

April Real Estate Update | Elm Cabin John, LLC v. United Bank

26 Apr 2019

[Christopher A. Glaser](#)

On April 19, 2019, Judge Messitte of the United States District Court for the District of Maryland issued an unpublished opinion in *Elm Cabin John, LLC v. United Bank* that is certainly noteworthy for real estate practitioners.

In this matter, Ms. Nancy Long owned three parcels in Montgomery County. As an individual in her 80s during the subject transactions, she is covered by the Maryland statutory protections for the elderly as set forth in Maryland Code Family Law, § 14-101, *et seq.* In order to facilitate development, Ms. Long transferred the three parcels into an entity solely owned by her (named Nancy Long, LLC). Mr. Andrew Economakis, a real estate developer who was a member of a separate entity with Ms. Long – Elm, LLC – but not a member of Nancy Long, LLC, was tasked with obtaining financing for the development project. Unbeknownst to Ms. Long, Mr. Economakis filed a single-page form with the Maryland State Department of Assessments and Taxation changing the name of Nancy Long, LLC to Elm Cabin John, LLC and falsely signed the form as the managing member of Nancy Long, LLC. Mr. Economakis, as a now-purported member of Elm Cabin John, LLC negotiated with United Bank's predecessor-in-interest for a development loan in the amount of \$1.6 million. Notwithstanding that United Bank's predecessor-in-interest was never provided with a copy of any evidence that the name change was authorized, nor was the lender ever provided a copy of the Elm Cabin John, LLC operating agreement, the lender extended the loan secured by a deed of trust against the three parcels. As Judge Messitte commented, the lender's "underwriting was hardly ideal."

Following a default on the loan, United Bank threatened foreclosure. Ms. Long attempted to communicate with the bank, but United Bank refused to speak with her on the grounds that she was not a member of Elm Cabin John, LLC and was not involved with the parcels. Ms. Long filed suit against United Bank shortly thereafter seeking monetary damages for United Bank's negligence.

On cross-motions for summary judgment, Judge Messitte denied both motions finding that there were facts to be determined by a jury. Importantly, Judge Messitte recognized the tort duty owed by United Bank to Ms. Long and held that,

should the trier of fact determine that the Bank was derelict and/or complicit, which is to say, negligent in allowing Economakis to effectively misappropriate Long's title, and/or in overlooking what may well have been the financial exploitation of an elderly person when it took the properties as collateral, then by threatening foreclosure which effectively forced their sale, Long will prevail.

In a footnote, Judge Messitte suggested that United Bank's threat of foreclosure may have been an improper means of recovery on the underlying note as "it is open to question whether the Bank itself has been truly 'damaged' in this case." The Court – in troubling language – opined that there may be a lack of damage assuming that "title insurance was in fact issued [and] the proceeds would have been (and may still be) available to the Bank to collect...." While the title insurer is not a named party to the action, one wonders whether a finding of the bank's own negligence would give rise to a 3(a) defense under the policy.

Jackson & Campbell, P.C. represents title insurers and insureds in Maryland, Virginia, and Washington, D.C. and we strive to keep our clients and other title professionals up to date on various developments in the law. Additionally, we present no cost in-house updates of the nation's most noteworthy cases and national trends following the spring and

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fall American Land Title Association's Title Counsel meetings.

If you have any questions about this case or laws impacting real estate in Maryland, Virginia, and Washington, D.C., feel free to contact us. Our [Real Estate](#) Litigation and Transactions Practice Group is ready to assist.

This summary is not intended to contain legal advice or to be an exhaustive review. If you have any questions regarding this particular Maryland case, please contact [Chris Glaser](#) at Jackson & Campbell, P.C.

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