Case Name and Number: *Chicago* v. *Fulton*, No. 19-357

Introduction: In an 8-0 opinion issued today, the Supreme Court held that a creditor's passive retention of property properly seized from a debtor pre-bankruptcy does not violate the automatic stay under 11 U.S.C. § 362(a)(3).

Background: When an entity or individual files for bankruptcy, an automatic stay arises by operation of law that bars all entities from instigating or continuing efforts to collect prepetition debts outside of the bankruptcy process. That includes "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*." 11 U.S.C. § 362(a)(3) (emphasis added).

In this case, several people filed Chapter 13 bankruptcy petitions. Those people had their cars impounded by the City of Chicago pre-bankruptcy because they failed to pay tickets or fines. After filing for bankruptcy, they said that the City had to return their cars because keeping them impounded would violate the automatic stay, because the City would be continuing to "exercise control over property of the estate." The Seventh Circuit agreed. The Supreme Court granted certiorari to resolve a circuit split on the issue.

Issue: Whether the City's refusal to return impounded vehicles to debtors after they file for Chapter 13 bankruptcy relief violates the automatic stay under 11 U.S.C. § 362(a)(3).

Court's Holding: In a unanimous opinion authored by Justice Samuel Alito, the Supreme Court held that the mere retention of estate property properly seized pre-bankruptcy does not violate the automatic stay under 11 U.S.C. § 362(a)(3). Instead, Section 362(a)(3) prohibits only "affirmative acts that would disturb the status quo of estate property." Not returning previously impounded cars was not an affirmative act and did not change the status quo – so it did not violate the automatic stay.

The Supreme Court based its decision on the language of Section 362(a)(3). The Court noted that the words "stay," "act," and "exercise control" – individually and together – show that the statute was aimed solely at affirmative acts. The Court also noted that, if mere passive retention of property could violate the automatic stay, any entity in possession of estate property would be required to turn over all property immediately upon a bankruptcy filing – which would render another provision of the Bankruptcy Code completely superfluous.

In a separate concurring opinion, Justice Sotomayor agreed that the mere passive retention of estate property properly seized pre-bankruptcy does not violate the automatic stay. But she separately emphasized that the Court was not deciding if and when property would need to be turned over to the bankruptcy estate under other Bankruptcy Code provisions. For example, for the impounded cars at issue, she suggested that the City might be required to turn over possession under 11 U.S.C. § 542. Justice Sotomayor also noted that the Court was not commenting on the wisdom of a law that permits the City to retain peoples' impounded cars post-filing, at a time when they may need their cars to pay their outstanding debts. Those issues, Justice Sotomayor stated, are "best addressed by rule drafters and policymakers, not bankruptcy judges."

Read the opinion here.