No. 20-1004

IN THE

Supreme Court of the United States

OCTOBER TERM, 2020

IN RE EARL THOMAS PETTY, DEBTOR,

WILDFLOWERS COMMUNITY BANK, PETITIONER

V.

EARL THOMAS PETTY, RESPONDENT.

ON WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

TEAM NO. 16
Counsel for Respondent

QUESTIONS PRESENTED

1. Whether this Court should compel arbitration for Petty's claim for a violation of the automatic stay, when there is an inherent conflict between the arbitration mandate in the Federal Arbitration Act and the policy objectives of the automatic stay under the Bankruptcy Code.

2. Whether § 362(c)(3)(A) terminates the automatic stay solely for actions against the debtor and the debtor's property but not against property of the estate, when the statute's language provides that the stay terminates "with respect to the debtor" and makes no mention of property of the estate.

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OPINIONS BELOW

The United States Bankruptcy Court for the District of Moot held for Respondent, Earl Thomas Petty, on both issues. Specifically, the bankruptcy court found that: (1) regardless of the prepetition arbitration agreement between Petty and Wildflowers Community Bank, the bankruptcy court had the authority to decide the parties' dispute; and (2) 11 U.S.C § 362(c)(3)(A) does not terminate the automatic stay with respect to the property of the estate. The Thirteenth Circuit Court of Appeals affirmed on both issues. This Court then granted the Wildflowers Community Bank's petition for writ of certiorari.

STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived pursuant to Competition Rule VIII.

STATUTORY PROVISIONS INVOLVED

The relevant federal laws controlling this case are 11 U.S.C. §§ 362(a)-(d) of the United States Bankruptcy Code and the Federal Arbitration Act, 9 U.S.C. §§ 2, 3, and 4. The text of these provisions are attached in **Appendix A–D.**

STATEMENT OF FACTS

Earl Thomas Petty ("Petty") took a risk and pursued his passion by opening a craft-brewery, the Great Wide Open Brewing Company ("Great Wide Open"), in 2002. R. at 3. While his operation started humble, in just three short years Petty opened a 9,000 square foot taproom in Royal Rapid Moot. R. at 3. Petty used his own money to purchase the small batch brewing equipment (the "Equipment") needed to run the taproom. R. at 3. Soon, Great Wide Open found success and became one of the largest craft breweries in the State of Moot. R. at 3.

In September of 2011, Great Wide Open needed capital to fund expansion plans and turned to Wildflowers. R. at 4. Great Wide Open and Wildflowers entered into a $35 million revolving loan that was secured by substantially all of Great Wide Open's assets. R. at 4. Petty also personally guaranteed repayment of the loan and granted a lien on the Equipment to secure the personal guarantee. R. at 4. Both Great Wide Open and Petty's agreements contained "arbitration" clauses that stated: "any and all disputes, claims, or controversies of any kind between us arising out of or relating to the relationship between us will be resolved through mandatory, binding arbitration and each party voluntarily gives up any rights to have such disputes litigated in a court or by jury trial." R. at 4. In 2017, catastrophe struck when demand in the craft beer industry began to decline just as competition was increasing which caused Great Wide Open to have liquidity problems. R. at 5. In March 2018, the debt burden that Great Wide Open faced forced them to close three of their taproom locations. R. at 5.

In April 2018, both Great Wide Open and Petty defaulted on their loan obligations. *Id.* Due to the default, Wildflowers filed a demand for arbitration and a breach of contract claim for which an initial conference in arbitration was scheduled for July 12, 2018. *Id.* On July 12, 2018, Great Wide Open filed a chapter 7 bankruptcy case. R. at 5. That same day, Petty also filed a chapter 11

bankruptcy petition. R. at 5. Shortly thereafter, on August 27, 2018, Petty's chapter 11 bankruptcy was dismissed because Petty was unable to file certain bankruptcy documents in time. R. at 5.

On January 11, 2019, Petty hired a new bankruptcy attorney and filed a second chapter 11 bankruptcy prior to arbitration recommencing. R. at 5–6. The plan of reorganization proposed to pay creditors forty cents on the dollar over five years. R. at 6. As part of his reorganization plan, Petty opened a taproom in December 2019 as a sole proprietorship named "Full Moon Fever Brewing." R. at 6. Petty used the Equipment to produce beer once again. R. at 6. With some breathing room to operate, Full Moon Fever Brewing was a success, and produced profits in its first month. R. at 6.

However, Wildflowers saw an opportunity to derail the plan when they noticed that Petty did not file a motion to extend the automatic stay during the first thirty days of the Second Bankruptcy Case. R. at 6. Wildflowers could have sought clarification from the bankruptcy court with respect to the status of the stay. R. at 6. But instead chose to repossess the Equipment on day thirty-two, which shutdown Full Moon Fever Brewing and "destroyed the goodwill that the business had generated since opening." R. at 6–7.

Petty proceeded to file a motion against Wildflowers in the Second Bankruptcy Case, seeking $500,000 in damages for violation of the automatic stay. R. at 6. In response, Wildflowers argued that arbitration of the claim should be compelled because of the arbitration provision in Petty's personal guarantee. R. at 7. Wildflowers also argued the automatic stay had terminated for actions against property of the estate, which comprised of the Equipment, because Petty failed to file a motion to extend the stay under § 362(c)(3)(A). R. at 7. The bankruptcy court ruled in favor of Petty on both arguments. R. at 7.

Subsequently, Wildflowers appealed to the United States Court of Appeals for the Thirteenth Circuit. R. at 7. That court again ruled in favor of Petty and affirmed the bankruptcy court's ruling on both issues. R. at 19. The Thirteenth Circuit held that the FAA inherently conflicts with the bankruptcy policy behind the automatic stay, and that the stay continues to apply to property of the estate. R. at 8,14. After the bankruptcy court was affirmed, Wildflowers filed a timely petition for writ of certiorari which this court granted. R. at 1.

STANDARD OF REVIEW

This case only presents questions of law because the facts are undisputed. R. at 9. When there are only questions of law, the standard of review is de novo. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014). Under de novo review, this Court must decide questions of law as though it was the original court reviewing the case. *Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996).

SUMMARY OF THE ARGUMENT

First, both the Bankruptcy Court and the Thirteenth Circuit Court were correct in holding that § 362 of the Bankruptcy Code impliedly repealed the Federal Arbitration Act because compelling arbitration of Petty's claim for violation of the automatic stay inherently conflicts with the policy considerations of the stay. While there is a strong federal policy favoring arbitration, that fpolicy is not absolute. In situations where the Code is found to inherently conflict with the FAA, bankruptcy courts have rejected arbitration. When it comes to the automatic stay, bankruptcy courts have considered the relevant goals of bankruptcy to determine if rejecting arbitration is proper. The bankruptcy policies behind the automatic stay are centralizing disputes, protecting

creditors and debtors, and utilizing the expertise of the bankruptcy court to promote an effective reorganization.

Compelling arbitration of Petty's claim would defeat these policies because it would decentralize this dispute. Furthermore, Petty's claim involves the rights of all parties to the bankruptcy including the other creditors because Wildflowers seized assets that were crucial to the reorganization. Compelling arbitration would remove this claim from bankruptcy, where the other creditors' interests are unrepresented, resulting in unequal treatment of creditors. Because Petty's bankruptcy is ongoing, the violation of the stay claim would impact a reorganization and requires the unique expertise of the bankruptcy court to enforce it. When looking at the key bankruptcy policies there is clear and manifest evidence that the FAA inherently conflicts with the policy considerations of the stay.

Second, the lower courts were also correct in holding that § 362(c)(3)(A) does not apply to property of the estate. The majority view, which interprets § 362(c)(3)(A) to terminate the stay only for actions against the debtor and property of the debtor comports with the plain language of the statute. The language explicitly states that the stay is terminated "with respect to the debtor" and makes no mention of property of the estate. Additionally, § 362(c)(3)(A) contains language limiting the scope of the stay while § 362(c)(4)(A)(i) does not—indicating that Congress intended each provision to be different.

In contrast, the minority view, which interprets the statute to terminate the stay in its entirety, disregards the plain language and instead relies on scant legislative history to support its policy preference in favor of enacting harsher punishments for serial-filing debtors. However, even if this Court goes beyond the plain language and considers legislative history, the majority view is

also consistent with Congress' purpose of deterring serial-filing because it provides consequences for debtors who file successive cases in bad faith.

Lastly, the majority view is also supported with the Bankruptcy Code's policies of providing a successful reorganization and maximizing value of the estate because it protects property of the estate by preventing a single creditor from undermining an entire reorganization.

Thus, this Court should affirm the lower court and hold that § 362 impliedly repeals the FAA and § 362(c)(3)(A) does not apply to property of the estate.

ARGUMENT

I. PETTY'S CLAIM SHOULD BE DECIDED BY THE BANKRUPTCY COURT BECAUSE THERE IS AN INHERENT CONFLICT BETWEEN THE CODE AND THE FAA

The Federal Arbitration Act ("FAA") was adopted to establish "a liberal federal policy favoring arbitration agreements." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018) (internal quotations and citations omitted). The passage of the FAA was intended to confirm a court's commitment to enforcing the terms of arbitration agreements. *Id.* While the FAA indicates a strong federal policy favoring arbitration, that preference is not absolute. *Shearson/American Exp., Inc. v. McMahon*, 482 U.S. 220, 226 (1987). This Court has held that the FAA's mandate "may be overridden by a contrary congressional command," which can be discerned from (1) the statutory text, (2) legislative history, or (3) *"from an inherent conflict between arbitration and the statute's underlying purposes*." *Id.* at 226–27 (internal quotations omitted) (emphasis added).

When it comes to the Bankruptcy Code displacing the FAA, courts have found statutory text and the legislative history to not be helpful to the analysis. *See e.g.*, *In re Thorpe Insulation Co.*, 671 F.3d 1011, 1020 (9th Cir. 2012) (stating that the text and the legislative history did not reflect "congressional intent to preclude arbitration in the bankruptcy setting"). Instead, courts have focused on the third prong in *McMahon*: whether there is an inherent conflict between compelling arbitration and bankruptcy's underlying purposes. *Id.* at 1021; *see also In re Anderson*, 884 F.3d 382, 389 (2d Cir. 2018) *cert. denied*, 139 S. Ct. 144 (2018); *In re Elec. Mach. Enters., Inc.*, 479 F.3d 791, 796 (11th Cir. 2007); *In re Mintze*, 434 F.3d 222, 231 (3d Cir. 2006); *In re White Mt. Mining Co., LLC.*, 403 F.3d 164, 169–70 (4th Cir. 2005); *Matter of Natl. Gypsum*, 118 F.3d 1056, 1069 (5th Cir. 1997).

A. An Inherent Conflict Exists Between the Code and the FAA Because Compelling Arbitration of Petty's Claim Would Undermine Key Bankruptcy Policies.

In determining whether compelling arbitration presents an inherent conflict with the Code, some courts look at the claim to determine if it is a "core" or a "non-core" claim. *E.g.*, *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108 (2d Cir. 2006) (holding that courts must compel arbitration when it comes to non-core bankruptcy claims). Others look to the nature of the claim to see if it is derivative of the Code's provisions as opposed to derivative of the debtor's prepetition legal or equitable rights. *E.g.*, *Matter of Natl. Gypsum*, 118 F.3d at 1067–68. (distinguishing "between actions derived from the debtor, and therefore subject to the arbitration agreement, and bankruptcy actions in essence created by the Bankruptcy Code for the benefit ultimately of creditors of the estate, and therefore not encompassed by the arbitration agreement").

Here, Petty's claim, seeking damages under § 362(k) for a violation of the automatic stay, is both a core claim and derivative of the Code's provisions. It is undisputed that claims for violation of an automatic stay are core claims. *See e.g.*, *In re Zumbrun*, 88 B.R. 250, 253 (Bankr. App. 9th Cir. 1988). Such claims are also derivative of the Code because under § 362(a) the automatic stay goes into effect upon filing the petition and § 362(k) provides a debtor remedies for violations of the stay. 11 U.S.C. § 362 (2020); *In re Merrill*, 343 B.R. 1, 9 (Bankr. D. Me. 2006) (stating that the "automatic stay and entitlement to remedies for its violation are creatures of the Code").

However, after determining that a claim is "core" or derivative of the Code, courts must also "engage in a particularized inquiry into the nature of the claim and the facts of the specific bankruptcy," to determine whether an inherent conflict with the FAA exists. *In re Anderson*, 884 F.3d at 389; *see also Matter of Natl. Gypsum*, 118 F.3d at 1069–70. In order to show that there is an inherent conflict, the party opposing arbitration must show that compelling arbitration would

undermine key bankruptcy policies such as: (1) the "centralized resolution of bankruptcy issues," (2) the "need to protect creditors and reorganizing debtors from piecemeal litigation," and (3) the "undisputed power of a bankruptcy court to enforce its own orders." *In re Trevino*, 599 B.R. 526, 545 (Bankr. S.D. Tex. 2019); *see also In re Anderson*, 884 F.3d at 389; *Matter of Natl. Gypsum*, 118 F.3d at 1069; *In re Thorpe*, 671 F.3d at 1022-23. This Court clarified that the party opposing arbitration bears a heavy burden of showing by clear and manifest evidence that an inherent conflict exists. *Epic*, 138 S. Ct. at 624.

1. Petty's Claim is Essential to the Centralized Resolution of His Bankruptcy.

With regard to a claim for violation of the stay, having a centralized resolution of bankruptcy issues requires determining if the stay is still in force and has effect. *In re Trevino*, 599 B.R. at 546. This is because the automatic stay serves "one of the core purposes of bankruptcy, by enabling the bankruptcy court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *S.E.C. v. Miller*, 808 F.3d 623, 630 (2d Cir. 2015) (internal quotations and citations omitted). After the close of a bankruptcy case, the stay is no longer in effect and arbitration of a stay claim would not impact the policy regarding centralization of issues. *Id.* However, while the case is still open and the automatic stay is in effect, the stay works to "create the foundation of debtor protection to be provided through . . . the specialized bankruptcy court." *In re Merrill*, 343 B.R. at 9.

Here, the automatic stay came into effect when petty filed his Ch. 11 petition on January 11, 2019. R. 5. Because the case is still open, it is clear that Petty's claim is essential to the centralized resolution of his bankruptcy as the stay is still in force and has effect and could impact whether his plan is even confirmed. *See In re Banks*, 577 B.R. 659, 665 (Bankr. E.D. Va. 2017)

(stating that the stay "remains in effect as to actions against the debtor until the debtor is granted or denied a discharge"). Thus, Petty's claim for violation of the stay must be heard by the bankruptcy court in order to have a centralized resolution of his case.

2. The Bankruptcy Court Must Adjudicate Petty's Claim to Protect Petty and His Creditors from Piecemeal Litigation.

The second policy consideration prevents "different creditors from bringing different proceedings in different courts," *Sunshine Dev., Inc. v. F.D.I.C.*, 33 F.3d 106, 114 (1st Cir. 1994), in order to avoid "piecemeal dismemberment of the debtor's estate outside the bankruptcy proceedings." *In re Padilla*, 379 B.R. 643, 664 (Bankr. S.D. Tex. 2007). The automatic stay curbs piecemeal litigation to ensure creditors are treated fairly and equitably. *In re Halas*, 194 B.R. 605, 611 (Bankr. N.D. Ill. 1996). However, the equal treatment of creditors is undermined when arbitration is sought for a claim that would have a significant impact on the outcome of a reorganization. *In re Hemphill Bus Sales, Inc.*, 259 B.R. 865, 872 (Bankr. E.D. Tex. 2001). This is because when arbitration is requested for resolution of a claim that is absolutely essential for a successful reorganization, the fate of the creditors' and debtors' bankruptcy rights are outsourced to an arbiter. *Id.* Arbitration, in this circumstance, controls the rights of the two parties to the arbitration agreement to the exclusion and detriment of the other creditors, which in turn incentivizes those creditors to race "to various courthouses to pursue independent remedies to drain the debtor's assets." *Id.*; *In re Gruntz*, 202 F.3d 1074, 1081 (9th Cir. 2000).

Here, it is critical for the bankruptcy court to adjudicate Petty's claim to protect the rights of both Petty and the other creditors. Whether Wildflowers violated the automatic stay in repossessing the Equipment has a significant impact on Petty's reorganization because the Equipment was necessary to keep Petty's business open and fund the plan. R. at 7. As such, arbitrating Petty's claim would undermine the rights of his other creditors because those creditors

are excluded from a resolution that will affect the success of the plan in its entirety. In order to protect those rights and prevent piecemeal litigation from creditors from racing to various courthouses to pursue their own remedies against the estate, Petty's claim must be decided solely by the Bankruptcy Court.

3. The Bankruptcy Court is Uniquely Able to Enforce and Interpret Petty's Claim for Violation of the Automatic Stay.

The third bankruptcy policy requires courts to consider whether compelling arbitration would undermine the undisputed power of a bankruptcy court to enforce its own decisions. *In re Trevino*, 599 B.R. at 547–48. Where the claim is for a violation of the stay, bankruptcy courts have a "unique and compelling interest" to ensure the stay is followed. *In re Rushing*, 443 B.R. 85, 97–98 (Bankr. E.D. Tex. 2010). This is because violation of a stay affects not only the injured party but all of the parties to a bankruptcy. *Id.* at 98. (stating that a "bankruptcy court is the best-equipped forum in which to evaluate the significance and impact of any alleged stay violation"). Because of this courts have reasoned that "applying and enforcing the stay" is not a "simple exercise" and typically requires a "bankruptcy judge's experience and training." *Id.* at 97. Thus, courts have held that compelling arbitration for a stay claim would be a violation of the "fundamental protection of the automatic stay." *Id.* (holding that when the stay is in effect courts have an "obligation" to "construe and enforce" the stay and to "determine the parties' right and obligations under bankruptcy law").

In this case, whether Wildflowers violated the automatic stay hinges on whether the automatic stay has been terminated for property of the estate under § 362(c)(3)(A). *See* 11 U.S.C. § 362(c)(3)(A) (2020). This is an issue of statutory interpretation that strictly deals with bankruptcy considerations and policies and the outcome affects all of the parties to the bankruptcy. Applying and enforcing Petty's claim is not a simple exercise and requires the expertise of the bankruptcy

court. In contrast, compelling arbitration would put Petty's claim in a forum that only considers the two parties to the agreement. *In re Hemphill*, 259 B.R. at 872. When it comes Petty's claim, an arbitrator cannot act to protect the other creditors because those creditors are not parties to the claim. Thus, compelling arbitration of Petty's claim would undermine the policy goals of bankruptcy.

Furthermore, a claim for a violation of the automatic stay should be treated no differently than a claim for a violation of the discharge injunction. And courts have uniformly rejected arbitration and kept claims for violations of the discharge injunction solely within the bankruptcy court—reasoning that bankruptcy courts retain a "unique expertise in interpreting" such claims. *See e.g.*, *In re Anderson*, 884 F.3d at 390–91 (stating that "Congress afforded the bankruptcy wide latitude to enforce their own orders [and] to carry out provisions of the Bankruptcy Code").

In fact, the automatic stay is the functional equivalent to a discharge injunction. *In re Banks*, 577 B.R. at 665. After a case is closed and a debt is discharged, the discharge injunction replaces the automatic stay. *Id.* And any actions that would violate the automatic stay would also violate the discharge injunction once the stay has expired. *Id.* Additionally, the automatic stay, like the discharge injunction is a self-executing injunction issued from the bankruptcy court's own authority. *In re Gruntz*, 202 F.3d at 1081–82. If a bankruptcy court must retain unique expertise in interpreting violations of discharge injunctions, it follows logically that a bankruptcy court would have to retain that same unique expertise in interpreting violations of the automatic stay.

Thus, arbitration of Petty's claim should be rejected because arbitration would undermine the bankruptcy courts power to enforce and interpret its own orders.

B. Compelling Arbitration of Petty's Claim Would Seriously Jeopardize a Particular Core Bankruptcy Proceeding Because Petty's Bankruptcy is Ongoing.

The courts that have considered this issue and compelled arbitration were not facing a claim that is as crucial to reorganization as Petty's claim. For example, in *Hill*, the Second Circuit Court of Appeals applied these bankruptcy policies in the context of an alleged violation of the stay. *Hill*, 436 F.3d at 106. That case involved a debtor's claim that a violation of the stay occurred when the creditor withdrew a scheduled monthly payment from the debtor's account after they filed for bankruptcy. *Id.* The court applied *McMahon* and looked at the policy considerations of bankruptcy to determine if there was an inherent conflict between the FAA and the Code. *Id.* at 108. The court held that compelling arbitration would not "seriously jeopardize a particular core bankruptcy proceeding" for three reasons. *Id.* at 109. First and most importantly, because the estate had already been fully administered and the debt already discharged, the debtor no longer needed the automatic stay's protection and resolution of the claim would not impact the estate. *Id.* at 109. Second, the debtor's claim lacked "direct connection to [the debtor's] own bankruptcy case" because the debtor filed their claim as a putative class action by which the debtor's claim was tied "to a class of allegedly similarly situated individuals, many of whom are no longer in bankruptcy proceedings". *Id.* at 109–10. Finally, the court reasoned that "a stay is not so closely related to an injunction that the bankruptcy court is uniquely able to interpret and enforce its provisions." *Id.* at 109.

Petty's claim for a violation of the stay can be distinguished from *Hill* for several reasons. Crucially, in *Hill*, the debtor's estate had already been fully administered and the debt already discharged. Accordingly, the debtor no longer needed the automatic stay's protection and resolution of the claim would not impact the estate. Here, Petty desperately needs the automatic stay's protection. Petty just recently rolled out his reorganization plan. Therefore, the administration of Petty's estate is at its infancy and the promise of discharged debt still awaits.

More importantly, the success of Petty's reorganization plan hinges on the resolution of Petty's claim. Without the Equipment, Petty likely cannot finance the reorganization plan because Great Wide Open cannot produce beer. Thus, whether or not Petty keeps the Equipment (in other words, whether or not the stay was violated) directly impacts the estate's capacity to finance the reorganization plan.

Furthermore, the debtor's claim in *Hill* lacked a direct connection to the debtor's own bankruptcy case because the claim was filed as a putative class action. Conversely, Petty's claim is not only not filed as a class action, but it is directly connected to Petty's reorganization plan. Petty seeks to enforce the stay so that the estate is not deprived of the source of the reorganization plan's revenue—the ability to run his business and generate income via the Equipment.

Finally, while the court in *Hill* reasoned that bankruptcy courts are not uniquely able to enforce and interpret the stay, it did so because in that circumstance the bankruptcy case was already concluded. As discussed earlier, bankruptcy courts have justified retaining jurisdiction over a violation of the stay claim because they are uniquely able to enforce and interpret the stay. In *Hill*, the violation of the stay claim did not require any bankruptcy expertise because the bankruptcy was concluded, and the claim would have no effect on the bankruptcy. Here, because the bankruptcy is ongoing, Petty's violation of the stay claim requires bankruptcy expertise because it will have a major effect on the bankruptcy.

This is consistent with the notion that bankruptcy issues should remain in the bankruptcy forum. The bankruptcy code was written to centralize disputes, provide equitable allocation to creditors, and to provide the debtor with a fresh start. *Moses v. CashCall, Inc.*, 781 F.3d 63, 72 (4th Cir. 2015). Arbitration serves to decentralize disputes which inherently conflicts with the concept of bankruptcy. *Hill*, 436 F.3d at 108 (stating that the Code and the FAA "present conflicts

of near polar extremes, . . . bankruptcy policy exerts an inexorable pull towards centralization while arbitration policy advocates a decentralized approach") (internal quotations and citations omitted). It is logical to conclude that when a bankruptcy court is dealing with purely bankruptcy issues such as violations of the stay, Congress intended for these issues to be centralized and resolved by bankruptcy courts. *In re Startec Glob. Commun. Corp.*, 300 B.R. 244, 254 (D. Md. 2003) (finding that arbitration of the automatic stay violation claim seriously jeopardises the bankruptcy code because the claim is integral to the bankruptcy court's ability to administer the estate); *In re Rushing*, 443 B.R. at 98 (same); *In re Jorge*, 568 B.R. 25, 37–38 (Bankr. N.D. Ohio 2017) (same); *In re Lucas*, 312 B.R. 559, 571 (Bankr. D. Md. 2004) (same); *In re Cavanaugh*, 271 B.R. 414, 426 (Bankr. D. Mass. 2001) (same).

In contrast, courts have allowed arbitration to proceed where the claim being arbitrated is a non-bankruptcy code matter. *In re Merrill*, 343 B.R. at 10–11 (concluding that arbitration may be compelled to all claims except the violation of stay); *see also In re MicroBilt Corp.*, 484 B.R. 56, 65 (Bankr. D.N.J. 2012) (compelling arbitration for state law tort claims); *In re Touchstone Home Health LLC*, 572 B.R. 255, 281 (Bankr. D. Colo. 2017) (breach of contract claims); *In re Farmland Industries, Inc.*, 309 B.R. 14, 20 (Bankr. W.D. Mo. 2004) (same); *In re Shores of Panama, Inc.*, 387 B.R. 864, 867 (Bankr. N.D. Fla. 2008) (same). Thus, because Petty's claim is a purely bankruptcy matter it should remain in the bankruptcy forum.

C. *Epic* Did Not Displace the *McMahon* Test to Determine Whether a Statute Overrides the FAA.

The courts that have approached this issue post-*Epic* have all agreed that *Epic* simply stood to reinforce the idea that arbitration should be enforced unless there is clear and manifest evidence of an inherent conflict between arbitration and the Code. *See Matter of Henry*, 944 F.3d 587, 592 (5th Cir. 2019) (reasoning that while "*Epic Systems* has a different tone, the test it employs is

substantially the same as *McMahon*'s . . . The difference between a 'deducible' congressional intent, and a 'clear and manifest' intent, is not an unequivocal direction to overrule our precedent") (internal quotations and citations omitted); *In re Homaidan*, 587 B.R. 428, 440 (Bankr. E.D.N.Y. 2018) (reasoning that *Epic* is consistent with *McMahon* and finding an inherent conflict between the FAA and the Code requires looking at the policy considerations of bankruptcy); *In re Roth*, 594 B.R. 672, 676 (Bankr. S.D. Ind. 2018) (treating *McMahon* as the correct current standard because *Epic* "is silent as to any attempt to overrule *McMahon*", and "in fact [*McMahon*] was cited in the *Epic* decision"); *In re Trevino*, 599 B.R. at 545–46 (stating that *Epic* clarified there is a clear and manifest burden when applying the *McMahon* test to find an inherent conflict between the FAA and the Code); *Ranginwala v. Citibank, N.A.*, 2020 WL 6817508, at *4 (D.N.J. Nov. 19, 2020) (same); *Knepp v. Educ. Fin. Services*, 2018 WL 11199014, at *4 (Bankr. D.N.J. Dec. 26, 2018) (finding that *Epic* does not overrule *McMahon* and "at most, refines . . . the standard for assessing congressional intent that one statute repeal another"); *see also In re Bauer*, 2020 WL 3637902, at *3 (Bankr. D.S.C. June 8, 2020) (using the *McMahon* test while acknowledging that *Epic* clarifies the burden of proof required to establish an inherent conflict is high); *Midland Funding LLC v. Thomas*, 606 B.R. 687, 693 (W.D. Va. 2019) (still applying the *McMahon* standard even though the case is post-*Epic*).

Furthermore, this Court does not overrule its earlier precedent by implication. *Agostini v. Felton*, 521 U.S. 203, 237 (1997). When this Court decided *Epic*, it was "silent as to any attempt to overrule *McMahon*." *In re Roth*, 594 B.R. at 676. Therefore, *McMahon* is good law and controlling precedent. *Id.* In fact, this Court had the opportunity to overrule *McMahon* and denied certiorari review on a case that applied the *McMahon* test. *In re Anderson*, 139 S. Ct. at 144.

In conclusion, this Court should affirm the lower court's decision to reject Wildflower's request to compel arbitration because there is clear and manifest evidence that compelling arbitration of Petty's claim would undermine bankruptcy's key policies.

II. SECTION 362(C)(3)(A) TERMINATES THE AUTOMATIC STAY FOR ACTIONS AGAINST THE DEBTOR AND THE DEBTOR'S PROPERTY, NOT PROPERTY OF THE ESTATE.

The automatic stay is a fundamental part of our bankruptcy system. *In re Rushing*, 443 B.R. at 97. Not only does it protect debtors from being harassed with collection and foreclosure actions, it also protects creditors by ensuring they all receive a fair and equitable distribution of assets. *In re Timbers of Inwood Forest Assoc., Ltd.*, 793 F.2d 1380, 1409 (5th Cir. 1986); *see also GATX Aircraft Corp. v. M/V Courtney Leigh*, 768 F.2d 711, 716 (5th Cir. 1985) ("Its purposes are to protect the debtor's assets, provide temporary relief from creditors, and further equity of distribution among the creditors by forestalling a race to the courthouse."). For without the automatic stay, creditors would be able to undermine an entire plan of reorganization. *In re Holcomb*, 380 B.R. 813, 816 (Bankr. App. 10th Cir. 2008).

Another creditor protection found in the Code is § 362(c)(3). 11 U.S.C. § 362(c)(3) (2020). Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), this provision was added by Congress to deter "serial filings"—where debtors file multiple cases to delay creditors rather than in a genuine effort to reorganize and pay off their debts. Howard Gershman, *Serial Filings, Stay Termination, and Following Alice Through Bankruptcy Code § 362(c)(3)*, 2019 Ann. Surv. of Bankr. Law 12 (2019).

Section § 362(c)(3)(A) states:

> [I]f a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

> (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate *with respect to the debtor* on the 30th day after the filing of the later case.

11 U.S.C. § 362(c)(3)(A) (emphasis added). In the context of a debtor who has had one filing pending and dismissed within the previous year, two diverging interpretations of § 362(c)(3)(A) have led to conflicting results for both debtors and creditors. *See In re Jones*, 339 B.R. 360, 365 (Bankr. E.D.N.C. 2006) (adopting the majority approach); *but see In re Smith*, 910 F.3d 576, 591 (1st Cir. 2018) (adopting the minority approach).

The minority view, which dismisses the plain language of the statute and instead relies on legislative history and policy behind BAPCPA, interprets § 362(c)(3)(A) as terminating the automatic stay in its entirety—including actions against the debtor, the debtor's property, *and* property of the estate. *See e.g.*, *In re Smith*, 910 F.3d at 591; *In re Reswick*, 446 B.R. 362, 373 (Bankr. App. 9th Cir. 2011); *In re Goodrich*, 587 B.R. 829, 849 (Bankr. D. Vt. 2018).

In contrast, the majority of courts adhere to the rules of statutory construction and follow the plain language of the phrase "with respect to the debtor" to conclude that § 362(c)(3)(A) terminates the stay for actions only against the debtor and the debtor's property. *See e.g.*, *Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226, 232 (5th Cir. 2019); *In re Holcomb*, 380 B.R. at 816; *In re Hale*, 535 B.R. 520, 527 (Bankr. E.D.N.Y. 2015); *In re Jones*, 339 B.R. at 365.

The Court should follow the majority approach because it adheres to the fundamental principles of statutory interpretation and is consistent with the policy goals of BAPCPA and bankruptcy law generally.

A. Both the Plain Language of the Statute and the Purpose Discerned from the Legislative History Confirm that § 362(c)(3)(A) Does Not Apply to Property of the Estate.

A central tenet of statutory interpretation is that when the language of the statute is plain and unambiguous, "the sole function of the courts is to enforce it according to its terms." *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States,* 242 U.S. 470, 485 (1917)). As long as the language is consistent with the overall statutory scheme, that is where judicial inquiry must end. *Id.* at 241–242. Only in exceedingly rare circumstances, in which the plain meaning produces an absurd result, is a court to go beyond the language to ascertain legislative intent. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (stating that the Court should only depart from the literal words of a statute where the meaning of those words "would thwart the obvious purpose of the statute"). Because the language of § 362(c)(3)(A) is plain and does not produce an absurd result, this Court must "enforce it according to its terms."

1. The Language of § 362(c)(3)(A) is Clear When Read in Accordance with the Other Provisions in § 362.

The language of § 362(c)(3)(A) plainly and expressly states that without an extension, the automatic stay terminates "with respect to the debtor." 11 U.S.C. § 362(c)(3)(a). As most courts interpreting this provision have found, this language "could not be any clearer." *In re Hale*, 535 B.R. at 524; *see also Rose*, 945 F.3d at 230 ("[T]he language in § 362(c)(3)(A) is clear."). As written, § 362(c)(3)(A) terminates the automatic stay for actions against the debtor and the debtor's property, not actions against property of the estate. *In re Hale*, 535 B.R. at 524. Any other reading would require this Court to contradict its own directive by disregarding the plain language of the statute.

Although the precise language in § 362(c)(3)(A) is clear that it does not apply to property of the estate, the statute must also be read in context, with regard to its "place in the overall statutory scheme." *King v. Burwell,* 576 U.S. 473, 486 (2015) (citations omitted). When reading this section in context with the other provisions in § 362, it becomes even more evident that § 362(c)(3)(A) does not apply to property of the estate.

Both the Fifth and the First Circuits have noted that § 362(a) operates as a stay against three different types of actions: actions against the debtor, actions against the debtor's property, and actions against property of the estate. *Rose*, 945 F.3d at 230 (adopting majority view); *In re Smith*, 910 F.3d at 580 (adopting minority view). In each of the subsections under § 362(a), Congress has provided language distinguishing between the three different types of actions. Section 362(a)(1) stays actions "against the debtor," (a)(2) stays actions "against the debtor or against property of the estate," (a)(3) stays actions against "property of the estate," and (a)(5) stays actions against "property of the debtor." 11 U.S.C. § 362(a) (2020). If Congress intended the stay in § 362(c)(3)(A) to apply to property of the estate as well, it would have said so. The omission of such language indicates that Congress' intent § 362(c)(3)(A) was to terminate the stay only "with respect to the debtor"—which includes solely actions against the debtor and the debtor's non-estate property. The minority view supplies this omission by reading into the statute the language "and property of the estate" in order to achieve what it perceives to be a better policy outcome. *See e.g.*, *In re Reswick*, 446 B.R. at 373 (rejecting the plain language reading in pursuit of "advance[ing] the goal of deterring a debtor's second filing"). However, this reasoning should be rejected because it goes against a clear directive of this Court: "[t]o supply omissions transcends the judicial function." *Iselin v. United States*, 270 U.S. 245, 251 (1926); *see also* Antonin Scalia & Bryan A. Garner, Reading Law: *The Interpretation of Legal Texts* 57 (2012) ("To find such a purpose in the

absence of a clear indication in the text is to provide the judge's answer rather than the text's answer to the question.").

While the minority approach seeks to "rewrit[e] the law under the pretense of interpreting it," courts following the majority approach do not have to resort to disregarding the canons of statutory construction in order to discern the correct meaning of this provision. *King*, 576 U.S. at 516 (Scalia, J., dissenting); *see also In re Smith*, 910 F.3d at 584 (disregarding the canons of construction by concluding the statute is "inartfully drafted"); *but see In re Scott-Hood*, 473 B.R. 133, 137 (Bankr. W.D. Tex. 2012) (stating that "inartful drafting or poor grammar does not mean that a statute's meaning is no longer plain"). Courts following the minority view contend that the majority approach expands the text of § 362(c)(3)(A) to read "with respect to the debtor *and the debtor's property.*" *See In re Goodrich*, 587 B.R. at 843. However, it is not necessary for the Court to expand the statute's text under the majority view because such interpretation is supported by the plain language of the statute itself and the other provisions in § 362. As the court in *In re Jones* explained, because § 362(c)(3)(A) also states that the stay is terminated "with respect to any action taken with respect to a debt or property securing such debt," it logically follows that "the stay would therefore terminate "with respect to the debtor" as it relates to a debt of the debtor and to property of the debtor "securing such debt." 339 B.R. at 365.

Additionally, the majority approach is supported by the fact that Congress made it clear that it knew how to terminate the stay in its entirety but chose not to do so. The provision immediately following § 362(c)(3) states:

> if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), *the stay under subsection (a) shall not go into effect upon the filing of the later case*.

11 U.S.C.A. § 362(c)(4)(A)(i) (2020) (emphasis added). Courts have read this to mean that the stay is terminated in its entirety upon filing because the statute does not include any limiting language on the scope of the stay being terminated. *Rose,* 945 F.3d at 231. It simply refers to "the stay under subsection (a)." When contrasted with § 362(c)(3)(A), which includes the qualifying language, "with respect to the debtor," the only permissible conclusion is that Congress intended to distinguish between the two provisions. And as this Court has stated: "[w]here Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Keene Corp. v. United States*, 508 U.S. 200, 207 (1993) (citation omitted). Thus, it would be illogical to impute the same meaning to both provisions when Congress wrote each differently.

Lastly, some courts following the minority view attempt to reconcile the obvious plain language with their preferred reading of the statute by concluding that § 362(c)(3)(A) refers to a joint case filed by a married couple. *E.g.*, *In re Reswick*, 446 B.R. at 369; *In re Daniel*, 404 B.R. 318, 321 (Bankr. N.D. Ill. 2009). These courts reason that the language "with respect to the debtor" is meant to distinguish between the debtor who is a repeat filer and the debtor's spouse who is not. *In re Reswick*, 446 B.R. at 369. However, this reasoning is flawed and should be rejected by this Court because it fails to consider the fact that joint cases between spouses are jointly administered (not substantively consolidated), and co-debtors maintain their rights independent from one another. Gershman, *supra*, at 16; *see also In re Smith*, 910 F.3d at 584 (following the minority view but stating that "even without the addition of 'with respect to the debtor,' it would be clear that § 362(c)(3)(A) is inapplicable to the non-repeat-filing spouse" because jointly administered cases "keep the rights of the two debtors separate"). Therefore, termination of the stay for one co-debtor has no effect on the property of the estate for the other co-debtor.

2. The Majority Approach is Supported by the Legislative History Because It Provides Consequences for Serial Filers.

When a statute's language is clear, it is unnecessary to rely on legislative history. *Lamie v. United States Tr.*, 540 U.S. 526, 539 (2004); *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994) (stating that courts "do not resort to legislative history to cloud a statutory text that is clear"). This is because legislative history has a tendency to confuse, rather than clarify, the congressional intent. *Lamie*, 540 U.S. at 539. And this Court has shown a clear preference for following the words of a statute, which in turn allows the judiciary to "respect the words of Congress." *Id.* at 536.

However, even if this court were to examine the legislative history accompanying § 362(c)(3)(A), such history is not the type of clear indication of congressional intent sufficient to override the plain language of the statute. Proponents of the minority view primarily rely on the absence of legislative history, rather than on concrete sources of history, to support its position. *In re Smith*, 910 F.3d at 590–91 (stating that if Congress intended to limit the scope of the stay, it would have explained that in the House Report.). The only history accompanying BAPCPA is a single House Report that states:

> Section 302 of the Act amends section 362(c) of the Bankruptcy Code to terminate the automatic stay within 30 days in a chapter 7, 11, or 13 case filed by or against an individual if such individual was a debtor in a previously dismissed case pending within the preceding one-year period.

H.R. Rep. No. 109–31(I), at 69 (2005). Proponents of the minority view conclude that because Congress did not explain or mention any change in the scope of the stay between first- and second-time repeat filers, it must have intended for the entire stay to be terminated for both. *In re Smith*, 910 F.3d at 590. However, what the minority view fails to recognize is the fact that the report does

not explain the scope of the stay to be terminated is the precise reason why the report provides no clarity on congressional intent.

Additionally, in what can only be viewed as an attempt to grasp at straws, the minority courts also rely on two Committee Reports from 1998[1] that accompanied unenacted legislation. *In re Smith*, 910 F.3d at 590 ("Even though that legislation was vetoed . . . we look to its purposes, given the uniformity of its language with the language of the provision at issue."). While both reports explain that the purpose of terminating the automatic stay under § 362(c) is to "reduce abuses of the bankruptcy system" and to deter debtors from filing multiple bankruptcies to keep creditors from foreclosing on their collateral, these purposes also support the majority view's reading of the statute. S. Rep. No. 105-253 (1998); see also H.R. Rep. No. 105-540 (1998).

Courts following the minority view reason that the plain language reading of § 362(c)(3)(A) creates an absurd result because it does not provide sufficient consequences in order to deter serial filing without terminating the stay as to property of the estate. *See In re Reswick*, 446 B.R. at 368 (stating that the majority view leaves "no meaningful consequence for a debtor filing a second case within a year and would not advance the goal of deterring a debtor's second filing, because there are very few practical situations in which a creditor would take action against a debtor or non-estate property"). But the result of the majority interpretation is not absurd because there are in fact meaningful consequences that the minority view completely fails to consider. As a result of terminating the stay against the debtor and the debtor's property, creditors are able to

[1] Both reports propose the exact same language that is reflected in the current version of § 362(c)(3)(A).
"the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case if– (A) a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13; and (B) a single or joint case of that debtor (other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)) was pending during the preceding year but was dismissed."
S. Rep. No. 105-253 (1998); see also H.R. Rep. No. 105-540 (1998).

commence or continue suits against the debtor postpetition, enforce judgments against the debtor, engage in collection actions against the debtor, and create, perfect, and enforce liens against the debtor's property. *In re Williams*, 346 B.R. 361, 367 (Bankr. E.D. Pa. 2006) (referring to the actions in § 362(a) that would no longer be stayed). All of these actions are automatically stayed under § 362(a) for a reason—because they all impede a debtor's attempt to reorganize or liquidate.

Further, it is apparent from the statutory scheme in § 362(c) that in order to deter abuse of the bankruptcy system by serial filers, Congress intended to create a scheme that penalized the debtor more with each successive filing. *Id.* at 369. Under § 362(c)(3)(A), where a debtor had only two successive filings within the same year, the stay would be terminated only as to the debtor and property of the debtor after 30 days. *In re Hale*, 535 B.R. at 525. In contrast, § 363(c)(4)(A)(i) provides a stronger penalty for a debtor with three or more successive filings by terminating the stay in its entirety upon filing of the petition. *Id.*

While the minority view proposes a reading that would provide a harsher punishment for serial filers, there is nothing in the legislative history to show that Congress intended to provide substantially equal punishment for serial filers regardless of the number of successive filings. *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 568 (2005) (cautioning courts against the use of legislative history just to find a portion that supports its view).

Thus, this Court should adopt the majority view because is not only faithful to the plain language of the statute and the progressive punishment scheme intended by Congress, but it is also supported by the purpose discerned from the legislative history because it provides meaningful consequences for serial-filing debtors.

B. The Majority Approach is Consistent with the Code's Policies of Providing a Successful Reorganization and Maximizing the Value of the Estate.

Although preventing abuses in the bankruptcy system is BAPCPA's primary objective, this Court has made it clear that a central purpose of Code is to provide a successful reorganization for debtors. *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984). As such, § 362(c)(3)(A) must be interpreted "in light of the purposes Congress sought to serve." *In re Windsor on the River Associates, Ltd.*, 7 F.3d 127, 130 (8th Cir. 1993) (quoting *Norfolk Redevelopment & Housing Auth. v. Chesapeake & Potomac Tel. Co.*, 464 U.S. 30, 36 (1983)).

Another fatal flaw in the minority approach is that it is focused solely on the policy goals of BAPCPA but fails to consider the overarching bankruptcy policy of promoting a successful reorganization. *See e.g.*, *In re Smith*, 910 F.3d at 589–90 (relying only on the policy of deterring serial filers found in BAPCPA and related legislative history). The minority view hinders a debtor's ability to have a successful reorganization because by terminating the stay in its entirety, it allows creditors access to property would otherwise be necessary for a debtor's reorganization. *In re Jones*, 339 B.R. at 365 (stating that it is important to protect estate property because such property may be needed to confirm a plan).

The importance of protecting the property of the estate in order to achieve a successful reorganization is exemplified by this case. After the decline of Petty's business and his first bankruptcy case, he was finally able to renegotiate his lease and his business became profitable again using the Equipment. R. at 6. The Equipment was essential to Petty's business and his current Ch. 11 case because Petty used it in producing beer to generate income that would be used to fund his plan. *Id.* After Wildflowers repossessed the Equipment, Petty was forced to shut down his business. R. at 7. Without a source of income, it is unlikely that Petty will be able to fund a plan—ultimately resulting in his case being dismissed or converted to a liquidation. Because the

Equipment was property of Petty's bankruptcy estate, this case shows how a single creditor can force a debtor to go out of business and thwart an entire plan of reorganization—demonstrating why Congress intended to protect property of the estate.

The majority approach strikes a balance between these two competing goals because it deters serial filing by providing some consequences for debtors while allowing debtors to successfully reorganize by protecting estate property. Along with the actions against the debtor and property of the debtor stayed under § 362(c)(3)(A), there are other provisions in § 362 that work to deter serial filing such as § 362(c)(4) and § 362(d)(4) and provide recourse for creditors dealing with debtors acting in bad faith. *See* 11 U.S.C. § 362(d)(4) (providing that the stay of actions against real property may be terminated if the debtor's filing "was part of a scheme to delay, hinder, or defraud creditors that involved . . . multiple bankruptcy filings affecting such real property").

Additionally, the majority view protects creditors by furthering another fundamental policy of bankruptcy law: "obtaining a maximum and equitable distribution for creditors." *In re Holcomb*, 380 B.R. 813 at 816 (quoting *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 563 (1994)); *see also In re Jones*, 339 B.R. at 365 (stating that the automatic stay for property of the estate is an important protection for creditors as well); *In re Rushing*, 443 B.R. at 97 (stating that without the stay, certain creditors would be able to foreclose on the debtor's property and "[t]hose who acted first would obtain payment of the claim in preference to and to the detriment of other creditors"). By allowing a single creditor, like Wildflowers, to obtain property of the estate, the minority view undermines this policy. If the creditor is oversecured, the estate loses value in equity that would be used to pay other creditors' claims. *In re Holcomb*, 380 B.R. at 816. And if the property is necessary for a

successful reorganization, the debtor's entire plan could be derailed whereby creditors would receive little to nothing of their claims paid. *Id.*

Lastly, whether there should be a stronger deterrent for serial filing is a policy consideration for Congress to decide. It is beyond the province of this Court to expand the language of the statute to include "property of the estate" when the plain language of the text says otherwise. *See Smith v. United States*, 508 U.S. 223, 247 n.4 (1993) (Scalia, J., dissenting) ("Stretching language in order to write a more effective statute than Congress devised is not an exercise we should indulge in.").

After reading the language of the statute in context with regard to the rest of § 362 and the purposes congress sought to serve, it is clear that § 362(c)(3)(A) terminates the stay for actions against the debtor or the debtor's property, not property of the estate.

CONCLUSION

In sum, Respondent, Earl Thomas Petty, respectfully requests this Court to affirm the judgment of the United States Court of Appeals for the Thirteenth Circuit and hold: (1) § 362 of the Code impliedly repealed the Federal Arbitration Act because compelling arbitration of a claim for violation of the automatic stay inherently conflicts with the policy considerations of the stay; and (2) the plain language, legislative history, and bankruptcy policy support the view that § 362(c)(3)(A) does not apply to property of the estate.

Respectfully Submitted,

Team #16

Counsel for Respondent

APPENDIX A

11 U.S.C. § 362(a) (2020)

Automatic Stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

APPENDIX B

11 U.S.C. § 362(c) (2020)

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day

period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) [omitted]

(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) [omitted]

APPENDIX C

11 U.S.C. § 362(d) (2020)

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if-

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later--

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that--

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

APPENDIX D

9 U.S.C. § 2. Validity, irrevocability, and enforcement of agreements to arbitrate.

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 3. Stay of proceedings where issue therein referable to arbitration.

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination.

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such

arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.