The question the Supreme Court will decide in City of Chicago, Illinois v. Fulton is whether a local government must return a vehicle impounded because of code violations immediately upon a debtor filing for bankruptcy.

The City of Chicago impounds vehicles where debtors have three or more unpaid fines. Robbin Fulton’s vehicle was impounded for this reason. She filed for bankruptcy and asked the City to turn over her vehicle; it refused.

Fulton claims the Bankruptcy Code’s “automatic stay” provision requires the City to immediately return her vehicles even though she didn’t pay her outstanding tickets. The Seventh Circuit agreed.

The “automatic stay” provision of the Bankruptcy Code provides that 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.”

In a previous case decided in 2009, Thompson v. General Motors Acceptance Corp., the Seventh Circuit concluded that “exercise control” includes holding onto an asset and that “exercise control” isn’t limited to “selling or otherwise destroying the asset.” So, the court reasoned in this case, the City of Chicago “exercised control” over Fulton’s car in violation of the automatic stay by not returning it after she filed the bankruptcy petition.

The Seventh Circuit next concluded that the bankruptcy stay becomes effective immediately upon filing the petition, without the debtor bringing a “turnover action.” Another section of the Bankruptcy Code requires the creditor to request “adequate protection” of its interest in property subject to a bankruptcy petition. According to the Seventh Circuit in Thompson: “[I]f a creditor is allowed to retain possession, then this burden is rendered meaningless—a creditor has no incentive to seek protection of an asset of which it already has possession.”

The City of Chicago asked the Seventh Circuit to overturn Thompson but the court refused. The lower court also rejected Chicago’s argument that two exceptions to the automatic stay provision apply in this case.

The International Municipal Lawyers Association submitted a certiorari stage amicus brief pointing out that municipalities impound thousands of vehicles a year for code violations. The brief also notes that at least two states, Texas and Pennsylvania, have adopted statewide regulatory schemes allowing this practice. According to the brief, remarkably, “a 2013 investigation by the Chicago Tribune found that hundreds of owners of impounded vehicles had turned to a single scam artist to file fraudulent bankruptcy petitions in order to receive their vehicles without paying an impoundment fee.

By:
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