Circuit Court for Montgomery County
Case No. 363481V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 364

September Term, 2017

UNITED BANK

v.

DAVID T. BUCKINGHAM, ET AL.

Eyler, Deborah S.,
Fader,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: May 10, 2018

In this appeal, United Bank ("the Bank"), successor in interest to Virginia Commerce Bank,[1] the appellant, challenges a declaratory judgment entered by the Circuit Court for Montgomery County after a bench trial. Among other things, the court declared that an agreement by Sun Control Systems, Inc. ("Sun Control"), executed by John D. Buckingham ("John"), to assign to the Bank three whole life insurance policies on John's life in exchange for the Bank's agreement to forbear from enforcing certain loans extended to Sun Control was void because the Bank knew that John was incompetent when he executed the agreement. The court further declared that John's assignments of two of the policies, pursuant to the promise made in the agreement, were void because his signature was forged, and the third assignment was void because John was incompetent when he executed it. John died during the pendency of the declaratory judgment action and the proceeds of the insurance policies were paid into the court registry.

The John D. Buckingham Family Trust ("the Family Trust") was the designated beneficiary of one of the life insurance policies. The court ordered that the proceeds of that policy be paid to the co-trustees, who are three of John's children and the appellees: David T. Buckingham ("David"), Susan Buckingham ("Susan"), and Richard

[1] United Bank is the assignee of Virginia Commerce Bank's interest in the loans at issue in this case and the various forbearance agreements related to those loans. For ease of discussion, we shall refer to both United Bank and Virginia Commerce Bank as "the Bank."

Buckingham ("Richard"). The Blue Heron Trust was the designated beneficiary of the other two life insurance policies. David was the sole trustee of the Blue Heron Trust and the beneficiaries were David, Richard, and Susan. The court ordered that the proceeds of those two policies remain in the court registry pending the resolution of a federal lawsuit challenging the creation of the Blue Heron Trust.

The Bank noted an appeal from the declaratory judgment in 2014, but that appeal was dismissed as not having been taken from a final judgment. The appellees had dismissed claims against the other two Buckingham children, Thomas Buckingham ("Thomas") and J. Daniel Buckingham, Jr. ("Daniel"), without prejudice and with the stated intent to resurrect those claims at a later point in time. *See Virginia Commerce Bank v. David T. Buckingham, et al*., No. 2216 (Sept. Term 2013). On remand from the dismissal, the Bank moved for reconsideration or, in the alternative, for a new trial based upon newly discovered evidence. The court denied that motion and, by separate order, dismissed the outstanding claims against Thomas and Daniel, as well as one claim against the Bank, with prejudice. This second appeal followed.

The Bank presents four questions for review,[2] which we have condensed and rephrased as three:

[2]The questions as posed by the Bank are:

> I. Whether the Trial Court erred in finding that David Buckingham, in his capacity as trustee of the Blue Heron Trust, had standing to challenge the validity of the Second Amendment to Forbearance Agreement and the collateral assignment of the "JDB" insurance policies contemplated thereunder, when at the time of the execution of the Second Amendment, the trust had yet to be created, and the trust was neither the owner nor the beneficiary of the "JDB" insurance policies.
>
> II. Whether the claims of the [sic] Susan Buckingham and Richard Buckingham in their capacities as co-personal representatives of the Estate of John Buckingham were waived and abandoned as a result of the voluntary amendment to remove and omit these parties as Plaintiffs in the First and Second Amended Complaints.
>
> III. Whether the Trial Court erred in finding that that the Bank knew or should have known that John Buckingham was incompetent to execute the Second Amendment to Forbearance Agreement when no conclusive evidence was presented that the Bank was aware he was legally incompetent.
>
> IV. Whether the Trial Court erred in denying the Bank's Motion to Reconsider or in the Alternative for a New Trial, without a hearing, in light of the Bank's presentation of newly-discovered evidence that John Buckingham, at David Buckingham's behest, executed a complex promissory note, individually and on behalf of four corporate entities, payable to David closely proximate in time to the execution of the Second Amendment.

I. Did the trial court err in ruling that David, as trustee of the Blue Heron Trust, had standing to challenge John's agreement to assign two life insurance policies to the Bank; and, if so, did Richard and Susan have standing to assert those claims at the time of the bench trial?

II. Did the trial court err by finding that the Bank knew or should have known that John was incompetent when he agreed to assign the life insurance policies to the Bank because it had actual knowledge that John was suffering from advanced dementia?

III. Did the trial court abuse its discretion when, on remand from the dismissal of the first appeal, it denied the Bank's motion for reconsideration or, in the alternative, for a new trial based upon new evidence bearing on David's credibility?

For the following reasons, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

In 1979, John formed Sun Control, a Maryland corporation that subcontracts the fabrication and installation of customized window treatments for newly constructed office buildings. All the Buckingham children worked for Sun Control at one time or another, but Thomas and Daniel were the most involved and only Thomas acquired an ownership interest in the company. David, an attorney, frequently represented Sun Control.

For more than twenty-five years, the Bank and its predecessors in interest made loans to Sun Control. Throughout this time, R.E. "Randy" Anderson was the chief

lending officer for the Bank (and its predecessors). John and Anderson developed a personal friendship during the many years they transacted business together.

A. The Life Insurance Policies

In 1988, Northwestern Mutual Life Insurance Company ("Northwestern") issued Policy No. 10737530, a whole life policy insuring John's life with a face value of $1,000,000. The policy beneficiary was the trustee of a trust created in John's will. On July 31, 2000, Northwestern issued Policy No. 15419985, a second whole life policy insuring John's life with a face value of $750,000. The policy beneficiary was designated as John's estate. We shall refer to these two policies as the "JDB Policies."

On May 15, 1991, in the interim between the issuance of the JDB Policies, John and his wife, Elizabeth, established the Family Trust, an irrevocable life insurance trust, and named their five children as trustees and beneficiaries. The trust documents were executed by John, Elizabeth, Thomas, and Daniel. On November 26, 1991, Northwestern issued Policy No. 11848616 to the trustees of the Family Trust ("the Family Trust Policy"). The Family Trust Policy was a "Joint Life Protection" policy insuring the lives of John and Elizabeth, payable on the "second death."[3] It had a face value of $1,000,000

[3] Northwestern also issued a fourth policy to John that insured Daniel's life. That policy was at issue in the litigation but is not at issue in the instant appeal.

and the Family Trust was the owner and beneficiary. By its terms, the Family Trust required the consent of all five trustees to dispose of any trust assets. The Family Trust Policy was the sole asset of the Family Trust.

B. The Forbearance Agreement

In the late 2000s, Sun Control's business was faltering. By 2009, Sun Control was in default on its line of credit with the Bank and on other loan obligations to the Bank. At that time, John was Sun Control's CEO, president, and manager. He and Elizabeth had personally guaranteed many of the company's loans, as had Thomas and his wife, Erin.

On May 13, 2009, Sun Control and the Bank entered into a Forbearance Agreement. John, Elizabeth, Thomas, Erin, and two other companies owned by John and/or the Buckingham children were parties to the agreement as well.[4] Also on that day, the same parties executed a First Amendment to Forbearance Agreement ("First

[4] The companies were Tower Oaks Boulevard, LLC, and PCI of America, Inc. A foreclosure action involving real property owned by Tower Oaks Boulevard, LLC was the subject of two decisions of this Court. *See Tower Oaks Blvd., LLC v. Procida*, 219 Md. App. 376 (2014), *cert. granted*, 441 Md. 217, *cert. dismissed*, 444 Md. 691 (2015); *Tower Oaks Blvd., LLC v. Procida*, Slip. Op., No. 1464, Sept. Term 2013 (filed Oct. 3, 2014). An action brought by Tower Oaks Boulevard, LLC against Virginia Commerce Bank also was the subject of an unreported decision of this Court. *See Tower Oaks Blvd., LLC v. Virginia Commerce Bank*, Slip. Op., No 1463, Sept. Term 2013 (filed May 1, 2015) (affirming dismissal of action).

Amendment"). The terms of the Forbearance Agreement and the First Amendment are not at issue in this appeal.

In July 2009, Thomas took over as president of Sun Control. John remained as CEO and manager. Within six months, Sun Control had defaulted under the terms of the Forbearance Agreement and the First Amendment. Shortly thereafter, the Bank engaged Steven Wexler, a financial consultant and turnaround specialist, as its "Special Assets Officer" to develop a "work-out plan" for Sun Control.

C. John's Dementia

While Sun Control's financial problems were spiraling out of control, John's mental health was in decline. Beginning around 2004, Elizabeth and the Buckingham children began noticing lapses in his memory. John resisted efforts by the family to be evaluated by a neurologist. By the fall of 2007, Daniel was so concerned that he suggested to David that John be involuntarily committed so he could undergo a full mental health evaluation. Ultimately, this option was not pursued because John agreed to be evaluated at the Mayo Clinic.

In January 2008, Richard accompanied John to a medical appointment with a neurologist at the Mayo Clinic. The neurologist diagnosed John with "[e]arly cortical dementia, possibly early Alzheimer's."

In the year that followed, John's mental condition deteriorated rapidly. Dr. William Sadlock, an orthopedist treating Elizabeth, became concerned about John's behavior and advised David to have John reevaluated. David made an appointment for John with Ned Sacktor, M.D., a neurologist at The Johns Hopkins Hospital. Initially, John refused to go to the appointment, and David was forced to cancel it.

John eventually relented and, on April 20, 2009, was evaluated by Dr. Sacktor. Dr. Sacktor gave John a "mini mental" examination, on which he scored 18/30. That result was "suggestive of moderate stage dementia." In Dr. Sacktor's opinion, John was "totally disabled" because of his dementia as of that time. Dr. Sacktor referred John for additional neuropsychological testing. That testing, performed in late 2009, resulted in a diagnosis of Pick's disease, or fronto temporal dementia, a "rare progressive degenerative disease of the brain, similar in clinical manifestations and course to Alzheimer's disease." *Dorland's Illustrated Medical Dictionary*, 541 (32nd ed. 2012). The condition causes memory problems, behavioral disturbance, and language difficulties. It is not curable and is terminal. The progression of the dementia can be slowed with medication, however.

In January 2010, David sent an e-mail to his four siblings with the subject line "Dad's Prognosis — Confidential." He explained Dr. Sacktor's diagnosis. He also informed his siblings that Dr. Sacktor believed that John would die within one to two years. David explained that John did not know about his prognosis and that Dr. Sacktor

did not think it would be advisable to tell him at that time. David stated that while John continued to "decline at a very rapid rate," he still had "lots of very lucid moments." He suggested that his siblings arrange to spend time with their father soon, before his dementia progressed further.

D. The Bank's Knowledge of John's Dementia and the Second Amendment

Anderson, who as mentioned was the chief lending officer for the Bank, had a personal friendship with John as well as a long-term business relationship. Around 2009, he began noticing changes in John's behavior. John was calling Anderson frequently and speaking to him at length about tangential matters. While John always tended to get caught up in details that Anderson thought were inconsequential, Anderson noticed that this tendency now seemed to be "magnified." John's frequent phone calls became an "irritation" for Anderson. In the fall of 2009, after Thomas had taken over as president of Sun Control, Anderson stopped taking John's calls and told Thomas that he would only communicate with him about Sun Control.

In November 2009, David participated in a conference call about Sun Control's finances with Anderson and Joseph Corish, outside counsel for the Bank. During this call, David informed Anderson and Corish that John no longer was capable of managing Sun Control and recently had been discharged from a stay at a nursing home. According to David, he told Anderson and Corish that John had dementia. Anderson denied that

David used the word "dementia," but acknowledged expressing sympathy about John's condition during the call and talking about his own father's diagnosis with Alzheimer's disease.

At the end of 2009, Thomas and Wexler began negotiating another amendment to the Forbearance Agreement. In early 2010, Thomas informed Wexler that John had been diagnosed with "[a]dvanced dementia" and had approximately six months to live. Thomas showed Wexler a copy of Dr. Sacktor's report detailing his assessment of John.

Also around this time, Thomas told Anderson in a telephone call that John had a "deteriorating mental disease that was terminal."

In April 2010, Wexler participated in a Special Assets Committee meeting at the Bank. At that meeting, the subject of Sun Control's loan defaults was discussed, as was the status of negotiations for a work out. Wexler advised that Sun Control had agreed to assign to the Bank "$2.4 mm of John['s] death benefits . . . from existing paid current life insurance policies." He further advised that it was "anticipated" that John's "currently diagnosed illnesses w[ould] result in death over the next 6 months."

Shortly thereafter, Corish, on behalf of the Bank, began drafting the Second Amendment to the Forbearance Agreement ("the Second Amendment"). On May 11, 2010, Corish sent an email to Anderson and others at the Bank in which he said he did not know the extent of John's mental health issues, but if there were concerns about

John's "capacity to enter into the various agreements that are part of this transaction," that would need to be discussed. A few weeks later, on May 27, 2010, Corish raised that issue again in an email to Anderson and other Bank employees. Corish warned that if John were "mentally incapacitated" when he executed the Second Amendment, the legality of that instrument could be challenged at a later point in time. Corish suggested that the Bank might want to have John evaluated by a physician prior to the execution of the Second Amendment. He noted, however, that in "prior discussions" representatives of the Bank had made clear that they did not wish to "go through these steps."

On June 16, 2010, Sun Control and the Bank executed the Second Amendment. John, Elizabeth, Thomas, Erin, PCI, Tower Oaks, and Oak Plaza, LLC also were parties to the Second Amendment. Paragraph 10 pertained to the "Assignment of Life Insurance Policies; Payment of Insurance Proceeds." It modified the Forbearance Agreement to provide that, no later than June 25, 2010, John would "pledge, assign, and grant to [the Bank] a first priority perfected security interest" in the Family Trust Policy and the JDB Policies (and other policies not at issue in this appeal) "as collateral for the amounts owing under any of the Loan Documents." In the event of John's death, the "death benefit proceeds [would] be paid directly to the [Bank]." John signed the Second Amendment in his capacity as manager of Sun Control (and certain other business parties) and in his individual capacity. In exchange for that promise, and others, the Bank

agreed to advance Sun Control an additional $750,000, to be used only with the Bank's approval, and to forbear on enforcing loans that were in default.

By the time the Second Amendment was executed, the Bank already was in possession of two "Assignment of Life Insurance Policy as Collateral" documents assigning the JDB Policies to the Bank. Those assignments, dated May 20, 2010, purported to bear John's signature, but, as we shall discuss, Thomas later acknowledged that he had forged his father's signature on them. On July 12, 2010, and August 25, 2010, respectively, Thomas and Daniel executed an "Assignment of Life Insurance Policy as Collateral" for the Family Trust Policy.

David, Richard, and Susan were not informed of or aware of the Second Amendment or any of the assignments.

E. Guardianship of John

On August 27, 2010, slightly over two months after the Second Amendment was executed, Elizabeth filed a petition in the circuit court for the appointment of a guardian of the person and the property of John. On January 13, 2011, she and David were appointed co-guardians of John's person and David was appointed guardian of John's property.

In February 2011, David learned about the Second Amendment and the purported assignments to the Bank of the Family Trust Policy and the JDB Policies. In March

2011, acting as John's guardian, he established the John D. Buckingham Life Insurance Trust and changed the beneficiary of the JDB Policies from John's estate to that trust. Elizabeth was the primary beneficiary of the life insurance trust and the five Buckingham children were contingent beneficiaries.

On June 3, 2011, in his capacity as John's guardian, David brought suit in the circuit court against Thomas and Daniel seeking their removal as trustees of the Family Trust for breach of their fiduciary duties.

Elizabeth died unexpectedly on December 11, 2011.

On December 27, 2011, the circuit court entered an order removing Thomas and Daniel as trustees of the Family Trust.

On January 31, 2012, again acting in his capacity as John's guardian, David created the Blue Heron Trust. He named himself as sole trustee of the Blue Heron Trust, and himself, Richard, and Susan as the beneficiaries.[5] With approval from Northwestern, he changed the beneficiaries of the JDB Policies to the Blue Heron Trust.

F. The Litigation and John's Death

[5] The trust documents provide that David would be reimbursed from the proceeds of the trust for certain expenses he had incurred as guardian prior to any distributions to the other beneficiaries of the trust.

On May 23, 2012, the instant action was commenced in the circuit court. The original plaintiffs were identified in the complaint as David, individually, in his capacity as John's guardian, and in his capacity as trustee of the Family Trust; the Family Trust; and Richard and Susan, individually and in their capacities as trustees of the Family Trust. The named defendants were the Bank, Northwestern, Thomas, and Daniel. The complaint stated 19 counts, including a count seeking a declaration that paragraph 10 of the Second Amendment and the assignments of the Family Trust Policy and the JDB Policies were void.

Simultaneous with the filing of the complaint, the plaintiffs moved for preliminary injunctive relief to prevent the Bank from receiving the proceeds of the three policies (and others not implicated in this appeal) in the event of John's death.

Beginning June 19, 2012, the court held a three-day preliminary injunction hearing. The plaintiffs presented expert testimony that John's signature on the assignments of the JDB Policies to the Bank had been forged.[6] Thomas later testified in deposition that he had signed his father's name on the assignments. At the injunction hearing, the Bank agreed to the three life insurance policies being deposited into the court

[6] The parties all agreed that John's signature on the Second Amendment was genuine.

registry and that, if John died during the pendency of the action, the death benefits under the policies would be deposited into the court registry.

On October 17, 2012, John died. The order memorializing the agreement regarding the policies was entered the day after John died. Less than a month later, Northwestern paid the proceeds of the Family Trust Policy ($502,153.35) and the JDB Policies ($1,036,453.14) into the court registry.

On June 17, 2013, Richard and Susan were appointed personal representatives of John's estate ("the Estate").[7]

On July 5, 2013, the Bank filed a counterclaim, naming David, Richard, and Susan as counter-defendants, individually, in their capacities as trustees of the various trusts, and, with respect to Richard and Susan, as personal representatives of the Estate. As relevant here, Count I of the counterclaim sought a declaration that the promise in the Second Amendment to assign the Family Trust Policy and the JDB Policies to the Bank as collateral for loan obligations was valid and therefore enforceable; specific performance of the terms of the Second Amendment with respect to the JDB Policies;

[7] On May 10, 2013, the Bank moved to postpone the trial, then scheduled to commence on June 10, 2013, for numerous reasons, including that no personal representative had been appointed. By order entered June 10, 2013, the trial was postponed to November 4, 2013.

reformation of the assignment of the Family Trust Policy; and a declaration that David, Richard, and Susan had "no claim or entitlement to such funds, either individually or as beneficiaries of the . . . Family Trust, the Blue Heron Trust, as fiduciaries for the [E]state . . . , or otherwise[.]"

On July 23, 2013, Richard and Susan, as personal representatives of the Estate, were substituted as plaintiffs in place of David, in his capacity as guardian of the person and property of John.

On September 12, 2013, the plaintiffs voluntarily dismissed defendant Northwestern, with prejudice.

On September 19, 2013, the plaintiffs filed a first amended complaint removing the individual plaintiffs, adding the Family Trust and the Blue Heron Trust as plaintiffs, and eliminating all but three counts. Count I sought a declaratory judgment that the Second Amendment and the assignments of the three life insurance policies were void and directing that the proceeds of the Family Trust Policy and the JDB Policies be paid to the beneficiaries of the Family Trust and the Blue Heron Trust, respectively. Count II alleged that Thomas and Daniel had breached their fiduciary duties as trustees of the Family Trust. Count III alleged a conspiracy between the Bank and Thomas to obtain the assignments of the Family Trust Policy and the JDB Policies.

On September 24, 2013, the court granted, in part, a pending motion by the plaintiffs to strike the Bank's counterclaim, striking all but the declaratory judgment count.

Also on September 24, 2013, the Bank moved for summary judgment. Among other things, it argued that the Family Trust and the Blue Heron Trust were not proper plaintiffs. It asserted that the proper parties to pursue a claim to the proceeds of the Family Trust Policy were David, Richard, and Susan, as trustees of that trust, and, with respect to the proceeds of the JDB Policies, either Richard and Susan, as personal representatives of the Estate, or David, as trustee of the Blue Heron Trust.

Three days later, on September 27, 2013, the plaintiffs filed a second amended complaint substituting David, Susan, and Richard, as trustees of the Family Trust, for the Family Trust, and substituting David, as trustee of the Blue Heron Trust, for the Blue Heron Trust.

On October 15, 2013, the Bank moved to strike the second amended complaint for numerous reasons, none of which are pertinent to the issues on appeal. In the background section of its motion, the Bank noted that David, Richard, and Susan were not parties to the case in their individual capacities nor was the Estate a party to the case through Richard and Susan, as personal representatives, and therefore any claims they could have asserted had been abandoned.

On October 22, 2013, the plaintiffs filed a notice of dismissal without prejudice of their breach of fiduciary duty and conspiracy claims against Thomas. Also on that date, the parties filed a joint pre-trial statement. In it, the Bank accepted Thomas's deposition testimony that he had forged John's name on the May 20, 2010 assignments of the JDB Policies and further stipulated that John had not executed those assignments.

G. The Bench Trial and the Declaratory Judgment

On November 4, 2013, a four-day bench trial commenced. At the outset, the court granted the plaintiffs' motion to voluntarily dismiss their breach of fiduciary duty claim against Daniel, without prejudice, and the Bank's motion to dismiss Count III of the second amended complaint, which alleged a conspiracy between the Bank and Thomas premised upon overt acts by Thomas, who no longer was a defendant.

Thus, as of the start of the trial, the plaintiffs were David, Richard, and Susan, as trustees of the Family Trust, and David, as trustee of the Blue Heron Trust, and the defendant was the Bank. The Bank was the counter-plaintiff and David, Richard, and Susan, individually and as trustees of the various trusts, and Richard and Susan, as personal representatives of the Estate, were the counter-defendants. The only claims before the court were the mirror-image declaratory judgment claims, one in the second amended complaint and one in the counterclaim, seeking an adjudication of the validity and therefore the enforceability of paragraph ten of the Second Amendment and of the

assignment of the Family Trust Policy. Resolution of those claims would determine who would receive the proceeds of the insurance policies that had been paid into the court registry.

The Bank filed its answer to the second amended complaint in open court. It raised "lack of necessary parties – John Buckingham's personal representatives" and "lack of standing with respect to the JDB Policies" as affirmative defenses.

The plaintiffs' position at trial was that the promise to assign the Family Trust Policy and the JDB Polices to the Bank in exchange for the Bank's forbearance agreement in paragraph 10 of the Second Amendment was void because John was incompetent when he executed it and the Bank knew, or was willfully blind to, that fact; and the assignments of the JDB Policies were void as forgeries.[8] The plaintiffs asked the court to direct that the proceeds of the Family Trust Policy be paid to David, Richard, and Susan, as trustees of the Family Trust; and that the proceeds of the JDB Policies be paid to David, as trustee of the Blue Heron Trust.

[8] The plaintiffs also took the position that the assignment of the Family Trust Policy to the Bank was void because it was signed by only two of the five trustees of the Family Trust, in violation of the trust documents, and because it was made without any consideration to the Family Trust.

The Bank's position at trial was that if John was incompetent when he executed the Second Amendment, then it merely was voidable, not void, and the court should rule that it was enforceable both because it was fair and because the Bank lacked knowledge of John's incompetence when the Second Amendment was executed. The Bank acknowledged that the assignments of the JDB Policies were void *ab initio* because John's signature had been forged on them but asserted that the "obligation to provide those assignments arose in the Second Amendment . . ., which John . . . did sign . . . ."[9]

The plaintiffs' case consisted of their testimony, the *de bene esse* video depositions of Dr. Sadlock and Dr. Sacktor, and testimony by Anderson. In its case, the Bank called Corish. Most of the evidence at trial concerned the onset and progression of John's dementia and the Bank's knowledge about John's mental condition.

On November 8, 2013, the trial court ruled from the bench. It explained that the "only remaining count" was the declaratory judgment count and its "mirror[]" image in the Bank's counterclaim. It framed the "major issue" before it as follows:

> Did [the Bank] know or have reason to know that John [] was mentally incompetent at the time that he signed these policies [over to the Bank]? Did the [B]ank, in fact, have act[ual] notice, or were they willfully blind to

[9] The Bank also took the position that Thomas and Daniel were authorized to assign the assets of the Family Trust (*i.e.*, the Family Trust Policy) because they were the only trustees who had signed the trust agreement.

> the fact that John [] was incompetent at the time of the [Second Amendment]?

The court credited Dr. Sacktor's testimony that by September of 2009 John was suffering from fronto temporal dementia and, no later than April 23, 2010, he was incompetent to comprehend legal matters. The court noted that this evidence was largely undisputed and that the Bank had not presented any countervailing expert testimony.

The court found that by September 29, 2009, when Anderson told Thomas that he would no longer be accepting John's telephone calls, Anderson knew that John was "not making any sense" and that there was some issue with his mental acuity. From that point forward, the Bank "cut [John] out of the mix" in discussions of Sun Control's business. Before then, John had been the "key cog" in the Bank's relationship with Sun Control.

The court credited the evidence that, in December of 2009, David told Anderson directly that John had a mental disease. The court concluded that regardless of whether David used the word "dementia" in his conversation with Anderson, the conversation caused Anderson to appreciate that John's mental health was failing. By April 2010, Thomas had told Wexler, who was acting as an agent of the Bank, that John had advanced dementia, that his condition was terminal, and that he would likely die within the next six months. The court found that Thomas showed Wexler a copy of Dr.

Sacktor's neurological evaluation, and this information was relayed by Wexler to the Bank at the April 12, 2010 meeting of the Special Assets Committee.

The court summarized the evidence of the Bank's knowledge of John's mental condition as of May 2010 as follows:

> Well, now the [B]ank knows, David's told them. He's got dementia. It's a deteriorating mental condition. They got an agent [Wexler] that looked at the report from Hopkins. Mr. Anderson has his own personal experience [with his own father]. [Anderson]'s cut off all conversations with the guy [John] that was the top dog at [Sun Control] for years and built it to 16 million.

The court also found that the May 2010 emails from Corish to the Bank voicing concern about the issue of John's capacity to enter into the Second Amendment and/or the assignments of the life insurance policies evidenced the Bank's knowledge of John's deteriorated mental condition.

In light of this evidence, the court concluded that before the Second Amendment was executed by John, on June 16, 2010, the Bank "knew, had actual notice" that John was mentally incompetent. It further concluded that, even if the Bank did not have actual notice of John's incompetency, it was "willful[ly] blind" to that fact.

From these findings, the court declared that paragraph ten of the Second Amendment was void. It determined that the Bank had paid $25,000 in insurance premiums on the Family Trust Policy. It ordered that the Bank be reimbursed that

amount, plus interest, and that the remainder of the proceeds from that policy be paid to David, Richard, and Susan, as trustees of the Family Trust. With respect to the JDB Policies, the court explained that the parties already had stipulated that the assignments of those policies to the Bank were void due to forgery. Thus, the "only ground" for the validity of the assignments was the Second Amendment, and the court had determined that the agreement to assign those policies also was void. The court found that the Blue Heron Trust was the designated beneficiary of the JDB Policies, but in light of a pending legal challenge to the creation of that trust, the court declined to determine who should receive the proceeds of those policies.[10]

[10] The federal case, *United Bank v. Buckingham*, No. RWT 13–cv–03227, was filed in the United States District Court for the District of Maryland on October 30, 2013, after the circuit court granted the motion in the instant case to strike most of the counts in the Bank's counterclaim. As pertinent, the Bank alleged that David engaged in self-dealing in violation of his duties as John's guardian by creating the trust. It named as defendants Richard, as personal representative of the Estate; Susan, individually, as personal representative of the Estate, and as a trustee of a trust not implicated in this appeal; and David, individually, and as trustee of the Blue Heron Trust and two other trusts. The Bank filed a second amended complaint on August 18, 2017. On March 13, 2018, the court granted summary judgment in favor of the defendants on all the Bank's claims. _____ F.Supp.3d _____, 2018WL1301147 (4th Cir. 2018). The effect of that decision, as relevant here, is to uphold the creation of the Blue Heron Trust.

On December 23, 2013, the court entered a "Final Declaratory Judgment and Order." As pertinent to the issues on appeal, the court declared that

- "upon the parties' stipulation . . . the assignments of [the JDB Policies] dated May 20, 2010 contained forged signatures, these assignments are null and void and of no force or effect, and that these assignments were not ratified by the Second Amendment";

- as of June 16, 2010, John was "suffering from advanced dementia, which rendered him mentally and legally incapable of reading, understanding, and agreeing to the terms of the Second Amendment"; that the Bank had "actual knowledge of John['s] . . . mental incapacity prior to the execution of the Second Amendment, and consequently the Second Amendment is null and void, and of no force or effect with respect to any obligations imposed on, or promises purportedly made therein by John . . . in either his personal or representative capacity, including but not limited to the assignment of any life insurance policies to [the Bank]";

- the proceeds of the Family Trust Policy should be released to David, Richard, and Susan, as the trustees of the Family Trust, less $25,000, plus interest owed to the Bank to reimburse it for premium payments;

- the proceeds of the JDB Policies would remain in the court registry pending the resolution of the federal lawsuit brought by the Bank challenging as self-dealing the creation of the Blue Heron Trust.[11]

G. The First Appeal and Proceedings on Remand

[11] The court also found that the assignment of the Family Trust Policy to the Bank was made without consideration to the Family Trust and was "null and void and of no force or effect."

The Bank noted a timely appeal from the declaratory judgment. On April 13, 2015, after briefing and argument, this Court dismissed that appeal as having not been taken from a final appealable judgment. We reasoned, in reliance upon *Miller and Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 251-53 (2010), and *Collins v. Li*, 158 Md. App. 252, 273-74 (2004), that because David, Richard, and Susan's claims against Thomas and Daniel had been dismissed without prejudice, and with respect to the claim against Daniel the dismissal was subject to a tolling agreement, the declaratory judgment did not adjudicate the rights and liabilities of all the parties to the action and therefore was not final. Our mandate issued on May 18, 2015.

On November 17, 2015, the Bank filed in the circuit court a motion for reconsideration or, in the alternative, for a new trial. As we shall discuss, it asserted that, since the bench trial, it had discovered new evidence with respect to a loan transaction between David and John that discredited David's trial testimony and was reason to vacate the declaratory judgment.

By memorandum opinion and order entered January 30, 2017, the court denied the motion for reconsideration or for new trial. Then, by order entered March 30, 2017, the court dismissed all the outstanding claims against Daniel and Thomas, and the related civil conspiracy claim against the Bank, with prejudice.

This timely appeal followed.

DISCUSSION

I.

The Bank first contends that when the case was tried, none of the plaintiffs named in the second amended complaint had standing to contest the enforceability of the promise in the Second Amendment to assign the JDB Policies to the Bank.[12] Specifically, the Bank asserts that David, as trustee of the Blue Heron Trust, lacked standing to challenge the promise in the Second Amendment to assign the JDB Policies to the Bank because the Blue Heron Trust was not a party to the Second Amendment and, in fact, was not even created until after the Second Amendment was executed. The Bank asserts that the personal representatives of the Estate—Richard and Susan—had standing to seek to have the court declare the promise to assign in the Second Amendment void if they wished to do so, but they only appeared in the action in that capacity for less than two months in 2013, before the first amended complaint was filed. After the second amended complaint was filed, Richard and Susan were suing solely as trustees of the Family Trust, which had no interest in the JDB Policies. Thus, when the case went to trial, the personal representatives were not plaintiffs.

[12] The Bank does not make a standing argument regarding the Family Trust Policy.

The appellees respond that, as trustee of the Blue Heron Trust, David had standing to seek an adjudication of the issue of the rightful beneficiary of the JDB Policies because at the time of John's death that trust was the designated beneficiary of those policies. Thus, the Blue Heron Trust had a vested property interest in the proceeds of the JDB Policies and that gave David, its trustee, standing to seek an order declaring that the proceeds should be paid to the Blue Heron Trust. Richard and Susan assert, moreover, that the Bank failed to preserve its argument that they were suing only as trustees of the Family Trust and not as personal representatives of the Estate because it did not raise that issue below and the issue was not decided by the trial court. On the merits, they maintain that because they are the personal representatives of the Estate *and* were parties to the action at the time of the bench trial, it would elevate form over substance to hold that they lacked standing merely because they did not specifically identify themselves in the second amended complaint as having sued in their capacity as personal representatives.

Md. Code (1973, 2006 Repl. Vol.), section 3-406 of the Courts and Judicial Proceedings Article ("CJP"), provides, as pertinent:

> Any person interested under a . . . written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a . . . contract, . . . may have determined any question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status, or other legal relations under it.

"[A] person who has or claims any interest which would be affected by the declaration, shall be made a party." CJP § 3-405(a)(1).

The prerequisites for standing in a declaratory judgment action are no different than in any civil action. *See Comm. for Responsible Dev. on 25th Street v. Mayor & City Council of Baltimore*, 137 Md. App. 60, 72 (2001).

> "Generally, whether a party has standing to sue depends on whether that party has an actual, real and justiciable interest susceptible of protection through litigation." *Mayor and City Council of Ocean City v. Purnell-Jarvis, Ltd.*, 86 Md. App. 390, 403, 586 A.2d 816 (1991) (citing 1A C.J.S. *Actions* § 60(a) (1985)). A person has "standing in the sense that [he or she] is entitled to invoke the judicial process in a particular instance." *Adams* [*v. Manown*], 328 Md. [463,] 480, 615 A.2d 611 [(1992)]. Standing to obtain declaratory relief is important because a declaratory judgment action "calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 242, 57 S.Ct. 461, 81 L.Ed. 617 (1937).

Howard v. Montgomery Mut. Ins. Co., 145 Md. App. 549, 556 (2002) (first alteration in *Howard*).

"It is a settled principle of Maryland law that, '"where there exists a party having standing to bring an action . . . we shall not ordinarily inquire as to whether another party on the same side also has standing."' *Sugarloaf Citizens' Ass'n v. Dep't of Env't*, 344 Md. 271, 297 (1996) (quoting *People's Counsel v. Crown Dev. Corp.*, 328 Md. 303, 317 (1992), in turn quoting *Bd. Of License Comm'rs v. Haberlin*, 320 Md. 399, 404 (1990)). Thus, it is sufficient if *any* party on the same side of the action had standing to seek an

adjudication of the rights and interests arising from the JDB Policies and the proceeds of those policies.

A. David as Trustee of the Blue Heron Trust.

The Blue Heron Trust was the named beneficiary of the JDB Policies when John died, and David was the trustee of that trust. The Bank relies upon *Address v. Millstone*, 208 Md. App. 62 (2012), to support its argument that David's position as the trustee of the Blue Heron Trust did not give him standing to challenge the Second Amendment.

In *Address*, Millstone purchased numerous whole life insurance policies with the assistance of Address, an insurance broker. The policies all were made on Millstone's life and named his wife and/or his adult daughters as beneficiaries. One such policy was owned by his daughters. As part of his estate planning, Millstone decided to surrender the whole life polices he owned (for which he was paid) and to create an irrevocable life insurance trust for the benefit of his daughters. He placed in the trust a new universal life policy, which was owned by the trust. Later, he replaced that policy with a different universal life policy that had lower premiums. That policy, like the one it replaced, was owned by the trust. Subsequently, Millstone directed that the trust be dissolved. When that happened, the universal life policy was transferred to the trust beneficiaries, Millstone's daughters. After that, the two policies owned by Millstone's daughters were surrendered and he purchased another universal life policy, which was also owned by his

daughters. When Millstone sought to borrow against that policy and learned that there was insufficient cash value to do so, he sued Address for negligence, breach of contract, negligent and intentional misrepresentation, and fraud in the purchase and surrender of the policies. He sought damages arising from the "loss of cash value of the policies, adverse tax consequences, and loss of premiums paid." *Id*. at 74.

Address raised as a defense that Millstone had failed to join necessary parties and that he lacked standing. Millstone then amended the complaint to add his daughters as plaintiffs. Ultimately, the case against Address was tried to a jury, which returned a verdict in favor of Millstone on the breach of contract claim, awarding him more than $900,000 in damages.[13] The jury did not reach a verdict on Millstone's daughter's claims and later they were dismissed.

On appeal from the judgment, Address argued that Millstone did not have standing to bring causes of action based on the purchase and surrender of insurance policies that, when surrendered, were owned by his daughters. This Court agreed that Millstone lacked standing to sue for damages resulting from the premature surrender of life insurance policies he did not own. Quoting *Pike v. New York Life Insurance Co.*, 901 N.Y.S.2d 76

[13] The jury also found that Address was negligent and made negligent misrepresentations but returned a verdict for Address on those counts because it found that Millstone was contributorily negligent.

(N.Y. App. Div. 2010), we held that "'[o]nly the policy owner has standing to sue based on an insurance policy.'" *Id*. at 78 (alteration in *Address*).

The holding in *Address* has no bearing on the standing issue in the case at bar. When this case went to trial, the sole remaining claims in the second amended complaint and the Bank's counterclaim asserted competing interests in the proceeds of matured insurance policies. The owner of the JDB Policies—John—had died and the proceeds of the polices had been paid into the court registry. The parties were not suing for breach of those insurance policies or for breach of any duty relating to the purchase of the policies. They were suing to resolve a dispute over the rightful beneficiary of the proceeds of the policies.

Willoughby v. Trevisonno, 202 Md. 442 (1953), is instructive. Elvira Trevisonno executed a deed conveying real property to herself for life and then to her daughter Theresa Willoughby and another daughter as joint tenants. Three years later, after suffering a stroke, Trevisonno conveyed the property in fee simple to a third party, who in turn conveyed it in fee simple to Willoughby's sister. Willoughby sued, seeking to void the deeds executed by Trevisonno after her stroke on the ground that she was incompetent to convey the property.

The circuit court granted a motion to dismiss Willoughby's suit for lack of standing. On appeal, the Court of Appeals reversed. It held that Willoughby's claim was

not premised upon "the possibility of a future inheritance that possibly may never occur." *Id.* at 449. Rather, it was premised upon a "property right accruing to her from a deed executed by [her mother]," which either was a vested remainder with a possibility of being divested or a contingent remainder. *Id*. at 449–50. The Court reasoned that, however designated, this property interest gave Willoughby "sufficient interest to maintain [the] action" to void the later conveyances due to lack of capacity. *Id*. at 451.

In so holding, the Court distinguished *Sellman v. Sellman*, 63 Md. 520 (1885), which the Bank also relies upon in the instant appeal. There, the children and grandchildren of Joshua Sellman sued him and his second wife, Jane, seeking to have two deeds declared void. The deeds purported to convey property interests to Ms. Sellman, who was not the mother of Mr. Sellman's children. The children and grandchildren alleged that Mr. Sellman had been without capacity to make the deeds and that Ms. Sellman had procured the deeds by fraud. The trial court granted Mr. and Mrs. Sellmans' motion to dismiss on the ground that the children and grandchildren "had no such right or interest in the property as would entitle them to maintain a bill for the relief prayed." *Id.* at 522. The Court of Appeals affirmed. It reasoned that "[t]he children and grandchildren of a living ancestor cannot claim a right or maintain a suit in respect to the property of that ancestor while their interest in such property is merely in expectancy,

depending upon a future inheritance that, by possibility, may never occur." *Id*. Thus, the Court held that the children and grandchildren lacked standing to sue to void the deeds.[14]

We return to the case at bar. When suit was filed in 2012, John was the owner of the JDB Polices, but David had been appointed guardian of his property. In that capacity, David sought to void the Second Amendment and the assignments of the JDB Policies on John's behalf. There is no dispute that he had standing to do so. During the pendency of the litigation, John died, the proceeds of the policies were paid into the court registry, and the Bank stipulated that the assignments of the JDB Policies were *void ab initio* due to forgery. Thus, by the time the second amended complaint was filed, on September 27, 2013, the JDB policies had matured and the Bank was not the assignee of those policies.

Like the daughter in *Willoughby*, and unlike the children and grandchildren in *Sellman*, the Blue Heron Trust had a vested property interest in the proceeds of the JDB Policies because it was the designated beneficiary of those policies and John had died. That property interest gave David standing to sue on behalf of the trust to have the court resolve a dispute over the trust's entitlement to the proceeds of the JDB Policies vis-à-vis

[14] The Court noted that if the children petitioned for Mr. Sellman to be declared incompetent and were successful in having a guardian appointed, that guardian could sue on Mr. Sellman's behalf to void the deeds.

the Bank, which now claimed an interest based solely upon paragraph ten of the Second Amendment.

The Bank's argument that David lacked standing because he was neither a signatory to the Second Amendment nor a third-party beneficiary of it is not on point because David was not seeking to enforce any right under the Second Amendment. Rather, on behalf of the Blue Heron Trust, he was taking the position that John's promise to assign the JDB Policies to the Bank in the Second Amendment was unenforceable, due to his incapacity, and the proceeds from the JDB Policies should be paid to the Blue Heron Trust as the named beneficiary in the policies. There plainly was a real and justiciable controversy "capable of protection through litigation" between the Blue Heron Trust, as the beneficiary of the JDB Polices, and the Bank, as a party to the Second Amendment. Therefore, David, as trustee of the Blue Heron Trust, had standing to pursue the declaratory judgment action with respect to the JDB Policies.

B. Richard and Susan as Personal Representatives of the Estate.

As noted, the law is clear that if one party among several on the same side has standing, that is sufficient. Because David had standing to seek a declaration regarding

the Blue Heron Trust's property interest in the proceeds of the JDB Policies, it was not necessary for Richard and Susan also to have had standing. Nevertheless, they did.[15]

As the Bank acknowledges, as personal representatives of John's Estate, Richard and Susan had standing to sue to void the Second Amendment. *See Atkinson v. McCulloh*, 149 Md. 662, 673 (1926) (A contract made by an incompetent is voidable and may be "avoided at the instance of the incompetent person, and, *in the event of his death, by his personal representatives or heirs*[.]") (emphasis added). The Bank maintains, however, that even though Richard and Susan were named plaintiffs as trustees of the Family Trust, the fact that they were not also identified as suing in their capacity as personal representatives of the Estate meant that they could not satisfy any standing requirement.

Richard and Susan point out that, under the Maryland Rules, special appearances have been abolished, *see* Rule 2-131(d), and in a pleading "[i]t is not necessary to aver

[15] The Bank did little to raise the issue of Richard's and Susan's lack of standing—other than mention in an unrelated filing that the personal representatives had "abandoned" any claims they may have had and raising, on the day of trial, the unspecified affirmative defense of "lack of standing with respect to the JDB Polices." The court's only ruling regarding standing concerned the Blue Heron Trust. Even if the standing issue regarding the personal representatives of the Estate was not raised or decided below, we exercise our discretion to consider it on appeal. *See* Md. Rule 8-131(a).

the capacity of a party to sue or be sued[.]" *See* Md. Rule 2-304(a). Thus, if they had sued without specifying the capacities in which they were acting, they could pursue claims in various capacities; and not identifying themselves as suing in their capacity as personal representatives of the Estate did not preclude them from pursuing claims in that capacity. We agree with this argument in the circumstances here. Richard and Susan participated in this case as party plaintiffs, both in discovery and at trial. Indeed, being present and testifying at trial, they were subject to questioning about the Estate and the positions they were taking on its behalf. Moreover, and importantly, the Bank in its counterclaim specified that Richard and Susan were being sued as personal representatives of the Estate. By the time of trial, the Bank's sole remaining claim in its counterclaim was the "mirror image" of the plaintiffs' declaratory judgment claim. It would make little sense, given that the claims essentially were the same, to treat Richard and Susan as acting as personal representatives of the Estate for purposes of one claim and not the other.

David, Richard, and Susan each had standing in this case. The standing of any one of them would be sufficient. Accordingly, the court's ruling on standing was not in error.

II.

The Bank next contends the trial court's factual finding that the Bank knew or was willfully blind to the fact that John did not have the mental capacity to enter into the

Second Amendment when he did so was clearly erroneous. It complains that the court "appeared to find that a person with dementia is to be presumed to be incompetent to execute legal documents"; that the court ignored evidence showing that David and other members of the Buckingham family intentionally concealed from it and others the extent of John's illness; and that the court misconstrued Anderson's awareness of "senility" as awareness of "dementia and incompetence."

David, Richard, and Susan respond that the record is replete with competent and material evidence supporting the trial court's non-clearly erroneous factual finding that the Bank, through its agents, either had actual knowledge that John was incapacitated by dementia when he executed the Second Amendment or was willfully blind to that fact.

Our review of a case that is tried to the court is governed by Rule 8-131(c). We "review the case on both the law and the evidence" and "will not set aside the judgment of the trial court on the evidence unless clearly erroneous," giving "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). "The deference shown to the trial court's factual findings under the clearly erroneous standard does not, of course, apply to legal conclusions." *Nesbit v. Gov't Employees Ins. Co.*, 382 Md. 65, 72 (2004). "We review *de novo* the circuit court's application of the law to the undisputed facts before it." *PNC Bank, Nat'l Ass'n v. Braddock Props.*, 215 Md. App. 315, 322 (2013).

The legal principles governing mental capacity are well established:

> [T]he law presumes that every [person] is sane and possesses the requisite mental capacity to execute the instrument attacked and the burden rests, as a consequence, upon those who allege the contrary. Testimony in order to be legally sufficient to overthrow the presumption in favor of a person's sanity and capacity, must be directed to the date of the execution of the paper attacked and must tend to show that he was incompetent at that particular time.

Gordon v. Rawles, 201 Md. 503, 512–13 (1953) (internal citation omitted). A contract made by a party without capacity due to mental incompetency is void unless the terms are fair *and* the other party was without knowledge of the incompetency at the time the contract was made, in which case it is voidable. *James B. Nutter & Co. v. Black*, 225 Md. App. 1, 16–17 (2015).

The Bank does not dispute Dr. Sadlock's unrefuted testimony that John did not possess the requisite mental capacity to enter into the Second Amendment at the time it was executed, nor does it dispute that there was evidence that its agents (including Anderson) were informed that John had been diagnosed with dementia. Rather, it disputes that this knowledge was sufficient to put it on notice that John was mentally incompetent and therefore lacked capacity to enter into the Second Amendment. We disagree.

The trial court made non-clearly erroneous factual findings that in November 2009 David told Anderson, an agent of the Bank, that John had a mental disease that rendered

him incapable of conducting Sun Control's business; that in March or April of 2010 Thomas told Wexler, also an agent of the Bank, that John had been diagnosed with advanced dementia and would die within six months; and that Wexler relayed this information to the Bank no later than April 2010, two months before the Second Amendment was executed. The court further found that Corish, acting as outside counsel for the Bank on Sun Control matters, warned the Bank that it should have John evaluated by a physician because of Corish's concerns about John's capacity to execute the Second Amendment and that Corish referenced "prior discussions" he had had with the Bank about John's mental capacity.

The court rationally inferred from this evidence and evidence tending to show that the Bank was in a hurry to execute the Second Amendment that the Bank knew John did not have the mental capacity to enter into the Second Amendment but feared that, if it made inquiries or sought to have him evaluated, the deal would be "stopped in its tracks." These findings and the inferences reasonably drawn from them were amply supported by competent and material evidence in the record and were not clearly erroneous. The trial court did not proceed on an unfounded legal assumption that a person with dementia is presumed to be incompetent to enter into a legal agreement nor did it ignore evidence that the Buckingham children did not want to generally reveal to the public at large John's mental condition. The court honed in on and credited evidence that John's dementia was

advanced, progressive, and terminal and that agents of the Bank were told of John's condition, such that the Bank's counsel voiced concern that the very challenge to his capacity to enter into the Second Amendment that this case concerns would come to fruition.

III.

After our mandate issued in the first appeal, the Bank filed a motion for reconsideration or, in the alternative, for a new trial based upon newly discovered evidence.[16] As pertinent, it alleged that after the declaratory judgment was entered it received documents in discovery in the related federal case concerning the Blue Heron Trust that were not disclosed during discovery in the instant case and that directly contradicted David's testimony at the bench trial. Specifically, the Bank learned that on June 25, 2010, just nine days after John executed the Second Amendment, he executed a promissory note ("the Note") as a borrower in a loan transaction with David. In that transaction, David agreed to lend Tower Oaks—a business entity owned and operated by

[16] As the Bank points out, in light of this Court's holding in the first appeal that the declaratory judgment was not a final judgment due to outstanding, adjudicated claims against Thomas and Daniel, the circuit court retained revisory power over the declaratory judgment without regard to the limitations in Rule 2-535. *See Waterkeeper Alliance, Inc. v. Md. Dep't of Agriculture*, 439 Md. 262, 277 (2014) (explaining that non-final orders are subject to revision by the court at any time).

the Buckingham family— $160,000 to allow it to cure a default on a mortgage loan on its property. John signed the Note individually, as manager of Tower Oaks and another LLC, and as president of a third entity, TOB Inc. Elizabeth also signed individually and as an "authorized person" for the business entities. Susan witnessed their signatures. The loan was made at a rate of 7% per annum, with an additional 3% per annum upon default, and was secured, in part, by one of the JDB Policies, up to the amount of outstanding principal and interest on the loan. The borrowers agreed to make payments on the loan commencing August 10, 2010, in the amount of $10,000 per month.

In its motion, the Bank asserted that David, Susan, and Richard all had actual knowledge of the Note and intentionally withheld that information from the Bank during discovery in this case; that David lied during his testimony at the bench trial when he said he would never have allowed John to enter into any business transaction in June 2010 because he was incompetent to do so; and that the trial court's finding that the Bank had actual knowledge that John was suffering from advanced dementia when the Second Amendment and related assignments were executed relied heavily upon David's credibility. It asked the court to vacate the declaratory judgment and enter judgment in its favor or, in the alternative, to vacate the judgment and "issue a new order after reopening the record and hearing such additional evidence as it deems necessary[.]"

David, Susan, and Richard opposed the motion for reconsideration. Among other things, they argued that the June 25, 2016 loan transaction was not evidence that David had sought to take advantage of John. To the contrary, it was evidence that David had used his personal funds to try to help his father; that "[t]he Bank's claim that David's testimony regarding his father's incapacity was the lynchpin of [the trial judge's] findings [was] demonstrably false"; that, in any event, David testified truthfully; and that the court should not reconsider its prior ruling or grant a new trial.

The Bank filed a reply and a supplemental memorandum in support of its motion, to which David, Susan, and Richard replied.

On January 30, 2017, the circuit court denied the motion for reconsideration or, in the alternative, for a new trial. In an eight-page memorandum opinion, the court explained that the "crux of the Bank's argument . . . is that newly discovered evidence casts doubt on the credibility of David['s] . . . testimony, upon which the Court relied heavily in finding that the Bank knew of John['s] . . . incompetence at the time that he signed the Second Amendment . . . ." The court agreed with the Bank that that evidence established that David had done "exactly the same thing the Bank did, when he had his father sign a complicated legal document, undoubtedly knowing his father was incompetent to execute said document." However, the court rejected the Bank's suggestion that David's testimony was the key evidence it had relied upon in finding that

the Bank had actual knowledge of John's advanced dementia. Rather, that had been "only one small piece of evidence, and certainly nowhere near the most important piece of evidence, regarding the Bank's knowledge or willful blindness to the fact that John . . . was incompetent at the time he executed the Second Amendment . . . ." Evidence that David "turn[ed] around and [did] the same thing that the Bank did" did not alter the fact that John was incompetent. The court explained that if the Bank had known about the Note prior to the bench trial, it could have used it to impeach David, but it "would have had no value as substantive evidence." The "evidence would already have been overwhelming that David not only knew his father was incompetent, but he was in the process of petitioning for his guardianship at the time he had his father sign the [N]ote." For all those reasons, the court determined that evidence about the Note would "not have changed the Court's decision in any way."

We review the denial of a motion for a new trial or for reconsideration for abuse of discretion. *See RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 673 (2010); *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 363 (2017). The court found that evidence that David procured John's signature on a Note shortly after the Second Amendment was executed would not have had any impact on the court's two central findings in the original proceeding: that John was incompetent when he executed the Second Amendment *and* that the Bank knew that he was incompetent at that time. This is consistent with the 2013

bench ruling, which reflects that the court relied primarily upon documentary evidence, as well as testimony from Anderson, in finding that the Bank had actual knowledge of John's incompetence prior to the execution of the Second Amendment. As the fact-finder, the trial court is plainly in the best position to assess whether newly discovered would have affected its decision and it did not abuse its broad discretion by denying the Bank's motion.

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