

PROGRAM SUMMARY 2-26-22

By: Gary R. Wallace-Program Summary Committee Chair

cdcbaa Holds Second Meeting and MCLE Program of 2021: "THE AUTOMATIC STAY AFTER FULTON v. CITY OF CHICAGO, AND BEYOND"

On February 26, 2022, the **cdcbaa** held its second members meeting and MCLE program of the year.

To help mitigate the spread of COVID-19, the meeting and program were conducted as a live webinar via Zoom video. The program topic was: "THE AUTOMATIC STAY AFTER FULTON v. CITY OF CHICAGO, AND BEYOND." The distinguished panel consisted of Hon. Neil W. Bason, U.S. Bankruptcy Court - Central District of California, Raymond Aver, Esq. of the Aver Law Firm, and Randall Mroczynski, Esq. of Cooksey Toolen Gage Duffy Woog. CDCBAA former president and current board member Hale Antico moderated.

The program began with Mr. Aver explaining the factual background and reasoning of the Supreme Court's ruling in *Fulton v. City of Chicago*, 141 S. Ct. 585 (2021). In that case, which involved the City of Chicago's refusal to return automobiles that had been impounded pre-petition without a turnover order, the Supreme Court ruled that the mere retention of estate property after the filing of a bankruptcy petition does not violate section 362(a)(3). Under that provision, the filing of a bankruptcy petition operates as a "stay" of "any act" to "exercise control" over the property of the estate. Taken together, the most natural reading of these terms is that section prohibits affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed.

The *Fulton* ruling has already had an impact on pending litigation. For example, in *Cordova v. City of Chicago*, 2021 Bankr. LEXIS 3335 (Bankr. N.D. Ill. 2021), the plaintiffs amended their complaint to allege a stay violation under subdivisions (a)(4)(6) and (7) of section 362 rather than subdivision (a)(3) which was at issue in *Fulton*. The plaintiffs also asserted a violation of section 542(a)'s turnover provision. The Court there ruled, on a motion to dismiss, that the plaintiffs could proceed with their subdivision (a)(4) and (6) claims and that the turnover provisions of section 542 were "self-executing" and compels compliance without the need for commencement of an adversary proceeding or court order.

Mr. Mroczynski delved into state law redemption and reinstatement rights following automobile impoundment under the Rees-Levering Motor Vehicle Sales Finance Act (Civil Code sections 2981- 2984.6). It was noted, however, that Civil Code 2983 only applies to dealer arranged financing and does not apply to loans made directly to a consumer by a bank or a credit union.

The panel discussed several other recent rulings within the Ninth Circuit on the automatic stay, such as:

- *Guido v. Strategic Funding Source, Inc. (In re Guido)*, 2021 Bankr. LEXIS 1484 (Bankr. S.D. Cal. June 1, 2021) (the mere refusal by a creditor to dismiss a pre-petition pending lawsuit does not violate the automatic stay and, where the debtor had appeared in that lawsuit pre-petition, the creditor has no obligation to file a notice of bankruptcy stay). It was also observed by one of our astute member viewers that, in cases where the debtor has not appeared, California Rules of Court 3.650(a) does require the plaintiff/creditor to file such a notice of stay.

- *Perryman v. Dal Poggetto* (In re *Perryman*), 631 B.R. 899 (9th Cir. BAP 2021)(seeking continuances and attending court-ordered status conferences in state court litigation does not violate the automatic stay).
- *Koeberer v. California Bank of Commerce* (In re *Koeberer*), 632 B.R. 680 (9th Cir. BAP 2021)(creditor's attempt to proceed with a state court fraudulent transfer action against non- debtor parties can violate the automatic stay).

Several related hypotheticals were also presented and discussed. Mr. Antico also invited viewers to share their own experiences regarding the automatic stay by responding to several prepared poll questions. Also, the chat and Q&A functions of the zoom technology proved valuable as several non- presenter viewers were able to remotely offer additional information (some of which is mentioned above) that further broadened everyone's understanding of the nuts and bolts aspects of this area of practice.

Responding to a question regarding the proper procedural vehicle to pursue contempt, Judge Bason stated that the proper method for seeking contempt sanctions is a section 105 motion, and that contempt should be similarly be brought by motion (as opposed to an adversary proceeding) in most instances.

Once again, an extremely helpful outline that included statute reprints and case summaries was provided to all registered participants.

The next **cdcbaa** members meeting and Zoom MCLE program will be held on March 26, 2022. The topics will be (1) "Advanced Collection Techniques" featuring Kelly Sweeney, Esq. and James Selth, Esq. as speakers, and (2) "How Does Credit Work During Bankruptcy" featuring board member Daniela Romero and credit repair specialist Philip Tirone as speakers. We hope you will join us.



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