SCOTUS Decision Allows Creditors To Retain Control of Seized Property After Bankruptcy Filing

January 14, 2021 - Do creditors need to return property they have taken control of, but don't yet own, to debtors after the debtor declares bankruptcy? That was the question before the US Supreme Court in the case of Fulton v. Chicago, and it is one that lower courts had not been able to agree upon.

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In this particular case, Robbin Fulton's car had been seized by the City of Chicago for unpaid fines. Fulton declared Chapter 13 bankruptcy and asked to have the car returned. When the city refused, the bankruptcy court found that the city was in violation of bankruptcy laws. An appellate court upheld that decision.

At about the same time, the US 9th Circuit Court of Appeals issued the opposite ruling in a very similar case. This caused a circuit split which the Supreme Court resolved with this decision.

In short, SCOTUS determined that the bankruptcy law as written simply means that creditors need to maintain the status quo on any property that they are currently control of when a debtor declares bankruptcy. They can't sell the property or otherwise dispose of it, but they are under no obligation to turn the property back over to the debtor until the disposition of the bankruptcy is determined by the court.

While this particular ruling affected the use of automobiles, it is likely to be applicable to all property including real estate. This means that anyone considering bankruptcy should file their declaration prior to moving out of their their home or business location. Doing so after a move is unlikely to result in the property being returned or made usable by them during the bankruptcy proceedings.

The opinion of the court was 8 to 0. Justice Amy Coney Barret did not participate because she was not on the court at the time the case was heard.
by Jim Malmberg
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