With respect to the second transaction, we held that as settlement agent, Pentagon was not charged with comparing signatures between the two transactions' closing documents and that nothing in the record even indicated that Pentagon realized it was the same Maria Iglesias as the previous transaction. *Id.* In sum, we concluded, "none of the facts Iglesias point[ed] to were sufficiently unusual to put Pentagon on notice that a fraud was being committed and that Iglesias was relying upon it to protect her from the fraud." *Id.*

Returning to the present case, the circuit court found that Ultimate Title owed a duty to K1 because an "intimate nexus" existed between the two. Ultimate Title does not contest that finding on appeal, thus rendering *Iglesias* wholly inapposite.[11] What Ultimate Title

[11] Even if Ultimate Title had properly challenged the circuit court's finding that an "intimate nexus" existed, the facts from *Iglesias* are still distinguishable from those here. As the circuit court pointed out, *Iglesias* would have had some applicability in the current case if Ladd Sr., rather than K1, had brought the case against Ultimate Title. Robert

contests instead is the circuit court's finding that it breached its duty to K1. Unlike the existence of a duty, which is a question of law reviewed *de novo*, *Cash & Carry America, Inc. v. Roof Solutions, Inc.*, 223 Md. App. 451, 461 (2015) (citations omitted), the question of whether Ultimate Title breached its duty is a question of fact, *see Lab. Corp. of Am. v. Hood*, 395 Md. 608, 617 (2006); *McHenry v. Marr*, 39 Md. 510, 520 (1874); *Powell v. Breslin*, 195 Md. App. 340, 358 (2010), *aff'd*, 421 Md. 266 (2011), which we review for clear error. *Pulliam v. Motor Vehicle Admin.*, 181 Md. App. 144, 154 (2008); *Kahle v. John McDonough Builders, Inc.*, 85 Md. App. 141, 148-49 (1990) (citing Maryland Rule 8-131(c)).

The circuit court found that Ultimate Title owed K1 a duty because "an intimate nexus existed" between the two based on Ultimate Title communicating directly with K1, performing a title search, and handling the settlement. Then, crediting the testimony of K1's standard of care expert, the court found that Ultimate Title breached its duty to K1 to exercise a reasonable degree of skill and diligence by failing to: "confirm the identity of

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Lennon, as K1's expert, testified at trial that a contractual relationship existed between K1 and Ultimate Title to perform the settlement and "prepare the necessary documents for settlement." Atkinson also testified that K1 paid Ultimate Title "[f]or the purpose of closing" and that Dawn Torres of Ultimate Title exchanged several emails prior to settlement with his partner, Bell. Lennon opined that a contractual relationship existed between K1 and Ultimate Title and that it was Ultimate Title's duty to K1 to "procure a good and marketable title" to the Property. The basis for this Court's holding in *Iglesias*, as we have explained, was the lack of a contractual relationship—or the equivalent thereof—between Ms. Iglesias and the title company in that case. Further, the title company in *Iglesias* relied on a facially valid power of attorney, so, considering that no contractual relationship existed between it and the seller, the title company had no duty to inquire beyond the power of attorney. There was no power of attorney here and Ladd Jr. had no other legal right to act on his father's behalf at the settlement.

Ladd Sr.," "authenticate the signatures of Ladd Sr.," "facilitate Ladd Sr.'s participation in the settlement," and "issue title insurance[.]" The court found that this breach caused K1 damages in the form of the Property's purchase price, fees incurred at settlement, and investment of resources into the Property.

On appeal, Ultimate Title argues simply that the circuit court provided no basis for its finding that it had a duty to look beyond the facially valid, signed, and notarized deed. This argument fails for several reasons. For one, the circuit court *did* provide a basis for its findings: the testimony of K1's expert witness, Robert Lennon. Lennon testified that Ultimate Title had a duty to prepare documents that would divest the grantee of the Property and convey good and marketable title to the purchaser. He testified that, based on his 40 years of experience, he believed Ultimate Title's actions and procedures fell short of the standard of care by failing to inquire further when it was apparent that the seller was not the owner, the address for the payments was not the owner's address, the seller purportedly could not travel to Baltimore County for the closing but signed the deed in Baltimore County, and the seller's signature on the deed did not match prior iterations of his signature on documents within Ultimate Title's possession. In addition to Ultimate Title's negligence in failing to authenticate Ladd Sr.'s signatures, Lennon testified, and the circuit court found that Ultimate Title was also negligent for failing to confirm Ladd Sr.'s identity, facilitate Ladd Sr.'s personal participation in the settlement, and issue title insurance that K1 had purchased.

Further, Ultimate Title's owner and settlement agent, Marion Jones, testified on cross-examination that at the time of settlement she did not realize that Ladd Jr., who was

present, was not actually Ladd Sr. She testified that she believed that the Russell Ladd present at closing was the seller of the Property and that she did not realize there was both a senior and a junior. This testimony directly contradicted Ultimate Title's position that it was conducting a split settlement. At oral argument before this Court, Ultimate Title's counsel acknowledged that Ms. Jones' testimony was "an inherent contradiction."

Considering all of the above, we perceive no error in the trial court's finding that Ultimate Title was negligent.

III.

Mitigation of Damages

Ultimate Title argues that the circuit court erred by awarding damages for expenses that K1 incurred after Father's Day 2014, when K1 would have had actual notice that Ladd Sr. did not authorize the sale of the Property. Ultimate Title further contends that it was unreasonable for K1 to spend nearly $30,000 renovating the Property after learning "there was a cloud on the title."[12] At trial, when Ultimate Title raised the mitigation issue, K1 argued—as it does on appeal—that the Property was uninhabitable at the time of the sale and it began rehabilitating the Property once the city fined K1 for keeping the Property in disrepair.

This Court has explained that the "mitigation of damages doctrine is '[t]he principle requiring a plaintiff, after an injury or breach of contract, to use ordinary care to alleviate

[12] Ultimate Title also suggests that the circuit court erred because its memorandum opinion lists Father's Day 2016 as the date that Ladd Sr. called K1. This seems to be a typographic error that did not affect the circuit court's findings or supporting rationale.

the effects of the injury or breach. If the defendant can show that the plaintiff failed to mitigate damages, the plaintiff's recovery may be reduced[.]'" *Cave v. Elliott*, 190 Md. App. 65, 96 (2010) (quoting Black's Law Dictionary 1018 (7th ed. 1999) (alteration in *Cave*)). "The duty to mitigate damages 'serves to reduce the amount of damages to which a plaintiff might otherwise have been entitled had he or she used all reasonable efforts to minimize the loss he or she sustained as a result of a breach of duty by the defendant.'" *Hopkins v. Silber*, 141 Md. App. 319, 337 (2001) (quoting *Schlossberg v. Epstein*, 73 Md. App. 415, 421-22 (1988)). When the doctrine applies, "the burden is necessarily on the defendant to prove that the plaintiff failed to use 'all reasonable efforts to minimize the loss he or she sustained.'" *Cave*, 190 Md. App. at 96 (quoting *Schlossberg*, 73 Md. App. at 422). This Court has made it clear "that the doctrine does not place any duty on a plaintiff or create an affirmative right in anyone." *Schlossberg*, 73 Md. App. at 422 (citations omitted).

The circuit court here found that "Ultimate Title failed to meet [its] burden to show that K1 [] failed to take reasonable efforts to mitigate their damages." In its ruling, as it had during Ultimate Title's closing argument, the circuit court noted that Ultimate Title's two theories of a failure to mitigate were irreconcilable. On the one hand, Ultimate Title argued that K1 failed to mitigate its damages by investing money to renovate the Property, but, on the other hand, failed to mitigate its damages by not renovating the Property quickly enough to secure more rental income from a potential tenant. The circuit court also noted that Ultimate Title "did not make an argument that the filing of the lawsuit by Ladd Sr. served as a separate or additional indication to K1 [] that it should stop investing resources

into the [P]roperty." The court reasoned that Ultimate Title "ha[d] not provided any authority stating that notice of a potential title defect would render it unreasonable to continue to invest in a property that one believes it has good title to." Further, the court found that K1 only began investing in the Property once the city fined it for keeping the Property in disrepair and, at the time of purchase, the Property was uninhabitable. Had K1 not began rehabilitating the Property, the court reasoned, "it would not have been able to eventually secure a tenant who pa[id] $950 per month to rent the [P]roperty." Finally, the court noted that Ultimate Title put on no evidence "regarding the reasonableness of the timeline of renovations and whether it was practical for K1 [] to secure a paying tenant prior to the one they ultimately found."

Whether or not a plaintiff took reasonable steps to mitigate its losses is a question of fact. *Schlossberg*, 73 Md. App. at 422. The reasonableness of an individual's action is often based on inferences and involves resolving his or her motive or intent. *Id.* at 423 (citations omitted). Thus, we will only substitute our judgment for the circuit court's findings of reasonableness if Ultimate Title demonstrates that those findings were clearly erroneous. Maryland Rule 8-131(c); *Martin v. TWP Enters. Inc.*, 227 Md. App. 33, 48 (2016). We conclude that Ultimate Title has failed to show clear error.

The fact that Ultimate Title offered two contradictory arguments demonstrates its own implicit recognition that there was a reasonable argument to be made for whichever path K1 chose. K1 received a curt phone call from an angry and surprised Ladd Sr. in June 2014. Atkinson testified that K1 believed, in reliance on its realtor and title company, that it had secured good title to the Property. After that phone call, nearly eight months passed

before K1 heard from Ladd Sr. again and another month passed before it contracted with a home improvement company to renovate the Property. Although Ladd Sr. filed his complaint in February 2015, the month before K1 began renovating the Property, Ultimate Title did not argue below and does not argue here, that his filing of the complaint should have put K1 on notice to stop investing in the Property. Further, the circuit court credited Atkinson's and Bell's testimony that they began renovating the Property in response to the city fining them for keeping it in disrepair. Ultimate Title does not dispute that finding on appeal. Instead, Ultimate Title merely states, without support, that it is unreasonable to invest in a Property when there is a cloud on the title.

Neither case that Ultimate Title directs us to supports its argument. In fact, *Cave v. Elliott*, 190 Md. App. at 65, demonstrates why Ultimate Title's contention on appeal must fail. The burden of proving that a plaintiff failed to mitigate its damages is on the defendant. *Id.* at 96 (citing *Schlossberg*, 73 Md. App. at 422). Here, as was the case in *Cave*, Ultimate Title "never adduced any evidence that [the plaintiff] failed to use reasonable efforts to mitigate the losses [it] sustained[.]" *Id.* Accordingly, we hold that the circuit court did not clearly err by finding that K1's investment efforts to rehabilitate the Property did not run counter to its duty to mitigate damages.

IV.

Striking an Expert Witness

Ultimate Title argues that the circuit court erred by striking its expert witness. According to Ultimate Title, the court's scheduling order did not contemplate a filing schedule for third-party defendants, so its expert designation in its pre-trial statement

timely complied with Maryland Rule 2-504.2(b) by providing the minimal information required to identify the expert it planned to call as a witness. It also contends that K1 was not prejudiced by Ultimate Title's expert designation because K1 chose not to propound interrogatories requesting detailed information regarding its expert witness. Despite this, Ultimate Title complains, the circuit court granted K1's motion to strike Ultimate Title's expert improperly, without explanation, and did not allow the proffered expert to testify or qualify.

According to K1, the circuit court was right to strike Ultimate Title's expert because Ultimate Title failed to comply with the scheduling order. Although Ultimate Title was not named as a defendant until September 4, 2015, 34 days before the October 8 expert-designation deadline, K1 suggests that the scheduling order stated that the dates could be changed for good cause and the onus was on Ultimate Title to seek an extension of time to designate their witness—which Ultimate Title never did. Instead, Ultimate Title waited until February 26, 2016, to designate Mr. Staiti as an expert witness, prejudicing K1's ability to prepare for trial. Aside from violating the scheduling order, K1 says that the trial court exercised reasonable discretion because Mr. Staiti had a conflict interest based on his role in the transaction at issue—including "deed prep review" and other legal services he provided K1.

Prior to trial, the circuit court addressed K1's motion to strike Ultimate Title's expert designation and the following colloquy occurred with respect to Mr. Staiti's conflict of interest:

[K1'S COUNSEL]: . . . Mr. Staiti was representing my client. Mr. Staiti has

a conflict of interest in this case. He's not a fact witness. He's going to come in and testify, I expect, to items which would be contrary to my client's claim of negligence. I expect he probably will say something about the title company which is his client, essentially, not being negligent[.] It breaches the canons of ethics and I think he should be excluded for that reasons, also not be allowed to testify against my client after my client paid him in the same transaction that he's going to testify about.

* * *

[ULTIMATE TITLE'S COUNSEL]: . . . To say further that Mr. Staiti [] represents K1 Auto, that there's no agreement between Mr. Staiti and K1 Auto, they never contacted Mr. Staiti. There's been no communication, to my knowledge, between Mr. Staiti and K1 Auto. Mr. Staiti provided services to Ultimate Title with regard to reviewing deeds which are prepared there. In terms of who paid Mr. Staiti the $50, . . . that's in a HUD-1 statement which does not designate in this matter who paid which fees. There was a split in terms of the fees that were paid and it's not clear who paid what. Ultimate Title ultimately –

THE COURT: So you're saying that the proffer counsel made is a lie?

[ULTIMATE TITLE'S COUNSEL]: I'm saying it's a misrepresentation of how payments were made. I'm not saying he lied.

THE COURT: Okay. But you acknowledge that he was involved in the transaction?

[ULTIMATE TITLE'S COUNSEL]: Yes, Your Honor.

THE COURT: Okay.

[ULTIMATE TITLE'S COUNSEL]: And I would say that in the event that this Court believes bias is one factor that this Court can consider when hearing the testimony of an expert witness and whether to give it weight. . . . We can even put him on the stand and ask him and the Court can determine whether to consider him an expert in this matter for just the statements today deciding right off that.

* * *

THE COURT: Well, let's talk about your expert's role in this transaction specifically.

> [ULTIMATE TITLE'S COUNSEL]: Yes, ma'am.
>
> THE COURT: Tell the Court what his role was.
>
> [ULTIMATE TITLE'S COUNSEL]: My understanding is that his role was reviewing a deed for sufficiency in terms of whether it would properly convey title[.]
>
> THE COURT: Did he work for the title company?
>
> [ULTIMATE TITLE'S COUNSEL]: He does not work for –
>
> THE COURT: Was he contracted by them to do that?
>
> [ULTIMATE TITLE'S COUNSEL]: [] I don't believe there's any contract with him that –
>
> THE COURT: Was he paid by anybody to review the deed or he did it for free?
>
> [ULTIMATE TITLE'S COUNSEL]: He was paid out of the settlement.

After argument from K1's counsel, the court returned its attention to Ultimate Title's counsel:

> THE COURT: And you're actually from [your expert's] firm?
>
> [ULTIMATE TITLE'S COUNSEL]: Yes, ma'am.
>
> THE COURT: Okay. Anything further?
>
> [K1'S COUNSEL]: No, Your Honor.
>
> THE COURT: All right. . . . [K1]'s motion is granted.

"[I]n deciding whether to admit or exclude expert testimony, a trial judge is 'vest[ed] . . . with [a] wide latitude' of discretion." *Butler-Tulio v. Scroggins*, 139 Md. App. 122, 135 (2001) (quoting *Massie v. State,* 349 Md. 834, 850 (1998)) (alterations in *Scroggins*). "The authority for such a ruling appears in Maryland Rules 5-403 and 5-702.

Rule 5-403 expressly authorizes the exclusion of relevant evidence when its probative value would be outweighed by the danger of unfair prejudice." *Parker v. Hous. Auth. of Balt. City*, 129 Md. App. 482, 487 (1999) (citation omitted). "Seldom will the decision in this regard constitute grounds for reversal." *Simmons v. State*, 313 Md. 33, 43 (1988) (citations omitted). "Reversal is warranted only if founded on an error of law or some serious mistake, or if the trial court has seriously abused its discretion." *Hartless v. State*, 327 Md. 558, 576 (1992) (citations omitted).

We see no abuse in discretion by the trial court excluding Ultimate Title's 11th-hour designation of Mr. Staiti as its expert witness. The trial court's "wide latitude" to exclude expert witnesses extends to those experts who may offer relevant testimony if the court believes that prejudice will outweigh any probative value. *Scroggins*, 139 Md. App. at 135; *Parker*, 129 Md. App. at 487. The trial court did not abuse that discretion here.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.