

Don't Give Up Your Leverage — The Interplay Between Vessel Arrest and the Automatic Stay

Cozen O'Connor recently advised a client in connection with a debtor that was in severe financial distress. In an effort to obtain payment of outstanding dockage fees owed to our client, we arrested several of the debtor's vessels, and, shortly thereafter, the debtor filed for Chapter 11 bankruptcy protection. The bankruptcy counsel for the debtor demanded that the vessels be released from arrest and alleged that our client was violating the automatic stay in bankruptcy by continuing the arrest and exercising control over the vessels. In addition, debtor's counsel asserted that notwithstanding the arrest proceedings, the vessels were property of the debtor's estate, therefore subject to the automatic stay, and that the continued arrest of the vessels was "illegal."

Violating the automatic stay and the consequences that follow are enough to scare the unversed to potentially release an otherwise valid arrest. In January 2021, the U.S. Supreme Court unanimously ruled in *City of Chicago v. Fulton* that a secured party in possession of a debtor's collateral as of the commencement of the debtor's bankruptcy case does not violate the automatic stay merely by passively retaining possession of the collateral. There is case law at the federal Circuit Court level that supports the position that once a district court obtains in rem jurisdiction over a vessel, a later filed bankruptcy proceeding will not divest the previously established jurisdiction of the district court and its control over the vessel. In addition, if the debtor makes a demand for turnover of the vessel, the arresting party may ask the bankruptcy court to condition such turnover on the arresting party's receipt of adequate protection (such as cash payments or replacement liens) of its interest in the vessel.

Those that understand that a prepetition valid arrest gives the arresting creditor leverage over the debtor in a Chapter 11 proceeding will likely reject a debtor's threat of a breach of the automatic stay and only release the arrested vessel in exchange for either payment or adequate assurances that leave the creditor in no worse position than immediately prior to the filing. This scenario is especially true where the vessel is needed by the debtor in connection with its reorganization. In our case, we successfully negotiated a prompt settlement and payment of our client's claim in exchange for lifting the arrest.



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