

**Morton v. Schlotzhauer** (Court of Appeals)

This case involves a personal injury claim, a bankruptcy proceeding, the plaintiff re-opening her bankruptcy petition in order to allow the bankruptcy court to reconsider re-vesting her personal injury action, the statute of limitations, and a circuit court order granting the defendant (in the personal injury action) summary judgment as to the plaintiff's lack of standing, and the circuit court's refusal to grant a motion to alter or amend its summary judgment ruling. Eventually, the Court of Appeals affirmed the Court of Special Appeals *reversal of the circuit court rulings*—after the Court of Appeals had painstakingly reviewed all the principles in the case. Thus, the plaintiff (Cindy Schlotzhauer) can return to her prosecution of her personal injury claim against defendants (Kevin Morton and Uni-Select) in circuit court.

The timeline went this way:

*January 4, 2010*

--Cindy Schlotzhauer was involved in an auto accident in the parking lot of the Centreville (Queen Anne's County) post office with Kevin Morton while he was driving his pickup truck—owned by his employer Uni-Select. Ms. Schlotzhauer alleges that Mr. Morton was talking on his cell phone when he backed his truck into her car, resulting in physical injuries to her.

She retained counsel, who resolved a claim for property damages (but not personal injury) with Uni-Select's insurer. No complaint was, at that time, filed.

*October 6, 2010*

Ms. Schlotzhauer filed for Chapter 7 bankruptcy. BUT she did NOT list her potential personal injury claim on the schedules filed with that petition, either as an asset or as property claimed to be exempt. It was assumed by the Court of Special Appeals – and not seriously challenged by the other side—that she simply did not know of the requirement to list all of the potential or litigated claims in those schedules.

*January 19, 2011*

The Bankruptcy Court granted a discharge and closed the case.

Nothing happened in this case for the rest of 2011 and almost all of 2012.

*December 26, 2012*

(The day after Christmas.) Finally, just under the statute of limitations (which will have run on January 3, 2013), Ms. Schlotzhauer filed her Complaint in the Circuit Court for Queen Anne’s County against Mr. Morton and Uni-Select. She averred that Mr. Morton was negligent and he was within the scope of his employment with Uni-Select. Mr. Morton and Uni-Select answered with a general denial and affirmative defenses.

The parties then engaged in discovery. In her answers to interrogatories and in her deposition (on July 31, 2013), Ms. Schlotzhauer revealed that she failed to include her potential personal injury claim on the schedules that she filed in her bankruptcy court case.

*August 23, 2013*

Uni-Select moved for summary judgment. It alleged that Ms. Schlotzhauer lacked standing to pursue her claim, because the cause of action had become the property of the

bankruptcy estate by the time she filed suit and that only the bankruptcy trustee had the right to pursue the claim.

*September 12, 2013*

Ms. Schlotzhauer filed a motion in the Bankruptcy Court to re-open her case, for the purpose of amending her petition to list the damages and lost wages related to her personal injury claim as exempt property. Uni-Select sought to intervene in the motion to re-open the bankruptcy petition. Although the Bankruptcy Court considered various filings by Uni-Select, the Court ultimately ruled that Uni-Select lacked standing to object to Ms. Schlotzhauer's motion, as it was not a creditor and was thus unaffected by the distribution of her bankruptcy estate. Uni-Select did not challenge this ruling by an appeal to the United States District Court for the District of Maryland.

*October 23, 2013*

The Bankruptcy Court granted Ms. Schlotzhauer's request to re-open her bankruptcy court case. She immediately filed amended schedules listing her lost wages (\$901) and personal injury claim (which she valued at \$1,500,000) as assets and as exempt property. The Bankruptcy Court re-appointed the trustee who had originally handled the bankruptcy case and scheduled a hearing for January 7, 2014-- by now, this is four years from the original car accident.

*December 5, 2013*

The Circuit Court conducted a hearing on Uni-Select's motion for summary judgment. Ms. Schlotzhauer asked the Circuit Court to hold off ruling on Uni-Select's motion until all parties and the Circuit Court knew what the Bankruptcy Court will do. The Circuit Court then

heard argument on whether the personal injury claim before it should be dismissed because allegedly the plaintiff lacked standing. Ms. Schlotzhauer proposed that one option would be to permit the bankruptcy trustee to join the case as a co-plaintiff. The Circuit Court did not rule on the summary judgment motion at that time, but indicated that it would issue a decision later.

*January 8, 2014*

--The Bankruptcy Court *ruled in favor* of Ms. Schlotzhauer, finding that the amended schedules she had filed would be accepted, and thus ruled that she had standing to pursue her personal injury action. The Bankruptcy Court ruled that the exemption of Ms. Schlotzhauer's personal injury claim was allowed as of late November, 2013, noting that neither the re-appointed trustee nor any creditor had objected to allowance of the amended schedules. It further ruled (on motion later in that month) that the amended schedules were effective *nunc pro tunc* as of October 6, 2010—the date that the bankruptcy case had been opened—effectively restoring ownership of the claim to her (her personal injury Complaint was filed in the Circuit Court on December 26, 2012).

--The Circuit Court *ruled against* the plaintiff, granting Uni-Select's summary judgment motion, thus finding that plaintiff lacked standing to pursue the personal injury action. The Circuit Court considered whether to dismiss the complaint without prejudice so that the bankruptcy trustee might pursue the claim, but concluded that an amended complaint would be barred by the statute of limitations and therefore awarded summary judgment in favor of Uni-Select.

It is evident that neither court was aware of the other court's action at the time it ruled.

*January 2014*

Ms. Schlotzhauer filed a timely motion to alter or amend the summary judgment ruling, and attached a copy of the Bankruptcy Court’s rulings—these rulings were a matter of federal bankruptcy law. After a hearing (on February 25, 2014) the Circuit Court denied that motion in a written order two days later—without explaining the reasons for its ruling. Ms. Schlotzhauer then noted a timely appeal to the Court of Special Appeals.

-----

The Court of Special Appeals vacated the Circuit Court’s judgment and remanded the case for further proceedings. That Court held that the Circuit Court had erred in awarding summary judgment to Uni-Select and in not revising that ruling after being informed of the Bankruptcy Court’s action re-vesting the personal injury claim in Ms. Schlotzhauer. That Court further reasoned that even if she did not own the claim when the Complaint was filed, Md. Rule 2-201 concerning the “real party in interest” allowed her to pursue the claim once it was re-vested in her. Because that rule incorporates the doctrine of “relation back,” she *would not be required to file a new compliant* and could pursue the complaint that had been filed within the period of limitations. In any event, the Court of Special Appeals held, the Bankruptcy Court’s ruling that re-vested her with the claim – well before the filing of the Complaint—meant that she owned the claim as of that filing. See *Schlotzhaeur v. Morton*, 224 Md. App. 72, 119 A.3d 121 (2015).

Uni-Select then petitioned the Court of Appeals for a writ of *certiorari*, which was granted.

----

The Court of Appeals *affirmed* the decision of the Court of Special Appeals (which had vacated the Circuit Court). In doing so, the Court remarked:

After being advised of the re-vesting of the claim in Ms. Schlotzhauer effective as of October 6, 2010, for purposes of federal bankruptcy law the Circuit Court declined to reconsider its ruling. Although the Circuit Court did not explain that decision, it presumably concluded that the Bankruptcy Court's action retroactively re-vesting the claim was either without legal effect for purposes of Maryland law or that, to the extent it was, Ms. Schlotzhauer would have to file a new complaint outside the period of limitations. It is that legal conclusion that we now review. In our view, that decision was legally incorrect, whether viewed in the posture of the case at the time the Circuit Court decided the motion to alter or amend or at the time is granted summary judgment.

The Court of Appeals gave full effect to the Bankruptcy Court's decision, commenting that no Maryland court can ignore that decision or reverse it. Therefore, once the Bankruptcy Court decided to re-open the bankruptcy case and then decided that Ms. Schlotzhauer would be re-vested as the owner of the personal injury claim and that would be effective as of the time of filing her bankruptcy petition, Maryland court were required to give that decision full legal effect.

Rejecting Uni-Select's interpretation of the Bankruptcy court's decision as to standing, the Court of Appeals further commented:

We can think of no good policy reason to adopt such a contradictory approach. Indeed, the policy reasons underlying the standing requirement, limitations periods, and bankruptcy all counsel in favor of treating the determinations of the Bankruptcy Court consistently. The complaint in the State court case was filed within the period of limitations and the defendants received the requisite notice of the action within the time specified by Maryland law. The named plaintiff was the individual allegedly injured in the incident recounted in the complaint and, but for the bankruptcy proceeding, there would be no question as to her standing. Since the time the complaint was filed, there has been no change in the cause of action asserted or in the facts alleged to support that cause

of action. The interests of the creditors in the bankruptcy case – and any interest they might have in this action—were legally the concern of the Bankruptcy Court and have presumably factored into the Bankruptcy Court’s decision. Although the Bankruptcy Court properly did not purport to dictate the result in the State court action, we see no reason not to give effect to its retroactive vesting of Ms. Schlotzhauer’s claim in assessing her standing to bring that claim under State law.

Thus, the Court of Appeals further rejected Uni-Select’s reading of several Maryland precedents, including *Pacific Mortgage and Investment Group, Ltd. v. Horn*, 100 Md. App. 311, 641 A.2d 913 (1994). The Court wound up its discussion (slip opinion, p. 23-27, and see 27-30) with a comment on real party in interest and that by rule the Circuit Court should have given sufficient time to substitute any person as the real party in interest (should that be necessary) and – as stated by the rule—that substitution is to relate back to the filing of the complaint. See Maryland Rule 2-201.

The Court of Appeals concluded (as to the doctrine of relation back) and the overall case:

In this case, there is no good reason not to apply the relation back doctrine. Uni-Select had notice of the operative facts of the cause of action within the period of limitations. Ms. Schlotzhauer has not alleged any new causes of actions or different facts. Uni-Select has not pointed to any prejudice it would suffer, other than that the complaint would not be dismissed and that Ms. Schlotzhauer would be able to pursue the claim she had filed within the period of limitations.

(Footnote omitted).

Thus, the Court of Appeals affirmed the Court of Special Appeals reversal or vacating the Circuit Court’s decision, and thus Ms. Schlotzhauer would be permitted to pursue her personal injury claim.

