# INJUNCTIVE RELIEF POST-*TAGGART*


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*This panel will revisit the Supreme Court's landmark opinion in* Taggart v. Lorenzen*, and will also explore how the ruling in* Taggart *has been applied in the intervening five years, including whether its "fair ground of doubt" standard is applicable to violations of the automatic stay and other injunctive provisions of the Bankruptcy Code. Additionally, this panel will discuss other issues applicable to the use (and limitations) of injunctions in bankruptcy proceedings.*


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Perhaps the most fundamental power of bankruptcy courts is their ability to "discharge" prepetition debts. That discharge is implemented through an "*injunction*," as provided in section 524 of the Bankruptcy Code, "against the commencement or continuation of an action . . . or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor."[1] Such injunctions are entered at the completion of most bankruptcy cases and are essential to providing debtors with the "fresh start" that underlies the U.S. bankruptcy system.

But bankruptcy cases often involve numerous other injunctions. A chapter 11 plan may contain an injunction ordering individuals, entities, or even government actors to take actions that are required to effectuate the plan or to refrain from taking actions inconsistent with the plan. In cases where claims are released or "channeled" to a claims resolution trust, a chapter 11 plan may contain an injunction to effectuate such relief. Parties in interest in a bankruptcy case may

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[1] 11 U.S.C. § 524(a).

similarly seek injunctive relief to stop transfers of assets alleged to be fraudulent conveyances.[2] And, although the automatic stay that arises upon a bankruptcy filing is arguably not itself an "injunction" entered by the court — but, rather a statutory prohibition[3] — debtors (and sometimes other parties in interest) may seek injunctions barring actions that would potentially violate the automatic stay.[4] Debtors may also seek an injunction "extending the stay" to nondebtors in circumstances where actions against those nondebtors could have a negative impact on the *res* of the estate or the administration of the bankruptcy case.[5]

If an injunction is violated, a party protected by the injunction can seek an order unwinding the violative action or transaction. But often the greater enforcement mechanism —and the greater deterrent to violating bankruptcy court injunctions — comes in the form of an action for civil contempt, including seeking sanctions against the party allegedly in violation.

In *Taggart v. Lorenzen*[6] ("*Taggart*"), the Supreme Court held that the standard for finding civil contempt for violation of a discharge injunction was an objective one: "if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct, civil contempt could be found."[7] In so ruling, the Court rejected the two primary standards that had been used by lower courts up to that point — one that was based on the subjective beliefs of the potential contemnor,

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2 *See, e.g.*, *Adelphia Commc'ns Corp. v. Rigas (In re Adelphia Commc'ns Corp.)*, 2003 WL 21297258, at *4 (S.D.N.Y. June 4, 2003) ("The bankruptcy court, therefore, may issue a pre-judgment order preventing a party from disposing of assets.").

3 *See* 11 U.S.C. § 362 ("[A] petition filed under section 301, 302, or 303 of this title . . . *operates as a stay* . . . .").

4 *See, e.g.*, Debtors' Emergency Motion for Entry of Interim and Final Orders Establishing Notification Procedures and Approving Restrictions on (A) Certain Transfers of Interests in Debtors and (B) Claims of Certain Worthless Stock Deductions, *In re Audacy, Inc.*, No. 24-90004 (Bankr. S.D. Tex. Jan. 7, 2024), ECF No. 17 ("The bases for the relief requested herein are sections 105(a), 362, and 541 of [the Bankruptcy Code].").

5 *See, e.g.*, The BSA's Motion for a Preliminary Injunction Pursuant to Sections 105(a) and 362 of the Bankruptcy Code, *Boy Scouts of Am. v. A.A. (In re Boy Scouts of Am.)*, Adv. Pro. No. 20-50527 (Bankr. D. Del. Feb. 18, 2020), ECF No. 6.

6 139 S. Ct. 1795 (2019).

7 *Id.* at 1799.

regardless of whether those beliefs were unreasonable, and another that mandated a finding of contempt "so long as the creditor was aware of the discharge order and intended the actions which violated it."[8]

Since its release in 2019, lower courts have considered whether *Taggart*'s objective "no fair ground of doubt" standard applies to the many other types of injunctions entered by bankruptcy courts. The variety of bankruptcy court injunctions mean that *Taggart* will likely continue to percolate through the lower courts for some time.

Part I of this article reviews the *Taggart* decision. Part II surveys how lower courts have interpreted and applied *Taggart* since it was released. Part III explores the potential application of *Taggart* to injunctions extending the automatic stay to protect nondebtors, which lower courts have not yet considered and which presents interesting an classification issue under *Taggart*'s logic.

## *I. Taggart v. Lorenzen*

Taggart was sued in Oregon state court by two co-owners of his company for breach of the company's operating agreement.[9] Before the case went to trial, Taggart filed a chapter 7 petition. He later received a discharge.[10] After Taggart's bankruptcy, the Oregon court entered a judgment against Taggart in the pre-bankruptcy suit and awarded approximately $45,000 of attorneys' fees to the plaintiffs.[11]

Taggart turned to the bankruptcy court, seeking civil contempt sanctions against the state court plaintiffs for seeking to collect their attorneys' fees in violation of the discharge order in his chapter 7 case.[12] The bankruptcy court originally found that the award of attorney's fees did not

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8 *Id.*

9 *See id.*

10 *See id.* at 1800.

11 *See id.*

12 *Id.*

violate the discharge injunction because Taggart had "returned to the fray" in the state court action after his discharge, which, under Ninth Circuit caselaw, made an award of attorneys' fees appropriate notwithstanding the discharge. But the district court disagreed, finding that Taggart had not "returned to the fray," and so an award of attorneys' fees *would* violate Taggart's discharge order. The bankruptcy court then found plaintiffs in civil contempt.[13] On appeal,[14] the Ninth Circuit held the finding of contempt was improper, concluding that civil contempt could not be found where a potential contemnor had a "good faith belief" that the discharge order "does not apply to the creditor's claim . . . even if the creditor's good-faith belief is unreasonable."[15]

The Supreme Court reversed.[16]

Looking to the statutory text of section 524(a), which describes the bankruptcy discharge "as *an injunction*" against attempts to collect from the Debtor, and section 105(a), which authorizes the Bankruptcy Court to "issue any *order, process, or judgment* that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code, the Court concluded that generally applicable principles of civil contempt should determine the legal standard.[17] Congress's use of the terms "injunction," "order," "process," and "judgment" was intended to "incorporate the traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction."[18] According to the Court, "[t]his standard is generally an *objective* one,"[19]

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[13] *See In re Taggart*, 522 B.R. 627 (Bankr. D. Or. 2014).

[14] The Bankruptcy Appellate Panel reversed the finding of contempt initially, *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275 (B.A.P. 9th Cir. 2016), and the Ninth Circuit affirmed, *Lorenzen v. Taggart*, 888 F.3d 438 (9th Cir. 2018).

[15] *Lorenzen v. Taggart*, 888 F.3d at 444.

[16] *Taggart*, 139 S. Ct. at 1801.

[17] *See id.*

[18] *Id.*

[19] *Id.* at 1802 (emphasis in original).

and "a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable."[20]

Instead, "a court may hold a creditor in civil contempt for violating a discharge order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful."[21]

In so ruling, the Supreme Court explicitly rejected two competing standards that had been previously used by lower courts. A subjective standard, applied by the Ninth Circuit below, prevented findings of contempt where the creditor had a "good faith belief" that the discharge order "does not apply to the creditor's claim," "even if the creditor's belief is unreasonable."[22] That standard, according to the Supreme Court, was not only "inconsistent with traditional civil contempt principles,"[23] but also "relies too heavily on difficult-to-prove states of mind,"[24] and, as a result, could "too often lead creditors who stand on shaky legal ground to collect discharged debts, forcing debtors back into litigation (with its accompanying costs) to protect the discharge that it was the very purpose of the bankruptcy court proceeding to provide."[25] Another competing standard, applied by numerous courts, found civil contempt wherever the creditor was "aware of

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[20] *Id.*

[21] *Id.* at 1799.

[22] *Lorenzen v. Taggart*, 888 F.3d at 444; *see also In re Coelho Dairy*, 605 B.R. 210, 218 n.5 (Bankr. D. Or. 2019) (applying Ninth Circuit's subjective standard); *GemCap Lending I, LLC v. Bateman (In re Naturescape Holding Grp. Int'l, Inc.)*, Nos. 17-90007, 17-90008, 18-90002, 2018 WL 5099706, at *16 (Bankr. D. Haw. Oct. 2, 2018) (same), *aff'd sub nom. Naturescape Holding Grp. Int'l, Inc. v. GemCap Lending I, LLC (In re Bateman)*, BAP Nos. HI-18-1302-TaSKu, HI-18-1306-TaSKu, HI-18-1307-TaSKu, 2019 WL 3731532 (B.A.P. 9th Cir. Aug. 7, 2019).

[23] *Taggart*, 139 S. Ct. at 1802.

[24] *Id.* at 1803.

[25] *Id.*

the discharge" and "intended the actions which violate it."[26] According to the Supreme Court, that approach "would operate much like a strict-liability standard,"[27] and could "lead risk-averse creditors to seek an advance determination in bankruptcy court even where there is only slight doubt as to whether a debt has been discharged."[28] This would lead to frequent forays into bankruptcy court for an advanced determination of whether a discharge injunction applied, "moving litigation out of state courts, which have concurrent jurisdiction over such questions, and into federal courts."[29] Such a shift was, in the Supreme Court's view, inconsistent with bankruptcy's purpose of providing "prompt and effectual resolution of bankruptcy cases within a limited period."[30]

In resolving *Taggart*, the Supreme Court made clear that it was leaving for another day whether the "no fair ground of doubt" standard would apply to actions for civil contempt of other bankruptcy court injunctions. Most explicitly, the Supreme Court declined to answer whether violations of the automatic stay — which may implicate the additional statutory remedy for "willful violation[s]" under section 362(k)(1) — should be evaluated under the same framework.

## II. Applications of *Taggart*

In the years following *Taggart*, courts around the country have considered whether the "no fair ground of doubt" standard applies to contempt motions alleging violations of numerous types of bankruptcy court orders and injunctions, including those contained in chapter 11 confirmation

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[26] *Hardy v. IRS (In re Hardy)*, 97 F.3d 1384, 1390 (11th Cir. 1996) (overruled by *Taggart*, 139 S. Ct. at 1799).

[27] *Taggart*, 139 S. Ct. at 1803.

[28] *Id.*

[29] *Id.* (citing 11 U.S.C. § 523(c)(1) and 28 U.S.C. § 1334(b)).

[30] *Id.* (internal citations omitted).

orders and plans,[31] a chapter 9 plan of adjustment,[32] discharge injunctions following the completion of a chapter 13 plan,[33] the automatic stay,[34] and even discovery orders.[35] *Taggart*'s core logic — that references in the Bankruptcy Code to "injunction," "order," "process," and "judgment" incorporate the "no fair ground of doubt" standard — applies to many circumstances where bankruptcy courts issue injunctions, since the same statutory provisions and language is implicated. So it is not surprising that most courts to have confronted the question across a broad range of contexts have ruled that *Taggart*'s standard applies. However, a handful of courts have declined to categorically apply *Taggart* to motions regarding violation of the automatic stay. And at least one court has concluded that *Taggart* supplements, rather than displaces, prior standards for finding contempt.[36] A sampling of decisions is below.

### A. Discharge injunction implementing chapter 11 plan

All courts to have considered the question have applied *Taggart* to violations of injunctions implementing a chapter 11 plan. Circuit-level decisions are surveyed below.

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[31] *See, e.g.*, *Beckhart v. NewRez LLC*, 31 F.4th 274 (4th Cir. 2022) (summarized below); *Deutsche Bank Tr. Co. Ams. v. Gemstone Sols., Grp., Inc. (In re Gemstone Sols. Grp., Inc.)*, No. 19-30258-KLP, 2020 WL 2758817 at *12 (Bankr. E.D. Va. May 26, 2020) ("Under *Taggart*, if there is a 'fair ground of doubt' as to whether Defendants' conduct was a violation of the [chapter 11] Confirmation Order, then a finding of contempt is not permitted."), *aff'd sub nom. Deutsche Bank Tr. Co. Ams. v. Gymboree Grp., Inc.*, No. 20-cv-419, 2021 WL 3618229 (E.D. Va. Aug. 16, 2021) ("Since *Taggart*, courts have recognized that violation of a bankruptcy order may result in a finding of contempt where there is no fair ground of doubt as to the meaning of the order.").

[32] *See In re City of Detroit*, 614 B.R. 255 (Bankr. E.D. Mich. 2020) (summarized below).

[33] *See PHH Mortg. Corp. v. Sensenich (In re Gravel)*, 6 F.4th 503 (2d Cir. 2021) (summarized below), *cert. denied*, 142 S. Ct. 2829 (2022).

[34] *See, e.g.*, *In re GYPC, INC.*, 634 B.R. 983, 991 (Bankr. S.D. Ohio 2021) ("The court will apply the *Taggart* standard in determining whether any stay violations committed by Eastport entitle GYPC to damages under a civil contempt theory."); *Tate v. Fairfax Vill. I Condo. (In re Tate)*, No. 19-00237 (Bankr. D.D.C. Feb. 10, 2020) (applying *Taggart* to a claimed violation of the automatic stay brought under section 362(k)(1) in a chapter 13 case).

[35] *See In re GL Master Inc.*, No. 18-BK-24302-NB, 2022 WL 34686 (Bankr. C.D. Cal. Jan. 3, 2022) (applying the *Taggart* standard for contempt sanctions where counsel "violated discovery orders repeatedly, willfully, and in bad faith").

[36] *See In re City of Detroit*, 614 B.R. at 265–66 (summarized below).

1. Fourth Circuit — *Beckhart*

The chapter 11 plan provision at issue in *Beckhart v. NewRez*[37] was specific to the debtor-creditor relationship at issue: it provided that the debtors would remain in possession of a home, that a new payment schedule would apply, that the lender would follow certain procedures in the event of a default prior to exercising remedies, and that "[e]xcept as otherwise modified herein, the Debtor shall continue to pay the creditor's claim according to the original loan terms."[38] When the loan servicer changed, an apparent administrative error resulted in the new servicer treating the loan as in default based on the missed prepetition payments. The new servicer commenced foreclosure proceedings, prompting the former debtors to seek contempt sanctions.[39] The bankruptcy court found the servicer in contempt, but the district court reversed.

In applying *Taggart*, the Fourth Circuit rejected both the bankruptcy court's use of an old multi-factor standard and the district court's application of a rule that the servicer's reliance on counsel prevented a finding of contempt. According to the Fourth Circuit, "[n]othing about the Supreme Court's analysis in *Taggart* suggests . . . that the Court's decision turned on considerations unique to the Chapter 7 context."[40] Instead, "a bankruptcy court's authority to enforce its own orders—regardless of which chapter of the Bankruptcy Code those orders were issued under—derives from the same statutes and the same general principles the Supreme Court relied on in *Taggart*. And those principles make clear that the logic of *Taggart* applies broadly and cannot be confined to Chapter 7 bankruptcy."[41]

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[37] *Beckhart v. NewRez LLC (In re Beckhart)*, 31 F.4th 274 (4th Cir. 2022).

[38] *Id.* at 276.

[39] *See id.*

[40] *Id.* at 277.

[41] *Id.*

2. Seventh Circuit — *Kimball Hill*

In *Kimball Hill*,[42] a chapter 11 debtor had entered into land development agreements with Illinois municipalities and a private surety, Fidelity. If Kimball Hall failed to develop the land, the municipalities could draw on the bond, and Fidelity could in turn seek indemnity from Kimball Hall. The municipalities and surety filed proofs of claim in Kimball Hall's bankruptcy, and the bankruptcy court later confirmed a chapter 11 plan of liquidation, under which those who voted in favor released their claims against third parties, limiting their recoveries to that which would be obtained through the claims resolution process.[43] The liquidating trust created under the chapter 11 plan sold Kimball Hall's development assets to a third party buyer free and clear.[44] In actions by the municipalities to recover on the bond from Fidelity, Fidelity repeatedly sought to interplead the buyer of Kimball Hall's assets, arguing it was the debtor's successor in interest.[45]

The bankruptcy court enforced the confirmation order, dismissing Fidelity's state court claims against the buyer and imposing $9.5 million of sanctions against Fidelity for intentionally violating the confirmation order.[46] Fidelity appealed, and *Taggart* was decided while the appeal was pending. The bankruptcy court reached the same conclusion post-*Taggart*, which the district court affirmed.[47]

The Seventh Circuit affirmed, finding that the lower courts had correctly found no fair of ground of doubt that Fidelity's actions violated the confirmation order and chapter 11 plan — which the court characterized as "clear and precise" in barring successor liability claims against

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[42] *Fid. & Deposit Co. of Md. v. TRG Venture Two, LLC (In re Kimball Hill, Inc.)*, 61 F.4th 529 (7th Cir. 2023).

[43] *See id.* at 531–32.

[44] *See id.* at 532.

[45] *See id.*

[46] *See id.* at 532–33.

[47] *See id.* at 533.

the buyer.[48] And the Court found no error in the bankruptcy court requiring the buyer to first prove "that there was 'no objectively reasonable basis for concluding that [Fidelity's] conduct might be lawful under the [] order'" and then "placing 'the burden of any uncertainty of the decree . . . on [the] shoulders' of Fidelity."[49]

### B. Order implementing a chapter 9 plan of adjustment

Chapter 9 plans of adjustment are comparatively rare, but the only decision applying *Taggart* in that context is interesting because of it concludes that *Taggart* supplemented, rather than displaced, prior contempt standards.

In *City of Detroit*,[50] the bankruptcy court held firefighters who filed a state court action in contravention of Detroit's confirmed chapter 9 plan in contempt. The Court noted that, prior to *Taggart*, the Sixth Circuit had found contempt where "the moving party proved 'by clear and convincing evidence that [the respondent] violate(d) a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order."[51] The *Detroit* court read *Taggart* as indicating that "more is required,"[52] not that the prior analysis could not be used:

> [A]fter *Taggart*, the elements that must be proven for a court to find a party in civil contempt are that (1) the party violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts; (2) the party did so with knowledge of the court's order; and (3) there is no fair ground of doubt as to whether the order barred the party's conduct — *i.e.*, no objectively reasonable basis for concluding that the party's conduct might be lawful.[53]

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[48] *Id.* at 534.

[49] *Id.* (internal quotation omitted).

[50] *In re City of Detroit*, 614 B.R. 255 (Bankr. E.D. Mich. 2020).

[51] *Id.* at 265.

[52] *Id.*

[53] *Id.*

It remains to be seen whether other courts will adopt this approach, though the Second Circuit decision discussed below uses similar reasoning. The fundamental question posed under the *Taggart* standard — whether there was an "objectively reasonable basis for concluding that the creditor's conduct might be lawful" — arguably subsumes the question of whether "the party violated a definite and specific order . . . requiring [the party] to perform or refrain from performing a particular act or acts."[54] Both require a close analysis of the order and whether the conduct at issue violated it. But the *Detroit* court is certainly correct that *Taggart* did not engage with the question of whether the party sought to be held in contempt of court had actual knowledge of the order that forms the basis for the contempt motion. And although *Taggart* rejected the potential contemnor's subjective interpretation of the order at issue as a basis for avoiding contempt, the question of whether that party knew of the order at all implicates due process questions that were also not considered in *Taggart*.

### C. Discharge injunction following completion of a chapter 13 plan

In *PHH Mortgage Corp. v. Sensenich (In re Gravel)*,[55] the U.S. Court of Appeals for the Second Circuit held that the "no fair ground of doubt" standard applied to repeated violations by mortgage servicers of orders declaring that debtors were current on their home mortgages at the end of their chapter 13 plans. A mortgage servicer had purported to charge three debtors fees arising from their failure to timely make payments, after a bankruptcy court had declared them current. The Second Circuit had no trouble finding that *Taggart* applied: "The 'fair ground of doubt' standard has long been used in this Circuit to determine when a party may be held in contempt in the district court."[56]

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[54] *Id.*

[55] 6 F.4th 503 (2d Cir. 2021).

[56] *Id.* at 512.

The Second Circuit found, however, that sanctions could not be assessed because the order at issue was not sufficiently clear so as to bar the mortgage servicer's conduct: "[A] contempt order is warranted only where the party has notice of the order, the order is clear and unambiguous, and the proof of noncompliance is clear and convincing."[57] Because the injunctions at issue only prevented the mortgage servicer from "disputing that the debtors are current [on their mortgage payments] in any other proceeding, . . . there [was] fair ground of doubt as to whether" including fees and expenses on the mortgage statement violated the injunction.[58]

**D. Automatic stay violations**

Most, but not all, courts to have considered the question have concluded that *Taggart*'s standard applies to stay violations.

1. Concluding that *Taggart* applies

a. *Ninth Circuit Bankruptcy Appellate Panel* — Jeong

*Suh v. Anderson (In re Jeong)*[59] involved contempt sanctions for a stay violation by an attorney who prepared and recorded amended deeds of trust on the debtors' home during their bankruptcy. In his defense, the attorney argued that he believed recording the amended deeds of trust was allowed under section 362(b)(3), which permits actions to perfect that would have been effective under nonbankruptcy law against a bona fide purchaser even if undertaken after the bona fide purchase.[60] Under the subjective test that *Taggart* rejected in the context of discharge orders, such a belief — if *bona fide* — would have been sufficient to defeat contempt sanctions. Although expressly declining to decide the question, the panel "*assume[d]* that the contempt standard

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[57] *Id.*

[58] *Id.* at 512–13.

[59] No. CC-19-1244-STaF, 2020 WL 1277575 (B.A.P. 9th Cir. Mar. 16, 2020).

[60] *See id.* at *2.

applied to the discharge violation in *Taggart* also applies to a violation of the automatic stay."[61] The panel did note, however, that applying the same legal standard to violations of both discharge injunctions and the automatic stay was supported by pre-*Taggart* practice within the Ninth Circuit, strongly suggesting that it might reach this same conclusion if it formally decided the question in the future.[62] The panel then went on to conclude that there was no objectively reasonable basis for the attorney to believe that his actions would have been permitted under section 362(b)(3) and, as a result, held him in contempt.

b. *Bankruptcy Court for the District of Columbia* — Tate

In *Tate v. Fairfax Vill. I Condo. (In re Tate)*,[63] the court applied *Taggart* to an alleged violation of the automatic stay in a chapter 13 case: "In the case of civil contempt, an objective test applies. . . . The same test applies to a proceeding under [section] 362(k): a violation of the automatic stay is not "willful" when there is fair ground of doubt as to whether the creditor's conduct violated the automatic stay. The creditor may have intended its act, but with there being fair ground of doubt that the automatic stay applied, the creditor cannot be said to have willfully violated the automatic stay. A strict liability standard does not apply."[64]

2. Concluding that *Taggart* applies only to stay violations asserted by entities, but not by individuals

In *Harker v. Eastport Holdings, LLC (In re GYPC, Inc.)*,[65] the U.S. Bankruptcy Court for the Southern District of Ohio ruled that whether *Taggart* or a "willfulness" standard applies to a stay violation depends on who is bringing the motion for contempt — an entity or an individual.

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[61] *Id.* at *4 n.3 (emphasis added). The panel was presumably able to assume without deciding that question both because it found the contemnor's explanation not credible.

[62] *See id.*

[63] No. 19-00237, 2020 WL 634293 (Bankr. D.D.C. Feb. 10, 2020).

[64] *Id.* at *3 n.2.

[65] 634 B.R. 983 (Bankr. S.D. Ohio 2021).

Section 362(k)(1) authorizes "an *individual* injured by any willful violation of a stay" to seek actual and punitive damages.[66] Focusing on that textual limitation, the *GYPC* court concluded:

> *Taggart* fundamentally is contrasting § 362(k), a congressionally approved private right of action for individuals, and the separate and more general language under § 105 supporting contempt proceedings. As Congress has chosen to limit any private right of action for stay violations to those against individuals, the court believes it must apply *Taggart* to § 105 contempt actions not covered by § 362(k) (or another private right of action).[67]

Because corporate debtors cannot avail themselves of section 362(k)(1), the court concluded that they are limited to civil contempt actions under section 105(a). And, according to the *GYPC* court, *Taggart*'s objective standard would apply to contempt actions under 105(a) for stay violations. But individuals can avail themselves of the separate private right of action in section 362(k)(1) and, as a result, the pre-*Taggart* "willfulness" / "strict liability" standards may continue to apply.[68]

3. Concluding that *Taggart* does *not* apply

In *In re Spiech Farms, LLC*,[69] the U.S. Bankruptcy Court for the Western District of Michigan wrote that: "This court does not read *Taggart* to change the Sixth Circuit's standard for determining whether a creditor can be held in contempt for violating the automatic stay."[70] Instead, the court analyzed whether the contemnors 'violated a definite and specific order of the court requiring [them] to perform or refrain from performing a particular act or acts with knowledge of

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66 11 U.S.C. § 362(k)(1) (emphasis added).

67 *GYPC*, 634 B.R. at 991.

68 *See id.*

69 603 B.R. 395 (Bankr. W.D. Mich. 2019).

70 *Id.* at 408 n.22.

the court's order.'[71] *Spiech Farms* did not provide further explanation for why *Taggart* did not apply.

4. Declining to answer the question

Many courts have declined to weigh in on whether *Taggart*'s "no fair ground of doubt" or their prior caselaw regarding "willfulness" should apply in stay violations, when they can instead analyze the alleged stay violation under both standards and conclude that both point to the same result.[72] This approach is particularly common in the Eleventh Circuit,[73] which may reflect the relatively well-developed body of circuit-level caselaw that existed prior to *Taggart* regarding contempt sanctions in bankruptcy, "willfulness," and stay violations, as compared to that in other circuits.[74]

## III. Stay Extension to Third Parties — *Taggart*'s Next Frontier?

Interesting questions arise when considering another type of injunction sometimes entered by bankruptcy courts, particularly in large chapter 11 cases — "stay extensions." Debtors, relying

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[71] *See id.* (paraphrased to correct apparent typographical error in *Spiech Farms* opinion regarding the controlling legal standard).

[72] *See, e.g.*, *In re Franklin*, 614 B.R. 534, 546 n.19 (Bankr. M.D.N.C. Jan. 24, 2020) (noting the differences between a discharge injunction and the automatic stay and stating "[e]ven if the standard in *Taggart* applied to § 362(k), no reasonable creditor objectively could have believed [the creditor's] actions in this case did not violate the automatic stay").

[73] *See, e.g., In re Abril*, 2021 WL 3162637, at *4 (Bankr. M.D. Fla. June 24, 2021) ("As this Court noted, after the U.S. Supreme Court's decision in *Taggart v. Lorenzen* some courts have assumed without deciding that 'willfulness' under § 362(k)(1) changed to include *Taggart*'s "fair ground of doubt" standard. *Taggart* involved a violation of the discharge injunction and the exercise of the court's contempt powers, not the enforcement of the automatic stay under express statutory authority. This Court has not decided whether *Taggart* applies to a violation of the automatic stay under § 362(k)(1) and does not need to do so here.") (citing *In re Sanders*, No. 20-BK-02731-RCT, 2020 WL 6020347, at *3 (Bankr. M.D. Fla. Sept. 15, 2020)); *In re Withington*, 654 B.R. 173, 182 (Bankr. S.D. Fla. 2023) (same approach); *In re Namen*, 649 B.R. 603, 608 (Bankr. M.D. Fla. 2023) ("The Court will not debate the issue of whether *Taggart* changed the 'willfulness' standard under § 362(k) because, under either standard, the Court finds that the Creditor's actions were willful."); *In re Geller*, No. 20-BK-01514-JAF, 2021 WL 4516125, at *3 (Bankr. M.D. Fla. Sept. 30, 2021) ("The Court will not enter the debate on the issue of whether *Taggart* changed the 'willfulness' standard under § 362(k) because, under either standard, the Court finds that [the creditor's] actions were willful.").

[74] *See, e.g.*, *Jove Eng'g, Inc. v. I.R.S.* (*In re Jove Eng'g*), 92 F.3d 1539, 1555 (11th Cir. 1996) (willful violation of the stay occurred if the creditor "(1) knew the automatic stay was invoked and (2) intended the actions which violated the stay"; specific intent to violate the violate the stay is not required).

on a combination of the Bankruptcy Code's automatic stay under section 362 and bankruptcy courts' powers under section 105(a), may request an "extension" of the automatic stay to cover nondebtor third parties. Such requests are typically based on a fear that actions against the nondebtor will result in a diminution of estate resources. Such diminution can sometimes result from direct indemnity obligations by the debtor to the nondebtor; other times, due to the possibility that a judgment against the nondebtor would be *res judicata* against the debtor; or even solely due to the costs and distraction to the debtor associated with attempts to collect from the nondebtor (*e.g.*, responding to discovery requests or attending depositions). Bankruptcy courts may also grant extensions of the stay to nondebtors who promise to contribute assets to the Debtors' reorganizations.

A "stay extension" relies on two statutory provisions that were analyzed in *Taggart*: sections 105(a) and 362.

Section 105(a) authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." And, in *Taggart*, the Supreme Court interpreted the statutory references to "order," "process," and "judgment" in section 105(a) to show that bankruptcy court power to sanction should be viewed through the lens of "traditional principles of equity practice," which it concluded required *Taggart*'s "no fair ground of doubt" standard.[75] So, to the extent that a bankruptcy court's authority to extend the stay relies on section 105(a), the logic of *Taggart* would suggest that Congress would have intended the same "traditional principles of equity practice" to apply, and therefore, the "no fair ground of doubt" standard.

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[75] *Taggart*, 139 S. Ct. at 1801.

But stay extensions also rely on section 362, which authorizes "an individual injured by any willful violation of a stay" to recover damages.[76] Although not deciding the question, *Taggart* suggested that violations of the automatic stay under section 362 may be subject to a more stringent standard — *i.e.*, easier to find contempt — than violations of section 524's discharge injunction.

*First*, the *Taggart* Court noted that section 362(k)(1) authorizes sanctions where a violator's actions are "willful." And although "willful" is "a word the law typically does not associate with strict liability," the Court observed that "willful" is a word "whose construction is often dependent on the context in which it appears."[77] The case quoted by the Supreme Court involved interpretation of the Fair Credit Reporting Act's ("FCRA") use of the term "willfully" to include actions in "reckless disregard of statutory duty," and rejected a narrower construction that would have covered only "acts known to violate the FCRA."[78] Moreover, many lower courts pre-*Taggart* applied a contempt standard more stringent than *Taggart* which those courts characterized as assessing the alleged contemnor's "willfulness."[79] Such courts find contempt wherever "the creditor deliberately acted with [actual] knowledge of the bankruptcy case"[80] — a very similar standard to that which the Supreme Court characterized as "strict liability" in *Taggart*.[81]

Admittedly, the cause of action provided in section 362(k)(1) is only, by its terms, open to any "individual" who brings a stay enforcement action — corporations or other entities appear to be excluded based on the statutory text. And at least one court has concluded that, as a result, entities must rely on section 105(a) only, rather than the "willful" standard of section 362(k)(1).

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[76] 11 U.S.C. § 362(k)(1).

[77] *Taggart*, 139 S. Ct. at 1804.

[78] *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 56–57 (2007).

[79] *See, e.g.*, *Orlandi v. Leavitt Fam. Ltd. P'Ship (In re Orlandi)*, 612 B.R. 372, 381 (B.A.P. 6th Cir. 2020) (collecting cases within the Sixth Circuit).

[80] *Id.* at 381.

[81] *See Taggart*, 587 S. Ct. at 1803.

But even if entities do not have an express remedy under section 362(k)(1), the presence of the statutory remedy suggests that Congress intended to provide an additional disincentive to violations of the stay, which would also support application of a more stringent standard.

*Second*, the *Taggart* Court noted that the purpose of the automatic stay differs from the purpose of a discharge order:

> *A stay aims to prevent damaging disruptions to the administration of a bankruptcy case in the short run*, whereas a discharge is entered at the end of the case and seeks to bind creditors over a much longer period.[82]

Without the automatic stay, the debtor and the bankruptcy court may be deprived as a practical matter of the full set of tools that the Bankruptcy Code offers. Assets that would otherwise be available to facilitate reorganization or enhance distributions to creditors as a whole may be diminished. The debtor may be unable to devote attention to broader creditor negotiations if it is occupied by litigation with a single creditor. In other words, the automatic stay is essential to the effective operation of a bankruptcy case. For this reason, violations of the stay must arguably be disincentivized to a greater extent than violations of a discharge order — for the bankruptcy process to work, the debtor must get the benefit of the stay throughout its case. In addition, the shorter duration of the stay — which operates only while the bankruptcy is pending, as opposed to forever following the bankruptcy — reduces the possibility that an unsuspecting party will be caught by a technical violation.

In the context of a stay extension, this purposivist reasoning of *Taggart* appears particularly relevant: Where a bankruptcy court is extending the stay to a nondebtor, it is doing so on the ground that the debtor's bankruptcy case will be disrupted by actions against this protected nondebtor. Thus, the same considerations that make a stricter standard more appropriate for stay

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[82] *Id.* at 1804 (emphasis added).

violations than discharge violations, also make a stricter standard more appropriate for violations of a stay extension.

However, with a stay extension, unlike with a discharge injunction or even a stay enforcement action, the party protected by the injunction is *not* a debtor in bankruptcy. One consequence is that third parties accused of violating the stay may, on average, receive far less notice of the injunction than in the circumstance where the injunction protects the debtor. A debtor's commencement of a bankruptcy case typically results in a flurry of notices to alert creditors of the stay and the ongoing bankruptcy proceedings. But such extensive noticing almost certainly does not happen where the stay is extended to a third party. Indeed, it is common for a debtor seeking to extend the stay to name as defendants in the adversary proceeding — *i.e.*, the list of individuals who will be expressly enjoined from taking actions against the protected nondebtors — only those third parties who are known to the debtor at the time of filing, and to later amend the adversary complaint periodically to add new individuals who are enjoined.[83] However, the terms of such stay extensions almost always provide that actions of unnamed parties — *i.e.*, those who the Debtors do not know the identity of at the time of the stay extension — against the protected nondebtors are enjoined as well. The possibility that a party may be held in contempt who had little actual notice that a nondebtor was potentially protected by the injunction makes applying a more stringent standard less defensible. However, because *Taggart* itself assumed that actual notice of the underlying injunction had been given, it is possible — and perhaps likely — that the Supreme Court would add to *Taggart* an actual notice requirement (like the *Detroit* court[84]) if presented with the question.

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[83] *See, e.g.*, Notice of Filing of Amended Schedule 2 to Consent Order, *Boy Scouts of Am. v. A.A. (In re Boy Scouts of Am.)*, No. 20-50527-LSS (Bankr. D. Del. Mar. 30, 2023), ECF No. 241 (updating lists of actions stayed, state court plaintiffs stayed, and state court defendants protected).

[84] See discussion *supra* at Part II(D)(2).

In sum, there is reason to think that the Supreme Court could come out either way on the correct standard to apply to a contempt action based on an order extending the stay. Although the statutory hook for extending the stay — section 105(a) — was already interpreted by the Supreme Court in *Taggart* as requiring the "no fair ground of doubt" standard, the purposes of stay extensions and the caselaw regarding the term "willful" in section 362(k)(1) suggest that a standard more akin to strict liability is likely to apply.

## IV. Conclusion

*Taggart* resolved a circuit split between two legal standards that were virtual opposites of each other. By rejecting both and adopting the objective "no fair ground of doubt" standard, the Court brought greater harmony to the law of bankruptcy injunctions. But there are further issues in the area of bankruptcy injunction enforcement that will need to be addressed, and where lower courts have come out different ways. And the sheer number of circumstances under which a bankruptcy court may enter an injunction mean that lower courts will continue to interpret and apply *Taggart* to new contexts for years to come.