# BANKRUPTCY

By: Keith A. Langley

The Supreme Court issued a decision on 1/14/2021 in the case of City of Chicago v. Fulton, resolving a circuit split over alleged violations of Section 362(a)(3). **The Court held that a creditor's "mere retention" of property of the estate post-petition does not violate the automatic stay as an act to exercise control.** The Court determined that Section 362(a)(3) prohibits affirmative acts that "would disturb the status quo." Accordingly, creditors who seize property prior to the bankruptcy filing will not face sanctions for violating the automatic stay by merely retaining control of property. The debtor still has the right to seek turnover of seized property, but can no longer argue that such retention is also a violation of the automatic stay.

The City of Chicago impounded vehicles for failure to pay fines for parking tickets and vehicle infractions. Several of the owners of those impounded vehicles filed Chapter 13 bankruptcy petitions and sought return of the vehicles in exchange for potential payments under the individual plans; however, the City of Chicago refused, and those debtors each filed actions asserting, in part, that the retention of the vehicles was a violation of the automatic stay. In a unanimous decision, the Supreme Court said the better account of §§ 542 and 362 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.

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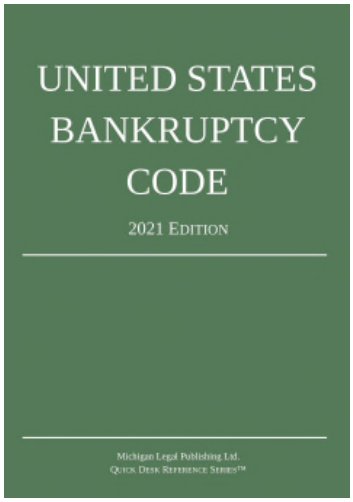
We hope that these changes make big differences in the future.

*Well done is better than well said.*

- Benjamin Franklin




The Court acknowledged the ambiguous meaning of the phrase to "exercise control," but stated that the more natural understanding requires an affirmative act after the bankruptcy filing. Otherwise, mere retention as exercising control would create at least two serious problems. First, the turnover provisions of Section 542(a) would be largely superfluous if Section 362(a)(3) required an automatic turnover of estate property. Second, Section 362(a)(3) and Section 542, would conflict because Section 542 contains exceptions to the turnover action. Thus, in some instances, if Section 362(a)(3) required automatic turnover, then a creditor would be required to do so even if the property is "of inconsequential value or benefit to the estate," which is otherwise an exception to the turnover action. Thus, while merely retaining seized property would not violate the automatic stay, additional actions such as selling the seized property at a public auction or via private sale would have to be a violation.

This decision should provide comfort to creditors who seized property prepetition and have not yet liquidated the property. There may still be turnover actions to face, but in most scenarios, creditors have leverage to request adequate protection provisions in exchange for turning over the property. The implications of this decision may create interesting opportunities for bankruptcy courts to draw new distinctions between mere retention and affirmative acts to exercise control of estate property.

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