UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2154

September Term, 2013

DUC T. BUTCHER & KAM BUTCHER

v.

CAPITAL BANK, N.A.

Berger,
Reed,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: August 12, 2015

Appellants, Duc T. Butcher, and his wife, Kam Butcher, filed a complaint alleging an elaborate conspiracy scheme and fraud against appellee Capital Bank. The Circuit Court for Montgomery County granted Capital Bank's Motion to Dismiss the Complaint on the grounds that the claim was barred by the doctrine of judicial estoppel. On appeal the Butchers present a single question for our review, which we have recast: Did the trial court err in granting the motion to dismiss the complaint?[1] For the reasons that follow, we shall affirm the judgment.

BACKGROUND

On February 2, 2007, Duc T. Butcher ("Butcher") executed a "Business Loan Agreement" and a promissory note in favor of Capital Bank in the original principal amount of $250,000, secured by a Deed of Trust lien against real property ("Note 1").[2] Butcher was to repay Note 1 in monthly interest installment payments over the course of eleven months, beginning on March 2, 2007, with interest calculated on the unpaid principle balance at an interest rate of 8.000% per annum. He was to make a final payment of principle and interest in the amount of $251,722.22 on February 2, 2008. Both he and his wife, Kam Butcher, who was a co-owner of the D.C. Property, signed the Deed of Trust.[3]

[1] In their brief, appellants present the issue as, "The Trial Court Abused Its Discretion in Granting Appellee's Motion to Dismiss."

[2] Specifically, the real property and improvements were located at 1320 H Street, N.E., Washington, D.C. 20002 (the "D.C. Property").

[3] Kam Butcher was not a borrower under the Business Loan Agreement and did not sign the promissory note.

Three days later, on February 5, 2007, Butcher executed a second "Business Loan Agreement" and promissory note in favor of Capital Bank in the original principal amount of $75,000, also secured by a Deed of Trust lien against real property ("Note 2").[4] The terms of Note 2 were essentially the same as those of Note 1; the eleven monthly interest payments were to begin on March 5, 2007, and the one principal and final interest payment of $75,516.87 was to be on February 5, 2008. Butcher was the only grantor on this Deed of Trust.[5] Butcher and Capital Bank entered into "Modification of Note" agreements for both Note 1 and Note 2 on June 30, 2008.[6]

In August 2008, Butcher defaulted on Note 1 by failing to pay amounts due and owing under Note 1, including interest and late fees. A few months later, in October 2008, he defaulted on Note 2. Capital Bank filed suit for breach of contract against Butcher in the Circuit Court for Montgomery County on February 21, 2009, seeking damages including amounts due and owing under Notes 1 and 2, late fees, accrued interest, and attorney's fees. Along with the Complaint, Capital Bank filed a Motion for Summary Judgment against Butcher seeking an entry of judgment in favor of Capital Bank on the Complaint. Capital

[4] The properties were 2103 Dukeland Street, Baltimore, MD 21216; 2221 W. Baltimore Street, Baltimore MD 21223; and 1110 N. Carey Street, Baltimore, MD 21217.

[5] Butcher was again the only borrower on the Business Loan Agreement and the promissory note.

[6] The "Modification of Note" agreement for Note 1 extended the maturity date of Note 1 to May 2, 2009. The "Modification to Note" agreement for Note 2 extended the maturity date to May 5, 2009. All other provisions, terms, and conditions of the Notes remained in full force and effect.

Bank's Motion for Summary Judgment was granted on April 14, 2009, and judgment was entered in favor of Capital Bank in the amount of $391,030.15, plus interest and late fees from February 6, 2009, and post-judgment interest at the legal rate. A foreclosure sale for the D.C. Property was scheduled for April 20, 2009.

On April 20, 2009, Butcher and his mother, Tu L. Butcher ("Mother"), met with representatives of Capital Bank.[7] At this meeting, Capital Bank executed a "Loan Purchase and Sale Agreement" for the sale of Note 1 to Mother for $280,409.71,[8] under which Capital Bank sold, assigned, and transferred all of its right, title, and interest in and to Note 1, if any, to Mother. Later, on May 6, 2009, Capital Bank executed a second "Loan Purchase and Sale Agreement" for Note 2 to the Mother for $78,611.50.[9] Butcher claims to have received a letter from Capital Bank, signed by then-Vice President Blaine Charak, confirming his Mother's payment, as well as confirming the termination of foreclosure proceedings.[10]

[7] Butcher recalls the meeting being with Capital Bank's then-Vice President, Blaine Charak. On the signed agreement, Mr. Charak attested to the transaction as a witness. The agreement was also signed by Capital Bank's President, Scot R. Browning, as "Seller."

[8] Butcher, in his Complaint, alleged that his Mother made a cash payment of $391,030.13 to Capital Bank on his behalf to stave off foreclosure; that the money was counted in his presence on April 17, 2009; and, that he was under the impression this transaction was for the purpose of repaying what was owed on the Notes. There is nothing else in the record indicating that: 1) a meeting occurred on April 17, 2009 between appellant, his Mother, and Capital bank; or 2) any cash transaction as described in his complaint occurred.

[9] Butcher alleges that this second transaction was "entirely unknown and secreted." According to appellant, it was at this meeting where "Appellee Bank and Appellant's mother conspired to 'purchase' the debt versus satisfying it."

After the sale and assignment to Mother, Capital Bank made what its counsel characterizes as an "innocent mistake." On September 17, 2009, rather than filing a "Line of Assignment of Judgment," Capital Bank erroneously filed a "Line of Satisfaction of the Judgment" in the Circuit Court of Montgomery County. Capital Bank filed a "Notice of Assignment of Judgment" with the circuit court on January 12, 2010.

Mother died on June 1, 2010, and her estate was opened on August 4, 2010. In September 2010, the Butchers entered into a contract to sell the D.C. Property. During the closing of the sale, they learned "Capital Bank had failed to release the Deeds of Trust" because "they had sold the Notes to [Mother], thereby keeping alive the debt owed." The Butchers claim that, as a result, they "ultimately lost their rights" in the D.C. Property, and the "proceeds of the sale of the same," to Mother's estate.

Having realized the error in filing the Line of Satisfaction in October 2010, Capital Bank, in an attempt to correct the mistake, filed, on October 15, 2010, a Motion to Strike the Line of Satisfaction from the record. Butcher filed his Opposition to the Motion to Strike on October 26 and requested a hearing.[11]

An evidentiary hearing was held on March 10, 2011, at which Butcher appeared, represented by counsel. After receiving evidence and hearing arguments, the circuit court

(...continued)

[10] This letter is not contained in the record on appeal.

[11] Two days later, on October 28, the Butchers filed a claim against Mother's estate for $391,030.15, the exact amount of the judgment the circuit court awarded Capital Bank on April 14, 2009. We have taken judicial notice of this fact. *See infra* note 16. There is no indication of how this claim was resolved. Mother's estate was closed on June 15, 2011.

granted Capital Bank's Motion to Strike the Line of Satisfaction. The Order, entered on March 14, 2011, stated that "the line of satisfaction filed on . . . September 17, 2009 is withdrawn and stricken." That same day, Butcher noted a timely appeal to this Court. Subsequently, but through counsel, he filed a line to withdraw the appeal on May 10, 2011. That appeal was dismissed on May 16, 2011.

On July 16, 2011, Butcher and his wife filed a petition for bankruptcy in the United States Bankruptcy Court for the District of Maryland seeking Chapter 7 relief under the United States Bankruptcy Code. As part of the filing, the Butchers were required to list their assets, including any contingent or unliquidated claims.[12] No such claims or potential claims were included. On a separate schedule they were also required to list creditors holding secured claims. Neither Capital Bank nor Mother were listed as a creditor, and only one of the properties described on the Deeds of Trust was listed on the schedule.[13] The Butchers were discharged from bankruptcy on August 27, 2012.

[12] The exact wording from "Schedule B - Personal Property" reads "18. [o]ther contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims."

[13] The Butchers first filed schedules in April 2012. All three Baltimore properties that secured Note 2 were listed as assets. Capital Bank was not listed as a creditor, and no debts related to the Notes in question were listed. They then filed amended schedules and an amended list of creditors in August 2012. Again, Capital Bank was not listed as a creditor. The only Baltimore property listed as an asset was 2103 Dukeland Street, and Baltimore City Revenue Collections was listed as a creditor because of property taxes owed on the property. This was the only debt listed in any way related to the Notes at issue in this case.

According to Butcher, he first learned about his Mother and Capital Bank's "conspira[acy] to misrepresent the debt's satisfaction" and the alleged fraud perpetrated against him when he visited his brother in Florida in December 2012. On April 16, 2013, the Butchers filed a Complaint against Capital Bank for fraud and loss of consortium. In that complaint, they stated that "[Capital] Bank's intentions were disclosed" on October 15, 2010, when it moved to strike the Line of Satisfaction of the Judgment. In response, counsel for Capital Bank wrote to the Butchers' counsel inquiring as to why the alleged claims were not listed in their bankruptcy petition after this disclosure on October 15, 2010. Counsel stated his belief that, by the failure to list these claims, the claims were barred by the doctrine of judicial estoppel. The Butchers voluntarily dismissed that case on July 24, 2013.

Later, on August 8, 2013, the Butchers filed the Complaint that is the subject of this appeal. They advanced six counts against Capital Bank arising out of the same factual allegations.[14] Capital Bank responded on September 30, 2013, by filing a Motion for Summary Judgment or, in the alternative, Motion to Dismiss Plaintiffs' Complaint. An evidentiary hearing was held in circuit court on November 19, 2013. The circuit court proceeded to treat Capital Bank's motion as a motion to dismiss only, and, after hearing arguments of counsel and taking judicial notice of the Butchers' filings before the United States Bankruptcy Court for the District of Maryland as well as the records in the Circuit

[14] The six counts in the Complaint are: Fraud-Misrepresentation (Count I); Loss of Consortium (Count II); Civil Conspiracy (Count III); Negligent Misrepresentation (Count IV); Violation of the Fair Debt Collection Act, 15 U.S.C. § 1692 (Count V); and Violation of the Maryland Consumer Debt Collection Law (Count VI).

Court for Montgomery County, the court granted Capital Bank's motion. The Complaint was dismissed with prejudice and without leave to amend. The Butchers filed a timely appeal to this Court.

STANDARD OF REVIEW

"We review *de novo* a trial court's granting of a motion to dismiss." *Monarc Const., Inc. v. Aris Corp.*, 188 Md. App. 377, 384 (2009) (citing *Gasper v. Ruffin Hotel Corp. of Md.*, 183 Md. App. 211, 226 (2008)). In our review, we must determine whether the complaint, on its face, states a legally sufficient cause of action. *Pulliam v. Motor Vehicle Admin.*, 181 Md. App. 144, 153 (2008). We assume "the truth of all the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from them, and we review the complaint in the light most-favorable to the non-moving party." *Id.* (internal citations omitted). A motion to dismiss for failure to state a claim may be granted "[i]f the pleadings do not as a matter of law allege sufficient facts to entitle a party to the relief sought on the claim[.]" *Noble v. Bruce*, 349 Md. 730, 759 (1998).

Ordinarily, our review of a grant of a motion to dismiss is based solely on the allegations contained within the four corners of the complaint. *See, e.g.*, *Nickens v. Mount Vernon Realty Group, L.L.C.*, 429 Md. 53, 62 (2012); *Converge Servs. Group, L.L.C. v. Curran*, 383 Md. 462, 475 (2004). Under Maryland Rule 2-322(c), however, "when a trial judge is presented with factual allegations beyond those contained in the complaint to support or oppose a motion to dismiss and the trial judge does not exclude such matters, then the

motion shall be treated as one for summary judgment." *See Okwa v. Harper*, 360 Md. 161, 177 (2000) (discussing Md. Rule 2-322(c)).

The motion before the circuit court in this case was styled a "Motion for Summary Judgment or, in the Alternative, To Dismiss Plaintiffs' Complaint," and, although both parties in the circuit court agreed to have the motion decided as a motion to dismiss, the trial court took judicial notice of, and did not exclude, certain extrinsic evidence that included the Butchers' bankruptcy filings and prior docketed matters before the circuit court. By considering and accepting documents outside the four corners of the complaint, the circuit court effectively "transmuted appellee['s] motion to dismiss to a motion for summary judgment." *Hrehorovich v. Harbor Hosp. Ctr., Inc.*, 93 Md. App. 772, 783 (1992).

Summary judgment, which is governed by Maryland Rule 2-501, "contemplates a two-level inquiry" during which the court must first determine: 1) "that no genuine dispute exists as to any material fact[;]" and then 2) "that one party is entitled to judgment as a matter of law." *Tall v. Bd. of Sch. Comm'rs of Baltimore*, 120 Md. App. 236, 246 (1998) (internal citations omitted). "In our review, we construe the record, including all inferences, in the light most favorable to the non-moving party." *Columbia Ass'n v. Poteet*, 199 Md. App. 537, 546-47 (2011). "[T]o defeat a motion for summary judgment, the non-moving party must establish a genuine issue of material fact." *Moura v. Randall*, 119 Md. App. 632, 640 (1998). In the absence of a genuine issue of material fact, we decide whether the trial court reached the correct legal conclusion. *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737 (1993). We

ordinarily review the grant of summary judgment "only on the grounds relied upon by the trial court." *Blades v. Woods*, 338 Md. 475, 478 (1995).

DISCUSSION

In ruling on the motion, the circuit court ruled that, because the claims were not listed on the bankruptcy schedules at any time before the discharge from bankruptcy, the Butchers' claims were barred by the doctrine of judicial estoppel.[15] The Butchers argue that the circuit court erred when it granted Capital Bank's motion because when they first learned of the alleged "fraud" perpetuated by Capital Bank was a significant and disputed issue of material fact. They maintain that they were ignorant of the "truth" until December 2012, when Butcher traveled to Florida to visit his brother where he learned of the alleged "true intentions" of Capital Bank to deceive him and transfer the debt to his mother. We are not persuaded.

[15] As noted earlier, no debts related to the Notes were listed in the bankruptcy filing. The circuit court based its ruling on the "reasons set forth by the defendants in their motion to dismiss and for the additional reasons . . . including the decision of the U.S. Court of Appeals of the Ninth Circuit in the *Hamilton* case [which it found] to be quite persuasive . . . ." In its motion, Capital Bank's primary "reason" for the Butchers' claims to be barred by judicial estoppel was that the Butchers "successfully obtained the relief that they sought in the Bankruptcy and were discharged without ever disclosing the existence of any potential claim against Capital Bank."

Capital Bank refutes the Butchers' assertion that they "remained unaware of the true intent of [Capital] Bank's deception until December of 2012" by pointing to the Butchers' "previous filing in [the circuit court] in which they allege[d] that Capital Bank's 'intentions were disclosed to [the Butchers] when [Capital] Bank filed a motion to strike the 'line of satisfaction.'" Furthermore, the circuit court "subsequently entered its final Order striking the Line of Satisfaction on March 14, 2011. Thus, many months prior to filing the Bankruptcy, [the Butchers] had enough facts to know that they had a potential cause of action against Capital Bank in connection with the sale of the Notes to [Mother]."

Judicial estoppel is defined as "a principle that precludes a party from taking a position in a subsequent action inconsistent with a position taken by him or her in a previous action." *Dashiell v. Meeks*, 396 Md. 149, 170 (2006) (quoting *Underwood–Gary v. Mathews*, 366 Md. 660, 667 n.6 (2001)). In *Middlebrook Tech, L.L.C. v. Moore*, 157 Md. App. 40 (2004), we said:

> Three factors "typically inform the decision whether to apply" the doctrine of judicial estoppel in a particular case: whether the party's later position is clearly inconsistent with its earlier position; whether the party succeeded in persuading the court in the earlier matter to accept its position, so that judicial acceptance of the contrary position in the later matter would create the perception that one of the courts had been misled; and whether the party seeking to assert the inconsistent position in the later matter would derive an unfair advantage, or would impose an unfair detriment on the other party, from being permitted to do so.

Id. at 63. But, these factors are not "inflexible prerequisites" and "[a]dditional considerations may inform the doctrine's application in specific factual contexts." *Vogel v. Touhey*, 151 Md. App. 682, 708-09 (2003) (citing *New Hampshire v. Maine*, 532 U.S. 742, 751 (2001)). On the other hand, judicial estoppel is inapplicable unless the party "had, or was chargeable with, full knowledge of the facts and another will be prejudiced by his action." *Chaney Enters. v. Windsor*, 158 Md. App. 1, 42 (2004) (quoting *Gordon v. Posner*, 142 Md. App. 399, 426 (2002) (citations omitted)).

Essentially, the Butchers argue that their positions before the bankruptcy court and the circuit court were not inconsistent because they were unaware of any potential claims against Capital Bank at the time of their bankruptcy filings. They contend that they only became aware of the claim in December 2012, roughly four months after their discharge from

bankruptcy. Capital Bank counters that the Butchers had knowledge of a potential claim prior to the commencement of the bankruptcy proceedings. Capital Bank refers to the earlier complaint filed by the Butchers–that they later withdrew–which stated that "[o]n October 15, 2010, [Capital] Bank's intentions were disclosed to [Butcher] when [Capital] Bank filed a motion to strike the "line of satisfaction" filed more than thirteen (13) months prior."

In dismissing the Butchers' motion, the circuit court found *Hamilton v. State Farm Fire & Casualty Co.*, 270 F.3d 778 (9th Cir. 2001), persuasive. In that case, Hamilton filed a claim under his State Farm insurance policy for theft and vandalism of his property stemming from the rental of his house to another family. *Id.* at 780. Suspicious of the claim, State Farm conducted an investigation. *Id.* It concluded that Hamilton was probably responsible for the vandalism and theft and refused to pay his claim. *Id.* at 781. Hamilton, like the Butchers, filed for Chapter 7 bankruptcy relief on October 31, 1997, and State Farm denied the claim and voided his coverage under the policy's concealment or fraud provision a few days later. *Id.* Hamilton listed a $160,000 residential vandalism loss against his estate in his Chapter 7 Financial Statement, but he did not list any corresponding claims against State Farm as assets of the estate in his bankruptcy schedules nor amend his schedules at any point to include such claims. *Id.*

Based on the false information provided, the bankruptcy court "discharged Hamilton's debts on April 6, 1998," but the trustee "noticed that Hamilton had listed a large vandalism loss and wrote [him] a May 30, 1998 letter to determine whether Hamilton was pursuing any

insurance claims to recover the amount of the loss." *Id.* The trustee requested "correspondence or other writings concerning said vandalism, including any correspondence with insurance companies to recover the amount of the vandalism." *Id.* The trustee sent a second letter requesting information, after which "Hamilton wrote a letter in return, but did not provide any additional information about the vandalism loss or claims against State Farm." *Id.* As a result, the trustee filed a motion to dismiss the bankruptcy. *Id.* The court dismissed the bankruptcy and vacated the prior discharge of Hamilton's debts. *Id.*

Hamilton then sued State Farm alleging breach of the covenant of good faith and fair dealing and breach of contract. *Id.* After removing the case to federal court, State Farm filed a motion for summary judgment which was granted. *Id.* at 782. The district court found that Hamilton had failed to raise a genuine issue of material fact as to the falsity of his representations. *Id.* It held that Hamilton's claim was barred by the doctrine of judicial estoppel because Hamilton took contradictory positions by failing to amend his bankruptcy schedules to include his insurance claim and pending bad faith action against State Farm, and yet persisting in attempts to recover on the claims. *Id.*

The United States Court of Appeals for the Ninth Circuit affirmed the application of judicial estoppel barring Hamilton's claims. Hamilton, like the Butchers, was under an express duty to list all claims or potential claims as assets on his bankruptcy schedules, failed to do so, and then later sued on those same claims. In deciding whether Hamilton had knowledge of the potential claims, the court explained that "[j]udicial estoppel will be

imposed when the debtor has knowledge of enough facts to know that a potential cause of action exists during the pendency of the bankruptcy, but fails to amend his schedules or disclosure statements to identify the cause of action as a contingent asset." *Id.* at 784.

The record reflects that the Butchers possessed sufficient knowledge to recognize that a potential cause of action existed prior to, and during the pendency of, the bankruptcy proceeding. Mr. Butcher maintains that he was under the impression his mother paid Capital Bank the amount owed on his Notes to satisfy those outstanding debts and stave off foreclosure. Believing then that he was free from the burden of his debts, Butcher contracted to sell the D.C. Property in September 2010. In his complaint, he stated that, during the closing process on that sale, he learned that "Capital Bank had failed to release the Deeds of Trust, claiming . . . that they had sold the Notes to [Mother], thereby keeping alive the debt." Shortly afterwards, on October 15, 2010, Capital Bank filed its motion to strike the "Line of Satisfaction." The Butchers, through counsel, opposed the motion in court. Finding that the filing was an honest mistake and that it was clear that the intent was to transfer the debt to Mother, the circuit court struck the Line of Satisfaction. The Butchers then noted an appeal to this Court, which they later voluntarily dismissed.

And, as noted above, on October 28, 2010, the Butchers filed a claim against Mother's estate in the amount of $391,030.15,[16] which was more than two years before they claimed to learn of the alleged claims.

The aforementioned circumstances indicate that the Butchers had sufficient knowledge of a potential claim long before the December 2012 Florida visit with the brother and the July 16, 2011 filing of their bankruptcy petition. As previously discussed, in the first complaint filed in the circuit court against Capital Bank, the Butchers admitted that "[o]n October 15, 2010, Defendant [Capital] Bank's intentions were disclosed to Plaintiff when Defendant [Capital] Bank filed a motion to strike the '*line of satisfaction*'. . . ." They withdrew that complaint after a letter was sent from Capital Bank's counsel to appellants'

[16] This fact was not included in the record on appeal, but we can take judicial notice of "matters of common knowledge or [those] capable of certain verification." *Dashiell v. Meeks*, 396 Md. 149, 174-75 (2006) (citing *Faya v. Almaraz*, 329 Md. 435, 444 (1993)). The latter category includes facts which "are capable of immediate and certain verification by resort to sources whose accuracy is beyond dispute." *Id.* (citing *Faya*, 329 Md. at 444). Rule 5-201(f) permits judicial notice to be taken at "any stage of the proceeding," which includes appellate proceedings. *Id.*; *see also Lerner v. Lerner Corp.*, 132 Md. App. 32, 40 (2000); *Burral v. State*, 118 Md. App. 288, 295 (1997).

With respect to taking judicial notice of proceedings outside the record, "[o]nly in exceptional cases, when the requirements of logic are overcome by the demands of justice, is it proper to exercise the discretionary power of an appellate court in this State to look to a proceeding outside of the record of the case before it." *Dashiell*, 396 Md. at 176-77.

We find the interests of justice warrant taking judicial notice of the Butchers' claim against Mother's estate. As a record of the Register of Wills, the existence of the claim is "capable of certain verification," and its "accuracy is beyond dispute." *Dashiell*, 396 Md. at 175. Judicial estoppel is an equitable doctrine designed to protect the integrity of the courts, and the "demands of justice" warrant taking judicial notice of this claim to supplement the established facts regarding the Butchers' knowledge of potential claims against Capital Bank.

counsel that expressed essentially the same argument that Capital Bank now raises, *i.e.*, that their claims were barred by the doctrine of judicial estoppel by the failure to list the claims in the bankruptcy filings, and noting that the complaint stated the Butchers knew of the Capital Bank's "intentions" in October 2010 before the bankruptcy proceedings were filed in July 2011. They then filed the present complaint asserting that they had no knowledge of the potential claims until December 2012, which was after the discharge from bankruptcy.

The Butchers also contend that the circuit court erred in resolving the "intent or knowledge element" of the claim as argued by Capital Bank. Instead, they argue that the determination of whether they possessed the requisite knowledge of potential claims against Capital Bank at the time of the bankruptcy proceedings should have been decided by the fact-finder. We are not persuaded. The circuit court concluded, and, in our view, the factual circumstances support its conclusion that appellants had knowledge of sufficient facts to know that a potential cause of action existed before the bankruptcy proceedings were filed, and it should have been disclosed on the schedule. Therefore, the Butchers' later position before the circuit court was clearly inconsistent with their earlier position before the bankruptcy court and, even before, the circuit court itself.

Judicial estoppel is applied when a party persuaded a court in the earlier matter to accept its position so that judicial acceptance of a later and contrary position would indicate that one of the courts had been misled. *Hamilton* held that a debtor is precluded from pursuing claims about which he had knowledge, but did not disclose, during his bankruptcy

proceedings, and that a discharge of debt by a bankruptcy court is sufficient acceptance to apply judicial estoppel. *Hamilton*, 270 F.3d at 784.

Clearly, the Butchers had enough knowledge to know that a debt on the Notes was still due when the circuit court granted Capital Bank's motion to strike the line of satisfaction in October 2010, yet they failed to include the debt or any potential claims against Capital Bank or Mother on their bankruptcy filings. The bankruptcy court, as were any creditors, was entitled to rely on the Butchers' schedules that there were no debts, creditors, or potential claims relating to the Notes at issue here in discharging them from bankruptcy. Litigants cannot be permitted to "play fast and loose" in this way. *Kramer v. Globe Brewing Co.*, 175 Md. 461, 469 (1938). As the Court of Appeals explained in *Kramer*:

> If parties in court were permitted to assume inconsistent positions in the trial of their causes, the usefulness of courts of justice would in most cases be paralyzed; the coercive process of the law, available only between those who consented to its exercise, could be set at naught by all. But the rights of all men, honest and dishonest, are in the keeping of the courts, and consistency of proceeding is therefore required of all those who come or are brought before them. It may accordingly be laid down as a broad proposition that one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of litigation, must act consistently with it; one cannot play fast and loose.

Id. at 469.

The doctrine of judicial estoppel "rests upon the principle that a litigant should not be permitted to lead a court to find a fact one way and then contend in another judicial proceeding that the same fact should be found otherwise." *Mathews v. Gary*, 133 Md. App. 570, 579 (2000), *aff'd on other grounds*, 366 Md. 660 (2001) (quotation marks and citations

omitted). Judicial estoppel ensures "the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment[.]" *Gordon*, 142 Md. App. at 425 (internal quotations and citation omitted).

These concerns are especially important in the bankruptcy context, and judicial estoppel is a useful tool in "protect[ing] the integrity of the bankruptcy process." *Hamilton*, 270 F.3d at 785. Bankruptcy debtors have an affirmative duty to disclose all assets in their bankruptcy schedules, including contingent and unliquidated claims. *Id.* (citing *In re Coastal Plains, Inc.*, 179 F.3d 197, 207-08 (5th Cir. 1999)); *see also* 11 U.S.C. § 521(1). "[I]t is very important that a debtor's bankruptcy schedules and statement of affairs be as accurate as possible, because that is the initial information upon which all creditors rely." *Hamilton*, 270 F.3d at 785 (citing *In re Coastal Plains, Inc.*, 179 F.3d at 208). In sum, the court and creditors rely on the schedules and the assets listed to determine what action they will take in the matter.

The *Hamilton* court, again quoting the *In re Coastal Plains, Inc.* decision, summarized the importance of the disclosure statement, to both the creditors and the court, and the rule of judicial estoppel in the bankruptcy context:

> The rationale for . . . decisions [invoking judicial estoppel to prevent a party who failed to disclose a claim in bankruptcy proceedings from asserting that claim after emerging from bankruptcy] is that the *integrity of the bankruptcy system depends on full and honest disclosure by debtors of all of their assets*. The courts will not permit a debtor to obtain relief from the bankruptcy court by representing that no claims exist and then subsequently to assert those claims for his own benefit in a separate proceeding. *The interests of both the creditors, who plan their actions in the bankruptcy proceeding on the basis of information supplied in the disclosure*

> *statements and the bankruptcy court . . . are impaired when the disclosure provided by the debtor is incomplete*.

Id. (alteration in original).[17]

The Butchers gained an unfair advantage for themselves and over any creditors because their bankruptcy was discharged based on the information provided. To now seek the benefit of an undisclosed claim against Capital Bank would result in a windfall for the Butchers with no benefit for the creditors who planned their actions on the basis of the information provided. To permit the Butchers to disavow a prior judicial assertion would require the court to endorse their inequitable conduct and inconsistent positions in regard to the debt thereby harming the integrity of the bankruptcy process.

CONCLUSION

In sum, although the Butchers were aware of their potential claims against Capital Bank, as well as Mother, well before filing their bankruptcy petition, they failed to list those claims as potential assets on their schedules at any time during the bankruptcy proceeding. After being discharged from bankruptcy, they filed the instant claims against Capital Bank. Therefore, the circuit court did not err or abuse its discretion in dismissing appellants' claims based on the doctrine of judicial estoppel.

[17] We note that in the case of *WinMark Ltd. P'Ship v. Miles & Stockbridge*, 345 Md. 614 (1997), which concerned the application of judicial estoppel to claims not listed in a *Chapter 11* bankruptcy proceeding, the Court declined to apply judicial estoppel to preclude the debtor's claim against non-creditor attorneys during reorganization under *Chapter 11*. As property in the possession of the debtor, the action against the attorneys who represented both the debtor and the creditor-bank during loan restructuring negotiations remained subject to the claims of creditors.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.