AMERICAN BANKRUPTCY INSTITUTE

Three Recent Bankruptcy Decisions by SCOTUS: What They Mean for Your Practice

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Despite the high court's ban on* nunc pro tunc *orders, may bankruptcy courts make their orders retroactive?

Supreme Court Bans *Nunc Pro Tunc* Orders

The Supreme Court has banned the term "*nunc pro tunc*" from the bankruptcy lexicon.

In a *per curiam* opinion on February 24, the Court also ruled that a state court altogether lacks jurisdiction in a removed action until the case has been formally remanded. Merely terminating the basis for federal jurisdiction does not restore the state court's jurisdiction and power to act.

The Catholic Church in Puerto Rico filed a petition for *certiorari* in January 2019, contending that rulings by the Puerto Rico Supreme Court violated the Free Exercise and Establishment Clauses of the First Amendment. The Solicitor General filed a brief in December 2019 recommending that the Court grant *certiorari* and reverse the Puerto Rico Supreme Court.

Without holding argument, the Court granted the petition, reversed and remanded, but not on First Amendment grounds. Instead, the Supreme Court ruled that the Puerto Rico courts were without jurisdiction to enter orders at the critical time.

The Complex Facts

The facts and procedural history are complex, but they boil down to this: The Catholic Church in Puerto Rico terminated a pension plan for workers in the island's parochial schools. The workers sued in an island court. Reversing the intermediate appellate court, the Puerto Rico Supreme Court reinstated the orders of the trial court in favor of the workers by directing the church to deposit $4.7 million with the court. Another order directed the sheriff to seize church assets.

Based on the Treaty of Paris of 1898, the Puerto Rico Supreme Court believed that all church entities in Puerto Rico — including schools and parishes — are liable for the debts of their brother and sister Catholic institutions. Because the high court in Puerto Rico had disregarded the corporate separateness of Catholic entities, the church filed a petition for *certiorari*, raising complex questions under the First Amendment.

For the courts in Puerto Rico, there was a jurisdiction problem that had been overlooked. Before the trial court entered its orders to deposit money and seize assets, the church had removed the suit to federal court, contending that it was related to a bankruptcy case that had been filed by the schools' pension trust.

Nothing Happened

The exact timing of events in the island and federal courts was critical to the outcome in the Supreme Court.

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On March 13, 2018, the bankruptcy court dismissed the pension trust's bankruptcy, thus ostensibly terminating the basis for removal of the suit against the church entities. Later in March 2018, the Puerto Rico trial court entered the orders to deposit money and attach assets, but the case had not yet been remanded to the island court when the orders were entered.

In fact, the federal court did not enter an order remanding the suit to the Puerto Rico court until August 2018, five months after the island court had entered orders *in that suit* to deposit money and attach assets. However, the remand order in August 2018 stated that it was *nunc pro tunc* to March 13, the day the bankruptcy was dismissed.

In Latin, the phrase means "now for then."

Jurisdiction Strictly Interpreted

A stickler for details, the Supreme Court ruled on the Puerto Rico court's lack of jurisdiction without reaching the merits on the First Amendment.

Because the suit had not been remanded to the island court when the orders were entered, the Supreme Court ruled in its eight-page opinion that the Puerto Rico court "had no jurisdiction over the proceedings. The orders are therefore void."

Citing 19th century authority, the Court said that removal divests the state court of "'all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment [are] not . . . simply erroneous, but absolutely void.'" *Kern v. Huidekoper*, 103 U.S. 485, 493 (1881).

The federal court's *nunc pro tunc* order did not save the day. The high court said that a *nunc pro tunc* order may "'reflect[] the reality'" of what has occurred, citing *Missouri v. Jenkins*, 495 U.S. 33, 49 (1990). A *nunc pro tunc* order, the Court said, "presupposes" that a court has made a decree that was not entered on account of "inadvertence," citing *Cuebas y Arredondo v. Cuebas y Arredondo*, 223 U.S. 376, 390 (1912).

The Supreme Court said that nothing had occurred in the federal court in terms of remand on March 13, the date to which the court had made the remand *nunc pro tunc*. Therefore, the high court ruled that a "court 'cannot make the record what it is not,'" citing *Jenkins*, 495 U.S. at 49.

What Does It Mean for Bankruptcy?

Bankruptcy courts often make orders *nunc pro tunc*. Based on the Supreme Court's opinion, a *nunc pro tunc* order is proper only if the court announces its ruling without immediate entry of an order.

May a bankruptcy court nonetheless make an order retroactive? For example, a retention order at the outset of a case may not be entered for several days or weeks. May retention be made retroactive to the date the application was filed, assuming it was later granted? Or, will courts be required to enter provisional orders immediately?

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The opinion is *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, 18-921 (Sup. Ct. Feb. 24, 2020).

SUPREME COURT OF THE UNITED STATES

ROMAN CATHOLIC ARCHDIOCESE OF SAN JUAN, PUERTO RICO *v.* YALI ACEVEDO FELICIANO, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

No. 18–921. Decided February 24, 2020

PER CURIAM.

In 1979, the Office of the Superintendent of Catholic Schools of the Archdiocese of San Juan created a trust to administer a pension plan for employees of Catholic schools, aptly named the Pension Plan for Employees of Catholic Schools Trust (Trust). Among the participating schools were Perpetuo Socorro Academy, San Ignacio de Loyola Academy, and San Jose Academy.

In 2016, active and retired employees of the academies filed complaints in the Puerto Rico Court of First Instance alleging that the Trust had terminated the plan, eliminating the employees' pension benefits. The employees named as a defendant the "Roman Catholic and Apostolic Church of Puerto Rico," which the employees claimed was a legal entity with supervisory authority over all Catholic institutions in Puerto Rico. App. to Pet. for Cert. 58–59, 152–153 (emphasis deleted).[1] The employees also named as defendants the Archdiocese of San Juan, the Superintendent, the three academies, and the Trust.

The Court of First Instance, in an order affirmed by the Puerto Rico Court of Appeals, denied a preliminary injunction requiring the payment of benefits, but the Puerto Rico Supreme Court reversed. The Supreme Court concluded

[1] The petition for a writ of certiorari includes certified translations of the opinions, originally in Spanish, of the Puerto Rico courts. We cite the certified translations.

that "if the Trust did not have the necessary funds to meet its obligations, the participating employers would be obligated to pay." *Id.*, at 3. But, because "there was a dispute as to which defendants in the case had legal personalities," the Supreme Court remanded the case to the Court of First Instance to "determine who would be responsible for continuing paying the pensions, pursuant to the preliminary injunction." *Ibid.*

The Court of First Instance determined that the "Roman Catholic and Apostolic Church in Puerto Rico" was the only defendant with separate legal personhood. *Id.*, at 239–240. The Court held such personhood existed by virtue of the Treaty of Paris of 1898, through which Spain ceded Puerto Rico to the United States. The Court found that the Archdiocese of San Juan, the Superintendent, and the academies each constituted a "division or dependency" of the Church, because those entities were not separately incorporated. *Ibid.*

As a result, the Court of First Instance ordered the "Roman Catholic and Apostolic Church in Puerto Rico" to make payments to the employees in accordance with the pension plan. *Id.*, at 241. Ten days later, the Court issued a second order requiring the Church to deposit $4.7 million in a court account within 24 hours. The next day, the Court issued a third order, requiring the sheriff to "seize assets and moneys of . . . the Holy Roman Catholic and Apostolic Church, and any of its dependencies, that are located in Puerto Rico." *Id.*, at 223.

The Puerto Rico Court of Appeals reversed. It held that the "Roman Catholic and Apostolic Church in Puerto Rico" was a "legally nonexistent entity." *Id.*, at 136. But, the Court concluded, the Archdiocese of San Juan and the Perpetuo Socorro Academy could be ordered to make contribution payments. The Archdiocese enjoyed separate legal personhood as the effective successor to the Roman Catholic Church in Puerto Rico, the entity recognized by the Treaty of Paris. Perpetuo Socorro Academy likewise constituted a separate legal person because it had been incorporated in accordance with Puerto Rico law, even though its registration was not active in 2016, when the orders were issued. The two remaining academies, San Ignacio Academy and San Jose Academy, were part of the same legal entity as "their respective parishes," but the employees could not obtain relief against the parishes because they had not been named as defendants. *Id.*, at 167.

The Puerto Rico Supreme Court again reversed, reinstating the preliminary injunction issued by the trial court. The Supreme Court first held that the "relationship between Spain, the Catholic Church, and Puerto Rico is *sui generis*, given the particularities of its development and historical context." *Id.*, at 5. The Court explained that the Treaty of Paris recognized the "legal personality" of "the Catholic Church" in Puerto Rico. *Id.*, at 6.

The Puerto Rico Supreme Court further observed that "each entity created that operates separately and with a certain degree of autonomy from the Catholic Church is in reality a fragment of only one entity that possesses legal personality," at least where the entities have not "independently submitt[ed] to an ordinary incorporation process." *Id.*, at 13–14 (emphasis deleted). "In other words," the Court continued, "the entities created as a result of any internal configuration of the Catholic Church," such as the Archdiocese of San Juan, "are not automatically equivalent to the formation of entities with different and separate legal personalities in the field of Civil Law," but "are merely indivisible fragments of the legal personality that the Catholic Church has." *Ibid.* And Perpetuo Socorro Academy was not a registered corporation in 2016, when the plan was terminated. *Id.*, at 16. Therefore, under the Court's reasoning, the only defendant with separate legal personality, and the only entity that could be ordered to pay the employees' pensions, was the "Roman Catholic and Apostolic Church in Puerto Rico." *Id.*, at 2.

Two Justices dissented. Justice Rodríguez Rodríguez criticized the majority for "inappropriately interfer[ing] with the operation of the Catholic Church by imposing on it a legal personality that it does not hold in the field of private law." *Id.*, at 29. In her view, the Archdiocese of San Juan and the five other dioceses in Puerto Rico each has its own "independent legal personality." *Id.*, at 52. Justice Colón Pérez likewise determined that, under Puerto Rico law, "each Diocese and the Archdiocese ha[s its] own legal personality" and that no separate "legal personality" called the "Roman Catholic and Apostolic Church" exists. *Id.*, at 80, 90 (emphasis deleted).

The Archdiocese petitioned this Court for a writ of certiorari. The Archdiocese argues that the Free Exercise and Establishment Clauses of the First Amendment require courts to defer to "the Church's own views on how the Church is structured." Pet. for Cert. 1. Thus, in this case, the courts must follow the Church's lead in recognizing the separate legal personalities of each diocese and parish in Puerto Rico. The Archdiocese claims that the Puerto Rico Supreme Court decision violated the "religious autonomy doctrine," which provides: "[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *Id.*, at 20 (quoting *Watson* v. *Jones*, 13 Wall. 679, 727 (1872)).

We called for the Solicitor General's views on the petition. 588 U. S. ___ (2019). The Solicitor General argues that we need not "reach [the Archdiocese's] broader theory in order to properly dispose of this case," because a different error warrants vacatur and remand. Brief for United States as *Amicus Curiae* on Pet. for Cert. 13–14 (Brief for United States). Instead of citing "any neutral rule of Puerto Rico law governing corporations, incorporated or unincorporated associations, veil-piercing, joint-and-several liability, or vicarious liability," the Puerto Rico Supreme Court "relied on a special presumption—seemingly applicable only to the Catholic Church . . . —that all Catholic entities on the Island are 'merely indivisible fragments of the legal personality that the Catholic Church has.'" *Id.*, at 9 (quoting App. to Pet. for Cert. 14). The Solicitor General contends that the Puerto Rico Supreme Court thus violated the fundamental tenet of the Free Exercise Clause that a government may not "single out an individual religious denomination or religious belief for discriminatory treatment." Brief for United States 8 (citing *Murphy* v. *Collier*, 587 U. S. ___ (2019); *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 524–525 (1993); *Fowler* v. *Rhode Island*, 345 U. S. 67, 69 (1953)).

We do not reach either argument because we find that the Court of First Instance lacked jurisdiction to issue the payment and seizure orders. On February 6, 2018, after the Supreme Court of Puerto Rico remanded the case to the Court of First Instance to determine the appropriate parties to the preliminary injunction, the Archdiocese removed the case to the United States District Court for the District of Puerto Rico. Notice of Removal in *Acevedo-Feliciano* v. *Holy Catholic Church*, No. 3:18–cv–01060. The Archdiocese argued that the Trust had filed for Chapter 11 bankruptcy and that this litigation was sufficiently related to the bankruptcy to give rise to federal jurisdiction. *Id.*, at 5–6 (citing 28 U. S. C. §§1334(b), 1452). The Bankruptcy Court dismissed the Trust's bankruptcy proceeding on March 13, 2018. Opinion and Order Granting Motions to Dismiss in *In re Catholic Schools Employee Pension Trust*, No. 18–00108. The Puerto Rico Court of First Instance issued the relevant payment and seizure orders on March 16, March 26, and March 27. App. to Pet. for Cert. 224, 227, 241. But the District Court did not remand the case to the Puerto

Rico Court of First Instance until nearly five months later, on August 20, 2018. Order Granting Motion to Remand in *Acevedo-Feliciano* v. *Archdiocese of San Juan*, No. 3:18–cv–01060.

Once a notice of removal is filed, "the State court shall proceed no further unless and until the case is remanded." 28 U. S. C. §1446(d).[2] The state court "los[es] all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment [are] not . . . simply erroneous, but absolutely void." *Kern* v. *Huidekoper*, 103 U. S. 485, 493 (1881). "Every order thereafter made in that court [is] *coram non judice*," meaning "not before a judge." *Steamship Co.* v. *Tugman*, 106 U. S. 118, 122 (1882); Black's Law Dictionary 426 (11th ed. 2019). See also 14C C. Wright, A. Miller, E. Cooper, J. Steinman, & M. Kane, Federal Practice and Procedure §3736, pp. 727–729 (2018).

The Court of First Instance issued its payment and seizure orders after the proceeding was removed to federal district court, but before the federal court remanded the proceeding back to the Puerto Rico court. At that time, the Court of First Instance had no jurisdiction over the proceeding. The orders are therefore void.

We note two possible rejoinders. First, the Puerto Rico Court of Appeals suggested that the Archdiocese consented to the Court of First Instance's jurisdiction by filing motions in that court after removal. But we have held that a removing party's right to a federal forum becomes "fixed" upon filing of a notice of removal, and that if the removing party's "right to removal [is] ignored by the State court," the party may "make defence in that tribunal in every mode recog-

[2] "The laws of the United States relating to . . . removal of causes . . . as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the United States District Court for the District of Puerto Rico and the courts of Puerto Rico." 48 U. S. C. §864.

nized by the laws of the State, without forfeiting or impairing, in the slightest degree, its right to a trial" in federal court. *Steamship Co.*, 106 U. S., at 122–123. Such actions do not "restore[ ]" "the jurisdiction of the State court." *Id.*, at 122. So, too, the Archdiocese's motions did not restore jurisdiction to the Court of First Instance.

Second, the District Court remanded the case to the Court of First Instance by way of a *nunc pro tunc* judgment stating that the order "shall be effective as of March 13, 2018," the date that the Trust's bankruptcy proceeding was dismissed. *Nunc Pro Tunc* Judgt. in No. 3:18–cv–01060 (Aug. 8, 2018).

Federal courts may issue *nunc pro tunc* orders, or "now for then" orders, Black's Law Dictionary, at 1287, to "reflect[ ] the reality" of what has already occurred, *Missouri* v. *Jenkins*, 495 U. S. 33, 49 (1990). "Such a decree presupposes a decree allowed, or ordered, but not entered, through inadvertence of the court." *Cuebas y Arredondo* v. *Cuebas y Arredondo*, 223 U. S. 376, 390 (1912).

Put colorfully, "[n]unc pro tunc orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact." *United States* v. *Gillespie*, 666 F. Supp. 1137, 1139 (ND Ill. 1987). Put plainly, the court "cannot make the record what it is not." *Jenkins*, 495 U. S., at 49.

Nothing occurred in the District Court case on March 13, 2018. See Order Granting Motion to Remand in No. 3:18–cv–01060 (noting, on August 20, 2018, that the motion is "hereby" granted and ordering judgment "accordingly"). March 13 was when the Bankruptcy Court dismissed the Trust's proceeding and thus the day that the Archdiocese's argument for federal jurisdiction lost its persuasive force. Even so, the case remained in federal court until that court, on August 20, reached a decision about the motion to remand that was pending before it. The Court of First Instance's actions in the interim, including the payment and seizure orders, are void.

The Solicitor General agrees that the Court of First Instance lacked jurisdiction but argues that this defect does not prevent us from addressing additional errors, including those asserted under the Free Exercise Clause. That may be correct, given that the Puerto Rico courts do not exercise Article III jurisdiction. But we think the preferable course at this point is to remand the case to the Puerto Rico courts to consider how to proceed in light of the jurisdictional defect we have identified.

The petition for certiorari and the motions for leave to file briefs *amici curiae* are granted, the judgment of the Puerto Rico Supreme Court is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

ROMAN CATHOLIC ARCHDIOCESE OF SAN JUAN, PUERTO RICO, PETITIONER *v.* YALI ACEVEDO FELICIANO, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

No. 18–921. Decided February 24, 2020

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring.

I join the opinion of the Court but write separately to note other important issues that may arise on remand.

First, the decision of the Supreme Court of Puerto Rico is based on an erroneous interpretation of this Court's old decision in *Municipality of Ponce* v. *Roman Catholic Apostolic Church in Porto Rico*, 210 U. S. 296, 323–324 (1908). The main question decided by the Supreme Court of Puerto Rico below was whether the Catholic Church in Puerto Rico is a single entity for civil law purposes or whether any subdivisions, such as dioceses or parishes, or affiliated entities, such as schools and trusts, are separate entities for those purposes. The Supreme Court of Puerto Rico held that *Ponce* decided that in Puerto Rico the Catholic Church is a single entity for purposes of civil liability. That was incorrect.

The question in *Ponce* was whether the Catholic Church or the municipality of Ponce held title to two churches that had been built and maintained during the Spanish colonial era using both private and public funds. The Church sued to establish that it had title, and the municipality argued that the Church could not bring suit because it was not a juridical person. 210 U. S., at 308–309. After considering the Treaty of Paris, Dec. 10, 1898, 30 Stat. 1754, which ended the Spanish-American War, this Court simply held that the Church was a juridical person and thus could bring suit. See 210 U. S., at 310–311, 323–324. This Court did not hold that the Church is a single entity for purposes of civil liability, but that is how the Supreme Court of Puerto Rico interpreted the decision. That court quoted *Ponce*'s statement that "'[t]he Roman Catholic Church has been recognized as possessing legal personality by the treaty of Paris, and its property rights solemnly safeguarded.'" App. to Pet. for Cert. 7 (quoting 210 U. S., at 323–324). Immediately thereafter it wrote: "Despite this, the intermediate appellate court understood that each division of the Catholic Church in Puerto Rico equals the creation of a different and separate legal entity and did not recognize that legal personality of the Catholic Church." App. to Pet. for Cert. 8.

This is an incorrect interpretation of this Court's decision, and it would have been appropriate for us to reverse the decision below on that ground were it not for the jurisdictional issue that the Court addresses. The assets that may be reached by civil plaintiffs based on claims regarding conduct by entities and individuals affiliated in some way with the Catholic Church (or any other religious body) is a difficult and important issue, but at least one thing is clear: This Court's old decision in *Ponce* did not address that question.

Second, as the Solicitor General notes, the Free Exercise Clause of the First Amendment at a minimum demands that all jurisdictions use neutral rules in determining whether particular entities that are associated in some way with a religious body may be held responsible for debts incurred by other associated entities. See Brief for United States as *Amicus Curiae* on Pet. for Cert. 8–13.

Beyond this lurk more difficult questions, including (1) the degree to which the First Amendment permits civil authorities to question a religious body's own understanding of its structure and the relationship between associated entities and (2) whether, and if so to what degree, the First

Amendment places limits on rules on civil liability that seriously threaten the right of Americans to the free exercise of religion as members of a religious body.

The Court does not reach these issues because of our jurisdictional holding. But they are questions that may well merit our review.

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Building on* Bullard*, the Supreme Court rules unanimously that a lift-stay motion is a "procedural unit" that's appealable if the bankruptcy court "conclusively" denies the motion.

Supreme Court Rules that 'Unreservedly' Denying a Lift-Stay Motion Is Appealable

The Supreme Court ruled unanimously today in *Ritzen v. Jackson Machinery* that an order denying a motion to modify the automatic stay is a final, appealable order "when the bankruptcy court unreservedly grants or denies relief."

In her unanimous opinion for the Court, Justice Ruth Bader Ginsburg said that a lift-stay motion is a "procedural unit" separate from the remainder of the bankruptcy case, even though the decision to retain the stay may be "potentially pertinent to other disputes."

The decision in *Ritzen* may contain a trap for creditors: A bankruptcy court could deny a creditor the right to appeal, perhaps for an extended time, by denying a lift-stay motion without prejudice or offering to reexamine the result in light of subsequent events.

The Facts

Before bankruptcy, the creditor had a contract to buy land from the debtor. The deal never closed, and the creditor sued in state court for breach of contract. Before trial, the debtor filed a chapter 11 petition.

In bankruptcy, the creditor moved to modify the stay so that the state court could decide who breached the contract. The bankruptcy court denied the motion. The creditor did not appeal.

The creditor filed a proof of claim, but the bankruptcy court disallowed the claim, ruling that the creditor, not the debtor, had breached the contract. Without objection from the creditor, the bankruptcy court confirmed the debtor's plan.

The creditor then filed an appeal from denial of the lift-stay motion and from disallowance of the claim. The district court dismissed the stay appeal as untimely and upheld the claim ruling on the merits.

The Sixth Circuit affirmed. *Ritzen Group Inc. v. Jackson Masonry LLC (In re Jackson Masonry LLC)*, 906 F.3d 494 (6th Cir. Oct. 16, 2018). To read ABI's analysis of the Sixth Circuit's opinion, click here.

The creditor filed a petition for *certiorari*, contending there was a split of circuits. The Supreme Court granted *certiorari* in May. The case was argued on November 13.

Bankruptcy Isn't Like Ordinary Litigation

Appealability is governed by 28 U.S.C. § 158(a), which gives district courts jurisdiction over appeals from "final judgments, orders, and decrees . . . in cases and proceedings referred to bankruptcy judges . . . ."

Justice Ginsburg acknowledged that ordinary rules of finality are "not attuned to the distinctive character of bankruptcy litigation." Bankruptcy, she said, is "an aggregation of individual controversies," quoting the *Collier* treatise. She explained why appeals from individual controversies cannot await resolution of the entire bankruptcy case.

The outcome was guided, if not controlled, by *Bullard v. Blue Hills Bank*, 575 U.S. 496 (2015), where the Supreme Court held that denial of confirmation of a chapter 13 plan is not a final, appealable order. She paraphrased *Bullard* as holding that bankruptcy court orders are final when they "definitively dispose of discrete disputes within the overarching bankruptcy case."

To be final under *Bullard*, an order must alter the *status quo* and fix the rights and obligations of the parties, Justice Ginsburg said.

Justice Ginsburg framed the question as whether denial of a lift-stay motion is a "distinct proceeding" that terminates "when the bankruptcy court rules dispositively on the motion." She said that a majority of courts and leading treatises say that denial of a lift-stay motion is immediately appealable.

Addressing the facts of the case on appeal, Justice Ginsburg said that the lift-stay motion was "a procedural unit anterior to, and separate from, claim-resolution proceedings." Stay relief, she said, "occurs before and apart from proceedings on the merits of creditors' claims."

Of potential significance in the future on questions about the finality of other types of orders, Justice Ginsburg said that resolution of a stay motion "can have large practical consequences." For example, leaving the stay in place may "delay collection of a debt or cause collateral to decline in value."

The decision by Justice Ginsburg is a categorical ruling. She saw "no good reason to treat stay adjudication as the relevant 'proceeding' in only a subset of cases." Quoting Supreme Court authority in another context, she said that finality "should 'be determined for the entire category to which a claim belongs.' *Digital Equipment Corp. v. Desktop Direct Inc.*, 511 U.S. 863, 868 (1994)."

Justice Ginsburg left little room for contending that denial of a lift-stay motion can sometimes be non-final. She said it "does not matter whether the court rested its decision on a determination potentially pertinent to other disputes in the bankruptcy case, so long as the order conclusively resolved the movant's entitlement to the requested relief."

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In a footnote at the end of the opinion, Justice Ginsburg said the Court was not deciding whether denial of a motion without prejudice would be final if the bankruptcy court was awaiting "further developments [that] might change the stay calculus."

Affirming the judgment of the Sixth Circuit, Justice Ginsburg held that the stay-relief motion was the "appropriate 'proceeding.'" The order "conclusively denying" the motion was final, she said, because the "court's order ended the stay-relief adjudication and left nothing more for the Bankruptcy Court to do in that proceeding."

Observation

At first blush, the opinion seems beneficial for creditors by assuring them of their right to appeal denials of lift-stay motions. In practice, however, *Ritzen* can be used against creditors.

Suppose the bankruptcy court denies a lift-stay motion without prejudice, saying that unfolding events might persuade the court to modify the stay. Denial of a motion without prejudice could therefore cut off the ability to appeal, exerting leverage in favor of the debtor and persuading the creditor to settle.

In upcoming years, courts may be called upon to grapple with the question of whether denial without prejudice may sometimes have the trappings of a final order.

The opinion is *Ritzen Group Inc. v. Jackson Masonry LLC*, 18-938 (Sup. Ct. Jan. 14, 2020).

SUPREME COURT OF THE UNITED STATES

Syllabus

RITZEN GROUP, INC. *v.* JACKSON MASONRY, LLC

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 18–938. Argued November 13, 2019—Decided January 14, 2020

An appeal of right lies from "final judgments, orders, and decrees" entered by bankruptcy courts "in cases and proceedings." 28 U. S. C. §158(a). Bankruptcy court orders are considered final and immediately appealable if they "dispose of discrete disputes within the larger [bankruptcy] case." *Bullard* v. *Blue Hills*, 575 U. S. 496, 501.

Ritzen Group, Inc. (Ritzen) sued Jackson Masonry, LLC (Jackson) in Tennessee state court for breach of a land-sale contract. Jackson filed for bankruptcy under Chapter 11 of the Bankruptcy Code. The state-court litigation was put on hold by operation of 11 U. S. C. §362(a), which provides that filing a bankruptcy petition automatically "operates as a stay" of creditors' debt-collection efforts outside the umbrella of the bankruptcy case. The Bankruptcy Court denied Ritzen's motion for relief from the automatic stay filed pursuant to §362(d). Ritzen did not appeal that disposition. Instead, its next step was to file a proof of claim against the bankruptcy estate. The Bankruptcy Court subsequently disallowed Ritzen's claim and confirmed Jackson's plan of reorganization. Ritzen then filed a notice of appeal in the District Court, challenging the Bankruptcy Court's order denying relief from the automatic stay. The District Court rejected Ritzen's appeal as untimely under 28 U. S. C. §158(c)(2) and Federal Rule of Bankruptcy Procedure 8002(a), which require appeals from a bankruptcy court order to be filed "within 14 days after entry of [that] order." The Sixth Circuit affirmed, concluding that the order denying Ritzen's motion to lift the stay was final under §158(a), and that the 14-day appeal clock therefore ran from entry of that order.

Held: A bankruptcy court's order unreservedly denying relief from the automatic stay constitutes a final, immediately appealable order under §158(a). Pp. 6–12.

(a) This Court's application of §158(a)'s finality requirement is guided by the opinion in *Bullard* v. *Blue Hills Bank*, 575 U. S. 496. Addressing repayment plan confirmations under Chapter 13, the Court held in *Bullard* that a bankruptcy court's order rejecting a proposed plan was not final because it did not conclusively resolve the relevant "proceeding." Rather, the proceeding would continue until approval of a plan. *Id.*, at 502. P. 6.

(b) In applying *Bullard*'s analysis here, the key inquiry is "how to define the immediately appealable 'proceeding' in the context of [stay-relief motions]." 575 U. S., at 502. Adjudication of a creditor's motion for relief from the stay is properly considered a discrete "proceeding." A bankruptcy court's order ruling on a stay-relief motion disposes of a procedural unit anterior to, and separate from, claim-resolution proceedings. It occurs before and apart from proceedings on the merits of creditors' claims. And its resolution forms no part of the adversary claims-adjudication process, proceedings typically governed by state substantive law. Relief from bankruptcy's automatic stay thus presents a discrete dispute qualifying as an independent "proceeding" within the meaning of §158(a). *Bullard,* 575 U. S., at 502–505. Pp. 6–8.

(c) Ritzen incorrectly characterizes denial of stay relief as determining nothing more than the forum for claim adjudication and thus a preliminary step in the claims-adjudication process. Resolution of a stay-relief motion can have large practical consequences, however, including whether a creditor can isolate its claim from those of other creditors and go it alone outside bankruptcy or the manner in which adversary claims will be adjudicated. Moreover, bankruptcy's automatic stay stops even nonjudicial efforts to obtain or control the debtor's assets, matters that often do not concern the forum for, and cannot be considered part of, any subsequent claim adjudication. Ritzen errs in arguing that the order should nonetheless rank as nonfinal where, as here, the bankruptcy court's decision turns on a substantive issue that may be raised later in the litigation. Section 158(a) asks whether the order in question terminates a procedural unit separate from the remaining case, not whether the bankruptcy court has preclusively resolved a substantive issue. Finally, rather than disrupting the efficiency of the bankruptcy process, immediate appeal may permit creditors to establish their rights expeditiously outside the bankruptcy process, affecting the relief sought and awarded later in the bankruptcy case. Pp. 8–11.

906 F. 3d 494, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 18–938

RITZEN GROUP, INC., PETITIONER *v.* JACKSON MASONRY, LLC

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[January 14, 2020]

JUSTICE GINSBURG delivered the opinion of the Court.

Under the Bankruptcy Code, filing a petition for bankruptcy automatically "operates as a stay" of creditors' debt-collection efforts outside the umbrella of the bankruptcy case. 11 U. S. C. §362(a). The question this case presents concerns the finality of, and therefore the time allowed for appeal from, a bankruptcy court's order denying a creditor's request for relief from the automatic stay. In civil litigation generally, a court's decision ordinarily becomes "final," for purposes of appeal, only upon completion of the entire case, *i.e.*, when the decision "terminate[s the] action" or "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Gelboim* v. *Bank of America Corp.*, 574 U. S. 405, 409 (2015) (internal quotation marks omitted). The regime in bankruptcy is different. A bankruptcy case embraces "an aggregation of individual controversies." 1 Collier on Bankruptcy ¶5.08[1][b], p. 5–43 (16th ed. 2019). Orders in bankruptcy cases qualify as "final" when they definitively dispose of discrete disputes within the overarching bankruptcy case. *Bullard* v. *Blue Hills Bank*, 575 U. S. 496, 501 (2015).

The precise issue the Court today decides: Does a creditor's motion for relief from the automatic stay initiate a distinct proceeding terminating in a final, appealable order when the bankruptcy court rules dispositively on the motion? In agreement with the courts below, our answer is "yes." We hold that the adjudication of a motion for relief from the automatic stay forms a discrete procedural unit within the embracive bankruptcy case. That unit yields a final, appealable order when the bankruptcy court unreservedly grants or denies relief.

I

In civil litigation generally, 28 U. S. C. §1291 governs appeals from "final decisions." Under that provision, a party may appeal to a court of appeals as of right from "final decisions of the district courts." *Ibid.* A "final decision" within the meaning of §1291 is normally limited to an order that resolves the entire case. Accordingly, the appellant must raise all claims of error in a single appeal. See *In re Saco Local Development Corp.*, 711 F. 2d 441, 443 (CA1 1983) (Breyer, J.) ("Traditionally, every civil action in a federal court has been viewed as a 'single judicial unit,' from which only one appeal would lie."). This understanding of the term "final decision" precludes "piecemeal, prejudgment appeals" that would "undermin[e] efficient judicial administration and encroac[h] upon the prerogatives of district court judges." *Bullard*, 575 U. S., at 501 (quoting *Mohawk Industries, Inc.* v. *Carpenter*, 558 U. S. 100, 106 (2009); internal quotation marks omitted).

The ordinary understanding of "final decision" is not attuned to the distinctive character of bankruptcy litigation. A bankruptcy case encompasses numerous "individual controversies, many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor." *Bullard*, 575 U. S., at 501 (internal quotation marks omitted). It is thus common for bankruptcy courts to resolve discrete controversies definitively while the umbrella bankruptcy case remains pending. Delaying appeals from discrete, controversy-resolving decisions in bankruptcy cases would long postpone appellate review of fully adjudicated disputes. Moreover, controversies adjudicated during the life of a bankruptcy case may be linked, one dependent on the outcome of another. Delaying appeal until the termination of the entire bankruptcy case, therefore, could have this untoward consequence: Reversal of a decision made early on could require the bankruptcy court to unravel later adjudications rendered in reliance on an earlier decision.

The provision on appeals to U. S. district courts from decisions of bankruptcy courts is 28 U. S. C. §158(a). Under that provision, an appeal of right lies from "final judgments, orders, and decrees" entered by bankruptcy courts "in cases and proceedings." *Ibid.* By providing for appeals from final decisions in bankruptcy "proceedings," as distinguished from bankruptcy "cases," Congress made "orders in bankruptcy cases . . . immediately appeal[able] if they finally dispose of discrete disputes within the larger [bankruptcy] case." *Bullard*, 575 U. S., at 501 (quoting *Howard Delivery Service, Inc.* v. *Zurich American Ins. Co.*, 547 U. S. 651, 657, n. 3 (2006)); see *In re Saco Local Development Corp.*, 711 F. 2d, at 444–447. In short, "the usual judicial unit for analyzing finality in ordinary civil litigation is the case, [but] in bankruptcy[,] it is [often] the proceeding." Brief for United States as *Amicus Curiae* 10.

Correct delineation of the dimensions of a bankruptcy "proceeding" is a matter of considerable importance. An erroneous identification of an interlocutory order as a final decision may yield an appeal over which the appellate forum lacks jurisdiction. Conversely, an erroneous identification of a final order as interlocutory may cause a party to miss the appellate deadline.

II

The dispute at hand involves a contract in which Ritzen Group, Inc. (Ritzen) agreed to buy land in Nashville, Tennessee from Jackson Masonry, LLC (Jackson). The land sale was never effected. Blaming Jackson for the deal's unraveling, Ritzen sued for breach of contract in Tennessee state court. After over a year of litigation, just days before trial was to begin, Jackson filed for bankruptcy under Chapter 11 of the Bankruptcy Code. By operation of the Bankruptcy Code's automatic stay provision, 11 U. S. C. §362(a), the state-court litigation was put on hold.

Ritzen filed a motion in the Federal Bankruptcy Court for relief from the automatic stay, seeking an order allowing the trial to proceed in state court. Ritzen argued that relief would promote judicial economy and that Jackson had filed for bankruptcy in bad faith. After a hearing, the Bankruptcy Court denied the motion. The Bankruptcy Code and Federal Rules of Bankruptcy Procedure require parties to appeal from a final order "within 14 days after entry of the . . . order . . . being appealed." 28 U. S. C. §158(c)(2); Fed. Rule Bkrtcy. Proc. 8002(a). Ritzen did not appeal from the order refusing to lift the stay within the prescribed period.

In pursuit of the breach-of-contract claim initially commenced in state court, Ritzen filed a proof of claim against the bankruptcy estate. Following an adversary proceeding, the Bankruptcy Court found that Ritzen, not Jackson, was the party in breach of the land-sale contract because Ritzen failed to secure financing by the closing date. The court therefore disallowed Ritzen's claim against the bankruptcy estate. Without objection from Ritzen, the court confirmed Jackson's plan of reorganization. The plan permanently enjoined all creditors from the "commencement or continuation of any . . . proceeding against [d]ebtor . . . on account of [c]laims against [d]ebtor." Debtor's Plan of Reorganization in No. 3:16–bk–02065 (MD Tenn.), p. 15.

Thereafter, Ritzen filed two separate notices of appeal in the District Court for the Middle District of Tennessee. First, Ritzen challenged the Bankruptcy Court's order denying relief from the automatic stay. Second, Ritzen challenged the court's resolution of its breach-of-contract claim.

The District Court rejected the first of Ritzen's appeals as untimely, holding that under §158(c)(2) and Federal Rule of Bankruptcy Procedure 8002(a), time to appeal expired 14 days after the Bankruptcy Court's entry of the order denying relief from the automatic stay. Turning to the appeal from the Bankruptcy Court's rejection of Ritzen's breach-of-contract claim, the District Court ruled against Ritzen on the merits.

On further appeal, the Court of Appeals for the Sixth Circuit affirmed the District Court's dispositions. As to the timeliness of the first notice of appeal, the Court of Appeals rendered this determination: Adjudication of Ritzen's motion for relief from the automatic stay qualified as a discrete "proceeding," commencing with the filing of the motion, followed by procedural steps, and culminating in a "[dispositive] decision based on the application of a legal standard." *In re Jackson Masonry*, *LLC*, 906 F. 3d 494, 499–500 (2018).[1] The 14-day appeal clock, the Court of Appeals therefore concluded, ran from the order denying the motion to lift the stay, a disposition "(1) entered in a proceeding and (2) final[ly] terminating that proceeding." *Id.,* at 499 (alterations omitted).

We granted certiorari to resolve whether orders denying relief from bankruptcy's automatic stay are final, therefore

[1] The "procedural steps" included Ritzen's provision of notice to Jackson and the Bankruptcy Court's conduct of a hearing at which the parties presented witness testimony and other evidence. App. to Pet. for Cert. 48a. The question under the "applicable legal standard": Did Ritzen establish "cause" to permit the state-court litigation to proceed. See *id.,* at 52a–67a; 11 U. S. C. §362(d)(1).

immediately appealable under §158(a)(1). 587 U. S. ___ (2019).

III

A

This Court's opinion in *Bullard* v. *Blue Hills Bank*, 575 U. S. 496, guides our application of §158(a)'s finality requirement. Addressing repayment plan confirmations under Chapter 13, we held in *Bullard* that a bankruptcy court's order rejecting a proposed plan was not "final" under §158(a) because it did not conclusively resolve the relevant "proceeding." *Id.,* at 499, 502–503. The plan-confirmation process, the *Bullard* opinion explains, involves back and forth negotiations. See *id.,* at 502. Plan proposal rejections may be followed by amended or new proposals. Only plan approval, we observed, "alters the status quo and fixes the rights and obligations of the parties." *Ibid*. "Denial of confirmation with leave to amend," by contrast, leaves the "parties' rights and obligations . . . unsettled," and therefore cannot be typed "final." *Id.*, at 503. The appropriate procedural unit for determining finality, we concluded, is not a plan proposal, it is "the process of attempting to arrive at an approved plan." *Id.*, at 502.

B

We take up next the application of *Bullard*'s analysis to a bankruptcy court's order denying relief from the automatic stay. As earlier stated, see *supra,* at 1, under the Bankruptcy Code, the filing of a bankruptcy petition automatically halts efforts to collect prepetition debts from the bankrupt debtor outside the bankruptcy forum. 11 U. S. C. §362(a). The stay serves to "maintai[n] the status quo and preven[t] dismemberment of the estate" during the pendency of the bankruptcy case. 1 Collier ¶1.05[1], p. 1–19; 3 *id.*, ¶362.03, p. 362–23. Among other things, the stay bars commencement or continuation of lawsuits to recover from the debtor, enforcement of liens or judgments against the debtor, and exercise of control over the debtor's property. §362(a).

A creditor may seek relief from the stay by filing in the bankruptcy court a motion for an order "terminating, annulling, modifying, or conditioning" the stay, asserting in support of the motion either "cause" or the presence of specified conditions. §362(d). A majority of circuits and the leading treatises regard orders denying such motions as final, immediately appealable decisions.[2] We reach the same conclusion.

Bullard instructs that we inquire "how to define the immediately appealable 'proceeding' in the context of [stay-relief motions]." 575 U. S., at 502. Jackson urges that, as the Court of Appeals held, adjudication of a stay-relief motion is a discrete "proceeding." Ritzen urges that stay-relief adjudication is properly considered a first step in the process of adjudicating a creditor's claim against the estate.

We agree with the Court of Appeals and Jackson that the appropriate "proceeding" is the stay-relief adjudication. A bankruptcy court's order ruling on a stay-relief motion disposes of a procedural unit anterior to, and separate from,

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[2] See, *e.g.*, *Rajala* v. *Gardner*, 709 F. 3d 1031, 1034 (CA10 2013); *In re Excel Innovations, Inc.*, 502 F. 3d 1086, 1092 (CA9 2007); *In re James Wilson Assocs.,* 965 F. 2d 160, 166 (CA7 1992); *In re Sonnax Industries, Inc.*, 907 F. 2d 1280, 1284–1285 (CA2 1990); *In re Lieb*, 915 F. 2d 180, 185, n. 3 (CA5 1990); *Grundy Nat. Bank* v. *Tandem Mining Corp.*, 754 F. 2d 1436, 1439 (CA4 1985), overruled in part on other grounds by *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365 (1988); *In re American Mariner Industries, Inc.*, 734 F. 2d 426, 429 (CA9 1984), overruled in part on other grounds by *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365; *In re Leimer*, 724 F. 2d 744, 745 (CA8 1984); 16 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §3926.2, p. 352, nn. 39–40 (3d ed. 2012 and Supp. 2019) ("Automatic-stay rulings by a bankruptcy judge or appellate panel should be appealable as final decisions."). See also 1 Collier on Bankruptcy ¶5.09, pp. 5–55 to 5–57 (16th ed. 2019).

claim-resolution proceedings. Adjudication of a stay-relief motion, as just observed, occurs before and apart from proceedings on the merits of creditors' claims: The motion 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. §362(d), (e); Fed. Rules Bkrtcy. Proc. 4001(a)(1) and (2), 9014 (describing procedure for adjudicating motions for relief from automatic stay). Resolution of stay-relief motions does not occur as part of the adversary claims-adjudication process, proceedings typically governed by state substantive law. See *Butner* v. *United States*, 440 U. S. 48, 54–55 (1979). Under *Bullard,* a discrete dispute of this kind constitutes an independent "proceeding" within the meaning of 28 U. S. C. §158(a). 575 U. S., at 502–505.

Our conclusion that the relevant "proceeding" is the stay-relief adjudication is consistent with statutory text. See *id.*, at 503. A provision neighboring §158(a), §157(b)(2)(G), types motions to terminate, annul, or modify the automatic stay as "core proceedings" arising in a bankruptcy case. Section 157(b)(2) lists those motions separately from the "allowance or disallowance of claims against the estate." §157(b)(2)(B), (G). Although the discrete "core proceedings" listings "hardly clinc[h] the matter," as the "provision's purpose is not to explain appealability," they are a "textual clue" that Congress viewed adjudication of stay-relief motions as "proceedings" distinct from claim adjudication. *Bullard*, 575 U. S., at 503.

C

In Ritzen's view, the position Jackson advances and we adopt "slic[es] the case too thin." *Id.*, at 502. Ritzen asserts that an order denying stay relief simply decides the forum for adjudication of adversary claims—bankruptcy court or state court—and therefore should be treated as merely a preliminary step in the claims-adjudication process. Brief for Petitioner 19–21, 26–28.

Courts, we agree, should not define "proceeding" to include disputes over minor details about how a bankruptcy case will unfold. As we put it in *Bullard*, "[t]he concept of finality cannot stretch to cover, for example, an order resolving a disputed request for an extension of time." 575 U. S., at 505.

But Ritzen incorrectly characterizes denial of stay relief as determining nothing more than the forum for claim adjudication. Resolution of a motion for stay relief can have large practical consequences. See 3 Collier ¶362.03, pp. 362–23 to 362–24. Disposition of the motion determines whether a creditor can isolate its claim from those of other creditors and go it alone outside bankruptcy. It can also affect the manner in which adversary claims will be adjudicated. See 11 U. S. C. §502 (permitting summary adjudication or estimation of amounts due in bankruptcy claims adjudication). These are not matters of minor detail; they can significantly increase creditors' costs. Leaving the stay in place may, *inter alia*, delay collection of a debt or cause collateral to decline in value. See Brief for United States as *Amicus Curiae* 14.

Ruling on a motion for stay relief, it is true, will determine where the adjudication of an adversary claim will take place—in the bankruptcy forum or state court. But that effect does not render a ruling nonfinal. Orders denying a plaintiff the opportunity to seek relief in its preferred forum often qualify as final and immediately appealable, though they leave the plaintiff free to sue elsewhere. Notably, dismissal for want of personal jurisdiction ranks as a final decision. See *Daimler AG* v. *Bauman*, 571 U. S. 117, 124–125 (2014). So too, dismissal for improper venue, or under the doctrine of *forum non conveniens*. See *United States* v. *Wallace & Tiernan Co.*, 336 U. S. 793, 794–795, n. 1 (1949); 15A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §§3914.6, 3914.12 (2d ed. 1992 and Supp. 2019) (collecting cases on appealability of dismissal without prejudice to filing in another forum).[3]

Ritzen's position encounters a further shoal: Many motions to lift the automatic stay do not involve adversary claims against the debtor that would be pursued in another forum but for bankruptcy. Bankruptcy's embracive automatic stay stops even nonjudicial efforts to obtain or control the debtor's assets. See §362(a). Motions for stay relief may, for example, seek permission to repossess or liquidate collateral, to terminate a lease, or to set off debts. *Ibid.* These matters do not concern the forum for, and cannot be considered part of, any subsequent claim adjudication. See Brief for National Association of Consumer Bankruptcy Attorneys as *Amicus Curiae* 23–24. We see no good reason to treat stay adjudication as the relevant "proceeding" in only a subset of cases. As we have held in another context, "the issue of appealability" should "be determined for the entire category to which a claim belongs." *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 868 (1994) (addressing collateral order doctrine).

Ritzen alternatively argues that, even if an order denying stay relief is not part of the claims-adjudication process, the order should nonetheless rank as nonfinal where, as here, the bankruptcy court's decision turns on a substantive issue that may be raised later in the litigation. Brief for Petitioner 45. Specifically, Ritzen stresses that it based its stay-relief motion largely on an argument that Jackson filed for bankruptcy in bad faith, an issue that could have been urged again later in the bankruptcy case. *Ibid.*

That argument is misaddressed. Section 158(a) asks

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[3] We note, however, that within the federal court system, when venue is laid in the wrong district, or when the plaintiff chooses an inconvenient forum, transfer rather than dismissal is ordinarily ordered if "in the interest of justice." 28 U. S. C. §§1404(a), 1406.

whether the order in question terminates a procedural unit separate from the remaining case, not whether the bankruptcy court has preclusively resolved a substantive issue. It does not matter whether the court rested its decision on a determination potentially pertinent to other disputes in the bankruptcy case, so long as the order conclusively resolved the movant's entitlement to the requested relief.

Finally, Ritzen protests that the rule we adopt will encourage piecemeal appeals and unduly disrupt the efficiency of the bankruptcy process. *Id.*, at 48–52. As we see it, classifying as final all orders conclusively resolving stay-relief motions will avoid, rather than cause, "delays and inefficiencies." *Bullard*, 575 U. S., at 504. Immediate appeal, if successful, will permit creditors to establish their rights expeditiously outside the bankruptcy process, affecting the relief sought and awarded later in the bankruptcy case. The rule Ritzen urges "would force creditors who lose stay-relief motions to fully litigate their claims in bankruptcy court and then, after the bankruptcy case is over, appeal and seek to redo the litigation all over again in the original court." 906 F. 3d, at 503.

This case is illustrative. After the Bankruptcy Court denied Ritzen's motion for relief from the automatic stay, Ritzen filed a claim against Jackson in the Bankruptcy Court. The parties and court expended substantial resources definitively litigating the dueling breach-of-contract allegations, and Ritzen lost. The Bankruptcy Court thereafter considered and confirmed Jackson's reorganization plan. By endeavoring now to appeal the stay-relief order, after forgoing an appeal directly after the denial, Ritzen seeks to return to square one. Its aim, to relitigate the opposing contract claims in state court. Nevermind that the Bankruptcy Court has fully adjudicated the contract claims and has, without objection from Ritzen, approved Jackson's reorganization plan. The second bite Ritzen seeks scarcely advances the finality principle.

IV

Because the appropriate "proceeding" in this case is the adjudication of the motion for relief from the automatic stay, the Bankruptcy Court's order conclusively denying that motion is "final." The court's order ended the stay-relief adjudication and left nothing more for the Bankruptcy Court to do in that proceeding.[4] The Court of Appeals therefore correctly ranked the order as final and immediately appealable, and correctly affirmed the District Court's dismissal of Ritzen's appeal as untimely.

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For the reasons stated, the judgment of the Court of Appeals is

Affirmed.

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[4] We do not decide whether finality would attach to an order denying stay relief if the bankruptcy court enters it "without prejudice" because further developments might change the stay calculus. Nothing in the record before us suggests that this is such an order.

High court rules that federal courts may make federal common law only to protect 'uniquely' federal interests.

Supreme Court Uses a Bankruptcy Case to Limit the Use of Federal Common Law

The Supreme Court ruled this morning in *Rodriguez v. Federal Deposit Insurance Corp.* that federal courts may not employ federal common law to decide who owns a tax refund when a parent holding company files a tax return but a subsidiary generated the losses giving rise to the refund.

In his eight-page opinion for the unanimous court, Justice Neil M. Gorsuch used a dispute in bankruptcy court to hold that "cases in which federal courts may engage in common lawmaking are few and far between."

The Facts

A bank's holding company was in chapter 7 with a trustee. The bank subsidiary was taken over by the Federal Deposit Insurance Corp. as receiver. The bank subsidiary's losses resulted in a $4 million tax refund payable to the parent under a pre-bankruptcy tax allocation agreement, or TAA, between the parent and the bank subsidiary.

Both the trustee for the holding company and the FDIC, as receiver for the bank, laid claim to the refund. If the holding company owned the refund, the FDIC would have nothing more than an unsecured claim.

The bankruptcy court in Colorado granted summary judgment in favor of the holding company's trustee, concluding that the TAA did not create a trust or agency under Colorado law. In the view of the bankruptcy court, the parent and subsidiary only had a debtor/creditor relationship under the TAA, leaving the FDIC with an unsecured claim for the refund.

On appeal, the district court believed that the Tenth Circuit had adopted the *Bob Richards* rule, first enunciated by the Ninth Circuit in *In re Bob Richards Chrysler-Plymouth Corp.*, 473 F.2d 262 (9th Cir. 1973). *Bob Richards* made a presumption under federal common law that the subsidiary with the losses is entitled to the refund absent a TAA that clearly gives the refund to the parent.

The district court, however, went on to analyze the TAA and found provisions supporting a ruling in favor of the holding company and other provisions where the bank subsidiary would come out on top. The district court ended up relying on tie-breaking language in the TAA that resolved ambiguity in favor of the bank subsidiary. The district court therefore reversed and awarded the refund to the FDIC.

The Tenth Circuit affirmed the district court, first saying that the appeals court had adopted *Bob Richards* in *Barnes v. Harris*, 783 F.3d 1185 (10th Cir. 2015).

Unlike *Barnes* and *Bob Richards*, the Tenth Circuit said that the case on appeal had a written agreement in the form of the TAA. The appeals court ruled that the tie-breaking provision in the TAA created an agency relationship. In the view of the circuit court, the FDIC was entitled to the refund because the holding company was an agent for the bank.

The Tenth Circuit created ambiguity about the basis for its ruling by saying at the end of the opinion that the result did not differ from the rule in *Barnes* and *Bob Richards*.

The circuits are split 3/4. The Fifth, Ninth and Tenth Circuits have followed *Bob Richards*, while the Second, Third, Sixth and Eleventh Circuits reject *Bob Richards* and employ state law to decide who owns a refund and whether the TAA creates an unsecured debtor/creditor relationship.

The holding company's trustee filed a petition for *certiorari* in April 2019. The Court granted the petition at the end of June to answer the one question presented: Does federal common law (*Bob Richards*) or state law determine the ownership of a tax refund?

Courts Have Only 'Limited Areas' for Making Federal Common Law

The handwriting was on the wall on the second page of the opinion. Justice Gorsuch said that state law — such as "rules for interpreting contracts, creating equitable trusts, avoiding unjust enrichment" — are "readymade" for deciding the ownership dispute.

"Judicial lawmaking," Justice Gorsuch said, "plays a necessarily modest role under a Constitution that vests federal" legislative power in Congress. As a result, "only limited areas exist in which federal judges may appropriately craft the rule of decision." Appropriate areas, he said, are in admiralty law and disputes among states.

Citing Supreme Court precedent, Justice Gorsuch said that federal common law is appropriate only when "necessary to protect uniquely federal interests." He found no federal interest in deciding the owner of the tax refund.

Returning to where he began, Justice Gorsuch said that "state law is well equipped to handle disputes involving corporate property rights." A federal bankruptcy, he said, "doesn't change much."

The Remedy

The trustee and the FDIC disagreed on whether the lower courts relied on *Bob Richards* or decided the case based on state law, but Justice Gorsuch said the Supreme Court did not grant *certiorari* to decide how the case should end up under state law.

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Vacating and remanding, Justice Gorsuch said that the Court "took this case only to underscore the care federal courts should exercise before taking up an invitation to try their hand at common lawmaking."

Observations

The case is an example of how the Supreme Court will make law when the justices feel like it, even if there is no longer a dispute between the parties. By the time of oral argument, neither side nor the Solicitor General was defending the *Bob Richards* rule.

With no live controversy regarding *Bob Richards*, several justices made comments at oral argument suggesting that the Court might dismiss the petition as having been improvidently granted. For instance, Justice Ruth Bader Ginsburg said, "we usually don't decide an abstract" question when there is a lack of "adversarial confrontation."

However, several justices seemed primed to strike down *Bob Richards*. Justice Brett M. Kavanaugh said the federal common law was "patently indefensible." Hinting that he would be the author of the Court's opinion, Justice Gorsuch said at oral argument that the outcome should be determined by state law, without "any thumb on the scale by federal common law."

The opinion presents a question for bankruptcy judges: May they announce a rule of bankruptcy common law if the Bankruptcy Code does not provide an answer? Must courts always purport to find an answer in the statute?

The opinion is *Rodriguez v. Federal Deposit Insurance Corp.*, 18-1269 (Sup. Ct. Feb. 25, 2020).

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

RODRIGUEZ, AS CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF UNITED WESTERN BANCORP, INC. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR UNITED WESTERN BANK

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 18–1269. Argued December 3, 2019—Decided February 25, 2020

The Internal Revenue Service (IRS) allows an affiliated group of corporations to file a consolidated federal return. See 26 U. S. C. §1501. The IRS issues any refund as a single payment to the group's designated agent. The tax regulations say very little about how the group members should then distribute that refund among themselves. If a dispute arises and the members have no tax allocation agreement in place, federal courts normally turn to state law to resolve the distribution question. Some courts, however, have crafted their own federal common law rule, known as the *Bob Richards* rule. See *In re Bob Richards Chrysler-Plymouth Corp.,* 473 F. 2d 262. The rule initially provided that, in the absence of an agreement, a refund belongs to the group member responsible for the losses that led to it. But it has since evolved, in some jurisdictions, into a general rule that is always followed unless an agreement unambiguously specifies a different result. Soon after United Western Bank suffered huge losses, its parent, United Western Bancorp, Inc., was forced into bankruptcy. When the IRS issued the group a $4 million tax refund, the bank's receiver, respondent Federal Deposit Insurance Corporation (FDIC), and the parent corporation's bankruptcy trustee, petitioner Simon Rodriguez, each sought to claim it. The dispute wound its way through a bankruptcy court and a federal district court before the Tenth Circuit examined the parties' tax allocation agreement, applied the more expansive version of *Bob Richards,* and ruled for the FDIC.

Held: The *Bob Richards* rule is not a legitimate exercise of federal common lawmaking. Federal judges may appropriately craft the rule of decision in only limited areas, *Sosa* v. *Alvarez-Machain,* 542 U. S. 692, 729, and claiming a new area is subject to strict conditions. One of the most basic is that federal common lawmaking must be "'necessary to protect uniquely federal interests.'" *Texas Industries, Inc.* v. *Radcliff Materials, Inc.,* 451 U. S. 630, 640. The *Bob Richards* rule has not satisfied this condition. The federal courts applying and extending *Bob Richards* have not pointed to any significant federal interest sufficient to support the *Bob Richards* rule. Nor have the parties in this case. State law is well-equipped to handle disputes involving corporate property rights, even in cases, like this one, that involve federal bankruptcy and a tax dispute. Whether this case might yield the same or a different result without *Bob Richards* is a matter the court of appeals may take up on remand. Pp. 4–6.

914 F. 3d 1262, vacated and remanded.

GORSUCH, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 18–1269

SIMON E. RODRIGUEZ, AS CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF UNITED WESTERN BANCORP, INC., PETITIONER *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR UNITED WESTERN BANK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[February 25, 2020]

JUSTICE GORSUCH delivered the opinion of the Court.

This case grows from a fight over a tax refund. But the question we face isn't who gets the money, only how to decide the dispute. Should federal courts rely on state law, together with any applicable federal rules, or should they devise their own federal common law test? To ask the question is nearly to answer it. The cases in which federal courts may engage in common lawmaking are few and far between. This is one of the cases that lie between.

The trouble here started when the United Western Bank hit hard times, entered receivership, and the Federal Deposit Insurance Corporation took the reins. Not long after that, the bank's parent, United Western Bancorp, Inc., faced its own problems and was forced into bankruptcy, led now by a trustee, Simon Rodriguez. When the Internal Revenue Service issued a $4 million tax refund, each of these newly assigned caretakers understandably sought to claim the money. Unable to resolve their differences, they took the matter to court. The case wound its way through a bankruptcy court and a federal district court before eventually landing in the Tenth Circuit. At the end of it all, the court of appeals ruled for the FDIC, as receiver for the subsidiary bank, rather than for Mr. Rodriguez, as trustee for the corporate parent.

How could two separate corporate entities both claim entitlement to a single tax refund? For many years, the IRS has allowed an affiliated group of corporations to file a consolidated federal return. See 26 U. S. C. §1501. This serves as a convenience for the government and taxpayers alike. Unsurprisingly, though, a corporate group seeking to file a single return must comply with a host of regulations. See 26 U. S. C. §1502; 26 CFR §1.1502–0 *et seq.* (2019). These regulations are pretty punctilious about ensuring the government gets all the taxes due from corporate group members. See, *e.g.,* §1.1502–6. But when it comes to the distribution of refunds, the regulations say considerably less. They describe how the IRS will pay the group's designated agent a single refund. See §1.1502–77(d)(5). And they warn that the IRS's payment discharges the government's refund liability to all group members. *Ibid.* But how should the members distribute the money among themselves once the government sends it to their designated agent? On that, federal law says little.

To fill the gap, many corporate groups have developed "tax allocation agreements." These agreements usually specify what share of a group's tax liability each member will pay, along with the share of any tax refund each member will receive. But what if there is no tax allocation agreement? Or what if the group members dispute the meaning of the terms found in their agreement? Normally, courts would turn to state law to resolve questions like these. State law is replete with rules readymade for such tasks—rules for interpreting contracts, creating equitable trusts, avoiding unjust enrichment, and much more.

Some federal courts, however, have charted a different course. They have crafted their own federal common law rule—one known to those who practice in the area as the *Bob Richards* rule, so named for the Ninth Circuit case from which it grew: *In re Bob Richards Chrysler-Plymouth Corp.*, 473 F. 2d 262 (1973). As initially conceived, the *Bob Richards* rule provided that, in the absence of a tax allocation agreement, a refund belongs to the group member responsible for the losses that led to it. See *id.,* at 265. With the passage of time, though, *Bob Richards* evolved. Now, in some jurisdictions, *Bob Richards* doesn't just supply a stopgap rule for situations when group members lack an allocation agreement. It represents a general rule always to be followed unless the parties' tax allocation agreement *unambiguously* specifies a different result.

At the urging of the FDIC and consistent with circuit precedent, the Tenth Circuit employed this more expansive version of *Bob Richards* in the case now before us. Because the parties did have a tax allocation agreement, the court of appeals explained, the question it faced was whether the agreement unambiguously deviated from *Bob Richards*'s default rule. *In re United Western Bancorp, Inc.*, 914 F. 3d 1262, 1269–1270 (2019). After laying out this "analytical framework" for decision, *id.,* at 1269 (emphasis deleted), the court proceeded to hold that the FDIC, as receiver for the bank, owned the tax refund.

Not all circuits, however, follow *Bob Richards*. The Sixth Circuit, for example, has observed that "federal common law constitutes an unusual exercise of lawmaking which should be indulged . . . only when there is a significant conflict between some federal policy or interest and the use of state law." *FDIC* v. *AmFin Financial Corp.*, 757 F. 3d 530, 535 (2014) (internal quotation marks omitted). In the Sixth Circuit's view, courts employing *Bob Richards* have simply "bypassed th[is] threshold question." 757 F. 3d, at 536. And any fair examination of it, the Sixth Circuit has submitted, reveals no conflict that might justify resort to federal common law. *Ibid.* We took this case to decide *Bob Richards*'s fate. 588 U. S. ___ (2019)

Judicial lawmaking in the form of federal common law plays a necessarily modest role under a Constitution that vests the federal government's "legislative Powers" in Congress and reserves most other regulatory authority to the States. See Art. I, §1; Amdt. 10. As this Court has put it, there is "no federal general common law." *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 78 (1938). Instead, only limited areas exist in which federal judges may appropriately craft the rule of decision. *Sosa* v. *Alvarez-Machain*, 542 U. S. 692, 729 (2004). These areas have included admiralty disputes and certain controversies between States. See, *e.g., Norfolk Southern R. Co.* v. *James N. Kirby*, *Pty Ltd.*, 543 U. S. 14, 23 (2004); *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U. S. 92, 110 (1938). In contexts like these, federal common law often plays an important role. But before federal judges may claim a new area for common lawmaking, strict conditions must be satisfied. The Sixth Circuit correctly identified one of the most basic: In the absence of congressional authorization, common lawmaking must be "'necessary to protect uniquely federal interests.'" *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U. S. 630, 640 (1981) (quoting *Banco Nacional de Cuba* v. *Sabbatino*, 376 U. S. 398, 426 (1964)).

Nothing like that exists here. The federal government may have an interest in regulating how it *receives* taxes from corporate groups. See, *e.g.,* 26 CFR §§1.1502–6, –12, –13. The government also may have an interest in regulating the *delivery* of any tax refund due a corporate group. For example and as we've seen, the government may wish to ensure that others in the group have no recourse against federal coffers once it pays the group's designated agent. See §1.1502–77(d)(5). But what unique interest could the federal government have in determining how a consolidated corporate tax refund, once paid to a designated agent, is *distributed* among group members?

The Sixth Circuit correctly observed that *Bob Richards* offered no answer—it just bypassed the question. Nor have the courts applying and extending *Bob Richards* provided satisfactory answers of their own. Even the FDIC, which advocated for the *Bob Richards* rule in the Tenth Circuit, failed to point that court to any unique federal interest the rule might protect. In this Court, the FDIC, now represented by the Solicitor General, has gone a step further, expressly conceding that federal courts "should not apply a federal common law rule to . . . put a thumb on . . . the scale" when deciding which corporate group member owns some or all of a consolidated refund. Tr. of Oral Arg. 40; see also *id*., at 32–36.

Understandably too. Corporations are generally "creatures of state law," *Cort* v. *Ash*, 422 U. S. 66, 84 (1975), and state law is well equipped to handle disputes involving corporate property rights. That cases like the one now before us happen to involve corporate property rights in the context of a federal bankruptcy and a tax dispute doesn't change much. As this Court has long recognized, "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law." *Butner* v. *United States*, 440 U. S. 48, 54 (1979). So too with the Internal Revenue Code—it generally "'creates no property rights.'" *United States* v. *National Bank of Commerce*, 472 U. S. 713, 722 (1985) (quoting *United States* v. *Bess*, 357 U. S. 51, 55 (1958)). If special exceptions to these usual rules sometimes might be warranted, no one has explained why the distribution of a consolidated corporate tax refund should be among them.

Even if the Tenth Circuit's reliance on *Bob Richards*'s analytical framework was mistaken, the FDIC suggests we might affirm the court's judgment in this case anyway. The

FDIC points out that the court of appeals proceeded to consult applicable state law—and the FDIC assures us its result follows naturally from state law. The FDIC also suggests that the IRS regulations concerning the appointment and duties of a corporate group's agent found in 26 CFR §§1.1502–77(a) and (d) tend to support the court of appeals's judgment. Unsurprisingly, Mr. Rodriguez disagrees with these assessments and contends that, absent *Bob Richards*, the Tenth Circuit would have reached a different outcome.

Who is right about all this we do not decide. Some, maybe many, cases will come out the same way under state law or *Bob Richards*. But we did not take this case to decide how this case should be resolved under state law or to determine how IRS regulations might interact with state law. We took this case only to underscore the care federal courts should exercise before taking up an invitation to try their hand at common lawmaking. *Bob Richards* made the mistake of moving too quickly past important threshold questions at the heart of our separation of powers. It supplies no rule of decision, only a cautionary tale. Whether this case might yield the same or a different result without *Bob Richards* is a matter the court of appeals may consider on remand. See, *e.g., Conkright* v. *Frommert*, 559 U. S. 506, 521–522 (2010); *Travelers Casualty & Surety Co. of America* v. *Pacific Gas & Elec. Co.*, 549 U. S. 443, 455–456 (2007); *Gonzales* v. *Duenas-Alvarez*, 549 U. S. 183, 194 (2007).

The judgment of the court of appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.