Supreme Court Holds that the Mere Retention of Property Does not Violate Bankruptcy Code Section 362(a)(3)

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In an 8 to 0 opinion in City of Chicago v. Fulton, the Supreme Court held that the mere retention of property does not violate §362(a)(3). A copy of the opinion is attached. Section 362(a)(3) states "any act to … to exercise control over property of the estate." In the proceedings below, the Bankruptcy Court held that the City of Chicago exercised control in violation of §362(a)(3) by refusing to return impounded vehicles when bankruptcy petitions were filed. The Seventh Circuit Court of Appeals affirmed.

Writing for the Court, Justice Alito found that the language of §362(a)(3) suggests that it "halts any affirmative act that would alter the status quo as of the time of the filing of a bankruptcy petition." Merely retaining property does not alter the status quo. In other words, the City of Chicago did not violate §362(a)(3) by refusing to return the impounded vehicles.

Any ambiguity in the language, Justice Alito explained, is resolved by comparing this section with §542(a) which expressly governs the turnover of property. First, finding a violation of §362(a)(3) by the mere retention of property "would render the central command of §542 largely superfluous." Justice Alito than explained as follows:

"Second, respondents' reading would render the commands of §362(a)(3) and §542 contradictory. Section 542 carves out exceptions to the turnover command, and §542(a) by its terms does not mandate turnover of property that is 'of inconsequential value or benefit to the estate.' Under respondents' reading, in cases where those exceptions to turnover under §542 would apply, §362(a)(3) would command turnover all the same. But it would be 'an odd construction' of §362(a)(3) to require a creditor to do immediately what §542 specifically excuses. *Citizens Bank of Md.* v. *Strumpf*, 516 U. S. 16, 20 (1995). Respondents would have us resolve the conflicting commands by engrafting §542's exceptions onto §362(a)(3), but there is no textual basis for doing so."

After resolving the matter by reference to the text and structure of the Bankruptcy Code, Justice Alito went further to confirm his interpretation by considering legislative history. This reference to the legislative history raises several interesting questions. Is the consideration of legislative history appropriate where the text and structure of the Bankruptcy Code resolve the issue? Would the Court's opinion have changed if the legislative history suggested a different result? If the answer to these questions is no, why did Justice Alito consider the legislative history?

The New Jersey law is unchanged because the Court's opinion is in accord with the Third Circuit's opinion in In re Denby-Peterson, 941 F. 3d 115 (3rd Cir. 2019). The opinion changes the law in New York.