Circuit Court for Washington County
Case No. 21-C-15-053393

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1471

September Term, 2016

DAN STEBBING, ET AL.

v.

SASSAN SHAOOL, ET AL.

---

*Woodward,
Kehoe,
Shaw Geter,

JJ.

Opinion by Woodward, J.

Filed: August 5, 2019

*Woodward, Patrick L., J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

Six months after being discharged of their debts in bankruptcy, Daniel[1] and Meredith Stebbing, along with Blue Star Fitness, LLC, an entity they owned (collectively "the Stebbings"), appellants, filed suit in the Circuit Court for Washington County, against their former landlord and one of their creditors, Sassan Shaool, and six businesses in which Shaool held an interest (collectively "the Shaool Defendants"),[2] and Fuji, LLC, d/b/a Fuji Chinese Cuisine and Sushi ("Fuji"), appellees, asserting claims for negligence, fraud, negligent misrepresentation, and tortious interference with contract. The circuit court granted summary judgment in favor of appellees, concluding that, because the Stebbings had asserted within their bankruptcy case that their potential cause of action against the Shaool Defendants and Fuji had no value, they were estopped from seeking $800,000 in damages in their later filed civil suit.

The Stebbings appeal, presenting three questions,[3] which we have condensed and rephrased as one: Did the circuit court err by granting appellees' renewed motion for

[1] Mr. Stebbing's name appears as "Dan" in the caption of his complaint and in the caption of this appeal. We refer to him by his full name as it appears elsewhere in the record.

[2] These businesses are: (1) Rosewood Commons, LLC; (2) Washco Management Corp.; (3) Rosewood Village Phase II-A, LLC; (4) Rosewood Investments, LLC; (5) Rosewood Pool & Fitness Club, LLC; and (6) S&S Fitness, LLC.

[3] The questions as posed by the Stebbings are:

> 1. Did the trial court commit reversible error by granting summary judgment based entirely on an irrelevant and non-precedential decision of the United States Bankruptcy Court related to how the debtor's valuation of assets on various schedules affects the amount a debtor may later claim as

summary judgment? We answer that question in the negative and shall affirm the judgment of the circuit court.

BACKGROUND

In May 2007, the Stebbings and their business partners, David and Monica Pittenger, entered into a franchise agreement with Anytime Fitness to open a gym in Hagerstown, Maryland ("the Gym"). To manage the Gym, the Stebbings and the Pittengers formed D&D Fitness, LLC ("D&D"), a Maryland limited liability company. Daniel Stebbing was D&D's managing member.

In July 2007, D&D entered into a lease agreement for a first-floor space in the Rosewood Commons shopping center, a Shaool owned business, with appellee, Washco Management Corp., a property management company also owned by Shaool. Rosewood Commons was a desirable location because it was adjacent to "a large residential community known as Rosewood Village Apartments," another Shaool entity. According

---

> exempt from his or her bankruptcy estate and not whether the debtor is thereafter limited to his or her recovery in future civil litigation for which all elements of the civil claim had yet to materialize?
>
> 2. Did the trial court commit reversible error by basing the grant of summary judgment on a finding of fact that Appellants knew or should have known the value of this potential litigation at the time of the bankruptcy proceeding where Appellants were admittedly aware of the facts on which liability would be based, but unable to quantify or evidence the necessary element of damages?
>
> 3. Did the trial court commit reversible error by granting Motion for Summary Judgment #2 without treating Motion for Summary Judgment #2 as a motion to exercise revisory power subject to the strict standard of modification by the court only in the case of fraud, mistake, or irregularity?

to the Stebbings, Shaool represented to them during the lease negotiations "that there existed no competitor gym in the surrounding area and that neither . . . Shaool nor any of [the Shaool Defendants] would allow a competitor gym to lease space," and that "[the Shaool Defendants] would provide all necessary management and maintenance of the Rosewood Commons location such that [the Gym] could run smoothly and without problems from the landlord or surrounding tenants[.]"

Fuji also was a tenant at Rosewood Commons and operated its restaurant in the space directly above the Gym. The restaurant's grease trap regularly overflowed during D&D's tenancy, causing leakage into the Gym. Despite repeated complaints to Fuji, certain Shaool Defendants, and government entities in Washington County, the grease trap issue was not resolved.

In August 2009, Shaool opened a competing gym in the Rosewood Village Apartment complex called Rosewood Pool & Fitness Club, LLC. For new and renewing Rosewood Village tenants, the cost of gym membership to Rosewood Pool & Fitness Club, LLC was included in their lease agreements. As a direct consequence, many patrons of the Gym who resided at Rosewood Village terminated their membership agreements with the Gym. Consequently, in April 2010, Anytime Fitness's corporate office sent a cease and desist letter to Shaool demanding that he immediately stop operating his gym. Shaool refused.

Despite these issues, in May 2012, D&D renewed its franchise agreement with Anytime Fitness. The new franchise agreement required D&D to make improvements to the physical franchise location.

In October 2012, Fuji's grease trap failed completely. Some of the Gym's equipment and all of its flooring were permanently ruined and "[a]t least a handful of [G]ym members canceled their membership" because of "the lingering smell."

By the end of 2012, D&D was looking for a new location. D&D and Shaool agreed to enter into a joint venture whereby the Gym would reopen at Rosewood Village within the space utilized by the competing fitness center. After D&D moved its fitness equipment to the new location, Shaool refused to sign an agreement with Anytime Fitness and refused to update the gym location in accordance with D&D's May 2012 franchise agreement.

At the same time, the Stebbings and the Pittengers had been negotiating a buyout by the Stebbings of the Pittengers' interest in the Gym. In January 2013, they dissolved D&D Fitness, LLC; the Stebbings agreed to indemnify the Pittengers for D&D's debts, totaling $130,000, and the Stebbings formed Blue Star Fitness, LLC.

In May 2013, Anytime Fitness sued D&D and Daniel Stebbing in the United States District Court for the District of Minnesota for breach of the franchise agreement, seeking damages and injunctive relief. They ultimately settled, with Daniel Stebbing agreeing that he would immediately stop operating the Gym and would cease his work in the fitness industry for an agreed period.

On February 28, 2014, the Stebbings filed a voluntary joint petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maryland ("the Bankruptcy Petition"). They estimated that after their "exempt property [was] excluded and administrative expenses paid, there [would] be no funds available for distribution to unsecured creditors."

On the form titled "Schedule B – Personal Property" under Item 13, titled "Stock and interests in incorporated and unincorporated businesses[,]" the Stebbings listed D&D. They described their interest as follows:

> D&D Fitness, LLC DBA Anytime Fitness [franchise terminated] [owned with David D. Pittenger and Monica A. Pittenger], predecessor to Blue Star Fitness, LLC (Blue Star Fitness never conducted business)]
> D&D Fitness, LLC has no assets other than equipment (secured by Comerica Bank) and *a potential cause of action by D&D/Debtors resulting from damage to business.*

(Brackets in original) (emphasis added). The Stebbings asserted that the "Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption" was "0.00."

On the form titled "Schedule C – Property Claimed as Exempt," the Stebbings each separately listed their interest in D&D, under the heading, "Stock and Interests in Businesses," with the same description of D&D's assets as set forth above, including the "potential cause of action" language. They asserted that their interest in that property was exempt pursuant to Md. Code (1974, 2013 Repl. Vol.) § 11-504(b)(5) of the Courts and Judicial Proceedings Article ("CJP"), which is Maryland's "wildcard" exemption,

permitting a debtor to exempt any property of any kind valued up to $6,000. The Stebbings asserted that the "Value of Claimed Exemption" and the "Current Value of Property Without Deducting Exemption" both were "[$]0.00." There is no dispute that the "potential cause of action" identified on the Stebbings' Schedules B and C refers to the claims at issue in the instant case.

At the meeting of creditors, which was attended by the Pittengers and their counsel, the trustee asked the Stebbings about the nature of their "potential cause of action."[4] The Stebbings' bankruptcy attorney explained that "there was a leak from an upstairs business that essentially closed D&D Fitness down." Daniel Stebbing then testified about many of the same facts alleged in the complaint in this action. The Stebbings' attorney asserted that his clients had consulted with another attorney[5] about the potential claims and that attorney had advised the Stebbings that he did not think "the claims are that strong" and "to the extent that there are claims [they] . . . belong to D&D[.]" He also asserted that the Stebbings could not afford to pursue the claims.

On August 29, 2014, the Bankruptcy Court granted a formal discharge of the Stebbings' debts, and the bankruptcy case was closed as a "no asset" case, meaning that there was no distribution to any of the Stebbings' creditors.

[4] The date of meeting of creditors is not apparent from the record, but it was sometime between February and August 2014.

[5] The attorney with whom they consulted is the Stebbings' counsel in the instant case.

Just over six months later, on March 13, 2015, the Stebbings filed the instant lawsuit. In Count I, they alleged that Fuji, Washco Management Corp., Rosewood Commons, LLC, and Rosewood Village Phase II-A, LLC were negligent in their use, maintenance, and repair of the grease trap at Fuji's restaurant, causing the grease trap failure and the resulting damage to the Gym. In Counts II and III, they alleged that the Shaool Defendants made intentional and negligent misrepresentations during the lease negotiations and during the joint venture negotiations. In Count IV, they alleged that all defendants tortiously interfered with the Stebbings' franchise agreement with Anytime Fitness. The Stebbings sought $500,000 in compensatory damages in Counts I, III, and IV and $800,000 in compensatory and punitive damages in Count II. All of the underlying facts alleged in the complaint pertain to actions or the failure to act by appellees that predate the filing of the Stebbings' Bankruptcy Petition, except that the Stebbings alleged that they were "forced to move out-of-state with their two young children after enduring an arduous Chapter 7 Bankruptcy discharge proceeding . . . related solely to the facts and circumstances set forth in this Complaint."

On November 24, 2015, the Shaool Defendants moved for summary judgment, arguing that, because all of the Stebbings' claims accrued prior to the filing of the Bankruptcy Petition, all of the claims had vested in the bankruptcy trustee for the benefit of the estate. Consequently, they maintained that the Stebbings lacked standing to pursue the action. By order entered December 29, 2015, the circuit court denied the motion.

In May 2016, the Shaool Defendants filed a renewed motion for summary judgment. Relying primarily upon *In re Forti*, 224 B.R. 323 (Bankr. D. Md. 1998), they asserted that by assigning a zero value to their claimed exemption of the instant cause of action on Schedule C of their Bankruptcy Petition, the Stebbings only preserved their interest in that asset up to that value and any value exceeding that amount was not exempted from the bankruptcy estate. Further, the Shaool Defendants argued that Counts II (fraud) and III (negligent misrepresentation) were barred by the applicable three-year statute of limitations, and that some of the damages sought in Count I also would be barred by limitations.

The Stebbings opposed the motion, arguing that the circuit court's denial of the original motion for summary judgment was *res judicata* as to the renewed motion; that the Stebbings appropriately valued their potential cause of action at zero because it had not yet been filed and its value was unknown; that because the trustee did not object to the exemption and they received a discharge, they had standing to pursue the claims; and that none of their claims were barred by limitations.

The circuit court held a hearing on the renewed motion on August 26, 2016. During the hearing, Fuji's attorney expressly adopted and incorporated the arguments made by the Shaool Defendants in their renewed motion for summary judgment and asked the court also to grant summary judgment as to Fuji. After hearing argument, the court ruled from the bench. It reasoned, in reliance on the persuasive authority of *In re Forti*, that by valuing their potential cause of action at $0 within their bankruptcy

schedules, the Stebbings were estopped from later bringing a cause of action and seeking damages in excess of that amount. Because this ruling was dispositive as to all counts of the complaint, the court declined to rule on the statute of limitations ground.

The court signed an order granting summary judgment as to all defendants the same day, which was entered on August 29, 2016. This timely appeal followed. We shall include additional facts as necessary to our discussion of the issues.

STANDARD OF REVIEW

Our standard on review of an order granting summary judgment is well-established:

> "On review of an order granting summary judgment, our analysis 'begins with the determination [of] whether a genuine dispute of material fact exists; only in the absence of such a dispute will we review questions of law.'" *D'Aoust v. Diamond*, 424 Md. 549, 574, 36 A.3d 941, 955 (2012) (quoting *Appiah v. Hall*, 416 Md. 533, 546, 7 A.3d 536, 544 (2010)); *O'Connor v. Balt. Cnty.*, 382 Md. 102, 110, 854 A.2d 1191, 1196 (2004). If no genuine dispute of material fact exists, this Court determines "whether the Circuit Court correctly entered summary judgment as a matter of law." *Anderson v. Council of Unit Owners of the Gables on Tuckerman Condo*., 404 Md. 560, 571, 948 A.2d 11, 18 (2008) (citations omitted). Thus, "[t]he standard of review of a trial court's grant of a motion for summary judgment on the law is de novo, that is, whether the trial court's legal conclusions were legally correct." *D'Aoust*, 424 Md. at 574, 36 A.3d at 955.

Koste v. Town of Oxford, 431 Md. 14, 24-25 (2013) (alterations in original).

DISCUSSION

I.

Before turning to the merits, we briefly address two threshold issues. First, the Shaool Defendants move to dismiss this appeal pursuant to Rule 8-501(c)[6] based upon the Stebbings' failure to include in the record extract all parts of the record necessary for resolving the questions presented. Although we agree that the Stebbings neglected to include relevant material in the record extract,[7] we exercise our discretion under Rule 8-602(c)(6)[8] to deny the motion and proceed to the merits of the appeal. *See McAllister v. McAllister*, 218 Md. App. 386, 399 (2014) ("[T]his Court typically will not dismiss an appeal, even in the face of noncompliance with Rule 8-501, unless the appellee sustains prejudice.").

Second, the Stebbings contend that the circuit court's grant of the renewed motion for summary judgment amounted to an improper exercise of revisory authority over the order denying the original motion for summary judgment, in violation of Rule 2-535. They are mistaken. Rule 2-535 permits a circuit court to "exercise revisory power and

[6] Rule 8-501(c) states, in pertinent part, that "[t]he record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal."

[7] The Stebbings did not include in the record extract their Bankruptcy Petition or the transcript of the meeting of creditors, both of which had been attached as exhibits to the Shaool Defendants' renewed motion for summary judgment and were relevant to the issues on appeal.

[8] Rule 8-602(c)(6) grants discretion to an appellate court to dismiss an appeal if the record extract does not comply with Rule 8-501.

control over [a] judgment" upon a motion filed within thirty days after the entry of that judgment, and at any time "in case of fraud, mistake, or irregularity." Md. Rule 2-535(a) & (b). That Rule only applies to final judgments. *Waterkeeper All., Inc. v. Md. Dep't of Agric.*, 439 Md. 262, 277 (2014). "Thus, non-final orders are 'subject to revision ... without regard to Rule 2-535.'" *Id*. (alteration in original) (quoting *Albert W. Sisk & Son, Inc. v. Friendship Packers, Inc.*, 326 Md. 152, 159 (1992)). An order denying a motion for summary judgment is an interlocutory order and is subject to revision by the trial court at any time prior to the entry of a final judgment (and beyond in accordance with Rule 2-535(b)). *See, e.g., Bradley v. Fisher*, 113 Md. App. 603, 605 (1997) ("While an order granting summary judgment in favor of all defendants . . . would be a final judgment, an order denying such a motion is not a *final order*." (emphasis in original)). Thus the court had authority to grant the renewed motion for summary judgment.

II.

On the merits, the Stebbings contend that the circuit court erred by relying upon what it characterizes as the "non-precedential and wholly irrelevant" decision *In re Forti*, 224 B.R. 323. The Shaool Defendants and Fuji urge that that the court correctly applied the reasoning from *In re Forti* to conclude that the Stebbings did not exempt any value from the instant cause of action from the bankruptcy estate. Alternatively, they assert that the Stebbings are judicially estopped from bringing this action. For the following reasons, we shall hold that the circuit court did not err by granting summary judgment in favor of the appellees based upon their representations within their bankruptcy schedules.

A.

"Bankruptcy allows one overcome by debt to obtain a discharge of debts and have, more or less, a fresh start." *Morton v. Schlotzhauer*, 449 Md. 217, 221 (2016). "When a debtor files a Chapter 7 bankruptcy petition, all of the debtor's assets become property of the bankruptcy estate . . . subject to the debtor's right to reclaim certain property as 'exempt.'" *Schwab v. Reilly*, 560 U.S. 770, 774 (2010) (citing 11 U.S.C. §§ 541 & 522(l)). A debtor is obligated to file a schedule of all assets and liabilities. *Bowie v. Rose Shanis Fin. Servs., LLC*, 160 Md. App. 227, 238-39 (2004) (citing 11 U.S.C. §521(l)), *cert. denied*, 385 Md. 512 (2005). The debtor also must file "a list of property that the debtor claims as exempt[,]" *i.e.*, property that the debtor seeks to have excluded from the bankruptcy estate. 11 U.S.C. § 522(l). "A party in interest to the bankruptcy proceeding, in turn, may object to the debtor's claims for exemptions." *Schlotzhauer v. Morton*, 224 Md. App. 72, 88 (2015), *aff'd*, 449 Md. at 217 (citing Fed. R. Bankr.P. 4003(b)(1)). If an interested party fails to object within the time allowed, the property claimed as exempt will be excluded from the estate.[9] *See Schwab*, 560 U.S. at 774 (citing 11 U.S.C. § 522(l)).

[9] Federal exemptions are set forth at 11 U.S.C. 522(d), but Maryland has opted-out of the federal exemption scheme. *See* Md. Code (1974, 2013 Repl. Vol.) § 11-504(g) of the Courts and Judicial Proceedings Article ("CJP") ("In any bankruptcy proceeding, a debtor is not entitled to the federal exemptions provided by § 522(d) of the federal Bankruptcy Code."). Maryland sets forth bankruptcy exemptions at CJP § 11-504.

While the bankruptcy estate remains open, it is the owner of "all legal or equitable interests of the debtor in property[,]" 11 U.S.C. § 541(a)(1), including "causes of action belonging to the debtor at the commencement of the [bankruptcy] case." *Bowie*, 160 Md. App. at 236. With respect to a cause of action, "[t]he bankruptcy trustee is the proper party to bring an action for injury [on behalf of the debtor]" and "the debtor does not have standing to bring a claim." *Pac. Mortg. & Inv. Grp., Ltd. v. Horn*, 100 Md. App. 311, 319 (1994). If a debtor has properly scheduled his or her assets and the trustee closes the case without administering the assets, however, then "at the time of the closing of [the] case [the asset] is abandoned to the debtor[.]" 11 U.S.C. § 554(c).[10]

B.

The circuit court determined, in reliance upon the reasoning of the United States Bankruptcy Court for the District of Maryland in the *In re Forti* decision, that because the Stebbings valued their "potential cause of action" at $0.00, the damages they could seek in the instant case were capped at that amount. At issue in *In re Forti* was the propriety of exemptions claimed by Chapter 7 debtors Michael and Geraldine Forti. The Fortis claimed exemptions on their Schedule C for their residence, a television, and two vehicles that they claimed were valued at $0. 224 B.R. at 324. The trustee objected to the valuation of $0, arguing that "full exemption of those assets valued as $0.00 [was]

[10] Assets also may be abandoned after "notice and a hearing" on motion of the trustee or another interested party based upon a determination that the assets are "burdensome to the estate" or of "inconsequential value and benefit to the estate." 11 U.S.C. § 554(a) & (b). No such motion was filed in the instant case.

improper." *Id*. at 325. The Bankruptcy Court overruled the trustee's objection but emphasized that, "[w]hen a debtor assigns a dollar value to an interest that the debtor is claiming as exempt, the debtor's exemption is limited to that value." *Id*. at 326-28. Thus, although the Fortis were permitted to claim exemptions for property that they valued as worthless, their "interests in these assets are exempt *only to the extent of zero dollars*. In effect, no dollar amount of the exemption has been preserved." *Id*. at 327 (emphasis added). The Bankruptcy Court reasoned that, if the Fortis were correct

> that there is no equity in these assets . . ., the lack of exempt amount in these assets lacks significance. If there is no equity in the property, there is nothing for the Trustee to distribute. If the [Fortis] are incorrect in alleging that there is no equity in any of these assets, however, then their claimed exemption in those assets is limited to the amount stated, namely, zero.

Id. Consequently, at the time of any distribution to the Fortis' creditors, "[a]ll of [the Fortis'] equity in such property, if any, remains property of the bankruptcy estate." *Id*. at 328.

Unlike in *In re Forti*, in the case at bar, the trustee did not raise any objections to the Stebbings' claimed exemptions, determined that there were no assets to administer, and granted a discharge without any distribution to the creditors. *See, e.g., In re Mendiola*, 99 B.R. 864, 867-68 (Bankr. N.D. Ill. 1989) (discussing no-asset liquidation cases). Thus, at issue in our case is not the propriety of the Stebbings' claimed exemptions, but whether the "potential cause of action" was abandoned by the bankruptcy trustee when the case was closed without administering the asset.

C.

Three cases decided by this Court and the Court of Appeals are instructive. First, in *Adams v. Manown*, 328 Md. 463 (1992), a Chapter 7 debtor failed to schedule a $43,000 loan that he had made to his then girlfriend for the purchase of a house in her name. After they broke up, he sued her to collect on the loan (and other alleged unpaid debts). *Id.* at 468-69. She moved for summary judgment, arguing that the doctrine of unclean hands barred his claim because the debtor had concealed the alleged loan from the bankruptcy court. *Id.* at 469. The trial court denied the motion and the debtor prevailed at trial, receiving $43,000 in damages. *Id.* at 469-72. On appeal from that judgment, this Court reversed, concluding that the trial court had erred by denying summary judgment based on the unclean hands doctrine. *Manown v. Adams*, 89 Md. App. 503 (1991). The Court of Appeals granted *certiorari* and reversed. *Adams*, 328 Md. 463. The Court held that the doctrine of unclean hands was inapplicable, but that the failure of the debtor to schedule the loan meant that it never had been abandoned by the bankruptcy trustee and remained property of the bankruptcy estate. *Id.* at 476-80. Thus the trustee, not the debtor, was the real party in interest and the debtor lacked standing to pursue the case. *Id.* at 480. The Court reasoned that it would not be in the interest of justice for summary judgment to be entered in favor of the defendant, however, because the damages awarded to the debtor belonged, first and foremost, to his creditors. *Id.* at 480-81. Thus, under those unique circumstances, the Court remanded the case for notice to be served on the trustee and to allow the trustee to determine, in the trustee's

discretion, whether to reopen the bankruptcy estate and administer the asset by intervening. *Id.* at 481.

In *Pac. Mortg.*, 100 Md. App. 311, a debtor (Horn) filed suit against her mortgage lender raising claims under the Maryland Consumer Loan Law while her Chapter 13 bankruptcy petition was pending. Horn listed the lawsuit as an asset on her bankruptcy schedules. *Id.* at 317. After Horn's creditors were paid in full (except for the mortgage lender), the trustee closed her case without administering that asset. *Id.* As pertinent, the trial court ruled that, although Horn lacked standing to pursue her lawsuit against her mortgage lender when she filed it, she had acquired standing to maintain the suit, because the trustee had since abandoned the lawsuit when it closed her case. *Id.* at 319. On appeal, we affirmed. In so holding, we rejected the lender's reliance on *In re Schmid*, 54 B.R. 78 (Bankr. D. Or. 1985), a decision of the United States Bankruptcy Court for the District of Oregon. *Id.* at 320. In that case, the bankruptcy court found that a "debtor's description in the schedules of his cause of action was ambiguous and that he failed to 'properly 'schedule' the asset.'" *Pac. Mortg.*, 100 Md. App. at 320 (quoting *In re Schmid*, 54 B.R. at 79). In contrast, there was no dispute that Horn had "properly scheduled" her lawsuit in her bankruptcy case. *Id.* Thus we held that the trustee had been put on notice of the existence of Horn's lawsuit and, by not administering that asset and closing the case, had evinced an intent to abandon it. *Id.* at 320-21. We emphasized, moreover, that, because Horn's other creditors all had been paid in full and the mortgage

lender had a secured interest, "there would be no purpose for the trustee to assert and maintain control over [the] suit." *Id.*

This Court reached the opposite conclusion in *Bowie*, 160 Md. App. 227. In that case, Rose Shanis Financial Services ("RSFS") extended a loan to Bowie that was secured by two vehicles owned by him. *Id.* at 232. Bowie defaulted on the loan and RSFS repossessed the vehicles, sold one, and relinquished the second vehicle to a senior lienholder. *Id.* Thereafter, Bowie filed a voluntary petition for bankruptcy under Chapter 7. *Id.* He did not schedule as an asset any potential cause of action against RSFS. *Id.* About a year after the bankruptcy case was closed and Bowie's debts were discharged, he filed suit against RSFS. *Id.* at 234. RSFS moved for summary judgment arguing that the claims against it belonged to the bankruptcy estate, not to Bowie. *Id.* The circuit court agreed and granted summary judgment. *Id.* at 231.

On appeal to this Court, we affirmed. We explained that it was well-established that upon filing for bankruptcy, the estate becomes the owner of any potential cause of action belonging to the debtor. *Id.* at 236. Thus the issue before this Court was whether "the ownership of [Bowie's] claim and the consequential right or standing to bring . . . suit might ever revert to [him]." *Id.* at 237. We emphasized that, when a debtor alleges abandonment by the bankruptcy trustee, "the burden of proving such an abandonment is allocated to the debtor." *Id.* at 241 (citing *Stein v. United Artists Corp.*, 691 F.2d 885, 890-91 (9th Cir. 1982)). "[W]ith respect to an unscheduled cause of action, it is virtually impossible for a debtor to satisfy that burden[.]" *Id.* Bowie's assertion that the trustee

was on notice of his cause of action because he "explained the situation that is outlined in the Complaint" during the meeting of creditors, was unavailing because the debtor's duty to formally schedule a claim is paramount. *Id*. at 242-43. Even if the trustee learns of a potential claim through other means, if it is not properly scheduled, the trustee does not constructively abandon the claim by inaction. *Id.* at 243.

As to the disposition, this Court reasoned that, because the trustee had not abandoned Bowie's unscheduled claim against RSFS, that claim remained the property of the bankruptcy estate and Bowie lacked standing to pursue it in his own name. *Id.* at 248. Upon the closing of the bankruptcy estate, the ownership became "dormant," but did not revert to Bowie. *Id*. at 246. Because none of the "extremely unusual circumstances" identified in *Adams*, 328 Md. 463 were present,[11] there was no justification for this Court to order a stay to permit the reopening of the bankruptcy estate. *Id*. at 252-53. On the ground that Bowie lacked standing, this Court affirmed the grant of summary judgment in favor of RSFS.

We return to case at bar. Unlike in *Pacific Mortgage*, where there was no dispute that the debtor had "property scheduled" her cause of action, here the undisputed evidence showed that the Stebbings, in scheduling their "potential cause of action,"

[11] Those "extremely unusual circumstances" were that the issue of standing, arising from the debtor's failure to schedule his potential claim in his bankruptcy case, was raised for the first time by the Court of Appeals, and that unlike "the overwhelming majority of bankruptcy cases involving this issue of who owned a cause of action[,]" in *Adams* a money judgment had been entered in favor of the debtor. *Bowie*, 160 Md. App. at 250-54.

misrepresented to the trustee that it was worthless. They compounded this misrepresentation at the meeting of creditors when, upon being asked about the "potential cause of action," elaborated that they had consulted legal counsel and that he had advised them that the claims were not "strong." In granting summary judgment in favor of the appellees in this case, the circuit court recognized that it could not equate the "value" of the Stebbings' "potential cause of action" with the damages they later sought in the instant case,[12] but reasoned that it could be inferred from the amount of damages sought that the lawsuit was "worth a good bit of money." The circuit court rejected the Stebbings' contention that they could not assess the value of their potential claim when they filed their Bankruptcy Petition. To the contrary, the court found the record to be clear that "the damages that were alleged . . . existed at the time of the bankruptcy petition[.]" This conclusion is supported the Stebbings' allegation in their complaint that they were forced to file for bankruptcy based "solely [upon] the facts and circumstances set forth in [their] Complaint." They have been unable to cite to any evidence in the record to support their bald assertion that they "did not incur the majority damages [sic] related thereto until after the bankruptcy discharge[.]"[13]

[12] *See generally In re Polis*, 217 F.3d 899, 902-03 (7th Cir. 2000) (discussing the valuation of a potential legal claim within a bankruptcy case and concluding that "the *value* of the (uncertain) benefit is less than the *amount* of the benefit if it is received") (emphasis and alteration in original).

[13] As an example, the damages claimed by the Stebbings in Count I of their complaint are for "serious financial damages in the form of ruined equipment, ruined flooring, ruined fixtures, lost wages from days on which the [G]ym could not be open,

The Stebbings further misrepresented in their bankruptcy schedules the nature of the "potential cause of action" by including it on their Schedules B and C as part of their interest in a business entity – D&D – and as belonging to "D&D/Debtors." They did not separately schedule the "potential cause of action" under Item 21 on Schedule B ("Other contingent and unliquidated claims of every nature . . .)". During the meeting of creditors, their bankruptcy attorney advised the trustee that "to the extent that there are claims, we believe the claims belong to D&D[,]" not to the Stebbings individually, and that D&D was indebted to Comerica for a $150,000 loan securing the fitness equipment. Later the trustee asked the Stebbings' counsel to confirm that his clients did not intend to pursue a claim against the appellees "because you think probably that's a claim of D&D?" Counsel responded, "Correct[,]" adding that the Stebbings also could not afford to pursue the claim. Despite scheduling the potential claim as one belonging primarily to D&D and representing to the trustee that the claim was not one the debtors could bring individually, the Stebbings filed suit in their own names just six months after their debts were discharged.

Under the circumstances, although the "potential cause of action" was technically "scheduled," it was not "properly scheduled" and the Stebbings have not met the "burden of proving such an abandonment" by the trustee. *See Bowie*, 160 Md. App. at 241. Consequently, we hold that the asset was not constructively abandoned by the trustee by

lost contracts with [G]ym members, and ultimately, [their] breach of the Franchise Agreement with Anytime Fitness and inability to work in the fitness industry for a period of time."

operation of 11 U.S.C. §554(c) and remains the property of the bankruptcy estate. *See In re Schmid*, 54 B.R. at 80-81 (granting a trustee's motion to reopen a closed bankruptcy case to administer and distribute to creditors a money judgment in favor of the debtor in a lawsuit that was scheduled vaguely and never knowingly abandoned). Like in *Bowie*, there are no circumstances justifying the unusual disposition in *Adams* and the entry of summary judgment in favor of the appellees was proper. *See Bowie*, 160 Md. App. at 250-54.

D.

Even if we were to hold that the "potential cause of action" was abandoned, which we do not, we nevertheless would hold that summary judgment was granted properly to the appellees on the alternative basis that the Stebbings are judicially estopped from pursuing this lawsuit. We explain.

In granting summary judgment in favor of appellees, the circuit court reasoned that, if the Stebbings had assigned a value greater than zero to their "potential cause of action" or had "listed [it] as an unknown, the bankruptcy trustee may have explored it more, may have tried to pursue it." The court emphasized that, if the Stebbings had valued the cause of action at $500,000, the "bankruptcy trustee would have taken a good hard look at it." Noting that it was somewhat "akin to an estoppel issue[,]" the court ruled that it would be unfair to permit the Stebbings to claim in their Bankruptcy Petition that the "potential cause of action" was "worth zero," have their debts fully discharged, and then seek $500,000 to $800,000 in a civil action.

Judicial estoppel is firmly rooted in Maryland's common law:

> Maryland has long recognized the doctrine of estoppel by admission, derived from the rule laid down by the English Court of Exchequer . . . that a man shall not be allowed to blow hot and cold, to claim at one time and deny at another. . . . [W]e adopted the statement of that principle[:] Generally speaking, a party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his action.

Bank of New York Mellon v. Georg, 456 Md. 616, 653-54 (2017) (alternations in original). A three-prong test must be satisfied to allow application of the doctrine:

> (1) one of the parties takes a [ ] position that is inconsistent with a position it took in previous litigation, (2) the previous inconsistent position was accepted by a court, and (3) the party who is maintaining the inconsistent positions must have intentionally misled the court in order to gain an unfair advantage.

Id. at 654 (alteration in original). A party may be judicially estopped from taking a position of fact or of law. *Id.*

In the case at bar, the first two prongs are easily satisfied. As already discussed, the Stebbings assigned their "potential cause of action" a value of zero in their Bankruptcy Petition and then valued their claim at more than $500,000 when they filed the instant lawsuit six months later. These factual positions are inconsistent. The Stebbings' inconsistent position that their "potential cause of action" was worthless was accepted by the Bankruptcy Court when it discharged the Stebbings' debts and closed the case as a no asset liquidation.

We now turn to the third prong, which requires that the party maintaining inconsistent positions to have "intentionally misled the court in order to gain an unfair advantage." *Id*. The Court of Appeals' decision in *Kramer v. Globe Brewing Co.*, 175 Md. 461 (1938) is instructive. There, the Court held that Globe Brewing Company ("Globe") was judicially estopped from taking the position that it was not Kramer's employer within his claim for workers' compensation because it had taken the contrary position when it moved to dismiss Kramer's tort action against it arising from same injuries. Globe prevailed on its motion in the tort suit and Kramer then pursued his worker's compensation claim. *Id.* at 465. The Court stated that "the reasonable inference is that [Globe's original position that Kramer was its employee] was [taken] deliberately and with the full knowledge of its plain meaning and effect on the part of the duly accredited officials of [Globe]." *Id*. at 472. The Court held that it would "be an injustice to [Kramer] in the present suit, to permit [Globe] after having availed itself of an affirmative defense in the prior suit, to appear in a subsequent proceeding involving the same matter of controversy between the same parties, and deny the facts asserted by it, or on its behalf, in the special plea." *Id.* at 471.

We return to the case at bar. Here, we can likewise infer from the facts and circumstances that the Stebbings, through their bankruptcy counsel, deliberately took the position within their bankruptcy case that any "potential cause of action" they might have against appellees was worthless and/or did not belong to them individually, to gain an advantage in the form of the complete discharge of their debts. As the circuit court

reasoned in its ruling granting the renewed motion for summary judgment, had the Stebbings assigned a value to their potential claim, the bankruptcy trustee likely would have investigated the claim further and, potentially, would have pursued it on behalf of the Stebbings' creditors. Further, as discussed above, the facts known to the Stebbings at the time they assigned that value to their potential cause of action did not differ in any material respect from the facts known to them when they filed the instant suit. The unfair advantage gained by the Stebbings is clear. If they were permitted to pursue this case and were to prevail, they would have had their debts discharged *and* would have reaped the sole benefit of the damages awarded while their creditors received nothing. Judicial estoppel is invoked precisely to prevent litigants from "play[ing] fast and loose" in this way. *Id*. at 469 (quoting *Ohio & Miss. Ry. Co. v. McCarthy*, 96 U.S. 258 (1877)).[14]

For all these reasons, the circuit court did not err by granting summary judgment in favor of the Shaool Defendants and Fuji.

[14] Although not binding upon us, it is worth noting that other courts have applied judicial estoppel under similar circumstances. *See, e.g.*, *Harris v. Fortin*, 333 P.3d 556 (Wash. App. 2014) (former Chapter 7 debtor judicially estopped from bringing action on a promissory note after he affirmatively stated within his bankruptcy proceeding that the note was uncollectible and thus, had no value as an asset, and had his debts discharged without any distribution to his creditors); *Bone v. Taco Bell of Am., LLC*, 956 F.Supp.2d 872 (W.D. Tenn. 2013) (former Chapter 7 debtor judicially estopped from pursuing personal injury action that she had disclosed within her bankruptcy case, but had claimed had no value); *Rose v. Beverly Health & Rehab. Servs., Inc.*, 356 B.R. 18 (E.D. Cal. 2006) (former Chapter 7 debtor judicially estopped from pursuing an employment discrimination suit that she failed to schedule within her bankruptcy petition based upon facts that predated the petition), *aff'd*, 295 Fed. Appx. 142 (2008).

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.