

# Bankruptcy and Evictions- In Re Alberts

[On behalf of Dornish Law Offices, PC](#) | Aug 1, 2008 | [All, Landlord-Tenant](#)

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Landlords already know how the challenge of evicting a tenant who files for Bankruptcy protection during the eviction process, especially a tenant who knows how to play the system. After the decision of Judge Deller in the recent Beaver County case, In Re Alberts, the eviction process has become even more drawn out in certain Bankruptcy proceedings, since the case changed the Bankruptcy Court's interpretation of the effect an appeal has on a judgment obtained at the Magisterial District Court level. See In Re Alberts, 381 B.R. 171 (Bkrcty.W.D.Pa., 2008).

In order to understand the effect of this decision, you have to know a little bit about how evictions work generally. To obtain an eviction judgment, both for money and possession of the property, landlords usually file a complaint with the local Magisterial District Court. If the judgment is awarded to the landlord for either possession, money or both, the tenant always has the ability to appeal the decision and get a new trial in the court of Common Pleas. Nevertheless, the Magisterial Judgment on appeal still dictates that the tenant has to pay money equal to the judgment, up to three months' rent, and continuing rent in the amount determined by the Magisterial Judge to be the monthly rent, into court to stay in the property during the appeal.

Such was the case in In Re Alberts. The landlord, which happened to be a public Housing Authority, was granted a monetary judgment and judgment for possession by the Magisterial District Court, and the tenant filed a de novo appeal to the Court of Common Pleas. Alberts at 175. In response, the Housing Authority filed a new complaint in the Court of Common Pleas, a new trial date was set, but prior to the trial the tenant filed for bankruptcy. Id.

It would not appear as if anything out of the ordinary had occurred with the facts mentioned so far in the Alberts case. However, a major setback to the Housing Authority, and to tenants everywhere in Pennsylvania, came about as a result of the tenant's timely perfected appeal and the subsequent Bankruptcy Court decision.

In the past, if a landlord obtained a “pre-petition” judgment or a judgment prior to the tenant filing bankruptcy, then the landlord was entitled to the exception to the automatic stay. An automatic stay pursuant to 11 U.S.C.A. §362(a) protects debtor-tenants by freezing the status quo and preventing post-petition action of creditors. It is automatic in the sense that it is done without the necessity of a formal court order but rather is automatic upon the commencement of the suit. An important exception to the automatic stay is found in 11 U.S.C.A. §362(b)(22), which allows for the continuation of eviction proceedings where a landlord has obtained a pre-petition judgment for residential property against the debtor-tenant. The key to this exception is securing a judgment against the tenant-debtor *prior* to his filing of bankruptcy.

In Alberts, the Debtor contended that the “judgment” obtained by the Housing Authority at the Magisterial level was null and void since the “judgment” was under review in the form of a de novo appeal to the Court of Common Pleas, and for purposes of the provision granting the exception to the automatic stay, there was no recognizable “judgment” in place as of the date the tenant filed for bankruptcy and therefore the landlord could not continue his eviction proceedings under the §362(a) exception. Alberts at 177.

Despite the above discussed survival of the Magisterial District Court judgment under Pennsylvania law for purposes of supersedeas, or determining the amount the tenant has to pay to stay, the Bankruptcy Court agreed with the Debtor. The de novo appeal had in essence, extinguished the original judgment awarded by the Magisterial District Court so that there was no pre-petition judgment in place, rendering the automatic stay exception inapplicable. Worse yet, if the landlord continued eviction proceedings without getting relief from stay once the de novo appeal is perfected, the landlord could be held for sanctions for violating the automatic stay the tenant-debtor is free to enjoy! Thus, Alberts appears to allow tenants who timely appeal a judgment in a landlord tenant action and also file bankruptcy during the process to stay in the property without paying the rent required under either Pennsylvania law or Section 362 of the Bankruptcy Code.

Fortunately, we are working on behalf of Pennsylvania landlords together with the Housing Authorities of Allegheny County, Beaver County, McKeesport and Pittsburgh, as well as lawyers from Neighborhood Legal Services, on a draft of a new local rule for the Bankruptcy Court which, if

the Court adopts the rule, should help rectify the problem with this decision, and lead to consistent, predictable results in landlord tenant cases with tenants in bankruptcy. Look for more news on this issue in the coming months.

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