

“Taggart, you’re it!” How good must your excuse be to be set free

- 1) Background: *Taggart v. Lorenzen*, 139 S.Ct. 1795, 1804 (2019)
 - a) “A court may hold a creditor in civil contempt for violating a discharge order where there is not a ‘fair ground of doubt’ as to whether the creditor’s conduct might be lawful under the discharge order.”
 - b) *Taggart* does not extend the “fair ground of doubt” standard to violations of the automatic stay.
 - i) The Supreme Court expressed that the language of § 362(k) “differs from the more general language in section 105(a)” and that the purpose of the automatic stay differs from the purpose of discharge orders.
- 2) Guidance from Circuit Courts
 - a) *Suh v. Anderson (In re Jeong)*, 2020 Bankr. LEXIS 714, at n.3 (B.A.P. 9th Cir. Mar. 16, 2020)
 - i) “We assume that the contempt standard applied to the discharge violation in *Taggart* also applies to a violation of the automatic stay. Neither the parties, nor the bankruptcy court, has suggested that any other standard should apply. Furthermore, application of the same contempt standard for stay violations and bankruptcy discharge violations is consistent with the Ninth Circuit’s prior precedent holding that the same contempt standards apply to both violations of the automatic stay and violations of the discharge injunction.”
 - b) *In re Gravel*, --- F.4th ---, 2021 WL 3277211, at *4 (2nd Cir. Aug. 2, 2021)
 - i) Context: bankruptcy court sanctioned the mortgage creditor for violating court orders that declared debtors current on their mortgage and that imposed a single injunction – that the mortgage creditor could not dispute the current status of the debtors “in any other proceeding”.
 - ii) In directly applying the *Taggart* standard, the court concluded that there is “fair ground of doubt” as to whether the injunction would reach the mortgage creditor’s out-of-court conduct. “[A] bankruptcy court cannot hold a party in contempt for violating an order that is subject to varying interpretations.” *Id.* at *6. “Without an express injunction, there is fair ground of doubt as to whether the listed fees can form the basis for contempt.” *Id.* at *4.
- 3) Bankruptcy Courts are Split
 - a) *In re Sanders*, 2020 Bankr. Lexis 2840, at *6-7 (Bankr. M.D. Fla. Sept. 15, 2020).
 - i) Noting that bankruptcy courts are split on the issue of whether the willfulness standard for automatic stay violations was changed to incorporate *Taggart*’s “fair ground of doubt” standard, Judge Colton declined to “cast a vote” because under either standard, the creditor’s actions were willful.
 - b) *In re Windstream Holdings, Inc.*, 627 B.R. 32, 40 (Bankr. S.D.N.Y. 2021)
 - i) Noting the uncertainty with respect to the post-*Taggart* standard to be applied to violations of the automatic stay, Judge Drain concluded that “[i]n any event, it should

be clear from the nature of [*Taggart's*] reservation regarding breaches of the automatic stay that applying a standard that is more *lenient* to potential violators of the automatic stay than the objective 'fair ground of doubt' approach is highly unlikely."

c) Within the Seventh Circuit

i) *In re Rice*, 613 B.R. 690, 695 (Bankr. N.D. Ill. 2020)

(1) Judge Schmetterer, in declining to apply the *Taggart* standard in the context of a stay violation, ruled that "[u]ntil the Supreme Court holds otherwise, the Seventh Circuit's standard remains the law of this circuit."

ii) *In re Kimball Hill, Inc.*, 620 B.R. 894, 902-03 (Bankr. N.D. Ill. 2020)

(1) Context: the bankruptcy court found that Fidelity and Deposit Company of Maryland violated the injunction in an order confirming a chapter 11 plan. On appeal, the district court remanded the matter and asked the bankruptcy court to determine whether contempt was appropriate under the *Taggart* standard. On remand, the bankruptcy court concluded that F&D's actions rose to the level of civil contempt under the *Taggart* standard.

(2) Judge Barnes was obligated on remand to examine how, not if, the standard articulated in *Taggart* applied. He observed that "applying the higher standard set forth in *Taggart* might in large part also render meaningless the state law contractual nature of such plan injunctions" and suggested that "[t]his, perhaps, is why some courts have declined to apply *Taggart* outside of the express context within which it arose."