



City of Chicago v. Fulton:
What SCOTUS Did Not Say

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City of Chicago v. Fulton:
592 U.S. ____ (2021)

You know the case:

- ❖ Chicago impounded cars for failure to pay fines
- ❖ Vehicle owners filed Chapter 13; demanded return of car
- ❖ Chicago said no
- ❖ Bankruptcy Court held Chicago's refusal violated 11 U.S.C. § 362(a)
- ❖ Court of Appeals affirmed
- ❖ Siding with the minority, Supreme Court reversed Seventh Circuit's decision

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City of Chicago v. Fulton
 592 U.S. _____ (2021)




Issue: Whether an entity that *retains possession* of property of a bankruptcy estate, seized or repossessed prepetition, violates § 362 (a)(3)?

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**11 U.S.C.
 § 362(a)(3)**

The filing of a Bankruptcy Petition operates as a stay, applicable to all entities, of “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[.]*”



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City of Chicago v. Fulton



Holding:
 “Mere retention of estate property after the filing of a bankruptcy petition does not violate § 362 (a)(3) . . .”



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How the Court Got There

- ❖ § 541(a): The filing of a Petition automatically “creates an estate.”
 - ❖ Generally, that estate is comprised of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1).
 - ❖ § 541 is intended to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code.
- ❖ § 542 is one of those “other” provisions.
 - ❖ Titled, “Turnover of property of the estate,” it provides that an entity in possession of property of the bankruptcy estate “shall deliver to the trustee, and account for” that property. 11 U.S.C. § 542(a).

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How the Court Got There

§ 362(a): Filing of a Petition automatically “operates as a stay, applicable to all entities” of all efforts to collect from the debtor outside the bankruptcy forum.

- Serves debtor by protecting estate from dismemberment
- Serves creditors by preventing individual creditors from pursuing their own interests at the expense of other creditors
- Under § 362(a)(3), the stay prohibits “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.”
- Under § 362(a)(3), the terms “stay,” “act,” and “exercise control” taken together suggest that what is prohibited are affirmative acts that would disturb the status quo of estate property as of the time when the petition was filed.

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How the Court Got There


So . . .

- ❖ Although an omission can qualify as an “act”;

AND

- ❖ “Control” can simply mean “to have power over”;

In the context of § 362(a)(3), saying that a person engages in an “act” to “exercise power” over a thing communicates more than merely *having that power*. Thus, the language of § 362(a)(3) implies something more than merely retaining power is required to “violate” the stay under this provision.



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The Interplay Between § 362 and § 542

Any ambiguity in the text of § 362(a)(3) is resolved by § 542 for 2 reasons:

- 1) If a violation under § 362(a)(3) included merely retaining possession, it would transform that section into a blanket turnover provision, rendering § 542 surplusage. **Instead:**
 - ❖ § 362(a)(3) merely prohibits collection efforts *outside* of bankruptcy that would change status quo.
 - ❖ § 542 works *within* bankruptcy process to draw far-flung estate property back into the hands of the debtor or trustee.
 - ❖ Had Congress wanted to make § 362(a)(3) “an enforcement arm,” for § 542, it could have at least cross-referenced the two provisions.

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The Interplay Between § 362 and § 542

2) Reading § 362(a)(3) as a blanket turnover provision would contradict § 542 and the exceptions to the turnover command.

- ❖ § 362(a)(3) would “require a creditor to do immediately what § 542 specifically excuses.”



Jody Bledsoe



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Implications for Chapter 13



What the Court Did NOT Decide

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The Court made no determination regarding the following:

- ❖ How the turnover obligation in § 542 operates, and how bankruptcy courts should go about enforcing creditor's separate obligation to "deliver" estate property to the trustee or debtor;
- ❖ § 362(a)(4), which stays "any act to create, perfect or enforce any lien against property of the estate"; or
- ❖ § 362(a)(6), which stays "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case..."

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The Court made no determination regarding the following:

The Court only held that passive retention is not an act with respect to § 363(a)(3), and not as to (a)(4) or (a)(6), when it said, omissions can qualify as 'acts' in certain contexts



- ❖ The term "control" can mean "to have power over."

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What can debtor do for best position for recovery?



- Have proof of insurance for the collateral
- Make sure the plan provides for adequate protection by commencing payments pre-confirmation if allowed in your district.


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Creditor Expenses

Can creditor demand reimbursement for towing and storage?

- ❖ Proof of claim?
- ❖ Other remedy?



Tony Sottile

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Sanctions

Violating the automatic stay could still be sanctionable

- ❖ Concurring opinion stresses that the Court is making no decisions on the other provisions of § 362(a).
- ❖ Has a creditor violated §§ 362(a)(4) and/or (a)(6)?
- ❖ If a stay violation is found, sanctions could still be possible pursuant to § 362(k).

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In Practice

Debtors should proceed with filing a Motion for Turnover under § 542(a) if §§ 362(a)(4) or (a)(6) cannot be met


OR


If debtor and creditor cannot come to agreement for turnover.

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Wide Range Implications

Does the same rationale apply to funds garnished and held by a creditor?






Rich Parker

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Judicial Lien

- ❖ *City of Chicago vs Howard*, January 29th # 20-00372
- ❖ City of Chicago vehicle lien is a judicial lien which can be avoided under § 522

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Fee Shifting

Is there any basis for fee shifting in this setting?

- ❖ § 362(k)
- ❖ § 105
- ❖ Rule 11?
- ❖ Added expense for debtor – possible reason why trustee should force the issue against the creditor.

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Adversary Proceeding vs. Motion for Turnover

At least one court has held (in dicta) that debtors must seek turnover through an Adversary Proceeding:

- See *In re Denby-Peterson*, 941 F.3d 115, 128-131 (CA3 2019), cited in *Fulton*

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Adversary Proceeding vs. Motion for Turnover

Rule 7001(1): Adversary Proceeding includes “a proceeding to *recover* money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002[.]”

- ❖ Rule 2017: Examination of Debtor’s Transactions with Debtor’s Attorney.
- ❖ Rule 6002: Accounting by Prior Custodian of Property of the Estate.

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Adversary Proceeding vs. Motion for Turnover

11 U.S.C. § 550(a): “Except as otherwise provided in this section, to the extent that a *transfer* is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may *recover*, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property[.]”

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Q & A

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