25-P-568 Appeals Court

MAIN STREET MORTGAGE GROUP, CORP. vs. SON B. TRAN & others.[1]

No. 25-P-568.

Suffolk. May 11, 2026. - September 10, 2026.

Present: Singh, Brennan, & Allen, JJ.

Mortgage, Foreclosure. Real Property, Mortgage, Registered land, Certificate of title. Judicial Estoppel. Practice, Civil, Summary judgment, Relief from judgment. Judgment, Relief from judgment. Bankruptcy.

Petition filed in the Land Court Department on March 23, 2020.

The case was heard by Howard P. Speicher, J., on motions for summary judgment, and a motion for relief from judgment, filed on January 3, 2025, was considered by him.

Thomas B. Vawter for the petitioner.
John F. Willis for Son B. Tran & others.

ALLEN, J. In this case involving multiple parties and spanning twenty-eight years, we consider whether the doctrine of

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[1] Ai T. Le; Caliber Home Loans, Inc.; and Mortgage Electronic Registration Systems, Inc.

judicial estoppel may preclude recognition of a mortgagee's otherwise proper exercise of a foreclosure by entry on registered land.

Main Street Mortgage Group, Corp. (Main Street), appeals from a judgment entered in the Land Court on cross motions for summary judgment on Main Street's subsequent petition filed pursuant to G. L. c. 185, § 114 (S-petition). The S-petition sought a new certificate of title to reflect Main Street's ownership of a residential property in Randolph (property). The judge ruled that although Main Street had satisfied the procedural requirements of a foreclosure by entry, its sole shareholder, Thomas Abate, had failed to disclose Main Street's or his interest in the property on the schedule of assets supporting his personal bankruptcy petition. The judge therefore concluded that Main Street was estopped from asserting its rights obtained by completing the foreclosure by entry and, accordingly, declined to grant Main Street a certificate of title. Following the denial of its motion for relief from judgment pursuant to Mass. R. Civ. P. 60, 365 Mass. 828 (1974), Main Street appealed from the judgment and from the denial of its postjudgment motion.[2] We affirm.

[2] Main Street makes no separate argument on its appeal from the denial of its motion for relief from judgment.

Background. 1. Foreclosure by entry. While used infrequently, foreclosure by entry occurs when, after default, a mortgagee takes "possession by an open and peaceable entry on the mortgaged premises, which if continued for three years [is] effective to foreclose the mortgage." Joyner v. Lenox Sav. Bank, 322 Mass. 46, 52 (1947). See G. L. c. 244, § 1.[3] "[A]n entry is peaceable if not opposed by the mortgagor or person claiming the premises." Thompson v. Kenyon, 100 Mass. 108, 111 (1868). After making a peaceable entry, the mortgagee must file a certificate of entry, signed by two witnesses, and, for registered land, as is the case here, register it with an assistant recorder within thirty days of the entry. G. L. c. 244, § 2.[4] See also G. L. c. 185, § 70 (recording requirement

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[3] In full, G. L. c. 244, § 1, provides,

"A mortgagee may, after breach of condition of a mortgage of land, recover possession of the land mortgaged by an open and peaceable entry thereon, if not opposed by the mortgagor or other person claiming it, or by action under this chapter; and possession so obtained, if continued peaceably for three years from the date of recording of the memorandum or certificate as provided in section two, shall forever foreclose the right of redemption."

[4] In full, G. L. c. 244, § 2, provides,

"If an entry for breach of condition is made without a judgment, a memorandum of the entry shall be made on the mortgage deed and signed by the mortgagor or person claiming under him, or a certificate, under oath, of two competent witnesses to prove the entry shall be made. Such memorandum or certificate shall after the entry, except as provided in section seventy of chapter one hundred and for foreclosures of mortgages of registered land by entry and possession satisfied by filing and registering certificate with assistant recorder); Beaton v. Land Court, 367 Mass. 385, 393, appeal dismissed, 423 U.S. 806 (1975) ("a certificate of entry must be [registered] . . . within thirty days from the date of entry"). Actual notice of the entry to the mortgagor or junior lienholders is not required. See Ellis v. Drake, 8 Allen 161, 164 (1864) (mortgagor knows of existence and condition of mortgage and that foreclosure by entry is possibility and is bound to review public records for certificate of entry). Indeed, registration of the certificate of entry is sufficient "notice of the mortgagee's intent to foreclose by entry and possession." Wornat Dev. Corp. v. Vakalis, 403 Mass. 340, 346 (1988). See also Joyner, 322 Mass. at 53 ("There was no statutory requirement that the bank notify the mortgagors or the assignee of the subsequent mortgagee of the entry, which, without more, was effective by reason of the recording of the certificate").

"If the mortgagor wants to challenge a foreclosure by entry, it is incumbent on him to do so before the three-year

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eighty-five, be recorded in the registry of deeds for the county or district where the land lies, with a note of reference, if the mortgage is recorded in the same registry, from each record to the other. Unless such record is made, the entry shall not be effectual for the purposes mentioned in the preceding section."

period has elapsed." Singh v. 207-211 Main St., LLC, 78 Mass. App. Ct. 901, 902 (2010). If the mortgagor fails to do so, and no opposition has been made within three years after the certificate of entry is registered, the mortgagor's right of redemption is forever foreclosed, see G. L. c. 244, § 1, and the mortgagee may bring an S-petition[5] seeking a new certificate of title listing the mortgagee as the owner of the property. See G. L. c. 185, § 114 (b).

2. The property and its registered title. On October 21, 1998, Suzanne C. Hutchinson and Clifton B. Hutchinson, who then held title to the subject property, granted the mortgage at issue in this case (the mortgage or Main Street mortgage) to Mansfield Mortgage Services. The Main Street mortgage had a stated maturity date of November 1, 2013, and was registered in the Land Court[6] and noted on the list of encumbrances on the

[5] An S-petition, or subsequent petition, "is filed in the original registration case . . . . Many S cases are effectively addressed by the Land Court ex parte, because they seek an alteration of the certificate that is routine, ministerial, obvious, and not at all likely to affect the interests of other parties. . . . In some cases, S cases involve contested litigation, and in such cases a Land Court judge will be assigned to the case and will conduct the litigation similar to other Land Court case types." J.D. Masterman, Real Estate Title Practice in Massachusetts § 14.4.6, at 14-30 (Mass. Cont. Legal Educ. 5th ed. 2024).

[6] Unless otherwise noted, all registered documents related to the property were registered in the Norfolk County registry district of the Land Court.

Hutchinsons' certificate of title. In 1998, the Main Street mortgage was assigned to another entity, and on February 24, 2000, it was assigned to Main Street. Each assignment was duly noted on the Hutchinson certificate of title.

On February 28, 2001, the Hutchinsons executed a quitclaim deed conveying the property to Denise Bercy. The deed was registered, and a certificate of title was issued to Bercy. The Main Street mortgage and all the related assignments were noted on the list of encumbrances on the Bercy certificate of title, and there is no indication on the certificate that the Main Street mortgage was discharged through this transaction.[7]

On November 28, 2016, over sixteen years after the Main Street mortgage was registered and during Bercy's ownership, Main Street registered two documents with the Land Court: the first, a limited power of attorney appointing Michael Gaydos, effective November 15, 2016, "as its true and lawful attorney for the purpose of making entry on the [p]roperty to foreclose" the Main Street mortgage," and the second, a certificate of entry, signed by two individuals who attested that they witnessed Gaydos "make an open, peaceable and unopposed entry on

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[7] Between 2002 and 2003, Bercy granted three mortgages to World Savings Bank, all noted on Bercy's certificate of title, and all subordinate to the Main Street mortgage. The first was discharged in 2003, and the other two were discharged in July 2017. The discharges were noted on Bercy's successor's certificate of title.

the [property], . . . for the purpose . . . of foreclosing said mortgage." The limited power of attorney and the certificate of entry were noted on the list of encumbrances on the Bercy certificate of title.

On May 8, 2017, Bercy executed a quitclaim deed, conveying the property to appellees Son B. Tran and Ai T. Le as tenants by the entirety. On June 14, 2017, a certificate of title was issued to Tran and Le, and the Main Street mortgage, the prior assignments, and the 2016 certificate of entry were listed as encumbrances on it.[8] On the same day, Tran and Le granted a mortgage to Mortgage Electronic Registration Systems, Inc., as nominee of the lender, Caliber Home Loans, Inc. (Caliber) (together, MERS), which was noted on Tran and Le's certificate of title. The proceeds of the Caliber loan were not applied to the Main Street mortgage, and Main Street remained the first mortgagee on the list of encumbrances, superior to the MERS mortgage.

3. Main Street and Abate's bankruptcy case. On December 31, 2001, Abate, in his capacity as president, treasurer, clerk,

[8] Both the S-petition and the judge's findings of fact state that the power of attorney and the certificate of entry appeared on the list of encumbrances on the Tran title. However, the Tran certificate of title, as appearing in the appellate record, does not list the power of attorney. Additionally, the power of attorney was not included in the record appendix on appeal. As neither party raises this issue on appeal, we do not address it further.

and director, voluntarily dissolved Main Street by filing articles of dissolution with the Secretary of the Commonwealth. On December 31, 2004, following the statutory three-year period during which Main Street remained in existence to allow it to close its affairs, see G. L. c. 156B, § 102, Main Street's remaining assets, including the Main Street note and mortgage, passed to its sole shareholder, Abate. See Pagounis v. Pendleton, 52 Mass. App. Ct. 270, 276 (2001).

On October 29, 2010, Abate filed a Chapter 7 voluntary bankruptcy petition in the bankruptcy court (bankruptcy case).[9] With his petition, Abate filed numerous required schedules, including Schedule B -- Personal Property (asset schedule), which required the petitioner to "list all personal property of the debtor of whatever kind." 2 Collier Pamphlet Edition F-32 (A.N. Resnick & H.J. Sommer eds., 2010). In section 13 of the asset schedule - "stock and interests in incorporated and unincorporated businesses," Abate disclosed "none." In section 19, "Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A -- Real Property," Abate also disclosed "none." On Schedule A, he listed a single-family residence in another town but he did not list the property at

[9] Abate's voluntary bankruptcy petition was filed jointly with his spouse.

issue or his mortgage interest in it. Abate signed the schedules "under penalty of perjury that" his filings were "true and correct."

On December 14, 2010, while the bankruptcy case was pending, a title insurance company (First American) sent a letter to Abate informing him that a recent title examination of the property revealed a missing discharge related to the Main Street mortgage and requested that Abate forward the discharge with the original note. Abate did not file any amendment to his asset schedule disclosing the mortgage or note after receiving the correspondence from First American. On February 8, 2011, his bankruptcy case concluded, and his liabilities were discharged pursuant to 11 U.S.C. § 727.

In October 2013, Abate contacted First American stating that he had located the original note and mortgage in the Main Street "archives," and asked for payment to be made to him personally.[10] In 2015 and 2016, respectively, Abate's attorney contacted First American and Bercy seeking payment pursuant to the note and mortgage.[11] As set forth above, on November 28,

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[10] Abate wrote in an e-mail message to First American on October 23, 2013, that after receipt of the correspondence, he contacted First American to request payment but was told that he "could not be paid off without the original note."

[11] It can be inferred from the record that Bercy did not respond to the inquiries.

2016, Main Street registered the certificate of entry on the property

On September 21, 2018, upon Abate's application, the Secretary of the Commonwealth granted a limited revival of Main Street, not to exceed one year, to "[enforce] an existing lien and its subsequent collection and payoff/release documentation." On September 6, 2019, Main Street received a general corporate revival from the Secretary of the Commonwealth.

4. Land Court proceeding. On March 23, 2020, Main Street filed its S-petition pursuant to G. L. c. 185, § 114, requesting a new certificate of title reflecting its ownership of the property in fee simple. Main Street alleged that it was entitled to the same as a matter of law because, "[a]s a matter of record, [Main Street] has openly, peaceably, and unopposed been in possession of the property since November 28, 2016," and therefore has "become the fee simple owner" of the property, completing the foreclosure by entry requirements and terminating the mortgagor's right of redemption. After discovery and motion practice,[12] the parties filed cross motions for summary judgment, Tran, Le, Caliber, and MERS (together, the respondents) filing a

[12] Tran and Le filed a motion for judgment on the pleadings, which Main Street opposed, and MERS and Caliber filed a motion to dismiss. The judge denied both motions.

joint summary judgment motion and a joint opposition to Main Street's motion for summary judgment.

Although the respondents advanced three arguments in the Land Court, we focus on the contention central to this appeal: that the doctrine of judicial estoppel applies because Abate, in his personal bankruptcy case, omitted the mortgage and note from his asset schedule and obtained a bankruptcy discharge in reliance on that disclosure, and therefore, could not claim to own these assets in support of the foreclosure by entry and the Land Court S-petition proceeding. In its cross motion, Main Street argued that the undisputed facts were not subject to judicial discretion: the mortgage was in default, Main Street had registered an unopposed certificate of entry, and the three years required by statute to complete a foreclosure by entry had elapsed, and therefore, the judge was required to issue Main Street a new certificate stating it owned the property in fee simple.[13]

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[13] Quoting In re Na-Mor, Inc., 437 B.R. 482, 487 (Bankr. D. Mass. 2010), the judge held that Main Street's revival "automatically [transferred] its former assets from its shareholders back to the corporation," and that the certificate of entry was a valid exercise by Main Street's agent. The judge also held that the registration of a certificate of entry constituted a valid entry and therefore terminated the limitations period set forth in the obsolete mortgage statute.

The judge held that although a "mortgagor [who] wants to challenge a foreclosure by entry . . . [must] do so before the three-year period has elapsed," Singh, 78 Mass. App. Ct. at 902, the passage of the three-year period does not bar the equitable defense of judicial estoppel. The judge concluded that Main Street was judicially estopped from obtaining a certificate of title for the property because Abate failed to disclose the mortgage as an asset during his 2010 bankruptcy case.[14]

Discussion. 1. Discretion in issuing certificates of title on S-petitions. Main Street first argues that the judge did not have discretion to decline to issue the certificate of title as requested in its S-petition. Main Street suggests that because the procedural steps of the foreclosure by entry were met, the ownership of the property passed to it by operation of law, and that because "[j]udges of the Land Court serve as administrators for the registered land system," "the Land Court's function is limited to issuing a new certificate of title."[15] Because Main Street's argument turns on a question of

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[14] In addition, the judge held that even if Main Street was entitled to a certificate of title, he would limit its recovery based on principles of equity and justice.

[15] We acknowledge Main Street's argument that if the property were recorded land instead of registered land, the foreclosure would have been completed and Main Street would own the property upon recording. However, the property has "heightened protection . . . by virtue of the status of the land as registered land [and] the [petitioner] ought not be allowed

statutory interpretation, our review is de novo. See Concord v. Rasmussen, 496 Mass. 450, 459 (2025).

Main Street's argument relies exclusively on G. L. c. 185, § 114, as in effect during the relevant period, which provided that "[n]o erasure, alteration or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon . . . except by order of the court." The argument does not account for other language in the same statute describing the process for requesting a new certificate of title and expressly conferring discretionary authority on Land Court judges to order the entry of an S-certificate "on such terms as equity and justice may require."[16] G. L. c. 185, § 70. See Cuticchia v. Andover, 95 Mass. App. Ct. 121, 125 (2019), quoting Commonwealth v. Hanson H., 464 Mass. 807, 810 (2013) (when interpreting statutes, "we look to the language of

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to exclude self-selected portions of the registration system from the definition of its scope." Duddy v. Mankewich, 75 Mass. App. Ct. 62, 69 n.12 (2009). The registered and recorded land systems are, by definition, different, and thus the process and results of foreclosure proceedings may also differ.

[16] In relevant part, G. L. c. 185, § 70, provides,

> "After possession has been obtained by the mortgagee or his assigns, by entry or by action, . . . he or his assigns may request the land court for the entry of a new certificate, and the court, after notice to all parties in interest, shall have jurisdiction to hear the case, and may order the entry of a new certificate on such terms as equity and justice may require" (emphasis added).

the entire statute, not just a single sentence, and attempt to interpret all of its terms 'harmoniously to effectuate the intent of the Legislature'"). The process and exercise of judicial discretion contemplated by the statute's plain language applies equally to circumstances where possession is obtained by entry or action; in neither instance does the statute contemplate that the judge acts simply as an administrator who is required to issue a new certificate of title if the mortgagee has met certain criteria. Here, the judge acted pursuant to G. L. c. 185, § 70, in examining the facts and issues raised and properly exercising his discretion in determining whether to issue a new certificate of title to Main Street.

2. Judicial estoppel. "The doctrine of judicial estoppel seeks to prevent the manipulation of the judicial process by litigants" (quotation and citations omitted). Mullins v. Corcoran, 488 Mass. 275, 286 (2021). The doctrine is one of equity, that "precludes a party from asserting a position in one legal proceeding that is contrary to a position it had previously asserted in another proceeding" (quotation and citation omitted). Otis v. Arbella Mut. Ins. Co., 443 Mass. 634, 639-640 (2005). "[T]he position being asserted in the litigation must be directly inconsistent, meaning mutually exclusive of, the position asserted in a prior proceeding, and the party must have succeeded in convincing the court to accept

its prior position" (quotations and citations omitted). Mullins, supra at 287. No "inflexible prerequisites or . . . exhaustive formula" dictates its application (alteration omitted). Otis, supra at 640, quoting New Hampshire v. Maine, 532 U.S. 742, 751 (2001). Rather, the doctrine is invoked to stop a party from "playing fast and loose with the courts." Otis, supra at 642, quoting Patriot Cinemas, Inc. v. General Cinema Corp., 834 F.2d 208, 212 (1st Cir. 1987). In applying judicial estoppel to debtors that have failed to reveal assets in bankruptcy proceedings, it is no defense that a windfall to even an undeserving party invoking the doctrine might occur -- the integrity of the bankruptcy process is that important. See In re Blanchette, 582 B.R. 819, 824 (Bankr. D. Mass. 2018), and cases cited.

We review a judge's "application of the equitable principle of judicial estoppel" for an abuse of discretion. See Otis, 443 Mass. at 640. "Where, as here, application of judicial estoppel has resulted in the entry of summary judgment, abuse of discretion remains the appropriate standard . . . ." Id.

Main Street first argues that judicial estoppel is unavailable in this case because the claims in the bankruptcy court and the Land Court were advanced by different entities -- Abate, as an individual petitioner who signed the asset schedule in the bankruptcy action, and Main Street, as a corporate petitioner in the Land Court. However, the distinction in legal identity is neither dispositive nor preclusive of a judicial estoppel analysis where, as here, the underlying party in interest in both cases is the same. See Sandman v. McGrath, 78 Mass. App. Ct. 800, 802-805 (2011) (judicial estoppel applied where real party in interest claimed directly inconsistent positions in two lawsuits). The application of judicial estoppel to cases in which the named parties differ but the parties in interest are the same is also supported by case law from other jurisdictions. See Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC, 692 F.3d 983, 996 (9th Cir. 2012) ("non-party may be bound by a judgment if one of the parties to the earlier suit is so closely aligned with the non-party's interests as to be its virtual representative . . . [;] the identity of parties is not a mere matter of form but of substance" [alteration, quotations, and citations omitted]). See also Patriot Mfg. LLC v. Hartwig, Inc., 996 F. Supp. 2d 1120, 1127-1128 (D. Kan. 2014) ("Privity requires a showing that the parties in the two actions are really and substantially, in interest, the same. Generally, a sole owner of a company is in privity with the company. . . . Therefore, [the company] may be bound by inconsistent statements made by [the owner] in his bankruptcy for the purpose of determining judicial estoppel" [footnotes omitted]).

Here, it is undisputed that on December 31, 2001, Abate voluntarily dissolved Main Street, and as of December 31, 2004, Main Street's remaining assets, including the interest in the property, passed to Abate as its sole shareholder. See G. L. c. 156B, § 102. See also Pagounis, 52 Mass. App. at 276 ("upon the dissolution of a corporation, all debts having been paid and no receiver having been appointed, the property of a dissolved corporation passes to its former shareholders"). Thus, in 2010, when Abate filed for bankruptcy protection, he personally held the note, secured by the property, as an asset. In 2019, after reviving Main Street as a corporation, Abate remained its sole shareholder and stood to enjoy any benefit awarded to Main Street, including the relief Main Street sought in its Land Court action, to wit, issuance of a title reflecting its fee simple interest in the property. Additionally, Main Street relied on its close relationship with Abate -- as its president, clerk, treasurer, and sole shareholder -- in performing the duties required to dissolve and then revive the business. We conclude therefore that Abate was the real party in interest in both the bankruptcy case and the present Land Court action, and the positions taken in both are subject to scrutiny under the doctrine of judicial estoppel. See Sandman, 78 Mass. App. Ct. at 802-803. See also Milton H. Greene Archives, Inc., 692 F.3d at 996.

Having established that the doctrine of judicial estoppel is available here, we address what we discern as Main Street's substantive argument. Main Street contends that judicial estoppel is inapplicable here because Abate did not make a statement or take a position about the "legal title" to the property in either the bankruptcy proceeding or the Land Court action. Main Street argues that, because the bankruptcy court does not have subject matter jurisdiction over determining title to registered land, Abate did not take a position on the status of the title to the property within his bankruptcy filings. It further contends that its filing in the Land Court relies solely on certificates of title and lists of encumbrances in support of its S-petition, and therefore, it did not make any "statement" to the Land Court regarding title. These arguments fail to grasp the core elements of judicial estoppel and, in particular, what actions constitute "taking a position in litigation."

Judicial estoppel has two essential elements. "First, the position being asserted in the litigation must be directly inconsistent, meaning mutually exclusive of, the position asserted in a prior proceeding" (quotations and citations omitted). Otis, 443 Mass. at 640-641. Here, in his 2010 bankruptcy case, Abate submitted what he attested was a complete schedule of assets to the bankruptcy court, and by extension, to the bankruptcy trustee.[17] As discussed above, three years after the dissolution of Main Street, Abate personally held Main Street's remaining assets, including the note and mortgage. However, he failed to include these instruments on the asset schedule submitted to the bankruptcy court on November 23, 2010, and took no action to notify the bankruptcy court or bankruptcy trustee that he retained the instruments after receiving the First American correspondence on December 14, 2010. By failing to disclose the note and mortgage, Abate took the position in the bankruptcy court that these instruments were not among the assets of the bankruptcy estate. See Keathley v. Buddy Ayers Constr., Inc., 608 U.S. 647, 654 (2026) ("courts that apply judicial estoppel to claims in the bankruptcy context view the debtor's failure to disclose a particular claim as an implicit representation that the claim does not exist" [quotations and citation omitted]). See also Davis v. Wakelee, 156 U.S. 680, 689 (1895) ("It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a

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[17] "The trustee of a Chapter 7 debtor . . . has the general duties of marshalling all available property, reducing it to money, distributing it to creditors, and closing up the estate." Koch Refining v. Farmers Union Cent. Exch., Inc., 831 F.2d 1339, 1342 (7th Cir. 1987), cert. denied, 485 U.S. 906 (1988). See also 11 U.S.C. § 704(a)(1).

contrary position . . ."). The asset schedule did not function to determine title in the property, as argued by Main Street; rather, it functioned to inform the bankruptcy trustee of the value of the estate assets so that the trustee, in turn, could evaluate whether to pursue them for the benefit of the estate's creditors. See 11 U.S.C. § 541(a).

Main Street then advanced a contrary position in the Land Court. By filing a certificate of entry, and thereafter, the S-petition, Main Street represented to the Land Court that it had the authority to complete the foreclosure by entry and gain title to the property by virtue of holding an interest in the note and mortgage -- the same instruments that Abate had implicitly represented were not a part of his bankruptcy estate.

The second element of judicial estoppel is that "the party must have succeeded in convincing the court to accept its prior position." Otis, 443 Mass. at 641. Because Abate omitted his interests in the property from his asset schedule, the bankruptcy trustee was deprived of the opportunity to investigate the value of this asset for the benefit of the creditors of the bankruptcy estate. Thereafter, the bankruptcy court granted Abate's discharge. See Guay v. Burack, 677 F.3d 10, 18 (1st Cir. 2012) ("A bankruptcy court 'accepts' a position taken in the form of omissions from bankruptcy schedules when it grants the debtor relief, such as discharge, on the basis of those filings"). See also Spinosa v. Tufts, 98 Mass. App. Ct. 1, 6 n.6 (2020).[18]

Here, the facts support both elements of judicial estoppel. Yet, application of judicial estoppel is a discretionary decision by the judge. "In deciding whether a party should be judicially estopped, we . . . look to see whether that party is seeking to use the judicial process in an inconsistent way that courts should not tolerate." East Cambridge Sav. Bank v. Wheeler, 422 Mass. 621, 623 (1996). Abate represented that he held no interest in the mortgage in one case and then used the mortgage as the basis for Main Street's foreclosure by entry. Where issuing a new certificate of title to Main Street would raise "the specter of inconsistent determinations and [endanger] the integrity of the judicial process," Otis, 443 Mass. at 643, quoting Alternative Sys. Concepts, Inc. v. Synopsys, Inc., 374 F.3d 23, 33 (1st Cir. 2004), the judge was within his discretion to determine that Main Street should not reap the benefit of the

[18] In the Land Court, Main Street did not argue that Abate's omission of the note and mortgage from the asset schedule was inadvertent or a mistake. Examining the record evidence demonstrating "the totality of the circumstances surrounding [the] failure to report" Abate's interest in the Main Street mortgage or the property, Keathley, 608 U.S. at 656, we discern no indication of inadvertence.

mortgage, and we see no error in the judge's well-reasoned allowance of the appellees' motion for summary judgment.[19]

Conclusion. We conclude that, because Main Street's S-petition requesting a certificate of title for the property and Abate's omission within his bankruptcy schedules took inconsistent positions, the judge acted within his discretion in applying the doctrine of judicial estoppel, and in entering summary judgment for the appellees and denying Main Street's motion for relief from judgment. We affirm the judgment and the order denying Main Street's motion for relief from judgment.[20]

So ordered.

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[19] Because we affirm the Land Court's application of judicial estoppel, we need not reach Main Street's remaining arguments.

[20] In view of our conclusion, Main Street's request for attorney's fees is denied.