

843 Fed.Appx. 799 (Mem)

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 7th Cir. Rule 32.1. United States Court of Appeals, Seventh Circuit.

IN RE: Robbin L. FULTON, Debtor-Appellee.

Appeal of: City of Chicago

In re: Jason S. Howard, Debtor-Appellee.

Appeal of: City of Chicago

In re: George Peake, Debtor-Appellee.

Appeal of: City of Chicago

In re: Timothy Shannon, Debtor-Appellee.

Appeal of: City of Chicago

No. 18-2527, No. 18-2793, No. 18-2835, No. 18-3023

Submitted March 9, 2021

Decided April 12, 2021

Appeal from the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. No. 18-02860, Jack B. Schmetterer, *Bankruptcy Judge*. No. 17-25141, Jacqueline P. Cox, *Bankruptcy Judge*. No. 18-16544, Deborah L. Thorne, *Bankruptcy Judge*. No. 18-04116, Carol A. Doyle, *Bankruptcy Judge*.

Attorneys and Law Firms

David Paul Holtkamp, Attorney, Office of the United States Trustee, Chicago, IL, Ellen W. McLaughlin, Attorney, City of Chicago Law Department, Chicago, IL, for Appellant

Nathan Delman, Attorney, Aaron M. Weinberg, John Peter Wonais, Attorney, Semrad Law Firm, LLC, Chicago, IL, Brenda Ann Likavec, Attorney, Codilis & Associates, P.C., Burr Ridge, IL, Catherine L. Steege, Attorney, Adam Swingle, Attorney, Jenner & Block LLP, Chicago, IL, Carl Wedoff, Attorney, Jenner & Block LLP, New York, NY, Eugene Wedoff, Attorney, Oak Park, IL, for Appellee

James A. Brady, Attorney, David S. Yen, Attorney, LAF, Chicago, IL, for Amicus Curiae Legal Assistance Foundation

Tara A. Twomey, Attorney, National Consumer Bankruptcy Rights Center, San Jose, CA, for Amici Curiae National Consumer Bankruptcy Rights Center, National Association of Consumer Bankruptcy Attorneys

Before Joel M. Flaum, Circuit Judge, Michael S. Kanne, Circuit Judge, Michael Y. Scudder, Circuit Judge

ON REMAND FROM THE SUPREME
COURT OF THE UNITED STATES

ORDER

This appeal returns to us on remand from the Supreme Court of the United States. In 2019, we considered this consolidated direct appeal of four Chapter 13 bankruptcies filed by debtors Robbin Fulton, Jason Scott Howard, George Peake, and Timothy Shannon. Prior to the debtors' bankruptcy filings, the City of Chicago had impounded the vehicles of all four debtors for failure to pay multiple traffic fines. After the debtors filed their bankruptcy petitions, the City refused to return the vehicles, claiming it needed to maintain possession to continue perfection of its *\$00 possessory lien on the vehicles and that it would only return the vehicles when the debtors paid in full their outstanding fines. Relying on

Thompson v. General Motors Acceptance Corp., 566 F.3d 699 (7th Cir. 2009) and 11 U.S.C. § 362(a)(3), we affirmed the bankruptcy courts' conclusions that the City violated the Bankruptcy Code's automatic stay by exercising control over property of the bankruptcy estate and that none of the exceptions to the stay applied. See *In re Fulton*, 926 F.3d 916 (7th Cir. 2019), *vacated and remanded sub nom.*

City of Chicago v. Fulton, — U.S. —, 141 S. Ct. 585, 208 L.Ed.2d 384 (2021). This Court explicitly did not reach violation theories grounded in § 362(a)(4) or (a)(6). *Id.* at 926 n.1 (“Because the City is bound by the stay under § 362(a)(3), we do not reach the applicability of the additional stay provisions.”).

The City petitioned for a writ of certiorari. The Supreme Court granted the petition to consider whether an entity violates § 362(a)(3) by retaining possession of a debtor's property after a bankruptcy petition is filed. Holding “only that mere retention of estate property after the filing of a bankruptcy petition

does not violate § 362(a)(3) of the Bankruptcy Code,” the Supreme Court vacated our initial decision and remanded for further proceedings. *Fulton*, 141 S. Ct. at 592.

With respect to applicability of § 362(a)(4) and (a)(6), the Supreme Court declined to “settle the meaning of other subsections of § 362(a).” *Id.* at 592 & n.2. In her concurrence, Justice Sotomayor agreed with the majority that the City had not violated § 362(a)(3) but “wr[ote] separately to emphasize that the Court ha[d] not decided whether and when § 362(a)’s other provisions may require a creditor to return a debtor’s property.” *Id.* at 592 (Sotomayor, J., concurring). “Nor ha[d] the Court addressed how bankruptcy courts should go about enforcing creditors’ separate obligation to ‘deliver’ estate property to the trustee or debtor under [11 U.S.C.] § 542(a).” *Id.* Consistent with the majority opinion, this logic does not foreclose an adverse finding against the City, on other grounds. As the concurrence notes, “[t]he City’s conduct may very well violate one or both of these other provisions.” *Id.*

In its statement under Circuit Rule 54, the City urges this Court to summarily reverse the bankruptcy courts’ decisions in the cases below and vacate the orders sanctioning the City for violating the automatic stay. The City requests the reversal extend to the *Shannon* court’s judgment that the City

violated § 362(a)(4) and (a)(6) of the automatic stay. By contrast, the debtors ask this Court on remand to address the open questions of whether the City violated the automatic stay imposed by § 362(a)(4) or (a)(6) by making demands that were not justified under the Bankruptcy Code and conditioning its release of the debtors’ cars on the satisfaction of those demands. We decline to adopt either request in full.

The common question raised and addressed on direct appeal centered on § 362(a)(3). Upon further review of the records below, we find that both *In re Fulton* and *In re Shannon* presented arguments that the City’s conduct violated provisions of the Bankruptcy Code other than § 362(a)(3), while *In re Peake* and *In re Howard* confined their arguments to § 362(a)(3). Accordingly, the question of whether or not the City’s conduct was impermissible on grounds other than § 362(a)(3) remains unresolved. Therefore, with our prior judgment now vacated, we REMAND to the relevant bankruptcy courts *In re Shannon* and *In re Fulton* for further proceedings consistent with the Supreme Court’s decision and further REMAND *In re Peake* and *In re Howard* with *801 instructions to vacate their respective judgments.

All Citations

843 Fed.Appx. 799 (Mem)