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Overcoming the Automatic Stay: Severing Bankrupt Defendants Under CPLR 603

Filing for bankruptcy often brings pending litigation to a screeching halt as supreme and district court judges are loathed to interfere with the automatic bankruptcy stay. For a party looking to slow play litigation, bankruptcy can be a boon, but in multi-party litigation you are trying to advance, it can be extremely frustrating to wait. Now enter CPLR 603, which enables a judge to sever the debtor and its claims where the remaining claims and defendants do not implicate property of the bankrupt estate. A recent decision in the Commercial Division of the Westchester County Supreme Court analyzed the propriety of severance in this scenario and provided important guidelines for balancing the competing interests involved in such applications.

The Case: *United Catalyst Corp. v. NCR Auto Cores & Security Inc.*

In *United Catalyst Corp. v. NCR Auto Cores & Security Inc., et ano*, the plaintiff asserted, *inter alia*, breach of contract claims against NCR Auto Cores & Security, Inc. and breach of guaranty claims against an individual defendant, Joseph Forti. NCR filed for bankruptcy, triggering the automatic stay of all claims against it in Supreme Court. Relying on CPLR 603, which permits trial courts to sever claims "in furtherance of convenience or to avoid prejudice," the court granted the plaintiff's application to sever the NCR claims and proceed against Fortis. Justice Gretchen Walsh noted that severance requires a balancing of the equities between the prejudice to the plaintiff from having to await the resolution of the bankruptcy and the inconvenience to the bankrupt defendant from having the litigation proceed in its absence. Recognizing that NCR's bankruptcy proceedings were moving slowly, the court concluded that the prejudice to the plaintiff from the delay warranted severance under CPLR 603.

Takeaway

Do not assume that the automatic bankruptcy stay is all-encompassing in multi-party litigation. For an aggressive plaintiff seeking to push its litigation forward, an application to sever the bankrupt party under CPLR 603 should be considered when distinct claims exist against the non-bankrupt defendants.