Mere Retention of Property Does Not Violate Automatic Stay

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Reversing a Seventh Circuit decision and resolving a circuit split, the U.S. Supreme Court recently held ?that mere retention of property does not violate the [automatic stay imposed by] section 362(a)(3) of the Bankruptcy Code.? The Court?s unanimous ruling arose out of four cases in which the City of Chicago refused to release vehicles that it impounded until the vehicle owners paid all fines and charges. The City?s refusal to release the vehicles continued even after the vehicle owners filed for relief under Chapter 13 of the Bankruptcy Code and demanded the return of their vehicles.

Section 362(a)(3) stays ?any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.? Thus, the issue in the case was whether a creditor had ?exercise[d] control? over the motor vehicles when the creditor merely had retained possession of the property that the creditor had seized prior to the filing of the bankruptcy. To reach its decision, the Court undertook a textual analysis, finding that the terms ?stay,? ?act? and ?exercise control? suggested that Congress had intended for section 362(a)(3) to prohibit only affirmative acts and not the maintenance of the status quo.

Section 542 of the Bankruptcy Code was critical to the Court?s analysis. Section 542(a) provides that ?an entity . . . in possession . . . of property that the trustee may use, sell, or lease under section 363 of this title . . ., shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.? Sections 542(c) and (d) then go on to provide exceptions where a creditor is not required to deliver property of the estate. The Court questioned why Congress would impose a turnover requirement in section 362(a) when it appears that section 542(c) was designed for that exact purpose; ?it would render the central command of [section] 542 largely superfluous.? Furthermore, if section 362(a)(3) were interpreted to impose a turnover requirement, then it would swallow the exceptions contained in section 542(c) and (d) because no such exceptions exist in section 362(a)(3). ?Had Congress wanted to make [section] 362(a)(3) an enforcement arm of sorts for 542(a), the least one would expect would be a cross-reference to the latter provision . . . .?

While the Court?s decision represents a victory for creditors, there are some important caveats. The

Court emphasized that its decision was limited to section 362(a)(3); the Court did not decide whether and when section 542(a) or the other provisions of section 362(a) require a creditor to turn over property of the estate after a debtor has filed for bankruptcy. Furthermore, bankruptcy courts tend to be sensitive to the plight of a debtor who is trying to make a living and can be short-tempered with creditors that interfere without a clear legal basis to do so. After all, as noted in Justice Sotomayor?s concurrence, ?[t]he principal purpose of the Bankruptcy Code is to grant a ?fresh start? to debtors.?

With those caveats, there can be no assurance that courts will wait for new legislation to provide clarity. Debtors and bankruptcy courts could rely on alternative sections of the Bankruptcy Code to require creditors to turn over property of the estate. Accordingly, zealous creditors may well be caught up in a dispute occasioned by a court seeking to forge protections for debtors and to resolve uncertainties that remain following the Court?s decision. Thus, creditors that choose to disregard a debtor?s request to turn over property of the estate still will do so at their own risk.

City of Chicago, Illinois v. Fulton, No. 19-357, 2021 WL 125106 (U.S. Jan. 14, 2021)

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- Michael D. Mueller ? 804.420.6332 ? mmueller@williamsmullen.com

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