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UNITED STATES TAX COURT

WASHINGTON, D.C.

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IN MEMORIAM

The Honorable Herbert L. Chabot

Judge, United States Tax Court

IN MEMORIAM

Retired Tax Court Judge Herbert L. Chabot passed away on October 11, 2022.

Judge Chabot, born during the Depression in New York City, attended Stuyvesant High School where he was a member of the Junior Astronomy Club and where he met his wife of 71 years. He received a B.A. cum laude from the City College of New York in 1952, an LL.B. from Columbia University in 1957, and an LL.M. in Taxation from Georgetown University in 1964.

He served in the United States Army for two years and in the Army Reserves (civil affairs unit) for eight years. He served on the Legal Staff of the American Jewish Congress from 1957-1961 and as an attorney-advisor to Tax Court Judge Russell E. Train from 1961-1965. He had a keen interest in constitutional history and served as an elected delegate to the Maryland Constitutional Convention from 1967-1968.

Before being appointed to the Tax Court he served on the staff of the Congressional Joint Committee on Taxation from 1965-1978. He honed skills in legislative drafting working with the late Lawrence Woodward. His law clerks would learn from Judge Chabot the difference between utraquistic subterfuge and elegant variation. *See Electronic Arts, Inc. v. Commissioner*, 118 T.C. 226, 258 (2002).

Judge Chabot was appointed as a judge to the Tax Court by President Carter. He was sworn in on April 3, 1978. Judge Chabot was reappointed by President Clinton. He was sworn in for a second term on October 20, 1993. He assumed senior status in 2001 and performed judicial duties as a senior judge on recall.

He served as an adjunct professor at George Washington University National Law Center from 1974-1983, and provided various lectures, including the Norman A. Sugarman Tax Lecture at the Case Western Reserve University School of Law in 1990 (https://scholarlycommons.law.case.edu/law_videos_general/875/).

Judge Chabot enjoyed listening to Gilbert and Sullivan and found opportunities to refer to several of the operettas. *See Powers v. Commissioner*, T.C. Memo. 2009-229. He strongly believed that regardless of the outcome of a case, taxpayers need to feel their story was heard. He insisted on deliberate and careful analysis in his opinions. He leaves behind a legacy of lawyers who benefited from the tremendous amount of time he dedicated to teaching them. He was a delightful storyteller and often regaled his colleagues and law clerks with wonderful stories. His charm, humor, and ubiquitous bowtie will be missed.

San Francisco, California

October 17, 2022

HONORABLE RONALD L. BUCH

THE COURT: Before we begin our session today, I would like to take a moment to acknowledge the passing of Judge Herb Chabot, who passed away on October 11 at the age of 91. He was first appointed by President Carter, and served as a judge on our Court for well over 30 years.

Even though I did not have the pleasure of working with Judge Chabot, he had an influence on my career as a judge. How is that, you might ask? Well, the answer is this. In the Court's cafeteria, there is a table where judges will regularly gather for lunch. For new judges in particular, that lunch table serves as a font of knowledge.

When I first joined the Court and throughout my time at the Court, one judge in particular has made it a point to keep the tradition of the lunch table going. Notably, if you were to ask him, he would explain that he does this because of Judge Chabot.

As I understand it, during his time on the Court, Judge Chabot was a regular at the lunch table. He would share his years of knowledge and experience with younger judges. He might point a judge to a case that might help him decide an issue or more regularly he might share anecdotes about handling various courtroom situations. Or the conversation

might be lighter and more social, helping to build camaraderie with the judges.

By sharing his wisdom and experience, Judge Chabot helped acclimate recently appointed judges to their new roles as members of the Court. He was a mentor to an entire generation of judges. And in being a mentor, Judge Chabot did something else that's very important. He inspired that generation of judges to do the same, to be at the lunch table mentoring the next generation of judges.

So in a very real sense, even though I did not personally work with Judge Chabot, I benefited from his mentoring, because he passed along the gift of a whole generation of mentor judges. Although he is gone, with each new generation of mentors, Judge Chabot's legacy will live on.

Hartford, Connecticut

October 17, 2022

HONORABLE TAMARA W. ASHFORD

And so my third and final introductory remark, actually, it's a little out of the ordinary, but it pertains to paying tribute to and remark on the incredible life and career of a colleague of mine, a judicial giant or legend in the Tax Court who passed away last week, in fact, on October 11 of this year, so just last week, retired Judge Herbert Chabot. It's traditional when judges are out on session, upon the recent passing of a colleague to make comments or remarks on the record. And so before we have the calendar call, I would like to do so right now.

Judge Chabot was born during the Depression in New York City and attended Stuyvesant High School, where he was a member of the Junior Astronomy Club, and also where he met his wife, Aleen, of 71 years. In 1952, he received a B.A. cum laude from the City College of New York. In 1957, he received an LL.B from Columbia University, and then, in 1964 an LL.M in taxation from Georgetown University.

Judge Chabot, quite frankly, was really a true public servant in every sense of the word. He served in the United

States Army for two years, and in the Army Reserves, the Civil Affairs Unit, for eight years. He served on the legal staff of the American Jewish Congress from 1957 to 1961, and as attorney-advisor to Tax Court Judge Russell E. Train from 1961 to 1965. And he had a very keen interest in constitutional history and served as an elected delegate to the Maryland Constitutional Convention from 1967 to 1968.

Before being appointed to the Tax Court, he served on the staff of the Joint Committee on Taxation from 1965 to 1978, where he honed his skills in legislative drafting, working with the late Lawrence Woodward. Interestingly, his law clerks would learn from Judge Chabot the difference between utraquistic subterfuge and elegant variation. And I would call your attention to his authored opinion in *Electronic Arts Inc. v. Commissioner*, which is 118 T.C. 226, 258 (2002).

Judge Chabot was appointed to be a judge on this Court by President Jimmy Carter on April 3, 1978. He served as a senior judge on recall performing judicial duties until his reappointment by President Bill Clinton, and confirmation for a second term on October 20, 1993. He went on to recall status as a senior judge on July 1, 2001, and then, fully retired on January 1, 2016.

I should also mention that he served as an adjunct professor at George Washington University National Law Center from 1974 to 1983, and provided various lectures including the Norman A. Sugarman Tax Lecture at Case Western Reserve University School of Law in 1990.

Judge Chabot enjoyed listening to Gilbert and Sullivan and found opportunities to refer to several of the operettas in his opinions, one of which is *Powers v. Commissioner*, T.C. Memo. 2009-229. He strongly believed that regardless of the outcome of a case, taxpayers need to feel their story was heard. He insisted on deliberate and careful analysis in his opinions. Indeed, these values of his live on through many of my judicial colleagues on this Court, including myself.

Similarly, he leaves behind a legacy of lawyers who benefited from the tremendous amount of time he dedicated to teaching them. He was a delightful storyteller and often regaled his colleagues and law clerks with wonderful stories. His charm, his humor, his ubiquitous bow tie, and the twinkle in his eye will be dearly missed. Continued blessings to his wife Aleen

and their children and grandchildren and his close friends. Thank you.

Tampa, Florida

October 17, 2022

HONORABLE JOSEPH ROBERT GOEKE

THE COURT: Judge Herbert Chabot of the Tax Court passed away on October 11, 2022. I had the honor of succeeding Judge Chabot as the presidentially appointed judge in the division of the Tax Court which Judge Chabot had occupied before he went into senior status because he attained the age of 70, which by statute in our Court requires a judge to go into senior status. This occurred in 2003.

Prior to that, Judge Chabot had served as a judge on our Court and fulfilled his duties as a regular judge who participated in and voted in Court Conference from the year 1978 through 2001. After 2001, he continued to work dutifully for the Court as a senior judge.

Judge Chabot had, in his earlier career, acted as an attorney-advisor, which might otherwise be characterized as a law clerk, for Judge Train of the Court. And later, after taking on several other legal positions, Judge Chabot worked for the Joint Committee on Taxation under relatively famous tax person Lawrence Woodward.

During his time on the Joint Committee on Taxation and throughout his career, Judge Chabot demonstrated tremendous knowledge of the law and especially the tax law, and he was honed as a great tax technician throughout his career and especially during this time on the Joint Committee on Taxation. In fact, there are few, if any, individuals who would have had a greater knowledge of individual tax provisions and the history of those provisions than Judge Chabot.

Judge Chabot also had a tremendous knowledge of the procedural history of our Court, especially the Court Conference procedures and the history of discussions in Court Conference. His retention of that information was

invaluable to his colleagues throughout his tenure as a Tax Court judge.

Judge Chabot's legal career began as a law student at Columbia University and he obtained a master's degree in taxation at Georgetown University.

My personal experience with Judge Chabot goes beyond the fact that we were colleagues on the Court and I occupied his former position as a presidentially appointed judge. I was a trial lawyer for the Internal Revenue Service in the 1980s and I was the attorney who tried a case called *Cottage Savings*. Judge Chabot was the judge on that case. It became a very important case and ultimately went to the United States Supreme Court.

I bring that case up because it is a good example of Judge Chabot's tremendous scholarship and technical knowledge. He originally ruled for the taxpayer in that case, and his opinion was adopted by the full Court which unanimously agreed with his position. Subsequently he was overturned by the Sixth Circuit Court of Appeals, and following that, the case was brought to the United States Supreme Court.

In the Supreme Court, the Government was represented by the current chief justice of the United States, John Roberts, who at that point was in the solicitor general's office. The Supreme Court ultimately reinstated the position of Judge Chabot and he was recognized as having been one of the trial judges who had their position reversed on appeal and then reinstated by the Supreme Court.

Cottage Savings was a very technical case and it involved a complex application of the Internal Revenue Code. It was just the type of case where Judge Chabot's rigorous scholarship and vast knowledge of the history of the provisions of the Internal Revenue Code bore great fruit.

Throughout his career, he brought those same attributes to his work both as a lawyer and as a judge on our Court. We were all honored and benefited by his presence as a colleague. I know I speak for my colleagues on the Court and all the employees of the Court when I offer our condolences to his surviving spouse of 71 years and his children and grandchildren.

Seattle, Washington

November 7, 2022

HONORABLE DIANA L. LEYDEN

THE COURT: I'm going to have a few remarks that I am going to state before we start our calendar call. The purpose is a couple-fold. One, it is the tradition of the Court, when we have had a judge sadly pass, to make some remarks at the next calendar session, and sadly, Judge Chabot passed in early October. So I will have some statements to make about him.

I had the pleasure of being his law clerk. It was my first job out of law school, so I had a very dear piece of my heart sort of faded when he died.

And then I will also give you some remarks that will help you. Many of you, it may be the first time that you have been in a courtroom at all, and so I find that giving you some information may be helpful and make you less nervous, and so that is why I spend a lot of time with my remarks.

So about Judge Chabot, he was born in the Depression and he was a graduate of the New York City School system. He met his wife of 71 years in the Junior Astronomy Club, believe it or not, in New York City. He served in the Army. He went to school at Columbia University, got his LL.B, which is equivalent to a J.D., and an LL.M in tax in Georgetown University.

He also served as a law clerk to Russell Train, who was then part of the Tax Court, which it was a piece of the Executive Branch, believe it or not, before. In 1969, our Court became an Article I court. And he had the pleasure of working with Lawrence Woodward, up at the Hill, drafting legislation.

Now, as all of his clerks will know, he used two terms, which are very important in drafting legislation, and we had to memorize these terms, and were quizzed on them periodically, one of them was utraquistic subterfuge and elegant variation. And what they mean is—utraquistic subterfuge means when you use the same term but you have different meanings, and elegant variation is when you use different terms and you have the same meanings. So he has a couple of—if you're curious, a couple of opinions in which he discusses that.

And he was also a fan of Gilbert and Sullivan and found ways to put in some of his opinions some references to Gilbert and Sullivan.

He was appointed by, let's see, Jimmy Carter on April 3, 1978, and then he served as recall judge and he was reappointed for a second term on October 20, 1993. He taught at the University of—I'm sorry, George Washington University.

And he insisted on a very deliberate and careful analysis in all of his opinions, but he also believed that in every case, a taxpayer needed to have their story heard, and I have adopted that same idea, and I will credit it to Judge Chabot.

We will miss him. He was a delightful storyteller, and he had this ubiquitous bow tie that he always wore, which I will not, and again, we will dearly miss him.

SEPTEMBER/OCTOBER TABLE OF CASES

DANIEL COCHRAN AND KELLEY COCHRAN, PETITIONERS *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 21002-16. Filed October 12, 2022.

Ps filed a Petition with this Court challenging a notice of deficiency issued by R. Thereafter, Ps filed a bankruptcy petition under 11 U.S.C. ch. 11, which triggered an automatic stay of proceedings in this Court under 11 U.S.C. § 362(a)(8) (automatic stay). Following the bankruptcy court's confirmation of petitioners' chapter 11 bankruptcy plan, Ps filed a Motion to Lift the Stay of Proceedings in this Court. Ps contend that the confirmation of the bankruptcy plan lifted the automatic stay notwithstanding that Ps have not completed all payments pur-

suant to that plan and that Ps' bankruptcy case has not been closed or dismissed. Ps rely on *Moody v. Commissioner*, 95 T.C. 655 (1990), in which we held that 11 U.S.C. § 1141(d) acts to effectively discharge or deny discharge to a taxpayer-debtor following confirmation of a taxpayer's chapter 11 bankruptcy plan for purposes of 11 U.S.C. § 362(c), thereby terminating an automatic stay with this Court. After our decision in *Moody*, Congress enacted 11 U.S.C. § 1141(d)(5), which provides in relevant part for individual debtors that confirmation of a bankruptcy plan does not discharge any debt provided for in the plan until (i) the bankruptcy court grants a discharge on completion of all payments under the plan or (ii) a bankruptcy court grants a discharge before that time after notice and a hearing. *Held*: The enactment of 11 U.S.C. § 1141(d)(5) created a limitation to our holding in *Moody* with respect to the effect under 11 U.S.C. § 362(c) of a confirmation of a debtor's chapter 11 bankruptcy plan. *Held, further*, on these facts the automatic stay continues pending satisfaction of 11 U.S.C. § 362, including through 11 U.S.C. § 1141(d)(5).

Travis W. Thompson, for petitioners.
Caitlin A. Homewood and *Brian A. Pfeifer*, for respondent.

OPINION

GREAVES, *Judge*: Petitioners filed a chapter 11 bankruptcy petition with the U.S. Bankruptcy Court for the Northern District of California in 2017. Thereafter, petitioners' pending case in this Court was automatically stayed pursuant to 11 U.S.C. § 362(a)(8).[1] Although petitioners' proceeding with the bankruptcy court is still pending, they have filed a Motion to Lift the Stay of Proceedings (Motion), wherein they argue that the bankruptcy court's confirmation of their bankruptcy plan acted to terminate the automatic stay. For the reasons set forth below we will deny petitioners' motion.

Background

The following facts are not disputed and are based on the parties' pleadings and Motion papers and petitioners' status

[1] Petitioners have another case pending before this Court, docket No. 23509-16S, for a different tax year that is also under an automatic stay. Because the two cases are not consolidated but involve similar facts and the same question concerning the lifting of an automatic stay, an appropriate order will be issued separately for the other case.

report dated October 22, 2021. Petitioners resided in California when they filed the Petition.

Respondent issued petitioners a notice of deficiency for tax year 2011 on July 7, 2016. Shortly thereafter petitioners timely filed the Petition with this Court challenging respondent's determinations in the notice.

Petitioners filed a chapter 11 bankruptcy petition with the bankruptcy court on February 15, 2017. On April 7, 2017, petitioners filed with this Court a Notice of Proceeding in Bankruptcy. The proceedings in this Court with respect to petitioners' case were subsequently automatically stayed pursuant to 11 U.S.C. § 362(a)(8).[2]

On July 22, 2019, the bankruptcy court issued an order confirming petitioners' chapter 11 plan.[3] As of the filing of this Opinion, petitioners have not completed all payments pursuant to that plan, and petitioners' bankruptcy case has not been closed or dismissed.

Discussion

A bankruptcy filing generally triggers an automatic stay of Tax Court proceedings concerning the debtor-taxpayer. *Kovitch v. Commissioner*, 128 T.C. 108, 111 (2007). Title 11 U.S.C. § 362(a)(8) specifically stays Tax Court proceedings "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 title 11 of the United States Code. This automatic stay is generally lifted at "the earliest of" the closing of the bankruptcy case, the dismissal of the bankruptcy case, or the granting or denial of a discharge to the debtor.[4]

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[2] This Court issued an order recognizing the automatic stay on May 9, 2017.

[3] The confirmed plan provided for the full payment of certain tax claims, including disputed tax claims, to the Internal Revenue Service but did not specify whether such claims included the amounts at issue in this case (or docket No. 23509-16S).

[4] One exception to this general rule is 11 U.S.C. § 362(d), which mandates that, upon the request of "a party in interest" and after notice and a hearing, a bankruptcy court "shall" grant relief from an automatic stay if certain conditions are present. An examination of the record, however, reveals no evidence that petitioners sought this potential exception with the bankruptcy court. *See* 11 U.S.C. § 1109(b) (identifying the debtor as a "party in interest" in a chapter 11 bankruptcy proceeding).

11 U.S.C. § 362(c)(2); *Guerra v. Commissioner*, 110 T.C. 271, 275 (1998). Neither party argues that petitioners' bankruptcy case has been closed or dismissed. Therefore, the present dispute centers on whether the bankruptcy court's confirmation of petitioners' chapter 11 bankruptcy plan acted to grant a discharge, or as a denial of a discharge, to petitioners for purposes of terminating the automatic stay with this Court under 11 U.S.C. § 362(c)(2)(C).

This Court has jurisdiction to determine whether we lack jurisdiction because of the continuance of an automatic stay under 11 U.S.C. § 362(a)(8).[5] *Moody v. Commissioner*, 95 T.C. 655, 658 (1990). In *Moody* we held that a bankruptcy court's confirmation of the taxpayer's chapter 11 bankruptcy plan served to effectively discharge or deny discharge to the taxpayer-debtor for purposes of 11 U.S.C. § 362(c)(2)(C), thereby terminating the automatic stay that was in place with this Court under 11 U.S.C. § 362(a). *Moody*, 95 T.C. at 664. In reaching this holding, we relied upon 11 U.S.C. § 1141(d)(1), which provides that a bankruptcy court order confirming a debtor's chapter 11 bankruptcy plan generally acts to discharge the debtor from any debt that arose before the date of the confirmation. *See Moody*, 95 T.C. at 659–62. The version of 11 U.S.C. § 1141(d) applied in *Moody* was subsequently amended in 2005 as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 321(d), 119 Stat. 23, 95–96, and in 2010 as part of the Bankruptcy Technical Corrections Act of 2010, Pub. L. No. 111-327, § 2(a)(36)(A), 124 Stat. 3557, 3561.[6] The two laws notably added the following relevant limitation in paragraph (5) of 11 U.S.C. § 1141(d):

> In a case in which the debtor is an individual—
>
> (A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

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[5] The parties do not ask us to revisit this legal principle, and we see no reason to do so.

[6] *Moody* also involved confirmation of the taxpayer-debtor's bankruptcy plan before the taxpayer-debtor's notice of deficiency and filing of a petition with this Court, *Moody*, 95 T.C. at 659, but we find this factual distinction immaterial to the resolution of the matter at hand.

> (B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—
>
> (i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;
>
> (ii) modification of the plan under section 1127 is not practicable; and
>
> (iii) subparagraph (C) permits the court to grant a discharge . . . .

The question before us can thus be reframed as follows: Does the addition of the above portion of 11 U.S.C. § 1141(d)(5) place a constraint on our prior holding in *Moody* with respect to the termination of an automatic stay in this Court following confirmation of a chapter 11 bankruptcy plan? Following an examination of both *Moody* and this new provision, we hold that it does. Title 11 U.S.C. § 1141(d)(5) clearly provides in relevant part that any debt provided for in the plan is not discharged until (i) the bankruptcy court grants a discharge on completion of all payments under the plan or (ii) a bankruptcy court grants a discharge before that time after notice and a hearing. Because neither of these events has occurred, the automatic stay remains in place.

Despite the clear text of 11 U.S.C. § 1141(d)(5), petitioners ask us to question the intent of this provision by looking to its legislative history and find that it "does not govern 'automatic stays' in the bankruptcy context." Such an exercise is unnecessary in an instance like this where we find the statute unambiguous on its face, *see California v. Montrose Chem. Corp. of Cal.*, 104 F.3d 1507, 1514 (9th Cir. 1997) ("If the plain meaning of the statute only supports one interpretation, the statute is not ambiguous."), and have previously concluded that 11 U.S.C. § 1141(d) can control the termination of an automatic stay in the context of 11 U.S.C. § 362, *see Moody*, 95 T.C. at 659–62.

Petitioners also broadly cite *Kovitch v. Commissioner*, 128 T.C. 108, 112 (2007), *People Place Auto Hand Carwash, LLC v. Commissioner*, 126 T.C. 359, 363 (2006), and *1983 Western Reserve Oil & Gas Co. v. Commissioner*, 95 T.C. 51, 57 (1990), *aff'd*, 995 F.2d 235 (9th Cir. 1993), for the proposition that an automatic stay under 11 U.S.C. § 362(a)(8) "should not apply unless the Tax Court proceeding possibly would affect the tax

liability of the debtor in bankruptcy." These cases are distinguishable on the basis that they were concerned with ascertaining which entities related to a debtor should fall within the scope of 11 U.S.C. § 362(a). This is not the question before us. Unlike the taxpayers in those cases, petitioners are not challenging the appropriateness of the *imposition* of the 11 U.S.C. § 362(a) automatic stay; rather, we are focused exclusively on determining whether an automatic stay that has been properly applied under 11 U.S.C. § 362(a) has been *terminated*. Title 11 U.S.C. §§ 362(c) and 1141(d) squarely supply those conditions, which have not been shown to be met here. Accordingly, petitioners' motion is denied.

To reflect the foregoing,

An appropriate order will be issued.