RESOLVING A SMALL PIECE OF A LARGE PUZZLE

RITZEN GROUP, INC. V. JACKSON MASONRY, LLC

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IN LAW, AS IN LIFE, it is often desirable to have certainty and finality. Just as knowing when a global pandemic will end would provide a sense of relief and an ability to plan for the future, knowing when a bankruptcy court order is final and, hence, appealable, would do the same. Unfortunately, a clear answer on either of these issues may not be forthcoming anytime soon.

However, this year, in *Ritzen Group, Inc. v. Jackson Masonry, LLC*, the Supreme Court did provide a small slice of certainty when it held that adjudication of a motion for automatic stay relief yields a final, appealable order when the bankruptcy court unreservedly grants or denies that relief.[1] In addition, although many commentators were quick to point out that the Court left an awful lot to be decided,[2] in this corner of the law, at least,

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[1] Ritzen Group, Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 586 (2020).

[2] *See, e.g.*, Karl J. Johnson, *Supreme Court Clarifies How to Determine Finality of an Order*, ABI BUS. REORG. COMM. NEWSLETTER (June 2020) ("[T]his case also likely has no impact on orders that otherwise qualify denial of relief from stay."); Bill Rochelle, *Supreme Court Rules That 'Unreservedly' Denying a Lift-Stay Motion is Appealable*, AM. BANKR. INST. (Jan. 14, 2020), www.abi.org/newsroom/daily-wire/supreme-court-rules-that-'unreservedly'-denying-

uncertainty might actually be the better option.[3]

I.
FROM BREACH OF CONTRACT TO AN UNTIMELY APPEAL

As Supreme Court cases go, the facts of *Ritzen* are fairly straightforward and even unremarkable. After a land sale went sour, Ritzen Group sued Jackson Masonry in Tennessee state court, alleging breach of contract.[4] Just days before the case was to go to trial, Jackson Masonry filed for chapter 11 bankruptcy, and bankruptcy's automatic stay kicked in to put the trial on hold.[5] Ritzen filed a motion asking the bankruptcy court to lift the automatic stay, arguing that Jackson Masonry had filed for bankruptcy in bad faith and that the state court trial should be allowed to proceed.[6] After a hearing, the bankruptcy court denied Ritzen's motion.[7] However, rather than appeal, Ritzen simply filed a proof of its claim against Jackson Masonry in the bankruptcy case, which the bankruptcy court disallowed after finding that Ritzen, not Jackson Masonry, was the party in breach of contract.[8]

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a-lift-stay-motion-is-appealable ("[C]ourts may be called upon to grapple with the question of whether denial without prejudice may sometimes have the trappings of a final order.").

[3] *See, e.g.*, Bill Rochelle, *Supreme Court Agrees to Rule on What Is or Is Not a 'Final, Appealable' Order*, AM. BANKR. INST. (May 21, 2019), www.abi.org/newsroom/daily-wire/supreme-court-agrees-to-rule-on-what-is-or-is-not-a-'final-appealable'-order ("[A] hard-and-fast rule may appeal to those seeking an answer in the statute, but rigidity ignores the realities of bankruptcy practice."); Christopher R. Thompson, *The Finality Countdown: Why the Supreme Court is Unlikely to Adopt a "Blanket Rule" of Finality for Orders Denying Stay Relief in* Ritzen Group, Inc. v. Jackson Masonry LLC, AM. BANKR. INST. (Nov. 27, 2019), www.abi.org/committee-post/the-finality-countdown-why-the-supreme-court-is-unlikely-to-adopt-a-"blanket-rule"-of (articulating three reasons why the Supreme Court will not adopt a blanket rule of finality).

[4] *Ritzen*, 140 S. Ct. at 587.

[5] 11 U.S.C. § 362 (prohibiting, *inter alia*, the continuation of a judicial action against the debtor that was commenced prior to bankruptcy).

[6] *Ritzen*, 140 S. Ct. at 587.

[7] *Id.*

[8] *Id.* at 587-88.

When the bankruptcy court confirmed Jackson Masonry's plan, the debtor's creditors were prohibited from pursuing any of the claims dealt with in the bankruptcy case.[9] At this point, Ritzen appealed the bankruptcy court's order denying stay relief.[10] The district court rejected the appeal as untimely, saying that Ritzen should have appealed within 14 days of the denial per 28 U.S.C. § 158(c)(2) and Bankruptcy Rule 8002(a), which generally provide for a 14-day period to file a notice of appeal.[11]

Ritzen appealed this decision, arguing that the stay-relief adjudication was simply one part of the larger claims adjudication process, and that it had therefore filed within the 14-day window because the claims adjudication process was not resolved until plan confirmation. The Sixth Circuit affirmed the district court, however, and the Supreme Court granted certiorari to resolve the question of whether the 14-day appeals clock started running after the order denying stay relief was entered, or after plan confirmation.[12] Analysis of this question turned on whether the order denying stay relief was final and immediately appealable.

II.
A UNANIMOUS FINAL DECISION

Writing for the Court in a unanimous decision, Justice Ruth Bader Ginsburg began her analysis by drawing upon the Court's 2015 ruling in *Bullard v. Blue Hills Bank*. In that case, which addressed whether an order denying confirmation of a bankruptcy plan with leave to amend was a "final" order,[13] the Court stated that the relevant question to consider is "how to define the immediately appealable 'proceeding'" – in this case, in the context of a motion for stay relief.[14] As applied to the case at hand, the Court found that the "proceeding" in question was a stay-relief

[9] *Id.* at 588. The Bankruptcy Code provides that a discharge operates as an injunction against actions to collect discharged debt. 11 U.S.C. § 524(a)(2).

[10] *Ritzen*, 140 S. Ct. at 588.

[11] *Id.*

[12] *Id.*

[13] Bullard v. Blue Hills Bank, 135 S. Ct. 1686 (2015).

[14] *Id.* at 1692.

adjudication.[15] A stay-relief adjudication, according to the Court, was a separate process from claims adjudication because the stay-relief motion "initiates a discrete procedural sequence," and because the claims adjudication process is typically governed by state law.[16]

When the bankruptcy court unreservedly denied Ritzen's stay relief motion, it had effectively ended the "discrete procedural sequence" related to stay relief. Thus, Ritzen's appeal was untimely because it was filed after the claims adjudication process was over, rather than after the stay-relief issue had been conclusively decided.

Ritzen had argued that to hold that the bankruptcy court's stay-relief decision was final would be inefficient because it would encourage "piecemeal appeals."[17] However, the Court rejected this argument, observing that classifying as final all orders conclusively resolving stay-relief motions will in fact avoid "delays and inefficiencies" because a successful immediate appeal would allow creditors to "establish their rights expeditiously."[18]

Thus, the Court here easily concluded that the bankruptcy court's order, which had conclusively denied Ritzen's motion, was "final," because it ended the discrete stay-relief adjudication proceeding and left nothing more for the bankruptcy court to do.[19] Ritzen was out of luck.

III.
A Narrow Ruling for an Issue with Broad Application

With its opinion in *Ritzen*, the Supreme Court has pieced together a small portion of a much larger puzzle concerning the issue of finality of orders. Although the Court clearly held that an order unreservedly granting or denying a stay-relief motion was final, the question of when many other orders are final and appealable still looms large. For example, since the *Ritzen* decision came out, bankruptcy commentators have pointed

[15] *Ritzen*, 140 S. Ct. at 589.

[16] *Id.*

[17] *Id.* at 591.

[18] *Id.*

[19] *Id.* at 592.

to several related questions arising from similar sets of facts that the Court's opinion does not resolve. These related questions notably include the potentially much more common situation where a court denies stay relief without prejudice.[20]

Thus, it's possible that some practitioners and observers might find this opinion frustrating. As is typical, the Supreme Court tends to resolve narrow issues, and its cases can raise more questions than they answer. In this instance, although resolving the question of whether a conclusive stay-relief order was final was important, the opinion may be substantially less useful in practice, since it does not address variants of the issue that are more likely to arise.

On the other hand, a narrow ruling in this case – one that applies only when the court unreservedly grants or denies relief – is probably the right result in the long run. The Supreme Court itself has acknowledged that finality is sometimes a "close question," and it is "impossible to devise a formula to resolve all marginal cases."[21] Put differently, there are so many instances where it is unclear whether an order is final and appealable that it does not make sense to try and capture all of them via a bright-line rule.

A narrow holding, in this instance at least, allows for flexibility and for "thoughtful analysis and discretion," which these types of issues tend to call for.[22] In addition, over the years, lower courts have developed their own tests for finality on a variety of facts, and the Court's ruling may allow

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[20] Russell C. Silberglied, *Questions Remain About When to Appeal an Order, Citing Debtor's Need for a Breathing Spell*, 39-APR AM. BANKR. INST. J. 12, 60 (2020) ("*Ritzen* provides clarity, but only with respect to what might well be a minority of orders denying stay relief."); Charles Tabb & Carly Everhardt, *More Clarity on What Constitutes a Final, Appealable Order in Bankruptcy After Ritzen Group Inc. v. Jackson Masonry, LLC*, FOLEY & LARDNER LLP (Jan. 21, 2020), www.foley.com/en/insights/publications/2020/01/more-clarity-bankruptcy-after-ritzen-v-jackson (concluding that *Ritzen* "leaves open the question of whether a stay relief order under § 362(d)(2) is final where a court enters the order without prejudice").

[21] Rochelle, *supra* note 3 (quoting *Gillespie v. U.S. Steel Corp.*, 379 U.S. 148, 152 (1964)).

[22] Ronit J. Berkovich & Andrew Citron, *Denial of Stay Relief is a Final Order, Says the U.S. Supreme Court*, WEIL BANKR. BLOG (Jan. 22, 2020), business-finance-restructuring.weil.com/automatic-stay/denial-of-stay-relief-is-a-final-order-says-the-u-s-supreme-court/ ("A large list of bankruptcy proceedings remain that require thoughtful analysis and discretion when determining whether the relevant order is final and therefore requires a prompt appeal.").

those tests to continue to be used and refined.[23] Finally, it's always possible that the Court will again take up the question of finality in a different context, and the larger "puzzle" of when an order is final and appealable will continue to come together.

CONCLUSION

The Court's narrow holding in *Ritzen* may allow lower courts to continue to exercise discretion, paying close attention to the circumstances of each case when deciding whether a particular order is final and appealable. All of this goes to show that the Supreme Court really does not need to conclusively resolve everything. Indeed, we can often better appreciate the complexity and uniqueness of each situation when there are no easy answers.

[23] Johnson, *supra* note 2.