

SCOTUS ISSUES OPINION ON POSSESSION OF PROPERTY AFTER A BANKRUPTCY PETITION FILING

On Jan. 14, 2021, the United States Supreme Court issued an opinion (*City of Chicago, Illinois v. Fulton et al.*) that mere possession of estate property after a bankruptcy petition filing “does not violate 11 U.S.C. §362(a)(3), which operates as a ‘stay’ of ‘any act’ to ‘exercise control’ over the property of the estate.” Accordingly, if a creditor lawfully takes possession of a debtor’s asset pre-bankruptcy, the retention of that asset is not a violation of the bankruptcy stay.

In *Chicago v. Fulton*, Fulton had her vehicle impounded by the City of Chicago for failure to pay fines. Subsequently, Fulton filed a Chapter 13 bankruptcy petition and the City filed a proof of claim asserting it was a secured creditor. Fulton then requested the City return her vehicle but the City refused her request. The bankruptcy court found the City was required to return the vehicle, following *Thompson v. General Motors Acceptance Corp.*, 566 F. 3d 699 (7th Cir. 2009), which held that creditors must comply with the automatic stay and return the debtor’s vehicle once a bankruptcy petition is filed. The Supreme Court granted certiorari to resolve an Appeals Court split over the issue of whether a creditor’s retention of bankruptcy estate property is a violation of the automatic stay.

Justice Alito wrote the unanimous opinion in *Chicago v. Fulton*, holding that the language in 11 U.S.C. §362(a)(3) provides that possessing estate property alone does not violate the bankruptcy’s automatic stay. The interpretation of the term “stay” is that it prohibits affirmative actions that would change the status quo of the estate property. For example, while holding property that was repossessed pre-bankruptcy may not necessarily violate the stay, selling a repossessed asset arguably would.

While this decision gives direction to creditors who have repossessed items pre-petition, it is important to note that the Supreme Court made clear that its decision in *Chicago v. Fulton* relates only to the retention of estate property under the automatic stay and that other remedies may be available that require creditors to return estate assets back to the debtor, such as turnover motions under 11 U.S.C. §542(a) (“[O]ne bankruptcy court has held that

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§542(a)'s turnover obligation is automatic even absent a court order.”).

While *Chicago v. Fulton* appears to have clarified and unified the interplay between the automatic stay and return of property repossessed pre-petition, it is always recommended to seek the advice of legal counsel to confirm how best to proceed when determining whether to retain or return repossessed collateral.