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*Husky Int'l Electronics, Inc. v. Ritz*, No. 15-145

Debtors seek the protections of the Bankruptcy Code to have their debts discharged, but there are exceptions. A creditor can prohibit discharge of a debt “obtained by ... actual fraud.” 11 U.S.C. § 523(a)(2)(A). Today, in a 7-1 decision written by Justice Sotomayor, the Supreme Court ruled that a fraudulent conveyance qualifies as “actual fraud.”

In so holding, the Court rejected the suggestion that a fraudulent conveyance could not constitute an “actual fraud” because it does not entail a misrepresentation, noting that frauds at common law did not necessarily include misrepresentations. The Court concluded that nothing in the Bankruptcy Code suggests that Congress intended for a different, narrower meaning of the term “actual fraud.”

Beyond addressing the question presented, today’s decision contains a notable discussion of the phrase “obtained by,” which appears in the same statutory provision. Justice Thomas, in dissent, contended that “[t]he statutory phrase ‘obtained by’ is an important limitation on the reach of the provision.” In his view, “Section 523(a)(2)(A) applies only when the fraudulent conduct occurs at the *inception of the debt*, *i.e.*, when the debtor commits a fraudulent act to induce the creditor to part with his money, property, services, or credit.” This theory would have significant implications; it would prohibit creditors from using later-in-time fraudulent conduct as a basis to exempt earlier-obtained debts from discharge. But the majority appears to have rejected this interpretation: “Nothing in the text of [Section] 523(a)(2)(A) supports that additional requirement.”

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