

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

March 21, 2011

Mr. Albert E. Muchille
P O Box 325
Townsend, DE 19734

Mr. Arthur E. White
10373 Bayside Drive
Dover, DE 19901

Ms. Cathleen D. Davis
10373 Bayside Drive
Dover, DE 19901

RE: Albert Muchille v. Arthur E. White and Cathleen D. Davis
C.A.No.: CPU5-09-000994
Appeal from Justice of the Peace Court
Decision on Motion to Vacate Judgment

Dear Mr. Muchille, Mr. White and Ms. Davis:

The appellant, Albert Muchille, has filed a motion to vacate the judgment that was entered against him by the appellees, Arthur E. White and Cathleen D. Davis, on March 24, 2010. It is the appellant's contention that he had a bankruptcy petition pending at the time that judgment was entered against him for this matter. Therefore, the judgment against him is void since it was entered while this matter should have been stayed.

After a hearing for the appellant's motion, the court finds the following facts:

- (1) That the appellant filed the current action on April 29, 2009.
- (2) That the appellant filed a bankruptcy petition in the United States Bankruptcy Court for the District of Delaware on November 23, 2009.
- (3) That the appellees obtained a default judgment against the appellant on March 24, 2010, when he failed to respond to the Complaint that they filed against him.
- (4) That the appellant's bankruptcy petition was dismissed by the United States Bankruptcy Court for the District of Delaware on April 30, 2010.
- (5) That the appellant filed the motion to vacate judgment that is currently under consideration by the court on November 16, 2010, contending that

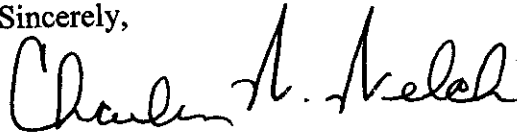
the judgment for this matter that has been entered against him is void since this matter should have been stayed pending his bankruptcy action. The appellant's motion was the first notice that the court had received indicating that the appellant had filed a bankruptcy petition.

The federal Bankruptcy Code provides that all legal actions pending against someone who files a bankruptcy petition are automatically stayed. Bankr. Code, 11 U.S.C.A. Section 362(a). The purpose of the stay is to prohibit, with limited exceptions, attempts to reach the assets of a petitioner in bankruptcy while his or her bankruptcy proceedings are pending. *Hershberger v. Morgan*, 677 N.E.2d 1261, 1263 (Ohio Ct. App. 1996). The fact that any court considering a matter against the individual that filed a bankruptcy petition does not have notice of the bankruptcy action has no effect on the stay. *See id.* at 1263. Any civil action being considered in any court against an individual that has filed a bankruptcy petition is automatically stayed regardless of notice to the court. *See id.*

Given the court's findings of facts and conclusions of law, please be advised that the appellant's motion to vacate the March 24, 2010, judgment against him for this matter is granted.

IT IS SO ORDERED this 21st day of MARCH, 2011.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles W. Welch, III

CWW:mek