Passive Violations of the Automatic Stay

Know When to Hold 'Em, Know When to Fold 'Em

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Outline of Presentation

- *In re Fulton*
  - Facts
  - City's Argument
  - Debtors' Argument
  - 7th Circuit's Holding
- Appeal to the U.S. Supreme Court
- Hypotheticals
- Questions

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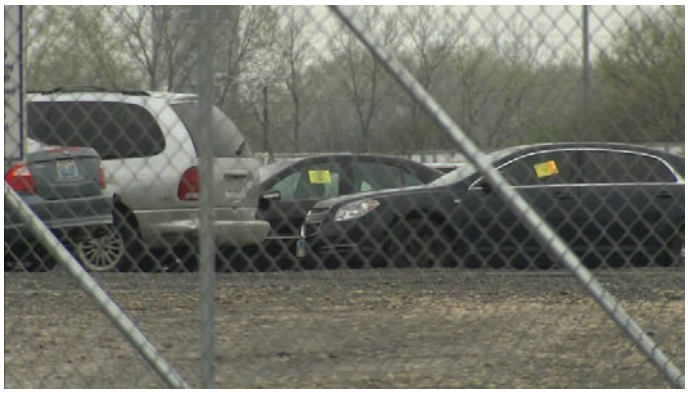
In re Fulton, 926 F.3d 916 (7th Cir. 2019)



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Facts of the Case

- Four separate debtors' cars were impounded by the City of Chicago prior to the commencement of their chapter 13 cases
- Following commencement of the bankruptcy cases, the City refused to return the vehicles and filed unsecured claims
- In several cases, the Bankruptcy Courts sanctioned the City and ordered the return of the vehicles, yet the City still refused to return the vehicles
- Following confirmation of the debtors' plans, the City again refused to return the vehicles and, in some cases, demanded that their claims be treated as secured

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Procedural History

- Direct consolidated appeal to the 7th Circuit

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City's Arguments on Appeal

- Section 362(a)(3) operates as a stay of any *act* that would *alter* the status quo and retaining property lawfully obtained prepetition only maintains the status quo
- The automatic stay does not render a creditor's possession of collateral unlawful where the creditor lawfully repossessed or impounded collateral before bankruptcy
- There is no clear indication that Congress intended to erode past bankruptcy practice when it amended § 362(a)(3) to include "exercise control"
- The stay against acts to exercise control only apply to intangible property interests that might otherwise fall outside the scope of acts to "obtain possession" of estate property
- Debtors' interpretation of § 362(a)(3) would render § 542(a) superfluous
- Although § 542(a) imposes a mandatory duty to turn over estate property, it is not self-executing, and there are defenses/exceptions the creditor could raise (E.g., lack of adequate protection)
- Reading § 362(a)(3) to compel immediate turnover is inconsistent with *Strumpf*

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