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4 **Attorneys for Respondent**

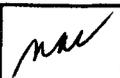
5 **BEFORE THE ARIZONA CORPORATION COMMISSION**

6
7 **WILLIAM A. MUNDELL**
Chairman
8 **JIM IRVIN**
Commissioner
9 **MARC SPITZER**
Commissioner

Arizona Corporation Commission

DOCKETED

MAR 01 2002

DOCKETED BY 

11 In the matter of:
12 **CLAY EUGENE LAMBERT**
3711 East Minton Place
13 Mesa, Arizona 85215
14 CRD No. 1959853,
15 Respondent.

)
) Docket No. S-03413A-01-0000

) **LAMBERT'S MOTION TO**
) **CONTINUE HEARING**

) **Expedited Oral Argument Requested**

16 In November 2001, Mr. Lambert filed a Chapter 13 bankruptcy. On
17 Monday, February 25, 2002, counsel learned for the first time that Mr. Lambert's
18 bankruptcy had been converted to Chapter 11.

19 After consulting with bankruptcy counsel at this firm, it is our opinion that
20 this firm cannot represent Mr. Lambert in the ACC matter, or in connection with a
21 motion for a ruling from the Bankruptcy Court regarding applicability of the automatic
22 stay, unless we comply with 11 U.S.C. §§ 327 through 331. This involves making an
23 application to the Bankruptcy Court to be appointed to represent Mr. Lambert and
24 obtaining the Court's ruling authorizing our employment. There is no way that this can
25 be accomplished by March 5, 2002.

26

1 Therefore, Lambert asks that this hearing be continued for 30 days so that
2 this firm can be properly appointed as Lambert's attorney for the limited purpose of
3 representing him in the administrative action and/or seeking the Bankruptcy Court's
4 order regarding the applicability of the automatic stay. Lambert asked the Division to
5 stipulate to this continuance. **Exhibit A.** The Division refused. **Exhibit B.**

6 Having the Bankruptcy Court make this final decision regarding the stay
7 is in everyone's best interest. Attached to Exhibit A is *In Re Dunbar*, 245 F.3d 1058
8 (9th Cir. 2001). That case, which involved an administrative agency's determination
9 that the stay did not apply, held that a "decision of the state ALJ (regarding applicability
10 of the stay) does not preclude the bankruptcy court's independent review. *Id.* at 1060. It
11 held that the final determination regarding the applicability of the stay belongs to the
12 Bankruptcy Court. *Id.* at 1062. It also held that actions taken in violation of the
13 automatic stay, including actions by the state court or by an administrative agency, are
14 void *ab initio* (from the start). *Id.* at 1063.

15 There is no ongoing activity, and the ACC will suffer no prejudice by a
16 short continuance. On the other hand, there are serious ramifications to Mr. Lambert,
17 the ACC, and this firm, if we run afoul of federal bankruptcy law. Counsel is available
18 by telephone or in person to argue this Motion.

19 **RESPECTFULLY SUBMITTED:** February 28, 2002.

20 GUST ROSENFELD P.L.C.

21 

22 _____
23 Michael Salcido
24 Attorney for Respondent

25 **ORIGINAL** and ten (10) copies filed with:

26 Docket Control
 Arizona Corporation Commission
 1200 W. Washington
 Phoenix, AZ 85007

1 **COPY FAXED AND MAILED to:**

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12 1300 W. Washington, 3rd Floor
13 Phoenix, AZ 85007-2929

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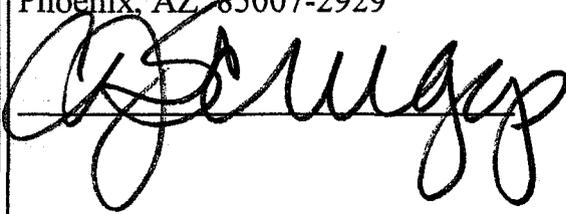


EXHIBIT A

REPLY TO THE PHOENIX OFFICE
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Michael Salcido
602.257.7473
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February 28, 2002

VIA FACSIMILE AND MAIL

Matthew J. Neubert
Anthony Bingham
Securities Division
Arizona Corporation Commission
1300 West Washington, 3rd Floor
Phoenix, Arizona 85007-2996

**Re: Lambert adv. ACC
Docket No. S-03413A-01-0000
Our File No. 017342-10001**

Dear Matt and Tony:

There remain issues that must be decided by the United States Bankruptcy Court before this administrative hearing can proceed. As you know, in November 2001, Mr. Lambert filed a Chapter 13 bankruptcy. The hearing date (March 5, 2002) was only affirmed by ALJ Dion's order dated February 22, 2002. On Monday, February 25, 2002, I learned for the first time that Mr. Lambert's bankruptcy had been converted to Chapter 11.

After consulting with bankruptcy counsel at this firm, it is our opinion that I cannot represent Mr. Lambert in the ACC matter, or in connection with a motion for a ruling from the Bankruptcy Court regarding applicability of the automatic stay, unless I comply with 11 U.S.C. §§ 327 through 331. This involves making an application to the Bankruptcy Court to be appointed to represent Mr. Lambert and obtaining the Court's ruling authorizing our employment. There is no way that this can be accomplished by March 5, 2002.

Therefore, I ask that this hearing be continued for 30 days so that I can be properly appointed as Lambert's attorney for the limited purpose of representing him in the administrative action and/or seeking the Bankruptcy Court's order regarding the applicability of the automatic stay.

Matthew J. Neubert
Anthony Bingham

-2-

February 28, 2002

Having the Bankruptcy Court make this final decision regarding the stay is in everyone's best interest. I have read your cases, but I enclose for your review *In Re Dunbar*, 245 F.3d 1058 (9th Cir. 2001). That case, which involved an administrative agency's determination that the stay did not apply, held that a "decision of the state ALJ (regarding applicability of the stay) does not preclude the bankruptcy court's independent review. *Id.* at 1060. It held that the final determination regarding the applicability of the stay belongs to the Bankruptcy Court. *Id.* at 1062. It also held that actions taken in violation of the automatic stay, including actions by the state court or by an administrative agency, are void *ab initio* (from the start). *Id.* at 1063.

I don't understand why the Division would want to take the risk of putting on a hearing that may later be found to be void. In any event, I must receive permission and appointment by the Bankruptcy Court before I can defend Mr. Lambert in the ACC action. There is no ongoing activity, and the ACC will suffer no prejudice by a short continuance. On the other hand, there are serious ramifications to Mr. Lambert, the ACC, and this firm, if we run afoul of federal bankruptcy law.

Please get back to me as soon as you can. If we cannot stipulate, then I plan to file a motion and ask for expedited oral argument. I look forward to hearing from you.

Sincerely,



Michael Salcido

MPS/cjs
425061
Enclosure

cc: Clay Lambert (w/o encl.)

LAWBER

CONCLUSION

We deny the petition.

PETITION DENIED.



In re: Robert Wayne DUNBAR,
Debtor,

In re: Kimberly Ann Dunbar, Debtor.

Contractors' State License Board of
California, Registrar of Contractors
State of California, Department of
Consumer Affairs, State of California,
Appellants,

v.

Robert Wayne Dunbar, Kimberly
Ann Dunbar, Appellees.

No. 99-16814.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Nov. 1, 2000

Filed April 4, 2001

After unsuccessful efforts to persuade Chapter 13 debtor-contractor to repair crumbling concrete installed by his company, homeowners filed complaint against debtor with California's Contractors State License Board and subsequently brought action against him and issuer of his prepetition contractor's bond in state court. Adopting administrative law judge's (ALJ's) recommendation, the Board ordered him to pay "restitution" to homeowners, to replace concrete work at no expense to them, or have his contracting license revoked. Debtor sought injunctive relief in bankruptcy court. The United States Bankruptcy Court for the Northern District of California, James R. Grube, J., denied an injunction barring Board from canceling and rescinding debtor's license,

on basis of collateral estoppel, enjoined homeowners from proceeding against debtor in state court, and denied an injunction barring homeowners' efforts to collect on contractor's bond. Debtor appealed. The Bankruptcy Appellate Panel, 235 B.R. 465, affirmed in part, and vacated and remanded in part. On further appeal, the Court of Appeals, Betty B. Fletcher, Circuit Judge, held that, to extent that Board erred in concluding that proceedings before it came within "police or regulatory power" exception to stay, proceedings were void ab initio, and bankruptcy court was under no obligation to extend full faith and credit to Board's determination.

Affirmed.

1. Bankruptcy \Leftrightarrow 3811

Court of Appeals reviews de novo a decision of Bankruptcy Appellate Panel (BAP).

2. Bankruptcy \Leftrightarrow 3782

On appeal from decision of Bankruptcy Appellate Panel (BAP), Court of Appeals independently reviews bankruptcy court's rulings.

3. Bankruptcy \Leftrightarrow 3784

Denial of preliminary injunction will be reversed on appeal only where lower court abused its discretion or based its decision on erroneous legal standard or on clearly erroneous findings of fact.

4. Bankruptcy \Leftrightarrow 3782

De novo standard applies on review of lower court's holdings regarding availability of collateral estoppel.

5. Administrative Law and Procedure
 \Leftrightarrow 501

Bankruptcy \Leftrightarrow 2462

Courts \Leftrightarrow 509

Neither Rooker-Feldman doctrine nor principles of res judicata or collateral es-

toppel afforded binding effect to administrative board's incorrect determination that proceedings before it were not stayed by automatic stay; to extent that board erred in concluding that proceedings came within "police or regulatory power" exception to stay, proceedings were void ab initio, and bankruptcy court was under no obligation to extend full faith and credit to board's determination. Bankr.Code, 11 U.S.C.A. § 362.

6. Bankruptcy ⇨2060.1

At least with respect to "core" bankruptcy proceedings, federal courts have final authority.

7. Bankruptcy ⇨2462

Actions taken in violation of automatic stay, including actions by state court or by administrative agency, are void ab initio. Bankr.Code, 11 U.S.C.A. § 362.

8. Administrative Law and Procedure ⇨501

Bankruptcy ⇨2462

Judgment ⇨828.21(2)

Because actions in violation of automatic stay, including state court judgments or administrative determinations, are void ab initio, bankruptcy court is not obligated to extend full faith and credit to them. Bankr.Code, 11 U.S.C.A. § 362.

9. Judgment ⇨660.5

Judgments that are issued without authority are void as matter of California law, and can have no preclusive effect.

10. Bankruptcy ⇨2060.1

By virtue of power vested in them by Congress, federal courts have final authority to determine scope and applicability of automatic stay. Bankr.Code, 11 U.S.C.A. § 362.

11. Courts ⇨509

Federal Courts ⇨3.1

Judgment ⇨948(1)

Rooker-Feldman doctrine is jurisdiction-stripping doctrine, while collateral es-

toppel and res judicata are affirmative defenses which have nothing to do with federal court's jurisdiction.

12. Courts ⇨509

Judgment ⇨828.4(1)

Rooker-Feldman doctrine, collateral estoppel, and res judicata are all premised on full faith and credit.

13. Bankruptcy ⇨2394.1, 2395

Automatic stay is broad injunction that stays commencement or continuation of any judicial, administrative or other action to recover upon prepetition claim against debtor. Bankr.Code, 11 U.S.C.A. § 362.

14. Bankruptcy ⇨2394.1

Automatic stay applies to any creditor who might sue, and is not limited to creditors who are listed in original petition. Bankr.Code, 11 U.S.C.A. § 362.

Maretta Denise Ward, Deputy Attorney General for the State of California, San Francisco, California, for the appellants.

David A. Boone and Edward Kunnes, San Jose, California, for the appellees.

John Rao, National Consumer Law Center, Boston, Massachusetts; Norma L. Hammes, Gold and Hammes, San Jose, California, for amicus National Association of Consumer Bankruptcy Attorneys.

Appeal from the Ninth Circuit Bankruptcy Appellate Panel; Russell, Perris, and Klein, Judges Presiding. B.A.P. No. NC-98-01571-RPK.

Before: B. FLETCHER,
O'SCANLAIN and GOULD, Circuit
Judges.

BETTY B. FLETCHER, Circuit Judge:

We are asked to decide whether the decision of a state administrative law judge ("ALJ") regarding the scope of the automatic stay in bankruptcy precludes consideration of the issue by the federal bankruptcy court. We hold that pursuant to *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074 (9th Cir.2000) (en banc), the decision of the state ALJ does not preclude the bankruptcy court's independent review.

I.

In September 1993, Robert Dunbar ("Dunbar"), on behalf of Concrete & Masonry Construction, Inc., entered into a written contract with Frank and Denise Martin ("Martins") to install a concrete driveway, walkway, and patio at their home for \$16,630. By the time Dunbar had completed the job in November 1993, the contract price had increased to \$18,070, which the Martins paid in full. Almost two years later, on May 15, 1995, Dunbar and his wife, Kimberly Dunbar, ("debtors") filed a voluntary Chapter 13 bankruptcy petition. The debtors did not list the Martins on their petition schedules.

In early 1996, the Martins noted that the concrete was beginning to crumble. The Martins requested Dunbar to repair the concrete or to pay for the cost of the repair. After unsuccessful efforts to get Dunbar to resolve the problem, the Martins filed a complaint ("agency complaint") with the California Contractors' State License Board ("CSLB"), presumably without knowledge of the debtors' Chapter 13 filing. In September 1997, during the pen-

dency of the investigation surrounding the agency complaint, the Martins sued Dunbar and the issuer of his contractor's bond in state court asserting contract and tort causes of action ("civil complaint").

A. *State Administrative Hearing*

An administrative hearing on the Agency Complaint was set for November 4, 1997. Rather than appear at the hearing, Dunbar sent a letter to the deputy attorney general, who represented the agency, seeking to stop the hearing on the basis that it was subject to an automatic stay pursuant to the bankruptcy laws. The ALJ treated the letter as a motion to terminate the administrative proceedings, and ruled that the bankruptcy filing did not preclude the state agency's commencement of a disciplinary review of Dunbar's actions as a state licensee.

The ALJ issued a "proposed order" in which it concluded that because the state agency was a governmental unit seeking to enforce its police or regulatory powers as codified under the California Business and Professions Code, the proposed disciplinary actions fell squarely within the automatic stay exception of 11 U.S.C. § 362(b)(4).¹

Also in the proposed order, the ALJ found Dunbar guilty of poor workmanship, the consequence of which was that there were numerous "spalls" (chipped areas) in the concrete work that were "due to improper installation techniques or handling techniques" used by Dunbar, and the spalling was so excessive as to necessitate complete removal and replacement.

1. Section 362(b)(4) provides, in pertinent part:

(b) The filing of a petition under section 301, 302, or 303 of this title ... does not operate as a stay—

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the com-

mencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit's ... police or regulatory power ...;

¹ 11 U.S.C. § 362(b)(4).

The CSLB, adopting the ALJ's proposals, required Dunbar to pay "restitution" of \$27,000 or replace the concrete work at no expense to the Martins. It also ordered that Dunbar pay the State its investigation expenses of \$2,921.56, which were ruled by the ALJ to be post-petition expenses unaffected by bankruptcy discharge. He was also ordered to post a \$30,000 contractor's bond.

B. Challenge in Federal Court

The debtors commenced a proceeding against the CSLB in United States Bankruptcy Court seeking injunctive relief to prevent the CSLB from enforcing its order and revoking Dunbar's contractor's license. They also sought to prevent the Martins from going forward with their civil complaint.

The bankruptcy court concluded that the ALJ's determination that the proceedings were excepted from the automatic stay was binding under principles of collateral estoppel and, accordingly, that no injunction should issue. With respect to the civil complaint, the bankruptcy court enjoined the Martins from proceeding against Dunbar.

Dunbar then appealed to the Bankruptcy Appellate Panel ("BAP") which, on June 16, 1999, issued a decision vacating and remanding the decision of the bankruptcy court. The BAP based its decision partly on the rationale of the three judge panel in *Gruntz v. County of Los Angeles (In re Gruntz)*, 177 F.3d 728 (9th Cir.1999) (opinion withdrawn). Subsequent to the opinion, the appeal was reheard and redetermined en banc. *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074 (9th Cir. 2000) (en banc).

II.

[1-4] We review de novo a decision of the Bankruptcy Appellate Panel. *United States Internal Revenue Serv. v. Palmer*

(*In re Palmer*), 207 F.3d 566, 567 (9th Cir.2000). On appeal from the BAP, this court independently reviews bankruptcy courts' rulings. *Mitchell v. Franchise Tax Bd. (In re Mitchell)*, 209 F.3d 1111, 1115 (9th Cir.2000). The denial of a preliminary injunction will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact. See *Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 874 (9th Cir.2000). However, a de novo standard is applied to review questions regarding the availability of collateral estoppel. See *Palmer*, 207 F.3d at 567.

III.

A. Preclusion

[5] The CSLB argues that the federal courts are bound to follow the ruling of the ALJ. Specifically, because the ALJ found that its proceedings fell into the "police or regulatory powers" exception to the automatic stay, 11 U.S.C. § 362(b)(4), the federal bankruptcy court was without power to reexamine that issue. Although the parties point to various legal theories—res judicata, collateral estoppel, and the *Rooker-Feldman* doctrine—one issue is raised: once a state administrative agency decides that its actions do not fall within the scope of an automatic bankruptcy stay, are bankruptcy courts precluded from reexamining the issue?

The bankruptcy court found that it was precluded by the ALJ's decisions. It denied Dunbar's request for a preliminary injunction because Dunbar could not prove a likelihood of success on the merits because "the elements of collateral estoppel appear[ed] to be satisfied." The court somewhat conclusorily weighed eight factors and decided that the decision of the state agency precluded further review.

Because it was estopped, the bankruptcy court was compelled to deny the request for injunctive relief.

The BAP reversed this part of the lower court's ruling, holding that "neither the so-called *Rooker-Feldman* doctrine nor principles of collateral estoppel apply to afford binding effect to an incorrect state court construction of the automatic stay." Accordingly, it was error for the bankruptcy court not to consider the merits of the parties' arguments regarding the scope of the automatic stay.

The BAP and the bankruptcy court issued their rulings and the parties filed their briefs to this court before the issuance of the en banc opinion in *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074 (9th Cir.2000) (en banc). *Gruntz* involved a Chapter 13 debtor who was prosecuted by the Los Angeles District Attorney, convicted for a misdemeanor failure to support his dependent children, and sentenced to 360 days in jail. *Id.* at 1077. *Gruntz* subsequently filed an adversary proceeding against the County in bankruptcy court, asking the court to declare the state proceedings void as violative of the automatic stay. *Id.* As in the instant case, the bankruptcy court dismissed the complaint as collaterally estopped by the state judgment. *Id.* The district court, acting in its appellate capacity, affirmed the dismissal on the basis of *Rooker-Feldman*. *Id.* at 1077-78.

2. It is ironic that, although we now hold that *Gruntz* dictates a ruling in favor of appellees, appellees spend three pages of their brief distinguishing their case from the facts in *Gruntz*. Nonetheless, none of the distinctions raised by appellees suggests that *Gruntz* should not control. First, it makes no difference that child support, the source of the debt in *Gruntz*, is nondischargeable while the debt in this case is not. The *Gruntz* court did not rely on the nondischargeability of child support in its opinion. Second, appellees try to

The *Gruntz* en banc court carefully considered the "entire federal jurisdictional constellation" of laws, *id.* at 1079, and ruled that "the *Rooker-Feldman* doctrine is not implicated by collateral challenges to the automatic stay in bankruptcy" because Congress vested the federal courts with "the final authority to determine the scope and applicability of the automatic stay." *Id.* at 1083.

The broad rule espoused in *Gruntz*, and the similarity of the issues² in that case to the immediate case compel us to rule, as did the *Gruntz* en banc panel, that "*Rooker-Feldman* does not nullify federal courts' authority to enforce the automatic stay, nor does it strip us of jurisdiction to entertain this appeal." *Id.* at 1084. Thus, in this case the bankruptcy court erred and the BAP was correct.

Although the CSLB wrote its brief before *Gruntz* was finally decided, it argued the applicability of *Gruntz* to this case at oral argument. These arguments fail. *Gruntz*'s factual similarity and broad reasoning dictate our holding.

[6, 7] First, *Gruntz* involved a prior state court adjudication on the allegedly precluded issue, while this case involves the proposed order of an administrative agency. Nothing in the *Gruntz* opinion suggests that this distinction matters. *Gruntz*'s central premise is that Congress has plenary power over bankruptcy and vested that power exclusively in the dis-

make an overly-formalistic distinction between administrative agencies and courts. As we discuss, *infra*, the distinction makes no difference in this inquiry. Finally, appellees discuss whether the state agency's decision meets the requirements of collateral estoppel. Because the en banc opinion in *Gruntz* makes clear that state court errors, if any, in construing the automatic stay are void *ab initio*, there is no need to separately decide whether the state agency decision would otherwise be entitled to preclusive effect.

trict courts. *See id.* at 1080; 28 U.S.C. § 1334(a). At least with respect to "core" bankruptcy proceedings (of which hearings to determine the scope of the automatic stay are a type) the federal courts have final authority. *See id.* at 1083. In fact, "actions taken in violation of the automatic stay are void" *ab initio*. *Id.* at 1082; *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992). If actions taken by a state court in violation of an automatic stay are void, so too must be analogous actions taken by the board of a state administrative agency.

Second, the *Gruntz* court identified three cases where action by a state might preclude subsequent action by bankruptcy courts. *See Gruntz*, 202 F.3d at 1084. None of these cases apply here. (1) This is a post-petition, not a pre-petition state judgment.³ (2) This case does not involve the lifting of the stay by the bankruptcy court. (3) The case involves a core proceeding that implicates substantive rights granted under Title 11.

[8-12] Third, *Gruntz* explicitly addresses *Rooker-Feldman*, not collateral estoppel or res judicata. Nevertheless, the rationale of *Gruntz* clearly applies to all three of these related doctrines. If the bankruptcy court had independently considered the question, it may have concluded that the administrative proceedings violated the automatic stay.⁴ "Because [actions] in violation of the stay are void

ab initio ... the bankruptcy court is not obligated to extend full faith and credit to" them. *Id.* at 1082 n. 6. "Judgments issued without authority are void as a matter of California state law and, therefore, can have no preclusive effect under 28 U.S.C. § 1738." *Id.* "[B]y virtue of the power vested in them by Congress, the federal courts have the final authority to determine the scope and applicability of the automatic stay." *Id.* at 1083. The obligation to extend "full faith and credit" undergirds all three of the doctrines listed above; to say that the bankruptcy court need not give "full faith and credit" to a state ruling involving the automatic stay means that it need not be bound by res judicata and collateral estoppel as well as *Rooker-Feldman*.⁵

[13, 14] A final distinction between *Gruntz* and this case is that the debtor in *Gruntz* explicitly listed as a creditor, on his bankruptcy petition, the person who ultimately became the complaining witness in the criminal proceedings. In contrast, the Martins had not yet complained about their driveway when Dunbar declared bankruptcy and thus are not listed as creditors in the petition. The CSLB might argue that while the criminal court in *Gruntz* essentially *modified* the automatic stay, the ALJ in this case did not, because the original automatic stay did not apply to the Martins, nor the CSLB. This argument would misapprehend the nature of the au-

3. On this point, it is necessary to emphasize that the *judgment* in this case was post-petition. The claim itself was probably pre-petition. Bankruptcy Court's Order on Injunctive Relief, ("[I]t is undisputed that the alleged negligent conduct which created a construction defect and damaged the property occurred at the time of construction in 1993, pre-petition. As a matter of law, the Martins' negligent construction claim was a pre-petition claim."). This distinction is important because post-petition claims are not subject to the automatic stay.

4. We express no opinion about whether the state action violated the automatic stay. *Infra*, Part III(B).

5. *Rooker-Feldman* is a jurisdiction-stripping doctrine while collateral estoppel and res judicata are affirmative defenses that have nothing to do with a federal court's jurisdiction. However, this distinction does not matter for our purposes. All three doctrines are premised on full faith and credit, and all three are impacted by the broad reasoning of *Gruntz*.

automatic stay. The automatic stay is a broad injunction that stays "the commencement or continuation . . . 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." 11 U.S.C. § 362(a)(1). The stay applies to any creditor who might sue, and is not limited to creditors who are listed in the original petition. *Gruntz* involved a claim under 11 U.S.C. § 362(a)(6), which stays "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." In such cases, the creditors in question are usually ascertainable and known. Because § 362(a)(1) creditors, on the other hand, often have yet to sue, they are naturally less ascertainable creditors. Nor does any of the reasoning of *Gruntz* rely on the fact that the creditors were alerted to the fact that an injunction existed.

Thus, we affirm the BAP's holding that the bankruptcy court erred in finding itself precluded from reviewing the judgment of the ALJ.⁶

B. Exception from the Automatic Stay?

Dunbar asked the bankruptcy court for a preliminary injunction "enjoining the [CSLB], the Registrar of Contractors, and the Department of Consumer Affairs from canceling and rescinding Robert Dunbar's contractor's licenses." Because the bankruptcy court incorrectly ruled that it was precluded from considering the issue, it never discussed the underlying merits: Do the CSLB actions in this case fall under

6. The CSLB suggests that Dunbar waived his jurisdictional argument by not appearing at the administrative hearing. Dunbar did challenge the jurisdiction of the ALJ explicitly, in his letter to the deputy attorney general. Fur-

thermore, the expansive holding of *Gruntz* suggests that state rulings on the scope of the automatic stay are subject to review regardless of Dunbar's failure to fully litigate or appeal the issue at the state level.

the "police or regulatory powers" exception to the automatic stay embodied in § 362(b)(4)?

The BAP declined to reach this issue, remanding instead so the bankruptcy court could fully consider it. Appellees ask us to do the same. We agree with appellees that we should leave unaltered the disposition of the BAP and remand to the bankruptcy court to conduct hearings and make rulings on this issue.

CONCLUSION

We affirm the BAP's opinion in light of *Gruntz*, and we leave undisturbed the disposition of the BAP, remanding the order denying injunctive relief to the bankruptcy court, to address the merits of Dunbar's application.

AFFIRMED.



UNITED STATES of America,
Plaintiff-Appellee,

v.

James Lavelle GAITHER,
Defendant-Appellant.

No. 99-50612.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted July 13, 2000

Filed April 4, 2001

Defendant, who was convicted of armed bank robbery, filed a motion to

EXHIBIT B

From: "Bingham, Tony" <tbb@ccsd.cc.state.az.us>
To: 'Michael Salcido' <msalcido@gustlaw.com>
Date: 2/28/02 5:59PM
Subject: RE: Lambert - Docket No. S-03413A-01-0000

The Division is refusing to stipulate to a continuance of the hearing to begin next week. It is the Division's position that the hearing can proceed as scheduled without your application to the bankruptcy court. Otherwise, you can file an emergency application with the bankruptcy court to be appointed before the hearing. Any motion to the bankruptcy court in connection with the applicability of the automatic stay should have been done previously when Administrative Law Judge Dion ordered you to obtain a ruling from the bankruptcy court on this issue.

-----Original Message-----

From: Michael Salcido [mailto:msalcido@gustlaw.com]
Sent: Thursday, February 28, 2002 5:08 PM
To: tbb@ccsd.cc.state.az.us
Subject: Lambert - Docket No. S-03413A-01-0000

This will confirm that the Division is refusing to stipulate to a continuance of the hearing to allow me to make application with the Bankruptcy Court.

Michael Salcido
Gust Rosenfeld P.L.C.
201 N. Central Ave, Ste 3300
Phoenix, AZ 85073-3300
602.257.7473
602.254.4878 (fax)

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