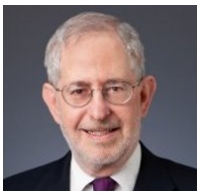
Lessons for Bankruptcy Practitioners from the Supreme Court's Ruling in Ritzen Group, Inc. v. Jackson Masonry, LLC

A Lexis Practice Advisor® Practice Note by Kenneth N. Klee and Sasha M. Gurvitz, KTBS Law LLP



Kenneth N. Klee
KTBS Law LLP

Sasha M. Gurvitz
KTBS Law LLP

In a unanimous decision authored by Justice Ginsburg, the Court holds that "the adjudication of a motion for relief from the automatic stay forms a discrete procedural unit within the embracive bankruptcy case," which "yields a final, appealable order when the bankruptcy court unreservedly grants or denies relief." Ritzen Grp., Inc. v. Jackson Masonry, LLC, 205 L. Ed. 2d 419, 424 (2020) (Ritzen). In reaching this conclusion, the Court distinguishes bankruptcy litigation from civil litigation, observing that in civil litigation, "a court's decision ordinarily becomes 'final,' for purposes of appeal, only upon completion of the entire case," whereas in bankruptcy litigation, orders "qualify as 'final' when they definitively dispose of discrete disputes within the overarching bankruptcy case." Id. The Court concludes that the adjudication of a motion for relief from the automatic stay is one such discrete dispute, and an order conclusively denying such a motion is final within the meaning of 28 U.S.C. § 158(a) and therefore subject to immediate appellate review. Id.

Lesson to Be Learned

The primary lesson to be learned from the *Ritzen* decision is that, when in doubt respecting the finality of a bankruptcy court's order, litigants should timely file a prophylactic notice of appeal to preserve their appellate rights. Following *Ritzen*, lower courts will undoubtedly continue to grapple with what other adjudications constitute discrete procedural units subject to immediate appeal under *Ritzen*, as opposed to interlocutory adjudications that merely resolve "minor details about how a bankruptcy case will unfold." Ritzen, 205 L. Ed. 2d at 429.

Legal Background

Section 158(a) of the Federal Judicial Code governs the right to appeal from bankruptcy court decisions and provides for appeals as of right from "final judgments, orders, and decrees" entered by bankruptcy courts "in cases and proceedings." 28 U.S.C. § 158(a). This provision should be distinguished from Section 1291, which governs appeals in federal civil litigation, and provides for an appeal as of right from "final decisions of the district courts." 28 U.S.C. § 1291. The latter provision has generally been interpreted to permit appeals in civil litigation only from orders finally resolving an entire case. See, e.g., In re Saco Local Development Corp., 711 F. 2d 441, 443 (1st Cir. 1983).

Also relevant to *Ritzen* is Bankruptcy Code Section 362, which provides, among other things, that the filing of a bankruptcy petition operates as a stay applicable to all entities of the commencement or continuations of a judicial or other action or proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case. 11 U.S.C. § 362(a). The bankruptcy

court may, after notice and a hearing, grant a moving party relief from the automatic stay for cause shown. 11 U.S.C. § 362(d).

Finally, Bankruptcy Rule 8002 provides that in order to be timely, a notice of appeal must be filed with the bankruptcy clerk within 14 days after the entry of the judgment, order, or decree being appealed. Fed. R. Bankr. P. 8002(a).

Facts and Proceedings Below

The *Ritzen* case arises from a failed land sale. Ritzen, 205 L. Ed. 2d at 425–26. Ritzen Group, Inc. (Ritzen) entered into a contract to buy land in Nashville, Tennessee, from Jackson Masonry, LLC (Jackson). Id. The land sale was never effectuated, and Ritzen sued Jackson for breach of contract. Ritzen, 205 L. Ed. 2d at 426. On the eve of trial, Jackson filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, and the litigation was stayed by operation of Bankruptcy Code Section 362(a). Id. In Jackson's bankruptcy case, Ritzen filed a motion for relief from the automatic stay so that the trial could proceed in state court. Id. The bankruptcy court denied the motion for relief from stay. Id. Ritzen did not appeal the order denying relief from stay within the 14-day period prescribed by Bankruptcy Rule 8002(a). Id.

Ritzen then filed a proof of claim in Jackson's bankruptcy case on account of its breach of contract claim. Id. The bankruptcy court determined, via an adversary proceeding, that it was Ritzen, not Jackson, that breached the land sale contract, and the court therefore disallowed Ritzen's claim. Id. Without objection from Ritzen, the bankruptcy court confirmed Jackson's reorganization plan, which, as is customary, enjoined creditors from commencing or continuing any proceeding against the debtor on account of claims against the debtor. Id. Following plan confirmation, Ritzen filed two notices of appeal challenging both the bankruptcy court's order denying relief from stay and the court's resolution of Ritzen's breach of contract claim. Id.

On appeal, the district court dismissed Ritzen's appeal from the order denying relief from stay as untimely and affirmed the bankruptcy court's decision rejecting Ritzen's breach of contract claim on the merits. Id. Ritzen appealed to the Court of Appeals for the Sixth Circuit, which affirmed the district court's dispositions. Id. With respect to the relief from stay appeal, the Sixth Circuit rejected "vague" tests applied in other circuits and determined that the statutory text of 28 U.S.C. § 158(a) "provides a clear test for courts to apply: a bankruptcy court's order may be immediately appealed if it is (1) 'entered in [a] . . . proceeding' and (2) 'final'—terminating that proceeding." Ritzen Grp., Inc. v. Jackson Masonry, LLC (In re Jackson Masonry, LLC), 906 F.3d 494, 499 (2018) (quoting 28 U.S.C. § 158(a)) (alterations in original).

The Supreme Court granted certiorari on May 20, 2019, to resolve whether orders denying relief from the automatic stay in bankruptcy are final and therefore immediately appealable. Ritzen Grp., Inc. v. Jackson Masonry, LLC, 204 L. Ed. 2d 263 (2019).

Analysis

The Court begins its analysis in *Ritzen* by distinguishing the analytical framework for determining finality in bankruptcy from that in civil litigation, observing that "'the usual judicial unit for analyzing finality in ordinary civil litigation is the case, [but] in bankruptcy[,] it is [often] the proceeding.'" Ritzen, 205 L. Ed. 2d at 425 (quoting Brief for United States as Amicus Curiae) (alterations in original). This reframing of the relevant judicial unit is necessary in bankruptcy cases because a "bankruptcy case encompasses numerous 'individual controversies, many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor.'" 205 L. Ed. 2d at 425 (quoting Bullard v. Blue Hills Bank, 135 S. Ct. 1686, 1692 (2015)). Delaying appellate review until final resolution of the bankruptcy case would "long postpone appellate review of fully adjudicated disputes" and, because controversies in bankruptcy cases are often dependent on one another, it could also "require the bankruptcy court to unravel later adjudications rendered in reliance on an earlier decision." 205 L. Ed. 2d at 425.

The Court's decision in Bullard v. Blue Hills Bank, 575 U.S. 496 (2015), guides application of Section 158(a)'s finality requirement. Ritzen, 205 L. Ed. 2d at 427. In *Bullard*, the Court held that a bankruptcy court's order rejecting confirmation of a proposed Chapter 13 plan with leave to amend was not final under Section 158(a) because it did not conclusively resolve the relevant proceeding; rather, given the back and forth nature of plan negotiations, only plan confirmation finally alters the status quo and fixes the rights and obligations of the parties. Id. (citing Bullard, 135 S. Ct. at 1692).

Bullard instructs that a trial court first define the immediately appealable proceeding. Ritzen, 205 L. Ed. 2d at 427–28. Jackson urged that "adjudication of a stay-relief motion is a discrete 'proceeding,'" whereas Ritzen argued "that stay-relief adjudication is properly considered a first step in the process of adjudicating a creditor's claim against the estate." Ritzen, 205 L. Ed. 2d at 428. The Court, consistent with the Sixth Circuit's holding, concludes that the appropriate "proceeding" for purposes of determining finality is the stay-relief adjudication. Id. A motion for relief from stay "initiates

a discrete procedural sequence, including notice and a hearing, and the creditor's qualification for relief turns on the statutory standard, i.e., 'cause' or the presence of specified conditions." Id. This procedural sequence is "a procedural unit anterior to, and separate from, claim-resolution proceedings," which may be governed by state substantive law. Id. Under *Bullard*, the Court concluded, "a discrete dispute of this kind constitutes an independent 'proceeding' within the meaning of 28 U.S.C. § 158(a)." Id.

The Court notes that its conclusion is consistent with the statutory text, as Section 157(b)(2), a provision preceding Section 158(a), provides a list of "core proceedings" arising in bankruptcy cases, and lists motions to terminate, annul, or modify the automatic stay in a separate subsection from the "allowance or disallowance of claims against the estate." Id. (citing 11 U.S.C. § 157(b)(2)(B) and (G)). This statutory scheme, though not dispositive, provides a "'textual clue' that Congress viewed adjudication of stay-relief motions as 'proceedings' distinct from claim adjudication." 205 L. Ed. 2d at 428 (citing Bullard, 135 S. Ct. at 1693).

The Court rejects Ritzen's argument that denial of a motion for relief from stay "simply decides the forum for adjudication of bankruptcy claims—bankruptcy court or state court—and therefore should be treated as merely a preliminary step in the claims-adjudication process." 205 L. Ed. 2d at 428–29. On the contrary, the Court reasons that resolution of a motion for stay relief has "large practical consequences" that "can significantly increase creditors' costs." Ritzen, 205 L. Ed. 2d at 429. The Court likewise rejects Ritzen's argument that an order denying relief from stay should not be considered final and appealable where, as here, the decision turns on a substantive issue that may be raised later in the litigation. Ritzen, 205 L. Ed. 2d at 430. Finally, the Court eschews Ritzen's suggestion that the Court's holding will encourage piecemeal appeals and instead finds that its decision "classifying as final all orders conclusively resolving stay-relief motions will avoid, rather than cause, 'delays and inefficiencies.'" Id.

Because the Court finds the appropriate "proceeding" for determining finality within the meaning of Section 158(a) is the adjudication of Ritzen's motion for relief of the automatic stay, the Court holds that the bankruptcy court's order conclusively denying that motion is final. Id. Accordingly, the Sixth Circuit correctly affirmed the district court's dismissal of Ritzen's appeal of the bankruptcy court's order denying stay relief as untimely.

Initial Guidance

Following *Ritzen*, to preserve their clients' rights and avoid malpractice, bankruptcy practitioners would be wise to file an appeal within the 14-day time period prescribed by Bankruptcy Rule 8002(a) whenever there is any doubt respecting the finality of a bankruptcy court's order. A litigant that fails to timely file an appeal risks forfeiting that right, as Ritzen learned. It remains to be seen whether, in the wake of *Ritzen*, there will be an uptick in the number of appeals filed as practitioners await further clarity from courts on what else constitutes a discrete procedural unit for purposes of the finality determination under Section 158(a).

The authors also call practitioners' attention to the potential lacuna suggested by footnote 4 in the *Ritzen* decision, where the Court states that it is not deciding whether finality would attach to an order denying relief from stay without prejudice. See Ritzen, 205 L. Ed. 2d at 431 n.4. To intentionally cast doubt on the finality of the order for purposes of appellate review, debtors' counsel might consider specifying that any order denying relief from stay be entered without prejudice. Denial of a stay relief motion with prejudice will put creditors on the firmest footing for purposes of obtaining a final order subject to appellate review. In the authors' experience, it is rare for an order denying relief from stay to be entered with prejudice—presumably creditors can renew motions for stay relief whenever factual developments give rise to cause for relief.

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Kenneth N. Klee, Partner, KTBS Law LLP

Kenneth N. Klee is a nationally recognized expert on bankruptcy law. He became a Professor of Law Emeritus at the UCLA School of Law in 2014 and is a founding partner of KTBS Law LLP, specializing in corporate reorganization, insolvency, and bankruptcy law.

From 1974 to 1977, Professor Klee served as associate counsel to the Committee on the Judiciary, U.S. House of Representatives, where he was one of the principal drafters of the 1978 Bankruptcy Code. He served as a consultant on bankruptcy legislation to the U.S. Department of Justice in 1983–1984. From 1992 to 2000, he served as a member of the Advisory Committee on Bankruptcy Rules to the Judicial Conference of the United States. From 2000 to 2003, and previously from 1988 to 1990, Professor Klee has served since 2017 as a board member of the Ninth Judicial Circuit Historical Society and served as a member of the Advisory Board for several years before that. He has served three times as a lawyer delegate to the Ninth Circuit Judicial Conference. Professor Klee served as member of the executive committee of the National Bankruptcy Conference from 1985 to 1988, 1992 to 1999, 2005 to 2008, and 2011 to 2014, and in 2017–2018 served as Chair of its Membership Committee. He served from 2011 to 2014 as Chair of the NBC's Committee to Rethink Chapter 11 and also served as chair of its legislation committee from 1992 to 2000. Professor Klee is a past president and member of the board of governors of the Financial Lawyers Conference. Professor Klee was included in "The Best Lawyers in America" 2018 edition and has been included for at least 25 years. He has been named by Who's Who Legal, since 2012, as one of the top ten insolvency & restructuring attorneys in the world and was named by The Legal 500 as one of the top nine leading attorneys in the municipal bankruptcy field for 2014. From 2003 to 2011 and periodically thereafter he was named by the Daily Journal as one of California's Top 100 Lawyers.

Professor Klee is an author or co-author of four books: Bankruptcy and the Supreme Court: 1801–2014 (with Whitman L. Holt) (West Academic 2015); Bankruptcy and the Supreme Court (LexisNexis 2008); BusinessReorganization in Bankruptcy (West 1996; 2d ed. 2001; 3d ed. 2006; 4th ed. 2012); and Fundamentals of Bankruptcy Law (ALI-ABA 4th ed. 1996).

He has authored or co-authored 32 law review articles on bankruptcy law. Recently, and within the past few years, Professor Klee has served as co-counsel for Bettina Whyte as COFINA agent in the Puerto Rico PROMESA restructuring cases; co-counsel for defendants Anadarko Petroleum Corp. and Kerr McGee in Tronox v. Anadarko (Bankr. S.D.N.Y.). and the Blavatnik defendants in Weisfelner v. Blavatnik (In re Lyondell Chemical Co.) (Bankr. S.D.N.Y.).

During the summer of 2010, Professor Klee served as the appointed Examiner in the Tribune chapter 11 cases. He also represented Jefferson County, Alabama, in its successful Chapter 9 case from 2011 to 2014. Professor Klee also serves clients as an expert witness, mediator, arbitrator, attorney, or consultant in his Chapter 11 business reorganization practice.

Sasha M. Gurvitz, Partner, KTBS Law LLP

Sasha M. Gurvitz is a partner of KTBS Law, LLP. Ms. Gurvitz received her J.D. from the UCLA School of Law, where she graduated tenth in her class. Upon graduation, she was admitted to the Order of the Coif.

In recognition of outstanding achievement in bankruptcy coursework during law school, she was awarded the 2013 American Bankruptcy Institute Medal of Excellence. She was also a recipient of the Dean's Merit Scholarship at UCLA School of Law. Ms. Gurvitz received her undergraduate degree from the University of California, Berkeley, where she graduated with highest honors.

Since joining KTBS, Ms. Gurvitz has represented clients in a variety of roles in the restructuring context, both out of court and in chapter 11 proceedings in Delaware, New York, California, and Nevada. In particular, Ms. Gurvitz has represented several chapter 11 debtors in Delaware cases, including American Blue Ribbon Holdings, LLC; Woodbridge Group of Companies, LLC; Open Road Films, LLC; Pacific Sunwear of California, Inc.; USA Discounters, Ltd.; and VRG Liquidating, LLC (f/k/a Vestis Retail Group, LLC). Ms. Gurvitz also has experience representing purchasers of assets in section 363 sales, secured lenders, contract counterparties, landlords, equity holders, chapter 11 trustees, an environmental regulator, and various other creditor constituencies, including in chapter 11 cases such as In re Fresh-G Restaurant Intermediate Holding, LLC (f/k/a Garden Fresh Restaurant Intermediate Holding, LLC); In re Runway Liquidation Holdings, LLC (f/k/a BCBG Max Azria Global Holdings, LLC); In re Exide Technologies; In re Kamen; In re Bishop Gorman Development Corporation; and In re Lakes at Las Vegas Joint Venture, LLC.

Ms. Gurvitz represents the liquidating trustees of the Circuit City Stores, Inc. Liquidating Trust and the RSH Liquidating Trust and serves as appellate counsel to asbestos trusts J.T. Thorpe Settlement Trust and Thorpe Insulation Company Asbestos Settlement Trust. Ms. Gurvitz is a member of the State Bar of California, the Financial Lawyers Conference, and the Turnaround Management Association ("TMA") and serves as the co-chair of the NextGen Committee for the Southern California chapter of TMA.