AMERICAN BANKRUPTCY INSTITUTE

2021 Winter Leadership Conference

Riding the Wave: Visiting and Revisiting the Automatic Stay, Discharge Injunction and Sanctions in the Wake of *Fulton v. City of Chicago* and Taggart v. Lorenzen

Hosted by the Bankruptcy Litigation and Consumer Bankruptcy Committees

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CONCURRENT SESSION

2021

Riding the Wave

Visiting and Revisiting the Automatic Stay, Discharge Injunction, and Sanctions in the Wake of *Fulton v. City of Chicago* and *Taggart v. Lorenzen*

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John Pottow – University of Michigan – Ann Arbor, Michigan
Keith Rucinski – Chapter 13 Trustee – Akron, Ohio
Chris Hawkins – Bradley – Birmingham, Alabama

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Insights and Predictions

02 ***Fulton v. City of Chicago***
Overview
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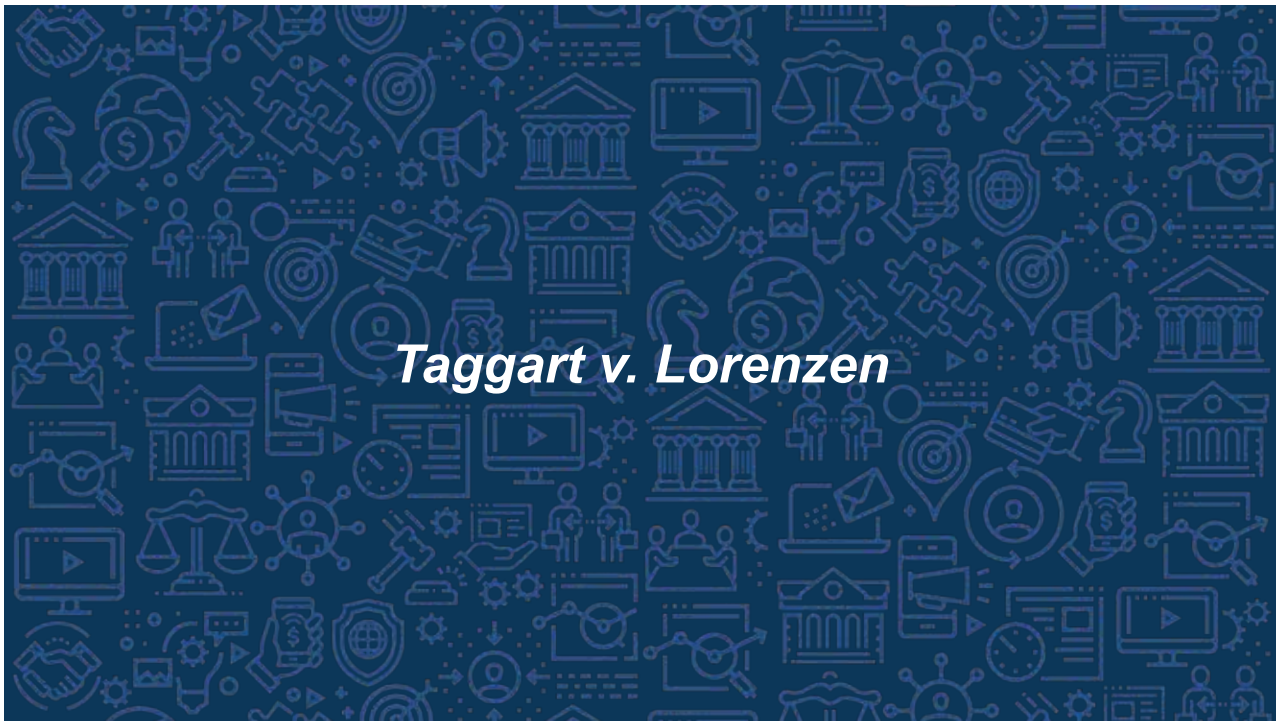


Taggart Background and Procedural History

- Plaintiff in a prepetition state court suit sought postpetition attorneys' fees from the defendant after the defendant received a discharge in his chapter 7 bankruptcy case
- State court allowed the plaintiff to collect the fees, and the defendant filed a motion with the bankruptcy court to hold the plaintiff in civil contempt for violation of the discharge injunction
- Bankruptcy court initially determined the fees were exempt from the discharge order because the defendant had "returned to the fray" in state court post-petition

Taggart Background and Procedural History

- District court disagreed, and on remand, the bankruptcy court held that if the fees were subject to the discharge injunction, the plaintiff was in violation of that injunction because it was "aware of the discharge" and "intended the action"
- Ninth Circuit applied a standard far from strict liability. It held that a creditor could not be held in contempt for a violation of the discharge injunction if it had a "good faith belief" that the discharge injunction did not apply to its action, "even if the creditor's belief is unreasonable"

Taggart Standard for Discharge Violations

- Court adopted standard from civil contempt opinion issued in 1885
  - When a statutory term is "obviously transplanted from another legal source," it "brings the old soil with it"
  - Civil contempt should not be resorted to where there is [a] *fair ground of doubt* as to the wrongfulness of the defendant's conduct
  - Under the "fair ground of doubt" standard, a creditor's good faith can be analyzed, but only under that objective standard of reasonability
  - Civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful

Taggart Standard for Discharge Violations

- Only applies in the discharge context (for now)
  - Court questioned the "strict liability" standard applied in cases related to automatic stay in a parenthetical, but declined to opine on applicability
  - Regardless of the new standard, it is objectively unreasonable to disregard the discharge when servicing a loan
  - Communications with debtor should acknowledge the discharge
  - It may not be objectively unreasonable to send communications required by other applicable law
    - Post-discharge loan modifications that include bankruptcy disclaimers
    - TILA and RESPA disclosures (billing statements, force-placed insurance, successor in interest communications) with bankruptcy disclaimers may be considered objectively reasonable

In re Roth

- After the debtor surrendered her interest in non-homestead real property and discharged personal liability on mortgage, mortgage company sent one monthly billing statement to the debtor
  - Mortgage statement said for "information only"
  - Mortgage coupon stated that payment was "voluntary"
- Key Holdings
  - Single statement sent to the debtor was not an attempt to collect debt
  - The debtor can choose to pay on discharged debt pursuant to Section 524
- Takeaways
  - The debtor received damages under FDCPA "least sophisticated consumer standard" in separate case
  - Bankruptcy Code does not use FDCPA standard for civil contempt

In re Orlandi

- In his Chapter 7 case, Debtor discharged his personal liability on the commercial lease where Debtor operated his incorporated business
  - Post-confirmation, Debtor and leasing company proceeded on pre-petition lease to allow Debtor to extend the lease term
  - Debtor defaulted on post-petition lease payments and leasing company sought payment on both pre- and post-petition defaulted payments
- Key Holdings
  - Debtor did not reaffirm personal liability for extended lease and was not personally liable for any pre and post lease defaults. Leasing company violated discharge injunction but its actions were not willful
- Takeaways
  - Bankruptcy court failed to follow *Taggart*
  - Conflicting case law provided a "fair ground of doubt"

In re Norton

- Town deemed the debtor's property to be a blight (junkyard/scrap business).
- A blight lien was recorded at $2,000 with a daily $100 fine until the blight was removed. The town eventually removed the items that constituted the blight.
- Shortly thereafter, the debtor filed a chapter 7 case, listing the lien in the schedules and a disputed claim of $1 for the removal costs. The town received notice of the bankruptcy and the discharge order. The town subsequently obtained a certificate of lien and brought action against the debtor.
- Key Holding
  - No objective reading of the Bankruptcy Code would lead to the conclusion that the town's conduct relating to its lien was permissible. Additionally, the lien does not fall under Section 523(a)(7) because it is not compensation for an actual pecuniary loss. Therefore, there was no "fair ground of doubt" as to whether the town's actions violated the discharge.

In re Palczuk

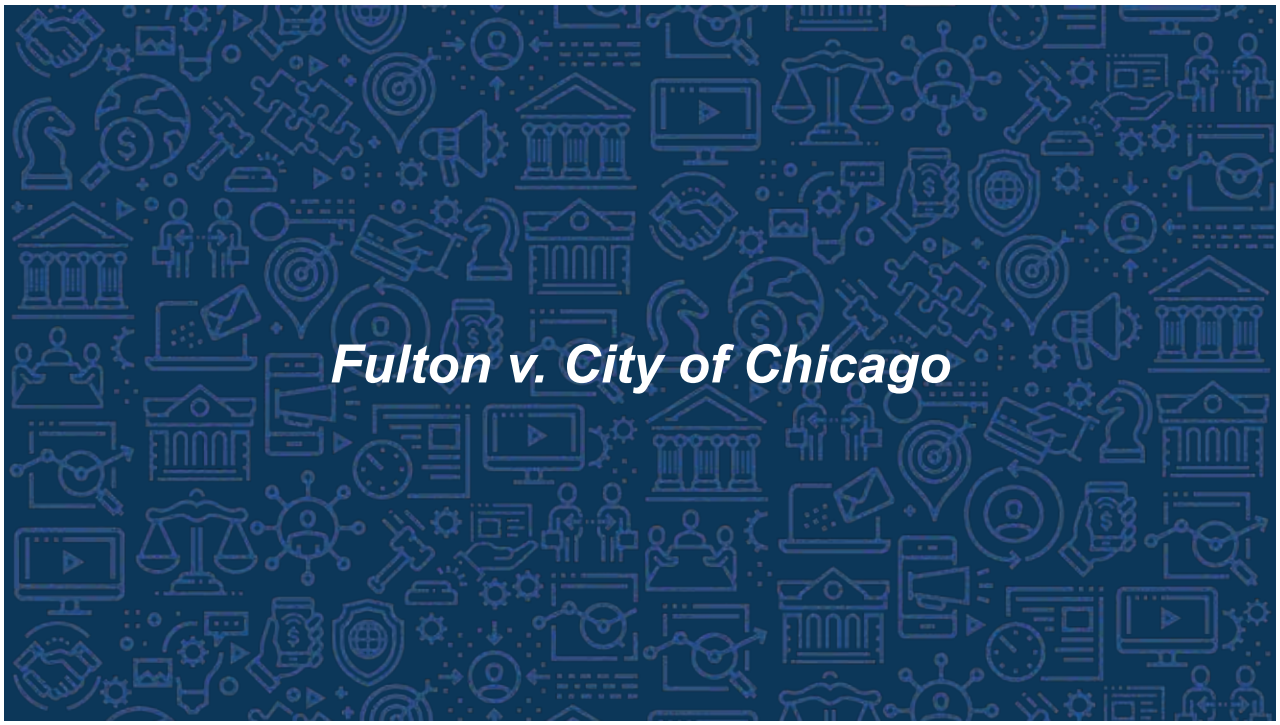
- Creditors previously had brought suit against the debtor in multiple venues.
- When the debtor filed a bankruptcy case, the creditors did not: file a claim in the debtors' bankruptcy case; object to confirmation of the debtor's plan; or file a complaint to determine is debt to be nondischargeable.
- The creditors continued to pursue the outside litigation post-discharge.

- Key Holding
  - The creditors simply refused to cease their efforts to establish and recover on their "self-effectuating Section 523(a)(19) claims" notwithstanding the plain language of that statute. This was explained to them by multiple federal judges.
  - In light of the plain language and multiple explanations, there was "no fair ground of doubt" that their actions violated the discharge and subjected them to sanctions for civil contempt.

Insights and Predictions

- Student loans
  - Private student loans under *Homaidan v. Sallie Mae*, 3 F.4th 595 (2nd Cir. 2021), *McDaniel v. Navient Sols. LLC (In re McDaniel)*, 973 F.3d 1083 (10th Cir. 2020), and *Crocker v. Navient Sols., L.L.C. (In re Crocker)*, 941 F.3d 206 (5th Cir. 2019)
  - Federal student loans in future legislation

- Mortgages
  - Section 1328(a)
  - New section 1328(i)



Fulton Background

- Background
  - After their cars were impounded and they sought bankruptcy protection, debtors Shannon argued that Section 362(a)(3) required the city to return the cars.
  - The city of Chicago refused, claiming that the debtors needed to use the turnover provisions in Section 542(a) to recover their cars back.
- Implications
  - If Section 362 is the operative provision, merely filing a bankruptcy petition would create an obligation for Chicago to return the vehicles to the debtors.
  - If Section 542 is the operative provision, the debtors may need to initiate an adversary proceeding to recover their cars.

Fulton Holding

- Opinion narrowly addresses Section 362(a)(3)
- Section 362(a)(3) provides that "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" violates the automatic stay.
- Based on Webster's Third New International Dictionary, "to exercise" under Section 362(a)(3) is "to bring into play" or "make effective in action."
- Act v. Omission
  - "[S]aying that a person engages in an 'act' to 'exercise' his or her power over a thing communicates more than merely 'having' that power."

Fulton Holding

- Any ambiguity in the text of Section 362(a)(3) is resolved decidedly in the City's favor by the existence of a separate provision, Section 542.
- Section 542 dictates that entities holding debtors' property "shall deliver to the trustee … such property or the value of such property unless such property is of inconsequential value or benefit to the estate."
  - The debtors' reading of Section 362 would render Section 542 "largely superfluous."
  - The debtors' reading of Section 362 contradicts Section 542, because the latter exempts property "of inconsequential value or benefit to the estate," and the former contains no such exemption. Section 362 cannot be read to include Section 542's exception.
  - Based on the history of amendments to the Bankruptcy Code, Congress has not made Section 362 an enforcement arm of Section 542.

In re Margavitch

- Creditor obtained pre-bankruptcy judgment against debtor and obtained a writ of attachment related to funds on deposit with credit union.
- Debtor filed chapter 13 case and made demand on creditor to take action to extinguish the writ. Creditor initially declined to do so, but it did withdraw the writ once the debtor's plan was confirmed (which provided for payment in full of the creditor's claim.
- The court decided the reasoning in *Fulton* can be applied to the other subsections of Section 362."
  - Because subsections (a)(4)-(6) all start with the phrase "any act to . . ." it can logically follow that an affirmative post-petition 'act' is necessary to constitute a violation of those subsections.
  - Mere retention of a valid pre-petition state court attachment or lien without more, is not a violation of Sections 362(a)(4) – (6).

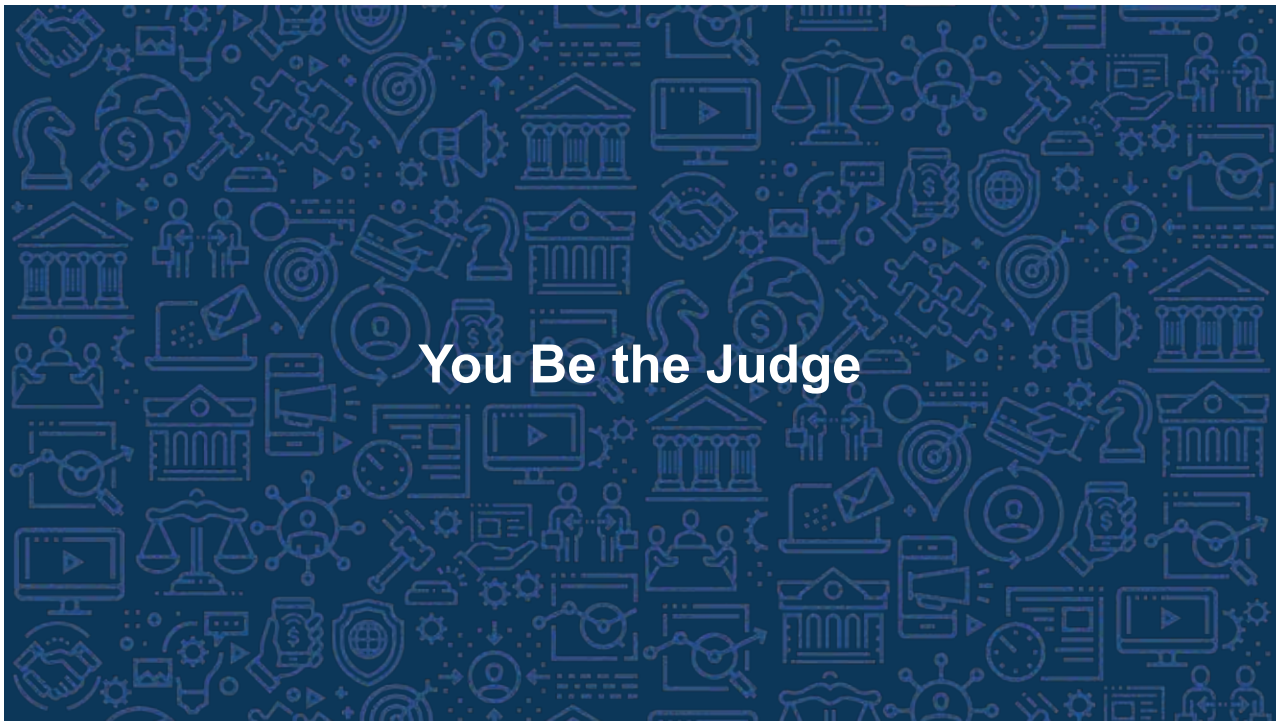
Stuart v. City of Scottsdale

- The City of Scottsdale had obtained a writ of garnishment related to the debtor's bank accounts, and the bank froze those accounts.
- When the debtor filed a chapter 13 case, the City promptly filed a motion to stay the underlying state court litigation but did not seek to quash the garnishment or dismiss the garnishment proceeding. The debtor moved to quash the writ of garnishment, and the state court granted that motion.
- The debtor moved for sanctions in bankruptcy court, alleging that the City's failure to dismiss the garnishment proceeding violated the automatic stay. The court initially found a stay violation, but before a hearing on damages, the City filed a motion to reconsider based on *Fulton*.

Stuart v. City of Scottsdale

- On reconsideration, the bankruptcy court determined that, under *Fulton*, the City had not violated the automatic stay under Section 362(a)(3) when it failed to take affirmative action to release the funds.
- The bankruptcy court found no violation of Section 362(a)(1) because the City had filed a motion to stay the state court proceeding.
- The bankruptcy court found no violation of Section 362(a)(2) because the failure to quash the garnishment did not constitute an act to compel or enforce the underlying state court judgment.
- The bankruptcy court also found no violation of Section 362(a)(6), reasoning that the failure to dismiss the lawsuit was not an act to collect a claim.
- The 9th Circuit B.A.P. affirmed the bankruptcy court essentially adopting all of the bankruptcy court's reasoning on the City's motion to reconsider.

Insights and Predictions



Hypothetical 1

- Background
  - The debtor received chapter 7 discharge in 2009 but retained possession of property subject to mortgage
  - Servicer subsequently sent debt validation notice, made at least 35 phone calls, and indicated on credit report that debtor was past due
  - Servicer argued that its sole purpose in making the calls was to determine the debtor's intention with respect to the property (retain and make voluntary payments v. surrender the property).
- You Be The Judge
  - Should the servicer be held in civil contempt under *Taggart* for violating the discharge injunction?
    - Yes
    - No

Hypothetical 1 – *In re DiBattista*

- Background
  - The debtor received chapter 7 discharge in 2009 but retained possession of property subject to mortgage
  - Servicer subsequently sent debt validation notice, made at least 35 phone calls, and indicated on credit report that debtor was past due
- Key Holdings
  - Bankruptcy court, affirmed by district court, found willful discharge violation
  - Bankruptcy court, awarded $500 per call ($17,500) plus attorney's fees ($9,000), but district court remanded for finding as to whether the $17,500 was actual damages or punitive damages
  - Under *Taggart*, absence of willfulness does not relieve party of contempt
- Takeaways
  - Disclaimers alone will not save a servicer that is not properly monitoring for discharge

Hypothetical 2

- Background
  - After the debtor received a discharge, the loan servicer continued to send monthly billing statements (with an attached payment coupon) to the debtor and made phone calls to the debtor.
  - The statements included a bankruptcy disclaimer.
  - The debtor asserted violations of the discharge order, FDCPA and TCPA related to mortgage loan
- You be the Judge
  - Should the servicer be held in civil contempt under *Taggart* for violating the discharge injunction?
    - Yes
    - No
  - Should the servicer be held in civil contempt under other applicable law?
    - Yes
    - No

Hypothetical 2 – *In re Parente*

- Background
  - The debtor asserted violations of the discharge order, FDCPA and TCPA related to mortgage loan
  - The debtor alleged harassing letters and phone calls
- Key Holdings
  - FDCPA claim survives motion to dismiss, notwithstanding bankruptcy disclaimer in written communications
  - TCPA claim survives motion to dismiss even with vague allegations regarding automatic telephone dialing system
  - Discharge violation claim dismissed, given Section 524(j)'s "safe harbor"
- Takeaways
  - While, under *Taggart,* there is no "fair ground of doubt" as to the effect of the debtor's discharge, Section 524(j) permits ordinary course acts limited to seeking periodic payments associated with valid security interest in debtor's principal residence

Hypothetical 3

- Background
  - Debtor's chapter 13 cram down plan provided for bifurcation of the creditor's claim into secured and unsecured portions. The debtor completed all payments under the plan and received a discharge. The creditor, instead of releasing its lien in compliance with the plan, attempted to foreclose the lien.
  - The creditor argued that it believed that its lien survived and applied to the total debt, not just the portion paid through the Plan. The creditor believed that under California law, to extinguish a Lien, a separate proceeding would be required. The creditor was expecting notice, i.e. "a motion or adversary proceeding to avoid a lien," and no such notice was provided.
- You Be The Judge
  - Should the creditor be held in civil contempt under *Taggart* for violating the discharge injunction?
    - Yes
    - No

Hypothetical 3 – *In re Freeman*

- The debtor did not meet burden (clear and convincing evidence) that there was “no fair ground of doubt” that the discharge injunction barred the creditor from enforcing what it believed to be surviving post-discharge lien rights.
- The creditor’s understanding was not "objectively unreasonable." The shifting valuations throughout the case led to justifiable confusion as to what was to be paid pursuant to the plan.
- Therefore, the debtor failed to establish that there was no “fair ground of doubt” that the discharge barred the creditor from taking action against the property.

Riding the Wave: Visiting and Revisiting the Automatic Stay, Discharge Injunction, and Sanctions in the Wake of *Fulton v. City of Chicago* and *Taggart v. Lorenzen*[1]

By:
Karlene Archer
John Pottow
Keith Rucinski
Chris Hawkins

While both *Taggart v. Lorenzen*[2] and *City of Chicago, Illinois v. Fulton*[3] arose in consumer bankruptcy cases, these recent opinions from the United States Supreme Court likely will have a profound impact across all chapters of the Bankruptcy Code. To date, *Taggart* has generated significantly more activity in the lower courts regarding violations of the discharge injunction, but the findings in *Fulton* have the potential for application across a wide spectrum of fact patterns related to the automatic stay. Attached are the Court's opinions in *Taggart* and *Fulton*, and below are summaries of some of the key citing decisions from the lower courts.

TAGGART

In this section, information is organized in the following format:

- Case Citation
    - **Conduct** = the alleged wrongful conduct forming the basis of the contempt complaint
    - **Argument** = What arguments the creditor posited (if any) that there was indeed "fair ground for doubt"
    - **Holding** = What the court held in response to the arguments presented.

Circuit Level & BAP

- *In re Gravel*, 6 F.4th 503 (2nd Cir. 2021).
    - **Conduct** = Mortgage company PHH sent monthly mortgage statements after the conclusion of a 2-year chapter 13 plan that included property inspection fees and late fees but did not demand payment of those fees. The monthly statement said it was "not an attempt to collect a debt" and "was provided to comply with local

[1] The panelists wish to thank the Law Library at the University of Michigan School of Law and Adam Girts for their research and compilation of materials for this panel.
[2] 139 S. Ct. 1795 (2019).
[3] 141 S. Ct. 585 (2021).

bankruptcy rules." Only principal, interest and escrow amounts were reflected in "Total Due" section of the monthly statement.

- **Argument** = PHH argued that they complied with the discharge order, which declared the debtors were current on all payments, "including all monthly payments and any other charges or amounts due under their mortgage." While the discharge order also prohibited creditor from contesting that fact "in any other proceeding," PHH listed, but did not demand payment of, the fees on its monthly statements.

- **Holding** = "The Current Orders imposed a single injunction: PHH may not dispute the current status of the debtors 'in any other proceeding.' However broad 'other proceeding' may be in this context, there is fair ground of doubt as to whether it would reach PHH's out-of-court conduct . . . ." In essence, without an express injunction prohibiting PHH from listing otherwise nonrecoverable fees on its monthly statements, there was a fair ground of doubt as to whether the listed fees could form the basis for contempt.

- ***In re Loder***, 796 Fed. App'x 698 (11th Cir. 2020)

  - **Conduct** = The creditor obtained a state court judgment in the amount of $5,600.00, which provided for 12% interest upon a default in repayment. Debtor almost immediately defaulted. Less than 1 month later, debtor filed a chapter 7 case. Several years later, the creditor tried to collect the state court judgement. The debtor does not contest the principal amount but did contest the 12% interest as having been discharged.

  - **Argument** = No direct argument was made by the creditor, as debtor had the burden of proof and persuasion.

  - **Holding** = "It was objectively reasonable for Icemakers to believe that it could legally collect the interest, costs, and fees imposed by the state court, for two reasons." First, the state court judgment fixed the debt, and bankruptcy court only determined whether it was dischargeable. The amount owed, including post judgement interest, was already litigated in state court and thus, the creditor had an objectively reasonable basis to conclude discharge was collaterally estopped. Second, the debtor had consented to the conclusion by the bankruptcy court that the $5,600.00 judgment was non-dischargeable. The creditor had a legal basis to conclude that costs and interest also were non-dischargeable because entitlement to a part means debtor is "entitled to collect the whole of any debt owed." *TranSouth Fin. Corp. of Fla. v. Johnson*, 931 F.2d 1505, 1507 (11th Cir. 1991).

- ***In re Orlandi*,** 612 B.R. 372 (6th Cir. B.A.P. 2019)

  - **Conduct** = Debtor filed a chapter 7 case that listed the debtor's personal guaranty on a commercial lease. The debtor's personal liability on the lease was discharged.

The creditor knew of the chapter 7 filing and discharge. Postpetition, the debtor and commercial landlord negotiated and extended the term of the commercial lease. The debtor and his company subsequently defaulted on the commercial lease. The creditor sought to recover based on the debtor's personal guaranty and sued the debtor in state court. The debtor returned to the bankruptcy court and filed an adversary proceeding against the creditor for a violation of the discharge injunction. Although usually brought by motion, the court allowed the adversary proceeding to move forward because the creditor waited more than a year to ask the court to dismiss the adversary on procedural grounds, making the request untimely. The bankruptcy court found that the creditor violated the discharge injunction by suing the debtor on the personal guaranty. The bankruptcy court found the creditor's actions to be willful and awarded the debtor $10,720.

- **Argument** = The issue was that the personal guaranty was a contingent liability not due at the time of the chapter 7 filing and therefore could not be discharged. The default on the commercial lease occurred postpetition. There was no controlling law in the Sixth Circuit at the time the creditor sued the debtor in state court. Lastly, even if the personal guaranty was discharged, the debtor gave a new personal guaranty when the commercial lease was extended postpetition.

- **Holding** = The BAP found that the extension of the commercial lease did not result in a new personal guaranty by the debtor. If the creditor wanted a personal guaranty the parties should have entered a completely new lease. The debtor's personal guaranty on the original lease was discharged, and an extension of the original lease did not revive the personal guaranty. The BAP did find the bankruptcy court erred in not applying *Taggart*. The conflicting case law cited by the bankruptcy court on whether a contingent liability could be discharged and no controlling law in the Sixth Circuit gave the creditor a fair ground of doubt. The BAP reversed the $10,720 awarded the debtor. The BAP also warned the creditor that there would be no future fair ground of doubt on actions to pursue the debtor on a discharged personal guaranty.

- ***In re Roth***, 935 F.3d 1270 (11th Cir. 2019)

  - **Conduct** = After a debtor filed a chapter 13 case, a collection agency sent monthly statements that included a disclaimer that they were not seeking to collect the debt. However, the statements included an amount due, due date, and instructions for payment. The debtor sued, and collection agency settled. After the settlement, an "informational statement" with the same instructions was mailed to debtor with amount due, due date, instructions for payment, and an even lengthier disclaimer.

  - **Argument** = The informational statement included prominent bankruptcy disclaimer, and payment was marked as "voluntary." Moreover, the debtor is allowed to voluntarily pay debts.

- **Holding** = The debtor's request for application of the "least sophisticated consumer" standard was not supported by the law. The court held that the statutory scheme clearly allows creditors to send potentially helpful informational statements to debtor without simultaneously casting those statements as an effort to collect a debt collection. In light of these facts, the statement sent by the creditor was not designed to have the "objective effect" of pressuring the debtor to pay a discharged debt.

Bankr. Ct. Level

- ***In re Southworth***, Case No. 18-11922, Chapter 7, 2021 Bankr. LEXIS 150, at *6 (Bankr. N.D.N.Y. Jan. 22, 2021).

  - **Conduct** = The creditor initiated a collection action in state court. The debtor then filed a chapter 7 case in the Northern District of New York. The creditor was listed on the debtor's schedules as an unsecured creditor and received notice of the filing and the discharge. The creditor did not dismiss or stay the state court collection action until after the debtor filed motion to hold the creditor in contempt for violation of the discharge.

  - **Argument** = The creditor argued that no harm was visited on the debtor, as "no further step was taken" in the state court action. Additionally, the creditor argued that it was the debtor's obligation to send the discharge order to the state court.

  - **Holding** = The court held that Section 524(a)(2) very clearly states that the discharge operates as an injunction against commencement, or continuation of collection activity. The Code is clear that it is the creditor's obligation to remedy any discharge violation. Therefore, there is no "objectively reasonable" support for the creditor's position.

- ***In re Kimball Hill***, 620 B.R. 894, 907-09 (Bankr. E.D. Ill. 2020)

  - **Conduct** = In a chapter 11 case, a purchaser of the debtor's assets sought to hold surety in contempt for attempt to collect from the purchaser on account of amounts owed by debtor to surety, in violation of injunction contained in confirmed chapter 11 plan.

  - **Argument** = The surety argued that at least some case law supported its view that it was not enjoined from pursuing claims against the purchaser. Notwithstanding the prevailing view against its position in the majority of applicable cases, the surety asserted it had at least a colorable argument that it had not violated the plan injunction.

  - **Holding** = The *Taggart* standard is not limited to Section 524 and can be applied in the context of plan injunctions as well. The surety not only had notice of the plan

but also voted in favor of it. The creditor had no meaningful support in the case law for the position it took, and therefore there was no fair ground of doubt as to whether its repeated efforts to pursue claims against the purchaser were in violation of the confirmed plan.

- ***In re Norton***, 622 B.R. 538, 558 (Bankr. D. Conn. 2020)

  - **Conduct** = Real property was subject of foreclosure proceedings. While the foreclosure was pending, the town deemed the property to be a blight (junkyard/scrap business). A blight lien was recorded at $2,000 with a daily $100 fine until the blight was removed. Two years later, the town removed the items that constituted the blight. Shortly thereafter, the debtor filed a chapter 7 case, listing the lien in the schedules and a disputed claim of $1 for the removal costs. The town received notice of the bankruptcy and the discharge order. "The discharge order entered by the Court specifically provided that 'some debts are not discharged . . . examples of debts that are not discharged. . . debts for most fines, penalties, forfeitures, or criminal restitution obligations . . . .'" The town obtained a certificate of lien and brought action against the debtor.

  - **Argument** = The liens were not discharged. In the alternative, the liens were necessary to enforce blight laws under the Code's police powers and thus could not be discharged.

  - **Holding** = There was no objective reading of the Code that would lead to the conclusion that the town's conduct relating to its lien was permissible. Additionally, the lien does not fall under Section 523(a)(7) because it is not compensation for an actual pecuniary loss. Therefore, there was no "fair ground of doubt" as to whether the town's actions violated the discharge.

- ***In re Freeman***, Case No.: 2:11-bk-34162-NB, Chapter: 13, 2020 Bankr. LEXIS 3559, at *12-19 (Bankr. C.D. Cal. Sept. 4, 2020)

  - **Conduct** = The debtor's chapter 13 cram down plan provided for bifurcation of the creditor's claim into secured and unsecured portions. The debtor completed all payments under the plan and received a discharge. However, the creditor, instead of releasing its lien in compliance with the plan, attempted to foreclose the lien.

  - **Argument** = The creditor argued that it believed that its lien survived and applied to the total debt, not just the portion paid through the Plan. The creditor believed that under California law, to extinguish a Lien, a separate proceeding would be required. The creditor was expecting notice, i.e. "a motion or adversary proceeding to avoid a lien," and no such notice was provided.

  - **Holding** = The debtor did not meet burden (clear and convincing evidence) that there was "no fair ground of doubt" that the discharge injunction barred the creditor

from enforcing what it believed to be surviving post-discharge lien rights. The creditor's understanding was not "objectively unreasonable." The shifting valuations throughout the case led to justifiable confusion as to what was to be paid pursuant to the plan. Therefore, the debtor failed to establish that there was no "fair ground of doubt" that the discharge barred the creditor from taking action against the property.

- ***In re Palczuk***, CASE NO. 11-04017-8, 2021 Bankr. LEXIS 2081, at *11-12 (Bankr. E.D.N.C. Aug. 5, 2021)

  - **Conduct** = The court noted that the creditors' acts made it "apparent that the [creditors] remain wholly committed to pursuit of the funds they lost in the failed investment and, equally, the parties they hold responsible." The creditors previously had brought suit in multiple venues but did not: file a claim in the debtors' bankruptcy case; object to confirmation of the debtor's plan; or file a complaint to determine is debt to be nondischargeable.

  - **Argument** = The creditors acknowledged the court's power under Section 105 to award actual damages for violations of the discharge injunction, but argued that damages were unwarranted because they have, at all times, simply sought "to adjudicate this matter fairly."

  - **Holding** = The defendants simply refused to cease their efforts to establish and recover on their "self-effectuating § 523(a)(19) claims" notwithstanding the plain language of that statute. This was explained to them by multiple federal judges. Therefore, in light of the plain language and multiple explanations, there is "no fair ground of doubt" that their actions violated the discharge and subjected them to sanctions for civil contempt.

FULTON

Directly on Point

- *In re Margavitch*, Case No. 5:19-05353, 2021 Bankr. LEXIS 2784 (Bankr. M.D. Pa. Oct. 6, 2021)

  - The court decided the reasoning *Fulton* "can be applied to the other subsections of §362." *Id.* at *16. Because subsections (a)(4)-(6) all start with the phrase "any act to . . ." it can "logically follow[] that an affirmative post-petition 'act' is necessary to constitute a violation of those subsections." *Id.* The defendant took no post-petition action. *Id.* at *17. "Thus, mere retention of a valid pre-petition state court attachment or lien without more, is not a violation of §362(a)(4) – (6)." *Id.* The court buttressed its argument with pre-*Fulton* case law.

- *Stuart v. City of Scottsdale*, Case No. 2:19-05481, 2021 WL 5274631 (9th Cir. B.A.P. Ariz. Nov. 10, 2021)

    - The City of Scottsdale had obtained a writ of garnishment related to the debtor's bank accounts at Bank of America, and Bank of America froze those accounts. When the debtor filed a chapter 13 case, his lawyer immediately reached out to Bank of America to demand that the bank release the frozen funds. The bank declined to do so until it received direction from the City of Scottsdale or the bankruptcy court. The City promptly filed a motion to stay the underlying state court litigation but did not seek to quash the garnishment or dismiss the garnishment proceeding. The debtor moved to quash the writ of garnishment, and the state court granted that motion.

    - The debtor moved for sanctions in bankruptcy court, alleging that the City's failure to dismiss the garnishment proceeding violated the automatic stay. The court initially found a stay violation, but before a hearing on damages, the City filed a motion to reconsider based on *Fulton*.

    - On reconsideration, the bankruptcy court determined that, under *Fulton*, the City had not violated the automatic stay under Section 362(a)(3) when it failed to take affirmative action to release the funds. The bankruptcy court found no violation of Section 362(a)(1) because the City had filed a motion to stay the state court proceeding. The bankruptcy court found no violation of Section 362(a)(2) because the failure to quash the garnishment did not constitute an act to compel or enforce the underlying state court judgment. The bankruptcy court also found no violation of Section 362(a)(6), reasoning that the failure to dismiss the lawsuit was not an act to collect a claim. The 9th Circuit B.A.P. affirmed the bankruptcy court essentially adopting all of the bankruptcy court's reasoning on the City's motion to reconsider.

Relevant but not dispositive

- *In re Guido*, Bankruptcy No. 19-02571, 2021 Bankr. LEXIS 1484, at *11 (Bankr. S.D. Cal. June 1, 2021)

    - Parties argued that *Fulton* made Ninth Circuit case law no longer good law. *Id.* at *4. The court, however, easily distinguishes this case involving §362(a)(1) from *Fulton*, because (a)(1) prohibits continuation of an action, and (a)(3) prohibits "any act." *Id.* Therefore, the court concluded that the logic is non-transferable.

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by In re Ajasa, Bankr.E.D.N.Y., April 7, 2021

139 S.Ct. 1795
Supreme Court of the United States.

Bradley Weston TAGGART, Petitioner
v.
Shelley A. LORENZEN, Executor
of the Estate of Stuart Brown, et al.

No. 18-489
|
Argued April 24, 2019
|
Decided June 3, 2019

Synopsis

Background: Former Chapter 7 debtor filed motion to hold attorney and his clients in contempt for willfully violating discharge injunction. The United States Bankruptcy Court for the District of Oregon, Randall L. Dunn, J., 2011 WL 6140521, denied motion, and also denied subsequent motion for reconsideration, 2012 WL 280726. Debtor appealed. The District Court, Mosman, J., 2012 WL 3241758, reversed. On remand, the Bankruptcy Court, Dunn, J., 522 B.R. 627, entered order awarding contempt sanctions. Appeal was taken. The Bankruptcy Appellate Panel (BAP), Jury, J., 548 B.R. 275, reversed and vacated. Both sides appealed. The Court of Appeals for the Ninth Circuit, Bea, Circuit Judge, 888 F.3d 438, affirmed. Certiorari was granted.

[Holding:] The Supreme Court, Justice Breyer, held that a bankruptcy court may hold a creditor in civil contempt for violating a discharge order if there is no fair ground of doubt as to whether the order barred the creditor's conduct, that is, if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful.

Vacated and remanded.

Procedural Posture(s): Petition for Writ of Certiorari; On Appeal; Motion for Contempt Sanctions.

West Headnotes (20)

[1] **Bankruptcy** Discharge as injunction

"Discharge order," an order that is typically entered by bankruptcy court at conclusion of bankruptcy proceeding and releases the debtor from liability for most pre-bankruptcy debts, bars creditors from attempting to collect any debt covered by the order. 11 U.S.C.A. § 524(a)(2).

7 Cases that cite this headnote

[2] **Bankruptcy** Liquidation, Distribution, and Closing

Chapter 7 of the Bankruptcy Code permits insolvent debtors to discharge their debts by liquidating assets to pay creditors. 11 U.S.C.A. §§ 704(a)(1), 726.

[3] **Bankruptcy** Discharge as injunction

Bankruptcy court's discharge order operates as an injunction that bars creditors from collecting any debt that has been discharged. 11 U.S.C.A. § 524(a)(2).

43 Cases that cite this headnote

[4] **Bankruptcy** Violation of discharge order

Bankruptcy court may hold a creditor in civil contempt for violating a discharge order if there is no fair ground of doubt as to whether the order barred the creditor's conduct, that is, if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order; based on the traditional principles that govern civil contempt, the proper standard is an objective one, not a standard akin to strict liability or a purely subjective standard, and such objective standard strikes the careful balance between interests of creditors and debtors that the Bankruptcy Code often seeks to achieve. 11 U.S.C.A. §§ 105(a), 524(a)(2).

118 Cases that cite this headnote

[5] **Statutes** Other Law, Construction with Reference to

When a statutory term is obviously "transplanted" from another legal source, it "brings the old soil" with it.

13 Cases that cite this headnote

[6] **Injunction** Contempt

Under traditional principles of equity practice, courts have long imposed civil contempt sanctions to coerce the defendant into compliance with an injunction or compensate the complainant for losses stemming from the defendant's noncompliance with an injunction.

17 Cases that cite this headnote

[7] **Bankruptcy** Violation of discharge order

Bankruptcy statutes do not grant courts unlimited authority to hold creditors in civil contempt for violating the discharge injunction; instead, the statutes incorporate the traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction. 11 U.S.C.A. § 524(a)(2).

40 Cases that cite this headnote

[8] **Bankruptcy** Contempt

Contempt Weight and sufficiency

In cases outside the bankruptcy context, civil contempt should not be resorted to where there is a fair ground of doubt as to the wrongfulness of the defendant's conduct.

40 Cases that cite this headnote

[9] **Contempt** Civil contempt

Injunction Contempt

Civil contempt is a severe remedy, and so principles of basic fairness require that those enjoined receive explicit notice of what conduct is outlawed before being held in civil contempt.

28 Cases that cite this headnote

[10] **Contempt** Civil contempt

Standard for civil contempt is generally an objective one.

16 Cases that cite this headnote

[11] **Contempt** Disobedience to Mandate, Order, or Judgment

Party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable.

19 Cases that cite this headnote

[12] **Contempt** Disobedience to Mandate, Order, or Judgment

Absence of wilfulness does not relieve one from civil contempt.

2 Cases that cite this headnote

[13] **Contempt** Disobedience to Mandate, Order, or Judgment

Subjective intent is not always irrelevant to a determination of civil contempt; civil contempt sanctions may be warranted, for example, when a party acts in bad faith.

21 Cases that cite this headnote

[14] **Contempt** Disobedience to Mandate, Order, or Judgment

Party's good faith, even where it does not bar civil contempt, may help to determine an appropriate sanction.

11 Cases that cite this headnote

[15] **Bankruptcy** Violation of discharge order

Under the fair ground of doubt standard, civil contempt may be appropriate when the creditor

violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope. 11 U.S.C.A. § 524(a)(2).

89 Cases that cite this headnote

[16] **Contempt** Disobedience to Mandate, Order, or Judgment

Under traditional civil contempt principles, parties cannot be insulated from a finding of civil contempt based on their subjective good faith.

11 Cases that cite this headnote

[17] **Bankruptcy** Purpose

A chief purpose of the bankruptcy laws is to secure a prompt and effectual resolution of bankruptcy cases within a limited period.

[18] **Bankruptcy** Automatic Stay

Automatic stay, which is entered at the outset of a bankruptcy proceeding, aims to prevent damaging disruptions to administration of the bankruptcy case in the short run. 11 U.S.C.A. § 362.

4 Cases that cite this headnote

[19] **Bankruptcy** Discharge as injunction

Discharge, which is entered at the end of the bankruptcy case, seeks to bind creditors over a much longer period than the automatic stay. 11 U.S.C.A. §§ 362, 524(a)(2).

3 Cases that cite this headnote

[20] **Bankruptcy** Enforcement of Injunction or Stay

Word "willful," as used in the Bankruptcy Code's automatic stay provision, is one that the law typically does not associate with strict liability, but whose construction is often dependent on the context in which it appears. 11 U.S.C.A. § 362.

4 Cases that cite this headnote

Syllabus *

Petitioner Bradley Taggart formerly owned an interest in an Oregon company. That company and two of its other owners, who are among the respondents here, filed suit in Oregon state court, claiming that Taggart had breached the company's operating agreement. Before trial, Taggart filed for bankruptcy under Chapter 7 of the Bankruptcy Code. At the conclusion of that proceeding, the Federal Bankruptcy Court issued a discharge order that released Taggart from liability for most prebankruptcy debts. After the discharge order issued, the Oregon state court entered judgment against Taggart in the prebankruptcy suit and awarded attorney's fees to respondents. Taggart returned to the Federal Bankruptcy Court, seeking civil contempt sanctions against respondents for collecting attorney's fees in violation of the discharge order. The Bankruptcy Court ultimately held respondents in civil contempt. The Bankruptcy Appellate Panel vacated the sanctions, and the Ninth Circuit affirmed the panel's decision. Applying a subjective standard, the Ninth Circuit concluded that a "creditor's good faith belief" that the discharge order "does not apply to the creditor's claim precludes a finding of contempt, even if the creditor's belief if unreasonable." 888 F. 3d 438, 444.

Held: A court may hold a creditor in civil contempt for violating a discharge order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct. Pp. 1800 – 1804——.

(a) This conclusion rests on a longstanding interpretive principle: When a statutory term is " 'obviously transplanted from another legal source,' " it " 'brings the old soil with it.' " *Hall* v. *Hall*, 584 U.S. ——, ——, 138 S.Ct. 1118, 1128, 200 L.Ed.2d 399. Here, the bankruptcy statutes specifying that a discharge order "operates as an injunction," 11 U.S.C. § 524(a)(2), and that a court may issue any "order" or "judgment" that is "necessary or appropriate" to "carry out" other bankruptcy provisions, § 105(a), bring with them the "old soil" that has long governed how courts enforce injunctions. In cases outside the bankruptcy context, this Court has said that civil contempt "should not be resorted to

where there is [a] fair ground of doubt as to the wrongfulness of the defendant's conduct." *California Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618, 5 S.Ct. 618, 28 L.Ed. 1106. This standard is generally an objective one. A party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable. Subjective intent, however, is not always irrelevant. Civil contempt sanctions may be warranted when a party acts in bad faith, and a party's good faith may help to determine an appropriate sanction. These traditional civil contempt principles apply straightforwardly to the bankruptcy discharge context. Under the fair ground of doubt standard, civil contempt may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope. Pp. 1801 – 1802.

(b) The standard applied by the Ninth Circuit is inconsistent with traditional civil contempt principles, under which parties cannot be insulated from a finding of civil contempt based on their subjective good faith. Taggart, meanwhile, argues for a standard that would operate much like a strict-liability standard. But his proposal often may lead creditors to seek advance determinations as to whether debts have been discharged, creating the risk of additional federal litigation, additional costs, and additional delays. His proposal, which follows the standard some courts have used to remedy violations of automatic stays, also ignores key differences in text and purpose between the statutes governing automatic stays and discharge orders. Pp. 1802 – 1804.

888 F. 3d 438, vacated and remanded.

BREYER, J., delivered the opinion for a unanimous Court.

***1797** ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Attorneys and Law Firms

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Daniel L. Geyser, Dallas, TX, for Petitioner.

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Sopan Joshi for the United States as amicus curiae, by special leave of the Court, in support of neither party.

Opinion

Justice BREYER delivered the opinion of the Court.

***1799** **[1]** At the conclusion of a bankruptcy proceeding, a bankruptcy court typically enters an order releasing the debtor from liability for most prebankruptcy debts. This order, known as a discharge order, bars creditors from attempting to collect any debt covered by the order. See 11 U.S.C. § 524(a)(2). The question presented here concerns the criteria for determining when a court may hold a creditor in civil contempt for attempting to collect a debt that a discharge order has immunized from collection.

The Bankruptcy Court, in holding the creditors here in civil contempt, applied a standard that it described as akin to "strict liability" based on the standard's expansive scope. *In re Taggart*, 522 B. R. 627, 632 (Bkrtcy. D.Ct. Ore. 2014). It held that civil contempt sanctions are permissible, irrespective of the creditor's beliefs, so long as the creditor was " 'aware of the discharge' " order and " 'intended the actions which violate[d]' " it. *Ibid.* (quoting *In re Hardy*, 97 F. 3d 1384, 1390 (CA11 1996)). The Court of Appeals for the Ninth Circuit, however, disagreed with that standard. Applying a subjective standard instead, it concluded that a court cannot hold a creditor in civil contempt if the creditor has a "good faith belief" that the discharge order "does not apply to the creditor's claim." *In re Taggart*, 888 F. 3d 438, 444 (2018). That is so, the Court of Appeals held, "even if the creditor's belief is unreasonable." *Ibid.*

We conclude that neither a standard akin to strict liability nor a purely subjective standard is appropriate. Rather, in our view, a court may hold a creditor in civil contempt for violating a discharge order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no

objectively reasonable basis for concluding that the creditor's conduct might be lawful.

I

Bradley Taggart, the petitioner, formerly owned an interest in an Oregon company, Sherwood Park Business Center. That company, along with two of its other owners, brought a lawsuit in Oregon state court, claiming that Taggart had breached the Business Center's operating agreement. (We use the name "Sherwood" to refer to the company, its two owners, and—in some instances—their former attorney, who is now represented by the executor of his estate. The company, the two owners, and the executor are the respondents in this case.)

[2] [3] Before trial, Taggart filed for bankruptcy under Chapter 7 of the Bankruptcy Code, which permits insolvent debtors to discharge their debts by liquidating ***1800** assets to pay creditors. See 11 U.S.C. §§ 704(a)(1), 726. Ultimately, the Federal Bankruptcy Court wound up the proceeding and issued an order granting him a discharge. Taggart's discharge order, like many such orders, goes no further than the statute: It simply says that the debtor "shall be granted a discharge under § 727." App. 60; see United States Courts, Order of Discharge: Official Form 318 (Dec. 2015), http:/ /www.uscourts.gov / sites / default / files /form _ b318_0.pdf (as last visited May 31, 2019). Section 727, the statute cited in the discharge order, states that a discharge relieves the debtor "from all debts that arose before the date of the order for relief," "[e]xcept as provided in section 523." § 727(b). Section 523 then lists in detail the debts that are exempt from discharge. §§ 523(a)(1)–(19). The words of the discharge order, though simple, have an important effect: A discharge order "operates as an injunction" that bars creditors from collecting any debt that has been discharged. § 524(a)(2).

After the issuance of Taggart's federal bankruptcy discharge order, the Oregon state court proceeded to enter judgment against Taggart in the prebankruptcy suit involving Sherwood. Sherwood then filed a petition in state court seeking attorney's fees that were incurred *after* Taggart filed his bankruptcy petition. All parties agreed that, under the Ninth Circuit's decision in *In re Ybarra*, 424 F. 3d 1018 (2005), a discharge order would normally cover and thereby discharge postpetition attorney's fees stemming from prepetition litigation (such as the Oregon litigation) *unless* the discharged debtor " 'returned to the fray' " after filing for bankruptcy. *Id.*, at 1027. Sherwood argued that Taggart had "returned to the fray" postpetition and therefore was liable for the postpetition attorney's fees that Sherwood sought to collect. The state trial court agreed and held Taggart liable for roughly $ 45,000 of Sherwood's postpetition attorney's fees.

At this point, Taggart returned to the Federal Bankruptcy Court. He argued that he had not returned to the state-court "fray" under *Ybarra*, and that the discharge order therefore barred Sherwood from collecting postpetition attorney's fees. Taggart added that the court should hold Sherwood in civil contempt because Sherwood had violated the discharge order. The Bankruptcy Court did not agree. It concluded that Taggart had returned to the fray. Finding no violation of the discharge order, it refused to hold Sherwood in civil contempt.

Taggart appealed, and the Federal District Court held that Taggart had not returned to the fray. Hence, it concluded that Sherwood violated the discharge order by trying to collect attorney's fees. The District Court remanded the case to the Bankruptcy Court.

The Bankruptcy Court, noting the District Court's decision, then held Sherwood in civil contempt. In doing so, it applied a standard it likened to "strict liability." 522 B. R. at 632. The Bankruptcy Court held that civil contempt sanctions were appropriate because Sherwood had been " 'aware of the discharge' " order and " 'intended the actions which violate[d]' " it. *Ibid.* (quoting *In re Hardy*, 97 F. 3d at 1390). The court awarded Taggart approximately $ 105,000 in attorney's fees and costs, $ 5,000 in damages for emotional distress, and $ 2,000 in punitive damages.

Sherwood appealed. The Bankruptcy Appellate Panel vacated these sanctions, and the Ninth Circuit affirmed the panel's decision. The Ninth Circuit applied a very different standard than the Bankruptcy Court. It concluded that a "creditor's good faith belief" that the discharge order "does not apply to the creditor's claim precludes a finding of contempt, even if the creditor's ***1801** belief is unreasonable." 888 F. 3d at 444. Because Sherwood had a "good faith belief" that the discharge order "did not apply" to Sherwood's claims, the Court of Appeals held that civil contempt sanctions were improper. *Id.*, at 445.

Taggart filed a petition for certiorari, asking us to decide whether "a creditor's good-faith belief that the discharge injunction does not apply precludes a finding of civil contempt." Pet. for Cert. I. We granted certiorari.

II

[4] The question before us concerns the legal standard for holding a creditor in civil contempt when the creditor attempts to collect a debt in violation of a bankruptcy discharge order. Two Bankruptcy Code provisions aid our efforts to find an answer. The first, section 524, says that a discharge order "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset" a discharged debt. 11 U.S.C. § 524(a)(2). The second, section 105, authorizes a court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." § 105(a).

In what circumstances do these provisions permit a court to hold a creditor in civil contempt for violating a discharge order? In our view, these provisions authorize a court to impose civil contempt sanctions when there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order.

A

[5] Our conclusion rests on a longstanding interpretive principle: When a statutory term is " 'obviously transplanted from another legal source,' " it " 'brings the old soil with it.' " *Hall v. Hall*, 584 U.S. ——, ——, 138 S.Ct. 1118, 1128, 200 L.Ed.2d 399 (2018) (quoting Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 537 (1947)); see *Field v. Mans*, 516 U.S. 59, 69–70, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995) (applying that principle to the Bankruptcy Code). Here, the statutes specifying that a discharge order "operates as an injunction," § 524(a)(2), and that a court may issue any "order" or "judgment" that is "necessary or appropriate" to "carry out" other bankruptcy provisions, § 105(a), bring with them the "old soil" that has long governed how courts enforce injunctions.

[6] That "old soil" includes the "potent weapon" of civil contempt. *Longshoremen v. Philadelphia Marine Trade Assn.*, 389 U.S. 64, 76, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967). Under traditional principles of equity practice, courts have long imposed civil contempt sanctions to "coerce the defendant into compliance" with an injunction or "compensate the complainant for losses" stemming from the defendant's noncompliance with an injunction. *United States v. Mine Workers*, 330 U.S. 258, 303–304, 67 S.Ct. 677, 91 L.Ed. 884 (1947); see D. Dobbs & C. Roberts, Law of Remedies § 2.8, p. 132 (3d ed. 2018); J. High, Law of Injunctions § 1449, p. 940 (2d ed. 1880).

[7] The bankruptcy statutes, however, do not grant courts unlimited authority to hold creditors in civil contempt. Instead, as part of the "old soil" they bring with them, the bankruptcy statutes incorporate the traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction.

[8] **[9]** In cases outside the bankruptcy context, we have said that civil contempt "should not be resorted to where there is [a] *fair ground of doubt* as to the wrongfulness of the defendant's conduct." ***1802** *California Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618, 5 S.Ct. 618, 28 L.Ed. 1106 (1885) (emphasis added). This standard reflects the fact that civil contempt is a "severe remedy," *ibid.*, and that principles of "basic fairness requir[e] that those enjoined receive explicit notice" of "what conduct is outlawed" before being held in civil contempt, *Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974) (*per curiam*). See *Longshoremen*, *supra*, at 76, 88 S.Ct. 201 (noting that civil contempt usually is not appropriate unless "those who must obey" an order "will know what the court intends to require and what it means to forbid"); 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2960, pp. 430–431 (2013) (suggesting that civil contempt may be improper if a party's attempt at compliance was "reasonable").

[10] **[11]** **[12]** This standard is generally an *objective* one. We have explained before that a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable. As we said in *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 69 S.Ct. 497, 93 L.Ed. 599 (1949), "[t]he absence of wilfulness does not relieve from civil contempt." *Id.*, at 191, 69 S.Ct. 497.

[13] **[14]** We have not held, however, that subjective intent is always irrelevant. Our cases suggest, for example, that civil contempt sanctions may be warranted when a party acts in bad faith. See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991). Thus, in *McComb*, we explained that a party's "record of continuing and persistent violations" and "persistent contumacy" justified placing "the burden of any uncertainty in the decree ... on [the] shoulders" of the party who violated the court order. 336 U.S. at 192–193, 69 S.Ct. 497. On the flip side of the coin, a party's good faith, even where it does not bar civil contempt, may help to determine an appropriate sanction. Cf. *Young v. United States ex rel. Vuitton et Fils S. A.*, 481 U.S. 787, 801, 107 S.Ct. 2124, 95 L.Ed.2d 740 (1987) ("[O]nly the least possible power adequate to the end proposed should be used in contempt cases" (quotation altered)).

[15] These traditional civil contempt principles apply straightforwardly to the bankruptcy discharge context. The typical discharge order entered by a bankruptcy court is not detailed. See *supra*, at 1799 – 1800. Congress, however, has carefully delineated which debts are exempt from discharge. See §§ 523(a)(1)–(19). Under the fair ground of doubt standard, civil contempt therefore may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope.

B

The Solicitor General, *amicus* here, agrees with the fair ground of doubt standard we adopt. Brief for United States as *Amicus Curiae* 13–15. And the respondents stated at oral argument that it would be appropriate for courts to apply that standard in this context. Tr. of Oral Arg. 43. The Ninth Circuit and petitioner Taggart, however, each believe that a different standard should apply.

[16] As for the Ninth Circuit, the parties and the Solicitor General agree that it adopted the wrong standard. So do we. The Ninth Circuit concluded that a "creditor's good faith belief" that the discharge order "does not apply to the creditor's claim precludes a finding of contempt, even if the creditor's belief is unreasonable." 888 F. 3d at 444. But this standard is inconsistent with traditional civil contempt principles, under which parties cannot ***1803** be insulated from a finding of civil contempt based on their subjective good faith. It also relies too heavily on difficult-to-prove states of mind. And it may too often lead creditors who stand on shaky legal ground to collect discharged debts, forcing debtors back into litigation (with its accompanying costs) to protect the discharge that it was the very purpose of the bankruptcy proceeding to provide.

Taggart, meanwhile, argues for a standard like the one applied by the Bankruptcy Court. This standard would permit a finding of civil contempt if the creditor was aware of the discharge order and intended the actions that violated the order. Brief for Petitioner 19; cf. 522 B. R. at 632 (applying a similar standard). Because most creditors are aware of discharge orders and intend the actions they take to collect a debt, this standard would operate much like a strict-liability standard. It would authorize civil contempt sanctions for a violation of a discharge order regardless of the creditor's subjective beliefs about the scope of the discharge order, and regardless of whether there was a reasonable basis for concluding that the creditor's conduct did not violate the order. Taggart argues that such a standard would help the debtor obtain the "fresh start" that bankruptcy promises. He adds that a standard resembling strict liability would be fair to creditors because creditors who are unsure whether a debt has been discharged can head to federal bankruptcy court and obtain an advance determination on that question before trying to collect the debt. See Fed. Rule Bkrtcy. Proc. 4007(a).

We doubt, however, that advance determinations would provide a workable solution to a creditor's potential dilemma. A standard resembling strict liability may lead risk-averse creditors to seek an advance determination in bankruptcy court even where there is only slight doubt as to whether a debt has been discharged. And because discharge orders are written in general terms and operate against a complex statutory backdrop, there will often be at least some doubt as to the scope of such orders. Taggart's proposal thus may lead to frequent use of the advance determination procedure. Congress, however, expected that this procedure would be needed in only a small class of cases. See 11 U.S.C. § 523(c)(1) (noting only three categories of debts for which creditors must obtain advance determinations). The widespread use of this procedure also would alter who decides whether a debt has been discharged, moving litigation out of state courts, which have concurrent jurisdiction over such questions, and into federal courts. See 28 U.S.C. §

1334(b); Advisory Committee's 2010 Note on subd. (c)(1) of Fed. Rule Civ. Proc. 8, 28 U.S.C. App., p. 776 (noting that "whether a claim was excepted from discharge" is "in most instances" not determined in bankruptcy court).

[17] Taggart's proposal would thereby risk additional federal litigation, additional costs, and additional delays. That result would interfere with "a chief purpose of the bankruptcy laws": " 'to secure a prompt and effectual' " resolution of bankruptcy cases " 'within a limited period.' " *Katchen v. Landy*, 382 U.S. 323, 328, 86 S.Ct. 467, 15 L.Ed.2d 391 (1966) (quoting *Ex parte Christy*, 3 How. 292, 312, 11 L.Ed. 603 (1844)). These negative consequences, especially the costs associated with the added need to appear in federal proceedings, could work to the disadvantage of debtors as well as creditors.

[18] **[19]** **[20]** Taggart also notes that lower courts often have used a standard akin to strict liability to remedy violations of automatic stays. See Brief for Petitioner 21. An automatic stay is entered at the outset of a ***1804** bankruptcy proceeding. The statutory provision that addresses the remedies for violations of automatic stays says that "an individual injured by any willful violation" of an automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1). This language, however, differs from the more general language in section 105(a). *Supra*, at ——. The purposes of automatic stays and discharge orders also differ: A stay aims to prevent damaging disruptions to the administration of a bankruptcy case in the short run, whereas a discharge is entered at the end of the case and seeks to bind creditors over a much longer period. These differences in language and purpose sufficiently undermine Taggart's proposal to warrant its rejection. (We note that the automatic stay provision uses the word "willful," a word the law typically does not associate with strict liability but " 'whose construction is often dependent on the context in which it appears.' " *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47, 57, 127 S.Ct. 2201, 167 L.Ed.2d 1045 (2007) (quoting *Bryan v. United States*, 524 U.S. 184, 191, 118 S.Ct. 1939, 141 L.Ed.2d 197 (1998)). We need not, and do not, decide whether the word "willful" supports a standard akin to strict liability.)

III

We conclude that the Court of Appeals erred in applying a subjective standard for civil contempt. Based on the traditional principles that govern civil contempt, the proper standard is an objective one. A court may hold a creditor in civil contempt for violating a discharge order where there is not a "fair ground of doubt" as to whether the creditor's conduct might be lawful under the discharge order. In our view, that standard strikes the "careful balance between the interests of creditors and debtors" that the Bankruptcy Code often seeks to achieve. *Clark v. Rameker*, 573 U.S. 122, 129, 134 S.Ct. 2242, 189 L.Ed.2d 157 (2014).

Because the Court of Appeals did not apply the proper standard, we vacate the judgment below and remand the case for further proceedings consistent with this opinion.

It is so ordered.

All Citations

139 S.Ct. 1795, 204 L.Ed.2d 129, 67 Bankr.Ct.Dec. 69, Bankr. L. Rep. P 83,385, 19 Cal. Daily Op. Serv. 5034, 2019 Daily Journal D.A.R. 4745, 27 Fla. L. Weekly Fed. S 878

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

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KeyCite Yellow Flag - Negative Treatment
Distinguished by In re Guido, Bankr.S.D.Cal., June 1, 2021

141 S.Ct. 585
Supreme Court of the United States.

CITY OF CHICAGO, ILLINOIS, Petitioner
v.
Robbin L. FULTON, et al.

No. 19-357
|
Argued October 13, 2020
|
Decided January 14, 2021

Synopsis

Background: Bankruptcy court issued rule to show cause why city should not be sanctioned for refusing to release Chapter 13 debtor's vehicle, which had been impounded because of unpaid parking tickets. The United States Bankruptcy Court for the Northern District of Illinois, Jacqueline P. Cox, J., 584 B.R. 252, entered judgment in favor of debtor, and city appealed. In separate Chapter 13 case, debtor moved to enforce automatic stay by requiring city to release vehicle, and the United States Bankruptcy Court for the Northern District of Illinois, Deborah Lee Thorne, J., 588 B.R. 811, granted motion. City appealed. In yet another case, debtor again filed motion to enforce stay against city, which motion was granted by the United States Bankruptcy Court for the Northern District of Illinois, Carol A. Doyle, J., 590 B.R. 467, and city appealed. Finally, like relief was granted by the United States Bankruptcy Court for the Northern District of Illinois, Jack B. Schmetterer, J., 2018 WL 2570109, and city appealed. Consolidating cases for purposes of appeal, the Court of Appeals for the Seventh Circuit, Flaum, Circuit Judge, 926 F.3d 916, affirmed. Certiorari was granted.

[Holding:] The Supreme Court, Justice Alito, held that an entity's mere retention of estate property after the filing of a bankruptcy petition does not constitute an act to exercise control over property of the estate in violation of the Bankruptcy Code's automatic stay, abrogating *In re Weber*, 719 F.3d 72, *In re Del Mission Ltd.*, 98 F.3d 1147, and *In re Knaus*, 889 F.2d 773.

Vacated and remanded.

Justice Barrett took no part in the consideration or decision of the case.

Justice Sotomayor filed a concurring opinion.

Procedural Posture(s): Petition for Writ of Certiorari; On Appeal; Motion to Enforce Automatic Stay.

West Headnotes (18)

[1] **Bankruptcy** Proceedings, Acts, or Persons Affected

When a debtor files a petition for bankruptcy, the Bankruptcy Code protects the debtor's interests by imposing an automatic stay on efforts to collect prepetition debts outside the bankruptcy forum. 11 U.S.C.A. § 362(a).

3 Cases that cite this headnote

[2] **Bankruptcy** Creation of estate; time

Under the Bankruptcy Code, the filing of a bankruptcy petition has certain immediate consequences, including the creation of "an estate." 11 U.S.C.A. § 541.

7 Cases that cite this headnote

[3] **Bankruptcy** Property of Estate in General

Section of the Bankruptcy Code governing property of the estate is intended to include in the estate any property made available to the estate by other provisions of the Code. 11 U.S.C.A. § 541.

3 Cases that cite this headnote

[4] **Bankruptcy** Collection and Recovery for Estate; Turnover

Turnover section of the Bankruptcy Code provides, with just a few exceptions, that an entity other than a custodian in possession of property of the bankruptcy estate shall deliver to the trustee, and account for, that property. 11 U.S.C.A. § 542.

1 Cases that cite this headnote

[5] **Bankruptcy** Proceedings, Acts, or Persons Affected

One automatic consequence of the filing of a bankruptcy petition is that, with certain exceptions, the petition operates as a stay, applicable to all entities, of efforts to collect from the debtor outside of the bankruptcy forum. 11 U.S.C.A. § 362(a).

4 Cases that cite this headnote

[6] **Bankruptcy** Automatic Stay

Bankruptcy Code's automatic stay serves the debtor's interests by protecting the estate from dismemberment, and it also benefits creditors as a group by preventing individual creditors from pursuing their own interests to the detriment of the others. 11 U.S.C.A. § 362(a).

4 Cases that cite this headnote

[7] **Bankruptcy** Damages and attorney fees

Bankruptcy Exemplary or punitive damages; fines

Under the Bankruptcy Code, an individual injured by any willful violation of the automatic stay shall recover actual damages, and may recover punitive damages. 11 U.S.C.A. §§ 362(a), 362(k)(1).

[8] **Bankruptcy** Proceedings, Acts, or Persons Affected

Entity's mere retention of estate property after the filing of a bankruptcy petition does not constitute an act to exercise control over property of the estate in violation of the Bankruptcy Code's automatic stay; rather, that subsection of the Code prohibits affirmative acts that would disturb the status quo of estate property as of the time the bankruptcy petition was filed; abrogating *In re Weber*, 719 F.3d 72, *In re Del Mission Ltd.*, 98 F.3d 1147, and *In re Knaus*, 889 F.2d 773. 11 U.S.C.A. § 362(a)(3).

6 Cases that cite this headnote

[9] **Action** Stay of Proceedings

A "stay" is an order that suspends judicial alteration of the status quo.

[10] **Bankruptcy** Proceedings, Acts, or Persons Affected

In context of the stay provision of the Bankruptcy Code prohibiting any act to exercise control over property of the estate, the term "act" refers to something done or performed, or a deed. 11 U.S.C.A. § 362(a)(3).

2 Cases that cite this headnote

[11] **Bankruptcy** Proceedings, Acts, or Persons Affected

In context of the stay provision of the Bankruptcy Code prohibiting any act to exercise control over property of the estate, to "exercise" means to bring into play or to make effective in action, and to exercise something like control is to put in practice or carry out in action. 11 U.S.C.A. § 362(a)(3).

2 Cases that cite this headnote

[12] **Statutes** Particular Words and Phrases

In interpreting a statute, omissions may qualify as "acts" in certain contexts.

1 Cases that cite this headnote

[13] **Statutes** Particular Words and Phrases

In interpreting a statute, in certain contexts the term "control" may mean to have power over.

[14] **Bankruptcy** Collection and Recovery for Estate; Turnover

Exceptions to the Bankruptcy Code's turnover provision shield (1) transfers of estate property made from one entity to another in good faith without notice or knowledge of the bankruptcy petition, and (2) good-faith transfers to satisfy certain life insurance obligations. 11 U.S.C.A. §§ 542, 542(c), (d).

[15] **Statutes** Superfluousness

Canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.

5 Cases that cite this headnote

[16] **Bankruptcy** Proceedings, Acts, or Persons Affected

Stay provision of the Bankruptcy Code prohibiting any act to exercise control over property of the estate prohibits collection efforts outside the bankruptcy proceeding that would change the status quo. 11 U.S.C.A. § 362(a)(3).

5 Cases that cite this headnote

[17] **Bankruptcy** Collection and Recovery for Estate; Turnover

Bankruptcy Code's turnover provision works within the bankruptcy process to draw far-flung estate property back into the hands of the debtor or trustee. 11 U.S.C.A. § 542(a).

[18] **Bankruptcy** Collection and Recovery for Estate; Turnover

Bankruptcy Code's turnover provision does not mandate turnover of property that is of inconsequential value or benefit to the estate. 11 U.S.C.A. § 542(a).

***587** *Syllabus* [*]

The filing of a petition under the Bankruptcy Code automatically "creates an estate" that, with some exceptions, comprises "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). Section 541 is intended to include within the estate any property made available by other provisions of the Bankruptcy Code. Section 542 is one such provision, as it provides that an entity in possession of property of the bankruptcy estate "shall deliver to the trustee, and account for" that property. The filing of a petition also automatically "operates as a stay, applicable to all entities," of efforts to collect prepetition debts outside the bankruptcy forum, § 362(a), including "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," § 362(a)(3). Here, each respondent filed a bankruptcy petition and requested that the city of Chicago (City) return his or her vehicle, which had been impounded for failure to pay fines for motor vehicle infractions. In each case, the City's refusal was held by a bankruptcy court to violate the automatic stay. The Seventh Circuit affirmed, concluding that by retaining possession of the vehicles the City had acted "to exercise control over" respondents' property in violation of § 362(a)(3).

Held: The mere retention of estate property after the filing of a bankruptcy petition does not violate § 362(a)(3) of the Bankruptcy Code. Under that provision, the filing of a bankruptcy petition operates as a "stay" of "any act" to "exercise control" over the property of the estate. Taken together, the most natural reading of these terms is that § 362(a)(3) prohibits affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed. Respondents' alternative reading would create at least two serious problems. First, reading § 362(a)(3) to cover mere retention of property would render § 542's central command—that an entity in possession of certain estate property "shall deliver to the trustee ... such property"—largely superfluous, even though § 542 appears to be the provision governing the turnover of estate property. Second, respondents' reading would render

the commands of § 362(a)(3) and § 542 contradictory. Section 542 carves out exceptions to the turnover command. Under respondents' reading, an entity would be required to turn over property under § 362(a)(3) even if that property were exempt from turnover under § 542. The history of the Bankruptcy Code confirms the better reading. The Code originally included both § 362(a)(3) and § 542(a), but the former provision lacked the phrase "or to exercise control over property of the estate." When that phrase was later added by amendment, Congress made no mention of transforming § 362(a)(3) into an affirmative turnover obligation. It is unlikely that Congress would have made such an important change simply by adding the phrase "exercise control," rather than by adding a cross-reference to § 542(a) or some other indication that it was so transforming § 362(a)(3). Pp. 590 - 592.

926 F.3d 916, vacated and remanded.

ALITO, J., delivered the opinion of the Court, in which all other Members joined, except BARRETT, J., who took no part in the consideration or decision of the case. SOTOMAYOR, J., filed a concurring opinion.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Opinion

Justice ALITO delivered the opinion of the Court.

***589** [1] When a debtor files a petition for bankruptcy, the Bankruptcy Code protects the debtor's interests by imposing an automatic stay on efforts to collect prepetition debts outside the bankruptcy forum. *Ritzen Group, Inc.* v. *Jackson Masonry, LLC*, 589 U.S. ——, —— – ——, 140 S.Ct. 582, 588–589, 205 L.Ed.2d 419 (2020). Those prohibited efforts include "any act ... to exercise control over property" of the bankruptcy estate. 11 U.S.C. § 362(a)(3). The question in this case is whether an entity violates that prohibition by retaining possession of a debtor's property after a bankruptcy petition is filed. We hold that mere retention of property does not violate § 362(a)(3).

I

[2] [3] [4] Under the Bankruptcy Code, the filing of a bankruptcy petition has certain immediate consequences. For one thing, a petition "creates an estate" that, with some exceptions, comprises "all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1). Section 541 "is intended to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code." *United States* v. *Whiting Pools, Inc.*, 462 U.S. 198, 205, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983). One such provision, § 542, is important for present purposes. Titled "Turnover of property to the estate," § 542 provides, with just a few exceptions, that an entity (other than a custodian) in possession of property of the bankruptcy estate "shall deliver to the trustee, and account for" that property.

[5] [6] [7] A second automatic consequence of the filing of a bankruptcy petition is that, with certain exceptions, the petition "operates as a stay, applicable to all entities," of efforts to collect from the debtor outside of the bankruptcy forum. § 362(a). The automatic stay serves the debtor's interests by protecting the estate from dismemberment, and it also benefits creditors as a group by preventing individual creditors from pursuing their own interests to the detriment of the others. Under the Code, an individual injured by any willful violation of the stay "shall recover actual damages, including costs and attorneys' fees, and in appropriate circumstances, may recover punitive damages." § 362(k)(1).

Among the many collection efforts prohibited by the stay is "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*." § 362(a)(3) (emphasis added). The prohibition against exercising control over estate property is the subject of the present dispute.

In the case before us, the city of Chicago (City) impounded each respondent's vehicle for failure to pay fines for motor vehicle infractions. Each respondent filed a Chapter 13 bankruptcy petition and requested that the City return his or her vehicle. The City refused, and in each case a bankruptcy court held that the City's refusal violated the automatic stay. The Court of Appeals affirmed all of the judgments in a consolidated opinion. *In re Fulton*, 926 F.3d 916 (CA7 2019). The court concluded that "by retaining possession of the debtors' vehicles after they declared bankruptcy," the City had acted "to exercise control over" respondents' property in violation of § 362(a)(3). *Id.*, at 924–925. We granted certiorari to resolve a split in the Courts of Appeals over whether an entity that retains possession of the property of a ***590** bankruptcy estate violates § 362(a)(3).[1] 589 U.S. ——, 140 S.Ct. 680, 205 L.Ed.2d 449 (2019). We now vacate the judgment below.

II

[8] The language used in § 362(a)(3) suggests that merely retaining possession of estate property does not violate the automatic stay. Under that provision, the filing of a bankruptcy petition operates as a "stay" of "any act" to "exercise control" over the property of the estate. Taken together, the most natural reading of these terms—"stay," "act," and "exercise control"—is that § 362(a)(3) prohibits affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed.

[9] **[10]** **[11]** Taking the provision's operative words in turn, the term "stay" is commonly used to describe an order that "suspend[s] judicial alteration of the status quo." *Nken* v. *Holder*, 556 U.S. 418, 429, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009) (brackets in original; internal quotation marks omitted). An "act" is "[s]omething done or performed ... ; a deed." Black's Law Dictionary 30 (11th ed. 2019); see also Webster's New International Dictionary 25 (2d ed. 1934) ("that which is done," "the exercise of power," "a deed"). To "exercise" in the sense relevant here means "to bring into play" or "make effective in action." Webster's Third New International Dictionary 795 (1993). And to "exercise" something like control is "to put in practice or carry out in action." Webster's New International Dictionary, at 892. The suggestion conveyed by the combination of these terms is that § 362(a)(3) halts any affirmative act that would alter the status quo as of the time of the filing of a bankruptcy petition.

[12] **[13]** We do not maintain that these terms definitively rule out the alternative interpretation adopted by the court below and advocated by respondents. As respondents point out, omissions can qualify as "acts" in certain contexts, and the term " 'control' " can mean " 'to have power over.' " *Thompson* v. *General Motors Acceptance Corp.*, 566 F.3d 699, 702 (CA7 2009) (quoting Merriam-Webster's Collegiate Dictionary 272 (11th ed. 2003)). But saying that a person engages in an "act" to "exercise" his or her power over a thing communicates more than merely "having" that power. Thus the language of § 362(a)(3) implies that something more than merely retaining power is required to violate the disputed provision.

Any ambiguity in the text of § 362(a)(3) is resolved decidedly in the City's favor by the existence of a separate provision, § 542, that expressly governs the turnover of estate property. Section 542(a), with two exceptions, provides as follows:

> "[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 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."

[14] The exceptions to § 542(a) shield (1) transfers of estate property made from one entity to another in good faith without notice or knowledge of the bankruptcy petition ***591** and (2) good-faith transfers to satisfy certain life insurance obligations. See §§ 542(c), (d). Reading § 362(a)(3) to cover mere retention of property, as respondents advocate, would create at least two serious problems.

[15] First, it would render the central command of § 542 largely superfluous. "The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Yates* v. *United States*, 574 U.S. 528, 543, 135 S.Ct. 1074, 191 L.Ed.2d 64 (2015) (plurality opinion; internal quotation marks and brackets omitted). Reading "any act ... to exercise control" in § 362(a)(3) to include merely retaining possession of a debtor's property would make that section a blanket turnover provision. But as noted, § 542 expressly governs "[t]urnover of property to the estate," and subsection (a) describes the broad range of property that an entity "shall deliver to the trustee." That mandate would be surplusage if § 362(a)(3) already required an entity affirmatively to relinquish control of the debtor's property at the moment a bankruptcy petition is filed.

[16] **[17]** Respondents and their *amici* contend that § 542(a) would still perform some work by specifying the party to whom the property in question must be turned over and by requiring that an entity "account for ... the value of " the debtor's property if the property is damaged or lost. But that is a small amount of work for a large amount of text in a section that appears to be the Code provision that is designed to govern the turnover of estate property. Under this alternative interpretation, § 362(a)(3), not § 542, would be the chief provision governing turnover—even though § 362(a)(3) says nothing expressly on that question. And § 542 would be reduced to a footnote—even though it appears on its face to be the governing provision. The better account of the two provisions is that § 362(a)(3) prohibits collection efforts outside the bankruptcy proceeding that would change the status quo, while § 542(a) works within the bankruptcy process to draw far-flung estate property back into the hands of the debtor or trustee.

[18] Second, respondents' reading would render the commands of § 362(a)(3) and § 542 contradictory. Section 542 carves out exceptions to the turnover command, and § 542(a) by its terms does not mandate turnover of property that is "of inconsequential value or benefit to the estate." Under respondents' reading, in cases where those exceptions to turnover under § 542 would apply, § 362(a)(3) would command turnover all the same. But it would be "an odd construction" of § 362(a)(3) to require a creditor to do immediately what § 542 specifically excuses. *Citizens Bank of Md.* v. *Strumpf*, 516 U.S. 16, 20, 116 S.Ct. 286, 133 L.Ed.2d 258 (1995). Respondents would have us resolve the conflicting commands by engrafting § 542's exceptions onto § 362(a)(3), but there is no textual basis for doing so.

The history of the Bankruptcy Code confirms what its text and structure convey. Both § 362(a)(3) and § 542(a) were included in the original Bankruptcy Code in 1978. See Bankruptcy Reform Act of 1978, 92 Stat. 2570, 2595. At the time, § 362(a)(3) applied the stay only to "any act to obtain possession of property of the estate or of property from the estate." *Id.*, at 2570. The phrase "or to exercise control over property of the estate" was not added until 1984. Bankruptcy Amendments and Federal Judgeship Act of 1984, 98 Stat. 371.

Respondents do not seriously dispute that § 362(a)(3) imposed no turnover obligation prior to the 1984 amendment. But ***592** transforming the stay in § 362 into an affirmative turnover obligation would have constituted an important change. And it would have been odd for Congress to accomplish that change by simply adding the phrase "exercise control," a phrase that does not naturally comprehend the mere retention of property and that does not admit of the exceptions set out in § 542. Had Congress wanted to make § 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, but Congress did not include such a crossreference or provide any other indication that it was transforming § 362(a)(3). The better account of the statutory history is that the 1984 amendment, by adding the phrase regarding the exercise of control, simply extended the stay to acts that would change the status quo with respect to intangible property and acts that would change the status quo with respect to tangible property without "obtain[ing]" such property.

* * *

Though the parties debate the issue at some length, we need not decide how the turnover obligation in § 542 operates. Nor do we settle the meaning of other subsections of § 362(a).[2] We hold only that mere retention of estate property after the filing of a bankruptcy petition does not violate §

362(a)(3) of the Bankruptcy Code. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice BARRETT took no part in the consideration or decision of this case.

Justice SOTOMAYOR, concurring.

Section 362(a)(3) of the Bankruptcy Code provides that the filing of a bankruptcy petition "operates as a stay" of "any act ... to exercise control over property of the [bankruptcy] estate." 11 U.S.C. § 362(a)(3). I join the Court's opinion because I agree that, as used in § 362(a)(3), the phrase "exercise control over" does not cover a creditor's passive retention of property lawfully seized prebankruptcy. Hence, when a creditor has taken possession of a debtor's property, § 362(a)(3) does not require the creditor to return the property upon the filing of a bankruptcy petition.

I write separately to emphasize that the Court has not decided whether and when § 362(a)'s other provisions may require a creditor to return a debtor's property. Those provisions stay, among other things, "any act to create, perfect, or enforce any lien against property of the estate" and "any act to collect, assess, or recover a claim against [a] debtor" that arose prior to bankruptcy proceedings. §§ 362(a)(4), (6); see, *e.g.*, *In re Kuehn*, 563 F.3d 289, 294 (CA7 2009) (holding that a university's refusal to provide a transcript to a student-debtor "was an act to collect a debt" that violated the automatic stay). Nor has the Court addressed how bankruptcy courts should go about enforcing creditors' separate obligation to "deliver" estate property to the trustee or debtor under § 542(a). The City's conduct may very well violate one or both of these other provisions. The Court does not decide one way or the other.

Regardless of whether the City's policy of refusing to return impounded vehicles satisfies the letter of the Code, it hardly ***593** comports with its spirit. "The principal purpose of the Bankruptcy Code is to grant a ' "fresh start" ' " to debtors. *Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 367, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007) (quoting *Grogan* v. *Garner*, 498 U.S. 279, 286, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)). When a debtor files for Chapter 13 bankruptcy, as respondents did here, "the debtor retains possession of his property" and works toward completing a court-approved repayment plan. 549 U.S. at 367, 127 S.Ct. 1105. For a Chapter 13 bankruptcy to succeed, therefore, the debtor must continue earning an income so he can pay his creditors. Indeed, Chapter 13 bankruptcy is available only to "individual[s] with regular income." 11 U.S.C. § 109(e).

For many, having a car is essential to maintaining employment. Take, for example, respondent George Peake. Before the City seized his car, Peake relied on his 200,000-mile 2007 Lincoln MKZ to travel 45 miles each day from his home on the South Side of Chicago to his job in Joliet, Illinois. In June 2018, when the City impounded Peake's car for unpaid parking and red-light tickets, the vehicle was worth just around $4,300 (and was already serving as collateral for a roughly $7,300 debt). Without his car, Peake had to pay for rides to Joliet. He filed for bankruptcy, hoping to recover his vehicle and repay his $5,393.27 debt to the City through a Chapter 13 plan. The City, however, refused to return the car until either Peake paid $1,250 upfront or after the court confirmed Peake's bankruptcy plan. As a result, Peake's car remained in the City's possession for months. By denying Peake access to the vehicle he needed to commute to work, the City jeopardized Peake's ability to make payments to *all* his creditors, the City included. Surely, Peake's vehicle would have been more valuable in the hands of its owner than parked in the City's impound lot. [1]

Peake's situation is far too common. [2] Drivers in low-income communities across the country face similar vicious cycles: A driver is assessed a fine she cannot immediately pay; the balance balloons as late fees accrue; the local government seizes the driver's vehicle, adding impounding and storage fees to the growing debt; and the driver, now without reliable transportation to and from work, finds it all but impossible to repay her debt and recover her vehicle. See Brief for American Civil Liberties Union et al. as *Amici Curiae* 11–16, 31–32. Such drivers may turn to Chapter 13 bankruptcy for a "fresh start." *Marrama*, 549 U.S. at 367, 127 S.Ct. 1105 (internal quotation marks omitted). [3] But without their vehicles, many debtors quickly find themselves unable to make their Chapter 13 payments. The cycle thus continues, disproportionately burdening communities ***594** of color, see Brief for American Civil Liberties Union et al. as *Amici Curiae* 17, and interfering not only with debtors' ability to

earn an income and pay their creditors but also with their access to childcare, groceries, medical appointments, and other necessities.

Although the Court today holds that § 362(a)(3) does not require creditors to turn over impounded vehicles, bankruptcy courts are not powerless to facilitate the return of debtors' vehicles to their owners. Most obviously, the Court leaves open the possibility of relief under § 542(a). That section requires any "entity," subject to some exceptions, to turn over "property" belonging to the bankruptcy estate. 11 U.S.C. § 542(a). The debtor, in turn, must be able to provide the creditor with "adequate protection" of its interest in the returned property, § 363(e); for example, the debtor may need to demonstrate that her car is sufficiently insured. In this way, § 542(a) maximizes value for all parties involved in a bankruptcy: The debtor is able to use her asset, which makes it easier to earn an income; the debtor's unsecured creditors, in turn, receive timely payments from the debtor; and the debtor's secured creditor, for its part, receives "adequate protection [to] replace the protection afforded by possession." *United States* v. *Whiting Pools, Inc.*, 462 U.S. 198, 207, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983). Secured creditors cannot opt out of this arrangement. As even the City acknowledges, § 542(a) "impose[s] a duty of turnover that is mandatory when the statute's conditions ... are met." Brief for Petitioner 37.

The trouble with § 542(a), however, is that turnover proceedings can be quite slow. The Federal Rules of Bankruptcy Procedure treat most "proceeding[s] to recover ... property" as "adversary proceedings." Rule 7001(1). Such actions are, in simplified terms, "essentially full civil lawsuits carried out under the umbrella of [a] bankruptcy case." *Bullard* v. *Blue Hills Bank*, 575 U.S. 496, 505, 135 S.Ct. 1686, 191 L.Ed.2d 621 (2015). Because adversary proceedings require more process, they take more time. Of the turnover proceedings filed after July 2019 and concluding before June 2020, the average case was pending for over 100 days. See Administrative Office of the United States Courts, Time Intervals in Months From Filing to Closing of Adversary Proceedings Filed Under 11 U.S.C. § 542 for the 12-Month Period Ending June 30, 2020, Washington, DC: Sept. 25, 2020.

One hundred days is a long time to wait for a creditor to return your car, especially when you need that car to get to work so you can earn an income and make your bankruptcy-plan payments. To address this problem, some courts have adopted strategies to hurry things along. At least one bankruptcy court has held that § 542(a)'s turnover obligation is automatic even absent a court order. See *In re Larimer*, 27 B.R. 514, 516 (Bankr. D Idaho 1983). Other courts apparently will permit debtors to seek turnover by simple motion, in lieu of filing a full adversary proceeding, at least where the creditor has received adequate notice. See Tr. of Oral Arg. 81 (counsel for the City stating that "[i]n most bankruptcy courts, if a creditor responds to a motion [for turnover] by" arguing that the debtor should have instituted an adversary proceeding, the bankruptcy judge will ask whether the creditor received "actual notice"); Brief for United States as *Amicus Curiae* 32 (reporting that "some courts have granted [turnover] orders based solely on a motion"); but see, *e.g.*, *In re Denby-Peterson*, 941 F.3d 115, 128–131 (CA3 2019) (holding that debtors must seek turnover through adversary proceedings). Similarly, even when a turnover request does take the form of an ***595** adversary proceeding, bankruptcy courts may find it prudent to expedite proceedings or order preliminary relief requiring temporary turnover. See, *e.g.*, *In re Reid*, 423 B.R. 726, 727–728 (Bkrtcy. Ct. ED Pa. 2010); see generally 10 Collier on Bankruptcy ¶ 7065.02 (16th ed. 2019).

Ultimately, however, any gap left by the Court's ruling today is best addressed by rule drafters and policymakers, not bankruptcy judges. It is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned. Congress, too, could offer a statutory fix, either by ensuring that expedited review is available for § 542(a) proceedings seeking turnover of a vehicle or by enacting entirely new statutory mechanisms that require creditors to return cars to debtors in a timely manner.

Nothing in today's opinion forecloses these alternative solutions. With that understanding, I concur.

All Citations

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Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 Compare *In re Fulton*, 926 F.3d 916, 924 (CA7 2019), *In re Weber*, 719 F.3d 72, 81 (CA2 2013), *In re Del Mission Ltd.*, 98 F.3d 1147, 1151–1152 (CA9 1996), and *In re Knaus*, 889 F.2d 773, 774–775 (CA8 1989), with *In re Denby-Peterson*, 941 F.3d 115, 132 (CA3 2019), and *In re Cowen*, 849 F.3d 943, 950 (CA10 2017).

2 In respondent Shannon's case, the Bankruptcy Court determined that by retaining Shannon's vehicle and demanding payment, the City also had violated §§ 362(a)(4) and (a)(6). Shannon presented those theories to the Court of Appeals, but the court did not reach them. 926 F.3d at 926, n. 1. Neither do we.

1 Even though § 362(a)(3) does not require turnover, whether and when the City may sell impounded cars is an entirely different matter. See, *e.g.*, *In re Cowen*, 849 F.3d 943, 950 (CA10 2017) ("It's not hard to come up with examples of ... 'acts' that 'exercise control' over, but do not 'obtain possession of,' the estate's property, e.g., a creditor in possession who improperly sells property belonging to the estate").

2 See, *e.g.,* Ramos, Chicago Seized and Sold Nearly 50,000 Cars Over Tickets Since 2011, Sticking Owners With Debt, WBEZ News (Jan. 7, 2019) (online source archived at www.supremecourt.gov).

3 The 10-year period from 2007 to 2017, for instance, saw a tenfold increase in the number of Chicagoans filing Chapter 13 bankruptcies that involved debt to the City. See Sanchez & Kambhampati, Driven Into Debt: How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy, ProPublica Illinois (Feb. 27, 2018) (online source archived at www.supremecourt.gov).

Faculty

Karlene A. Archer is a staff attorney at the Legal Aid Society of Mid-New York in Syracuse, N.Y. She previously was an associate in the Bankruptcy and Financial Restructuring Group at WilmerHale in Boston and later at Bradley Arant Boult Cummings in Nashville, Tenn., where she focused mainly on consumer bankruptcy compliance for bank and nonbank mortgage-servicers. Ms. Archer currently works on *pro bono* and *pro se* assistance initiatives for consumer debtors, as well as impact litigation initiatives for student loan dischargeability. She received her J.D. from Boston College Law School.

Christopher L. Hawkins is a partner in the Birmingham, Ala., office of Bradley Arant Boult Cummings LLP. Throughout his 20+-year career, he has counseled individuals and businesses in a wide variety of bankruptcy and insolvency-related matters. He regularly represents debtors and creditors in out-of-court business restructurings, chapter 11 bankruptcy cases, and bankruptcy-related litigation, but for the past decade he has devoted most of his practice to advising large financial institutions on bankruptcy compliance and bankruptcy-related regulatory matters. In addition, he has represented financial institutions in nationwide consumer bankruptcy litigation, regulatory enforcement matters and large-scale remediation projects, as well as through his time serving as interim in-house bankruptcy counsel for one of the largest financial institutions in the Fortune 50. Over the years, Mr. Hawkins has counseled clients on a wide range of consumer bankruptcy engagements, including designing and conducting risk assessments, drafting policies and procedures, scoping and implementing bankruptcy remediation projects, preparing comments to regulators on proposed regulations impacting bankruptcy, training client bankruptcy departments, auditing third-party bankruptcy vendors and counseling clients on bankruptcy operational issues. He received his B.S. *summa cum laude* in 1996 from Spring Hill College and his J.D. *summa cum laude* in 1999 from the University of Alabama School of Law, where he was a member of the Order of the Coif, served on the *Alabama Law Review*, received the M. Leigh Harrison Award and was a Hugo Black Scholar.

Prof. John A.E. Pottow is the John Philip Dawson Collegiate Professor of Law at the University of Michigan Law School in Ann Arbor, Mich., and is an internationally recognized expert in the field of bankruptcy and commercial law. His award-winning scholarship concentrates on the issues involved in the regulation of cross-border insolvencies, as well as consumer financial distress, and his extensive public service work focuses on international trade and the *pro bono* representation of bankrupt debtors. On behalf of the U.S., Prof. Pottow serves on the delegation to the United Nations Commission on International Trade Law (UNCITRAL) and serves on the State Department's Advisory Committee on Private International Law. In addition, he co-authors one of the leading bankruptcy textbooks in the country: The Law of Debtors and Creditors. Prof. Pottow has published in prominent legal journals in the U.S. and Canada and testified before both Houses of Congress. A frequent lecturer, he has presented his works at academic conferences around the world and frequently provides commentary for national and international media outlets, such as NPR, CNBC, CNN, C-SPAN, Al Jazeera America and the BBC. His *pro bono* representations have ranged from bankruptcy court to the Supreme Court, where he successfully argued on behalf of the respondent in *Executive Benefits Insurance Agency v. Arkison* (2014). Prior to joining the Michigan Law faculty in 2003, Prof. Pottow worked at several prominent firms in private practice, including Weil, Gotshal and Manges in New York and Hill & Barlow in Boston, where his practice focused on debtor rep-

resentation in complex chapter 11 restructurings. He also was an active litigator whose trial work included representing a gender-based asylum-seeker from Afghanistan in U.S. Immigration Court. Prof. Pottow is a licensed barrister and solicitor in Ontario and attorney in Massachusetts and Michigan. In 2005, he was presented the L. Hart Wright Award for Excellence in Teaching and, in 2012, received a *pro bono* award from the U.S. District Court of the Eastern District of Michigan. He is an elected member of the American Law Institute, American College of Bankruptcy and International Insolvency Institute. Prof. Pottow received his A.B. in psychology *summa cum laude* from Harvard College and his J.D. *magna cum laude* from Harvard Law School, where he served as treasurer of the *Harvard Law Review*.

Keith L. Rucinski, CPA is an attorney and the chapter 13 trustee for the Northern District of Ohio in Akron, appointed in October 2008. He has served as an expert witness in bankruptcy for private attorneys, state prosecutors and the U.S. Department of Justice. Mr. Rucinski has taught more than 30 graduate and undergraduate courses in taxes, financial statement analysis, accounting and business law, and he has published several articles in the areas of bankruptcy and accounting. In addition, he has been a seminar speaker for numerous local and national organizations. Mr. Rucinski is a member of ABI and the National Association of Chapter 13 Trustees, Ohio State Bar Association, Ohio Society of CPAs, Akron Bar Association and Federal Bar Association, and he is a life member of the Sixth Circuit Judicial Conference. He received his B.S. in business administration with a concentration in finance from the University of Akron and his J.D. from the University of Akron School of Law.