

The Maryland Court of Special Appeals held that the trial court lacked subject matter jurisdiction over a fraudulent conveyance action that was commenced while the automatic stay was in place, such that the action was void *ab initio*.

***Kochhar v. Bansal*, 2015 Md. App. LEXIS 32 (February 27, 2015).**

Summary by Bradley J. Swallow, Funk & Bolton, P.A.

Reversing a judgment by the Circuit Court for Montgomery County, Maryland, the Maryland Court of Special Appeals (“CSA”) held that the commencement of a fraudulent conveyance action while an automatic stay of 11 U.S.C. § 362(a) was in place as to the defendants rendered the action void *ab initio*. As such, the Circuit Court never had subject matter jurisdiction over the action. Consequently, judgment in the fraudulent conveyance action in favor of plaintiff judgment creditors (“Plaintiffs”) likewise was void even though the judgment was entered after the automatic stay was no longer in effect.

Plaintiffs commenced the subject fraudulent conveyance action without knowledge that the defendants, Baljit Kochhar (“Baljit”) and her daughter, Sonia Kochhar (“Sonia”), each recently had filed voluntary Chapter 13 petitions. In their complaint, Plaintiffs asserted that Baljit, with knowledge of Plaintiffs’ judgments against her, made three conveyances of residential real property to Sonia for no consideration. After Baljit and Sonia each filed suggestions of bankruptcy in the Circuit Court action, the action was stayed for several months until both Chapter 13 cases were dismissed on account of the debtors’ failure to complete required filings. Sonia thereafter moved to dismiss the action, asserting that, because the automatic stay was in place when the action was filed, the Circuit Court lacked jurisdiction to determine matters involving property of her estate. The Circuit Court denied Sonia’s motion to dismiss and later entered judgment by default against both defendants and ordered the three conveyances “vacated and set aside.” *Id.* at *4-5.

Upon Sonia’s timely appeal, the CSA reversed the judgment and held that the Circuit Court lacked subject matter jurisdiction over the action. The CSA recognized a split in authority as to whether actions taken in violation of the automatic stay are void *ab initio* or merely voidable but noted that the “prevailing view among the federal courts of appeal is that actions taken in violation of the automatic stay are void *ab initio*.” *Id.* at *8 (citations omitted). The CSA further observed that, while the Fourth Circuit has not decided the issue, “the United States Bankruptcy Court for the District of Maryland has hewn to the majority view.” *Id.* at *9 (citations omitted). Although the Maryland Court of Appeals has not addressed the effect of the commencement of a civil action against a defendant who was protected by the automatic stay at the time of the filing, the CSA found guidance in the decision in *Klass v. Klass*, 377 Md. 13, 831 A.2d 1067 (2003). The Court of Appeals in *Klass* held that, except with respect to actions which were expressly excepted from the automatic stay (such as dissolution of marriage and actions to establish or modify alimony or child support), actions taken in continuation of divorce proceedings after a bankruptcy filing by one spouse were void as taken in violation of the automatic stay. *Id.* at *9-13.¹ The CSA also observed that the “overwhelming majority” of state courts to have addressed the effect of an inadvertent filing of a civil action while the automatic stay was in effect concluded that the action was void *ab initio* because, at the time of the filing, a federal bankruptcy court was vested with exclusive jurisdiction over property of a bankruptcy estate. *Id.* at 13-14.

¹ The CSA also noted that the Court of Appeals in *Klass* held as a threshold matter that it had concurrent jurisdiction with the bankruptcy court to “‘determine the effect of the stay’ on a case pending in a Maryland state court.” *Id.* at *10 (quoting *Klass*, 37 Md. At 18 (“[The] Maryland court has, and indeed must have, jurisdiction to determine, at least in the first instance, whether and how a matter pending before it is affected by a § 362 stay.”)).