No. 01-1051

In the Supreme Court of the United States

JERALD D. SAUNDERS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the filing of a notice of federal tax lien after an order dismissing petitioner's bankruptcy petition had been signed by the Bankruptcy Court judge and was in the clerk's office awaiting entry, but one hour and 37 minutes before the clerk performed the ministerial act of entering the judge's order, violated the automatic stay of Section 362 of the Bankruptcy Code, 11 U.S.C. 362.

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OPINIONS BELOW

The opinion of the court of appeals (Pet App. 36-37) is reported at 275 F.3d 51. The opinion of the district court (Pet. App. 17-35) is reported at 240 B.R. 636. The opinion of the bankruptcy court (Pet. App. 1-16) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 4, 2001. The petition for a writ of certiorari was timely filed on January 17, 2002, having been timely postmarked on January 2, 2002 (28 U.S.C. 2101(c); Sup. Ct. R. 29). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner, who is a former pilot with Pan Am Airways, owed federal incomes taxes and penalties for his 1978, 1979, 1983, 1984, 1985, 1986, and 1987 taxable years in the total amount of $513,766.58. Pet. App. 18-19. In April 1991, Pan Am reassigned petitioner from Germany to the United States. On September 20, 1991, believing that petitioner still resided outside the United States, the Internal Revenue Service filed a notice of federal tax lien in Washington, D.C., with respect to petitioner's unpaid federal tax liabilities. *Id.* at 3, 18.[1]

In late 1991, Pan Am filed for bankruptcy. As a result, petitioner lost his job with Pan Am, and his interests in Pan Am's pension plans were terminated. In March 1993, petitioner rolled over funds received from the pension plans into individual requirement accounts (IRAs) held at Smith Barney Shearson, Inc.[2] Pet. App. 2.

In June 1993, the Internal Revenue Service issued a notice of levy to Smith Barney to collect the taxes that petitioner owed. Pet. App. 18. On July 6, 1994, before Smith Barney released the funds in petitioner's IRA, petitioner filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code to forestall collection of his tax liabilities. *Id.* at 18-19. Petitioner subsequently determined, however, that taxes for some years would be dischargeable only if his bankruptcy petition were filed

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[1] See 26 U.S.C. 6323(f)(2) (in determining the proper place to file a notice of tax lien for personal property, a taxpayer "whose residence is without the United States shall be deemed to be in the District of Columbia").

[2] Petitioner's IRA accounts with Smith Barney were later determined to be exempt from claims of all creditors other than the IRS. Pet. App. 20.

on or after September 9, 1994. Petitioner moved to dismiss his bankruptcy petition, which would allow him to refile the petition on or after September 9, 1994, and seek a discharge of additional taxes. *Id.* at 5. The bankruptcy court granted petitioner's motion to dismiss his bankruptcy case and read the ruling authorizing dismissal into the record. *Id.* at 5, 19. The order of dismissal was signed by the bankruptcy court judge and date stamped by the clerk's office of the bankruptcy court at 2:01 p.m. on September 8, 1994. The order was thereafter docketed by the clerk's office at 4:09 p.m. the same day. *Id.* at 19.

At 2:32 p.m. on September 8, 1994—after the signed order of dismissal was in the possession of the clerk of the bankruptcy court but before that order was entered on the clerk's docket—the Internal Revenue Service filed a new notice of tax lien in Broward County, Florida, where petitioner then resided. Petitioner filed a new bankruptcy petition on the following day, September 9, 1994, at 10:53 a.m. Pet. App. 19.

2. On April 12, 1995, petitioner filed an adversary complaint in his bankruptcy case to avoid the government's tax liens and to determine the dischargeability of his income tax liabilities. Pet. App. 20. After a trial, the bankruptcy court held that taxes for the years 1978, 1979, and 1987, and penalties for all years, were dischargeable. The bankruptcy court held further, however, that the time periods that determine dischargeability (11 U.S.C. 507(a)(8)(A)(ii)) are tolled during the period that the government was prevented from collecting taxes due to petitioner's prior bankruptcy filing. As a result, the bankruptcy court held that taxes for the years 1983, 1984, and 1985 were not dischargeable. Pet. App. 10-15. In addition, petitioner did not contest that taxes for his 1986 taxable year were

not dischargeable, and the bankruptcy court so held. *Id.* at 3, 11.

The bankruptcy court further held that the notice of federal tax lien recorded in Washington, D.C., was ineffective because, at the time the notice of tax lien was filed, petitioner was a resident of Florida. Pet. App. 3-4, 8-10. In addition, the bankruptcy court held that the notice of tax lien filed by the goverment on September 8, 1994, violated the automatic stay and was therefore ineffective. *Id.* at 6-8. In so holding, the bankruptcy court stated that, although the automatic stay terminates when a bankruptcy case is dismissed, an order of dismissal is not effective until it is entered. The court reasoned that, since the government filed its notice of tax lien before the order dismissing petitioner's case was entered on the clerk's docket sheet, the notice of tax lien violated the automatic stay and was void. *Ibid.*

3. Both parties appealed to the district court. The district court affirmed most of the bankruptcy court's holdings but reversed that court's holding that the September 8, 1994, notice of federal tax lien violated the automatic stay. Pet. App. 17-35. The court concluded that entry of the order of dismissal on the clerk's docket sheet was a ministerial act that was not essential for the order to be effective. The court held that, for the purpose of determining when the automatic stay expired, the case was "dismissed" (11 U.S.C. 362(c)(2)(B)) when the court signed an order directing that it be dismissed. Pet. App. at 33. The court emphasized that, "[t]o hold otherwise would permit the clerk's office to misplace an order and prevent the judge's order from becoming effective." *Ibid.* The court therefore held that the notice of tax lien filed by

the government at 2:32 p.m. on September 8, 1994, did not violate the automatic stay. *Id.* at 30-34.

4. The district court remanded the case for the Bankruptcy Court to resolve an additional issue concerning the rights of the parties with respect to the IRA accounts. Pet. App. 35. After resolution of that issue and entry of a decision by the district court on appeal reaffirming its holdings in the case, petitioner appealed. The court of appeals then affirmed per curiam, without writing an opinion. *Id.* at 36-37.

ARGUMENT

Petitioner's case involves a unique factual circumstance, in which a notice of federal tax lien was filed after a bankruptcy case was ordered to be dismissed by the bankruptcy court but before that signed order was entered on the clerk's docket sheet. The court of appeals correctly concluded that the filing of a notice of tax lien does not violate an automatic stay in a bankruptcy case that has been ordered to be dismissed by the bankruptcy court. That determination does not conflict with any decision of this Court or of any other court of appeals. Further review is therefore not warranted.

1. a. Section 362(a) of the Bankruptcy Code provides that the filing of a bankruptcy petition "operates as a stay" against various steps of creditors to obtain collection of the debts owed to them. 11 U.S.C. 362(a). That automatic stay continues in effect until the earliest of "the time the case is closed," "the time the case is dismissed," or "the time a discharge is granted or denied." 11 U.S.C. 362(c)(2)(A)-(C). See *In re Income Property Builders, Inc.*, 699 F.2d 963, 965 (9th Cir. 1982) ("[a]fter an order of dismissal, the debtor's debts and property are subject to the general laws, unaffected by bank-

ruptcy concepts"). The dismissal of a bankruptcy petition "puts all parties back in the same position they were prior to the filing of the bankruptcy petition. It is as if no bankruptcy petition had ever been filed." *In re Stahley*, 90-1 U.S. Tax Cas. (CCH) ¶ 50,247 (Bankr. D. Colo. 1990).

b. In asserting that his case had not formally been dismissed at the time that the government filed its notice of tax lien, petitioner relies (Pet. 13) on Rule 58(a) of the Federal Rules of Civil Procedure. That Rule specifies that "[a] judgment is effective only when so set forth [in a separate document] and when entered * * * ." Fed. R. Civ. P. 58(a). This case, however, arose in bankruptcy court. Rule 9021 of the Bankruptcy Rules makes Rule 58 of the Federal Rules of Civil Procedure applicable to bankruptcy cases only "[e]xcept as otherwise provided" in that Rule. Fed. R. Bankr. P. 9021. Rule 9021 then specifies that a judgment in bankruptcy court "is effective when entered;" unlike Rule 58, it does not state that a judgment is effective "only" when entered. The question presented in this case is thus governed by the distinct language of the Bankruptcy Rules, not by the text of Rule 58 of the Federal Rules of Civil Procedure.

In contexts apart from Rule 58, courts have frequently given effect to judgments prior to their formal entry. For example, under Rule 4(a) of the Federal Rules of Appellate Procedure, a notice of appeal may be filed from a final order after announcement of judgment but prior to its entry. Indeed, this same conclusion had been reached even before Rule 4(a) had been amended specifically to provide for that result. Fed. R. App. P. 4(a), Advisory Committee Notes (1979 amendment) ("Despite the absence of such a provision in Rule 4(a) the courts of appeals quite generally have held pre-

mature appeals effective."); *Markham* v. *Holt*, 369 F.2d 940, 941-942 (5th Cir. 1966); *In re Grand Jury Impaneled Jan. 21, 1975*, 541 F.2d 373, 376-377 (3d Cir. 1976); see also *United States* v. *Interlink Systems, Inc.*, 984 F.2d 79, 82 (2d Cir. 1993) ("a party can appeal an order that has not been entered as a judgment if no further proceedings are contemplated"); *Eberhardt* v. *O'Malley*, 17 F.3d 1023 (7th Cir. 1994).

And, courts have frequently noted that "[a] judgment duly rendered is binding and enforceable between the parties although, due to neglect of the clerk, no formal entry has been made thereof." *Continental Oil Co.* v. *Mulich*, 70 F.2d 521, 524 (10th Cir. 1934). See *Zadig* v. *Aetna Ins. Co.*, 42 F.2d 142 (2d Cir. 1930); *United States* v. *Hunt*, 513 F.2d 129, 137 (10th Cir. 1975). That is because the "[r]endition of judgment" itself constitutes the "judicial act" and the "filing and entry" of a judgment are merely "ministerial activities * * * handled by the clerk." *Weedon* v. *Gaden*, 419 F.2d 303, 306 (D.C. Cir. 1969); *Rexnord Holdings, Inc.* v. *Bidermann*, 21 F.3d 522, 527 (2d Cir. 1994); *In re Capgro Leasing Associates*, 169 B.R. 305 (Bankr. E.D. N.Y. 1994). Applying this principle, courts have concluded that even an oral order lifting an automatic stay has "binding effect [on the parties] * * * notwithstanding the issuing court's failure to enter it on the docket." *Noli* v. *Commissioner*, 860 F.2d 1521, 1525 (9th Cir. 1988).

c. The purposes of the automatic stay are to grant debtors a breathing spell and protect against premature disbursements from the estate. *Carver* v. *Carver*, 954 F.2d 1573, 1576 (11th Cir.), cert. denied, 506 U.S. 986 (1992); *Hunt* v. *Bankers Trust Co.*, 799 F.2d 1060, 1069 (5th Cir. 1986). It is obvious that those interests would not be advanced by extending the

automatic stay *after* the court has signed an order that grants the debtor's own voluntary motion to dismiss the bankruptcy case.

2. Petitioner errs in asserting (Pet. 10, 15-16) that the decision in this case conflicts with the decision of the Fifth Circuit in *In re American Precision Vibrator Co.*, 863 F.2d 428 (1989), and with the decision of the Second Circuit in *In re Barbieri*, 199 F.3d 616 (1999). Those courts determined the date on which a final judgment was entered in a bankruptcy case for the purpose of determining whether the bankruptcy court had lost jurisdiction to enter a separate order in the case. *In re American Precision Vibrator Co.*, 863 F.2d at 429; *In re Barbieri*, 199 F.3d at 622 (bankruptcy court had jurisdiction to dismiss a Chapter 13 case when the motion to dismiss was filed before entry of order converting the case from Chapter 13 case to Chapter 7 case).[3] See also *Beatty* v. *Traub*, 162 B.R. 853 (BAP 9th Cir. 1994) (debtor possessed right to dismiss Chapter 13 case when order converting case to Chapter 7 case had not yet been entered); *Coones* v. *Mut. Life Ins. Co. of New York*, 168 B.R. 247, 258 (D. Wyo. 1994) (bankruptcy court that had "determined that dismissal of the entire case was appropriate" but had not entered order of dismissal possessed jurisdiction to entertain a motion to modify the automatic stay).

By contrast, the present case concerns the different question whether the automatic stay continued in effect even after an order of dismissal was signed by the

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[3] Petitioner's reliance (Pet. 18-19) on *Mining Co.* v. *Anglo-Californian Bank.*, 104 U.S. 192 (1881), is also misplaced. That case involved the effect of a judgment rendered by a state trial court "for the city and county of San Francisco." *Id.* at 193. Nineteenth century rules of local practice have no bearing on the resolution of the question presented in this case.

bankruptcy court, at the debtor's request, and delivered by the bankruptcy court to the clerk for docketing. The Bankruptcy Code specifies that the automatic stay expires when "the case is dismissed." 11 U.S.C. 362(c)(2)(B). As the district court emphasized, in applying the automatic stay statute, "common sense dictates that a court's order is effective when a court enters such an order," and the "[p]arties should be able to reasonably rely on a written order, signed by a Judge, that the party has actually received * * * ." Pet. App. 33. In the present case, the bankruptcy court had not only signed a written order but the "ruling authorizing dismissal of the case was read into the record at the time of the hearing." *Id.* at 5.

There is no conflict among the circuits on the application of this specific statutory language to the unique facts of this case. Further review is therefore not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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