

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 August Term, 2002

4
5 (Argued: December 4, 2001)

(Decided: 12-20-02)

6 Docket No. 01-5048

97-11879

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8 In re: LAURA STOLTZ,

9 Debtor.

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11 LAURA STOLTZ,

12 Debtor-Appellee,

13 v.

14 BRATTLEBORO HOUSING AUTHORITY,

15 Creditor-Appellant,

16 UNITED STATES TRUSTEE and RAYMOND J. OBUCHOWSKI, Chapter 7
17 Trustee,

18 Trustees.
19 -----

20 BEFORE: WALKER, Chief Judge, NEWMAN and F.I. PARKER, Circuit
21 Judges.

22 Appeal from the judgment of the United States District Court
23 for the District of Vermont (J. Garvan Murtha, Chief Judge)
24 entered February 14, 2001, reversing the judgment of the United
25 States Bankruptcy Court for the District of Vermont (Colleen A.
26 Brown, Judge) entered September 18, 2000, which had granted
27 creditor-appellant Brattleboro Housing Authority's motion for

1 relief from automatic stay. The district court reversed on the
2 ground that 11 U.S.C. § 525(a) of the Bankruptcy Code precludes a
3 public housing authority from evicting a debtor-tenant from
4 public housing based on her nonpayment of discharged, prepetition
5 rent.

6 AFFIRMED.

7 Chief Judge Walker dissents in a separate opinion.

8 GEOFFRY WALSH, Vermont Legal Aid,
9 Springfield, Vermont, for Appellee.

10 REBECCA A. RICE, Cohen & Rice, Rutland,
11 Vermont, for Appellant.

12 JONATHAN H. LEVY, Department of Justice,
13 Washington, D.C., for Amicus Curiae, United
14 States of America.

15 F.I. PARKER, Circuit Judge:

16 Creditor-appellant Brattleboro Housing Authority appeals
17 from the judgment of the United States District Court for the
18 District of Vermont (J. Garvan Murtha, Chief Judge) entered
19 February 14, 2001, reversing the judgment of the United States
20 Bankruptcy Court for the District of Vermont (Colleen A. Brown,
21 Judge) entered September 18, 2000, which had granted creditor-
22 appellant Brattleboro Housing Authority's motion for relief from
23 automatic stay. Granting the motion for relief from automatic
24 stay permitted Brattleboro Housing Authority to proceed with the
25 eviction of debtor-appellee Laura Stoltz. The bankruptcy court
26 narrowly construed 11 U.S.C. § 525(a), the antidiscrimination

1 provision of the Bankruptcy Code that protects debtors from
2 discrimination by governmental units with regard to certain
3 grants, concluding that section 525(a) does not protect debtor-
4 tenants from eviction by public housing authorities for
5 nonpayment of prepetition rent. By narrowly construing section
6 525(a), the bankruptcy court sidestepped a potential conflict
7 between section 525(a) and 11 U.S.C. § 365, the executory
8 contracts provision of the Bankruptcy Code that equates rejection
9 of an unexpired lease with prepetition breach of the lease, thus
10 enabling creditors to pursue state law remedies, including
11 eviction, for prepetition breach of rejected leases. The
12 district court reversed and reinstated the automatic stay,
13 thereby preventing the eviction, on the ground that the
14 antidiscrimination provision precludes a public housing authority
15 from evicting a debtor-tenant from public housing based on
16 nonpayment of discharged, prepetition rent. We agree that the
17 bankruptcy court construed section 525(a) too narrowly. We are
18 therefore faced with a conflict between Bankruptcy Code sections
19 525(a) and 365 reminiscent of Dr. Seuss's intractable North-Going
20 and South-Going Zax.

21 And it happened that both of them came to a place.
22 Where they bumped. There they stood.
23 Foot to foot. Face to face.

24 Dr. Seuss, The Sneetches and Other Stories 26 (1961, renewed
25 1989). For the reasons set forth herein, we conclude that

1 section 525(a) controls over section 365 and precludes the
2 Brattleboro Housing Authority from evicting debtor-appellee Laura
3 Stoltz. We therefore affirm the judgment of the district court.

4 I. BACKGROUND

5 Debtor-appellee Laura Stoltz ("Stoltz") and her three
6 dependants have resided since 1993 in a Brattleboro, Vermont
7 apartment that is part of a government subsidized housing
8 development owned and managed by the Brattleboro Housing
9 Authority ("BHA"). The most recent lease agreement between
10 Stoltz and BHA was executed on August 1, 1996. The month-to-
11 month lease stipulated a rent of \$560.00 per month, payment of
12 which on the first of each month would trigger automatic renewal
13 of the lease, so long as Stoltz also complied with the enumerated
14 tenant duties.

15 The tenant-landlord relationship between Stoltz and BHA was
16 subsequently strained due to Stoltz's occasional failure to make
17 monthly rent payments during times of financial hardship. In
18 1997, Stoltz failed to pay rent for July and August. As a
19 result, BHA notified Stoltz on August 1, 1997, that it would
20 terminate the lease on September 1, 1997, if she failed to redeem
21 and reinstate the lease by then.

22 BHA commenced an eviction proceeding against Stoltz in
23 Windham County Superior Court in October 1997. On December 18,
24 1997, the superior court granted judgment to BHA in the amount of

1 \$4,838.73 and awarded BHA possession of the apartment. The
2 superior court's judgment was entered on December 23, 1997, by
3 order indicating that a writ of possession would issue on
4 December 31, 1997. Stoltz filed a Chapter 13 bankruptcy petition
5 and reorganization plan on December 26, 1997. Stoltz's
6 bankruptcy filing triggered an automatic stay under 11 U.S.C. §
7 362(a), staying the issuance of the writ of possession.

8 In her reorganization plan, Stoltz proposed to cure her
9 default by paying all backrent and to assume the lease. BHA
10 opposed Stoltz's motion to assume the lease and moved for relief
11 from the automatic stay. The bankruptcy court issued an order on
12 June 3, 1998, denying Stoltz's motion to assume the lease and
13 granting BHA's motion for relief from stay. The bankruptcy court
14 concluded that Stoltz's lease had expired according to its own
15 terms upon Stoltz's failure to make the 1997 rent payments, a
16 conclusion that required the denial of Stoltz's motion to assume
17 the lease, as only unexpired leases may be assumed by Chapter 13
18 debtors. 11 U.S.C. § 365(a) (2001). The bankruptcy court lifted
19 the automatic stay on the grounds that Stoltz had no equity in
20 the apartment and the apartment was not necessary to an effective
21 reorganization. The bankruptcy court also denied confirmation of
22 the reorganization plan, as its sole purpose was the assumption
23 of the lease.

24 On appeal by Stoltz, the district court concluded that

1 Stoltz's lease had not expired under Vermont state law because
2 the writ of possession had not issued. Because Stoltz therefore
3 retained a possessory interest in the lease, the district court
4 reversed the bankruptcy court's denial of Stoltz's motion to
5 assume the lease, to the extent it was based on the erroneous
6 conclusion that the lease had expired prepetition. The district
7 court remanded the case to the bankruptcy court for determination
8 of whether Stoltz's motion to assume the lease should nonetheless
9 be denied on alternative grounds. The district court's judgment
10 implicitly reversed the bankruptcy court's decision to lift the
11 automatic stay.

12 BHA appealed to this Court, and the bankruptcy court
13 postponed its hearing regarding Stoltz's Chapter 13
14 reorganization plan pending the appeal. By judgment entered on
15 November 29, 1999, this Court affirmed the district court's
16 decision, similarly concluding that Stoltz's lease had not
17 expired under Vermont law. Brattleboro Hous. Auth. v. Stoltz,
18 (In re Stoltz), 197 F.3d 625, 631 (2d Cir. 1999) ("[U]nder
19 Vermont law, a debtor who retains a possessory interest in a
20 residential tenancy has an 'unexpired' lease at least until the
21 writ of possession is issued.") This Court did not reach the
22 central issue in this opinion, i.e., the interplay of section
23 525(a), the antidiscrimination provision of the Bankruptcy Code
24 which may, under certain circumstances, prohibit eviction of a

1 debtor-tenant for nonpayment of prepetition rent, and section
2 365, the executory contract provision of the Bankruptcy Code
3 which may, under certain circumstances, permit eviction of a
4 debtor-tenant for nonpayment of prepetition rent.

5 In light of this Court's decision, the bankruptcy court
6 subsequently accepted Stoltz's Chapter 13 reorganization plan.
7 Stoltz thereafter made payments of \$1,433.63 toward her past due
8 rent of approximately \$3,400.00.

9 Stoltz remained current on her rent for the majority of the
10 two-year period following her Chapter 13 bankruptcy filing, but
11 she again faltered while experiencing financial difficulties at
12 the end of 1999. Stoltz did not pay rent in October, November,
13 and December 1999, or in January 2000. As a result of this
14 nonpayment of rent, BHA filed a new motion for relief from stay
15 on January 20, 2000, in order to commence eviction proceedings.

16 The bankruptcy court granted Stoltz's request to convert her
17 Chapter 13 case to a Chapter 7 case in February 2000. By order
18 dated February 11, 2000, Stoltz's prepetition debts were
19 discharged with an effective conversion date of February 7, 2000.
20 The conversion to Chapter 7 mooted Stoltz's motion to assume the
21 lease.¹ In September 2000, the bankruptcy court granted BHA's

1 ¹Whereas the Bankruptcy Code specifically gives a Chapter 11
2 debtor the authority to assume an unexpired lease, see 11 U.S.C.
3 § 1107(a), "there is no corresponding provision in the code for a
4 chapter 7 debtor." In re Rodall, 165 B.R. 506, 507 (Bankr. M.D.
(continued...)

1 motion to modify the automatic stay, thereby permitting BHA to
2 proceed with the eviction proceeding against Stoltz, on the
3 ground that "11 U.S.C. § 525(a) does not protect the debtor from
4 eviction where there is a payment default which would otherwise
5 entitle a non-government landlord to relief from stay." In re
6 Stoltz, No. 97-11879, 2000 WL 33667824, at *7 (Bankr. D. Vt.
7 Sept. 18, 2000).

8 On appeal by Stoltz, the district court reversed the
9 bankruptcy court's decision and reinstated the automatic stay,
10 concluding that section 525 prohibits a public housing authority
11 from evicting a tenant, even though section 365 requires a debtor
12 or bankruptcy trustee to cure defaults in order to assume an
13 unexpired lease. This appeal followed.

¹(...continued)

1 Fla. 1994). Under Chapter 7, only the bankruptcy trustee may
2 exercise the option to assume or reject a lease. See In re
3 Knight, 211 B.R. 747, 748 (Bankr. D. Or. 1997). Stoltz's public
4 housing lease was deemed rejected by the trustee by operation of
5 law under 11 U.S.C. § 365(d)(1). See In re Sheard, 1999 WL
6 454260, at *3 (Bankr. E.D. Pa. June 24, 1999) ("[I]n virtually
7 every Chapter 7 no-asset case the trustee realizes no benefit
8 from assuming the debtor's residential lease, and thus in
9 virtually every Chapter 7 no-asset case, the residential lease is
10 deemed rejected . . ."). A rejected lease is abandoned and no
11 longer property of the estate. Rejection, however, is not the
12 same as termination. In re Blackburn, 88 B.R. 273 (Bankr. S.D.
13 Cal. 1988). A rejected lease is treated as if the debtor
14 breached it immediately prior to the petition date, 11 U.S.C. §
15 365(g), and the parties are generally left with the rights and
16 remedies available outside of bankruptcy law, Rodall, 165 B.R. at
17 508.

II. DISCUSSION

1
2 This appeal presents an internal Bankruptcy Code conflict
3 that has divided the bankruptcy courts and district courts that
4 have considered it. Section 525(a), also known as the
5 antidiscrimination provision of the Code,² provides that a
6 governmental unit may not discriminate against a person with
7 respect to certain grants solely because that person, inter alia,
8 has had a debt discharged under the Bankruptcy Act. Section
9 365(b) of the executory contracts section of the Code requires a
10 debtor to cure prepetition defaults as a precondition of assuming
11 an executory contract. If a Chapter 7 trustee does not assume or
12 reject an unexpired lease within sixty days of the order for
13 relief, then the lease is deemed rejected under section
14 365(d)(1). Upon rejection, the lease is no longer part of the
15 bankruptcy estate, and the non-debtor party to the contract may
16 generally pursue state law remedies for breach of contract,

1 ²Although courts and commentators generally refer to section
2 525(a) as the antidiscrimination provision, section 525 contains
3 two additional antidiscrimination provisions, which were added
4 after the 1978 enactment of section 525(a). Section 525(b),
5 enacted in 1984, prohibits discrimination against debtors by
6 private employers. 11 U.S.C. § 525(b)(1999). Section 525(c),
7 enacted in 1994, prohibits discrimination against debtor-
8 borrowers on the basis of discharged, unrepaid loans by
9 governmental units operating a student loan or grant program. 11
10 U.S.C. § 525(c) (2001). Section 525(c) signaled congressional
11 disapproval of Goldrich v. New York State Higher Educ. Servs.
12 Corp., 771 F.2d 28 (2d Cir. 1985), in which this Court had
13 narrowly construed section 525(a)'s "other similar grant"
14 language to not include extensions of credit. Neither section
15 525(b) nor section 525(c) is implicated by this appeal.

1 including eviction for breach of lease. See supra note 1.

2 Depending on the breadth attributed to section 525(a), a
3 conflict between sections 525(a) and 365 may arise in situations,
4 like Stoltz's, where a debtor seeks to retain an executory
5 contract or unexpired lease with a governmental unit after having
6 her debt discharged in bankruptcy, but without curing the related
7 prepetition defaults. If the public housing grant protected
8 under section 525(a) includes the public housing lease itself,
9 or, put another way, includes the debtor-tenant's current right
10 to participate in the public housing program, then the
11 antidiscrimination provision is at odds with the executory
12 contract provision, which would require Stoltz to cure, not
13 simply have discharged, her debt to BHA as a precondition of
14 assuming the public housing lease. If, on the other hand,
15 section 525(a) is construed to only protect the debtor-tenant's
16 future right to participate in the public housing program, then
17 there is no conflict between sections 525(a) and 365, and BHA may
18 proceed with the eviction.

19 A. Standard of Review

20 The rulings of a district court acting as an appellate court
21 in a bankruptcy case are subject to plenary review. In re
22 Mazzeo, 167 F.3d 139, 142 (2d Cir. 1999). Accordingly, this
23 Court reviews the bankruptcy court's conclusions of law de novo
24 and its findings of fact for clear error. McCord v. Agard, 252

1 F.3d 113, 116 (2d Cir. 2001).

2 B. Development of the Antidiscrimination Provision

3 1. Codification of Perez v. Campbell

4 Section 525(a) evolved from Perez v. Campbell, 402 U.S. 637,
5 91 S. Ct. 1704 (1971), a seminal bankruptcy case in which the
6 Supreme Court struck down a state statute that withheld driving
7 privileges from debtors who failed to satisfy motor-vehicle-
8 related tort judgments against them, even if the judgments were
9 discharged under bankruptcy law. The Supreme Court used the
10 Supremacy Clause to invalidate the state statute, finding that it
11 discriminated against debtors in a manner that frustrated and was
12 contrary to the fresh start principles of the Bankruptcy Act.
13 Id. at 649-52, 1711-13. Congress thereafter signaled its
14 approval of the Perez holding by enacting section 525(a), which
15 prohibits bankruptcy-based discrimination by governmental units
16 against debtors. Section 525(a) states, in relevant part, that:

17 [A] governmental unit may not deny, revoke, suspend, or
18 refuse to renew a license, permit, charter, franchise,
19 or other similar grant to, condition such a grant to,
20 discriminate with respect to such a grant against, deny
21 employment to, terminate the employment of, or
22 discriminate with respect to employment against, a
23 person that is or has been a debtor under this title or
24 a bankrupt or a debtor under the Bankruptcy Act, or
25 another person with whom such bankrupt or debtor has
26 been associated, solely because such bankrupt or debtor
27 is or has been a debtor under this title or a bankrupt
28 or debtor under the Bankruptcy Act, has been insolvent
29 before the commencement of the case under this title,
30 or during the case but before the debtor is granted or
31 denied a discharge, or has not paid a debt that is
32 dischargeable in the case under this title or that was
33 discharged under the Bankruptcy Act.

1 11 U.S.C. § 525(a) (2001) (emphasis added). Notably, the text of
2 Section 525(a) does not limit its scope to the facts presented in
3 Perez. Section 525(a) applies to any governmental unit, not just
4 a State agency or department; it covers not only licenses, but
5 also permits, charters, franchises, and other similar grants; and
6 it applies regardless of whether the governmental unit involved
7 is the creditor whom the debtor failed to pay, or is simply a
8 grantor conditioning a grant on the debtor's satisfaction of a
9 discharged debt owed to a third party.

10 2. Case Law Development of Section 525(a)

11 In the nearly twenty-four years that have passed since its
12 enactment, section 525(a) has been interpreted by the courts to
13 protect debtors from discrimination in a wide variety of
14 contexts, including a debtor's right to operate a motor vehicle,
15 see, e.g., In re Adler, 47 B.R. 554 (Bankr. S.D. Fla. 1985)
16 (holding section 525(a) prohibits enforcement of statute that
17 allows state department of motor vehicles to suspend licenses and
18 registrations of judgment debtors, even if motor-vehicle-related
19 judgments against them were discharged in bankruptcy); ability to
20 engage in a trade or business, see, e.g., In re Walker, 927 F.2d
21 1138 (10th Cir. 1991) (finding statute, which automatically
22 revokes real estate license of any licensee for whom payment was
23 made from real estate recovery fund, contravenes section 525(a));
24 and ability to obtain essential goods and services, In re Heath,

1 3 Bankr. 351 (N.D. Ill. 1980) (holding state university's refusal
2 to release student-debtor's transcript until he paid prepetition
3 debt in full violated section 525(a)).

4 Despite more than twenty years of judicial consideration,
5 however, the scope of Section 525(a)'s protection in the context
6 of public housing is still unsettled. No circuit court has yet
7 spoken on the issue, and the bankruptcy courts and district
8 courts that have done so have done so inharmoniously. It is
9 undisputed that a public housing authority is a governmental unit
10 within the meaning of 525(a).³ See 11 U.S.C. § 101(27); see also
11 In re Robinson, 169 B.R. 171, 176 (N.D. Ill. 1994), In re
12 Szymecki, 87 B.R. 14, 16 (Bankr. W.D. Pa. 1988). BHA has
13 conceded as much in this appeal. Instead, the debate over

1 ³The Bankruptcy Code defines "governmental unit" to include:
2 "United States; State; Commonwealth; District; Territory;
3 municipality; foreign state; department, agency, or
4 instrumentality of the United States (but not a United States
5 trustee while serving as trustee in a case under this title), a
6 State, a Commonwealth, a District, a Territory, a municipality,
7 or a foreign state; or other foreign or domestic government." 11
8 U.S.C. § 101(27).

9 Paragraph 27's legislative history indicates that
10 "governmental unit" is defined "in the broadest sense. The
11 definition encompasses the United States, a State, Commonwealth,
12 District, Territory, municipality, or foreign state, and a
13 department, agency or instrumentality of any of these entities.
14 'Department, agency, or instrumentality' does not include an
15 entity that owes its existence to State action, such as the
16 granting of a charter or a license but that has no other
17 connection with a State or local government or the Federal
18 Government. The relationship must be an active one in which the
19 department, agency, or instrumentality is actually carrying out
20 some governmental function." S. Rep. No. 95-989, at 24 (1978),
21 reprinted in 1978 U.S.C.C.A.N. 5787, 5810; see also H. Rep. No.
22 95-595, at 311 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6268.

1 section 525(a) in the public housing context has centered on (1)
2 the precise contours of the "other similar grant[]" at stake,
3 compare Johnson v. Chester Hous. Auth. (In re Johnson), 250 B.R.
4 521, 530 (Bankr. E.D. Pa. 2000) (determining that the "other
5 similar grant[]" protected by section 525(a) was the public
6 housing tenant's inseparable rights to lease a residence and to
7 be charged rent reductions established for public housing
8 residents), and In re Curry, 148 B.R. 966, 972 (Bankr. S.D. Fla.
9 1992) (finding eviction would violate section 525(a) because it
10 would revoke the governmental grant of a rent subsidy), with In
11 re Bacon, 212 B.R. 66, 74-75 (Bankr. E.D. Pa. 1997) (finding
12 eviction permissible because section 525(a) protects only debtor-
13 tenant's future right to participate in public housing program),
14 and (2) whether a public housing authority in this situation
15 seeks to evict the public housing tenant "solely because" of the
16 discharge of prepetition defaults, compare Robinson v. Chicago
17 Hous. Auth. (In re Robinson), 169 B.R. 171, 176 (Bankr. N.D. Ill.
18 1994) (distinguishing between eviction solely because debtor-
19 tenant failed to pay dischargeable debt and eviction because
20 debtor-tenant stopped paying rent), and Hous. Auth. of Pittsburgh
21 v. James (In re James), 198 B.R. 885, 888 (Bankr. W.D. Pa. 1996)
22 (distinguishing between eviction solely because of the failure to
23 pay dischargeable debt and eviction (1) because the lease is no
24 longer in effect because it was deemed rejected, (2) because of
25 housing authority's duty to taxpayers to ensure that tenants pay

1 rent, and (3) because of housing authority's obligation to other
2 applicants to make housing available to them), with Bacon, 212
3 B.R. 66, 75 (disagreeing with "[t]he illusory distinction between
4 seeking eviction for not paying a dischargeable debt as opposed
5 to eviction for stopping the payment of rent").

6 C. The Public Housing Grant Protected Under Section 525(a)

7 In addition to its concession that it falls within section
8 525(a)'s definition of a "governmental unit," BHA also concedes
9 that Stoltz's prepetition defaults have been discharged, and that
10 it may not discriminate against Stoltz with regard to a section
11 525(a) grant because of her prepetition defaults. Nonetheless,
12 BHA argues that the eviction it seeks is not proscribed by
13 section 525(a) because a public housing lease is not an "other
14 similar grant[]" within the meaning of section 525(a). BHA
15 appears to argue that a public housing tenant's future right to
16 participate in the public housing program is the only protected
17 public housing grant under section 525(a). In this scenario,
18 Stoltz's protected public housing grant would not be disturbed by
19 eviction because eviction would not limit her right to
20 participate in the public housing program in the future. If this
21 line of thinking were correct, section 525(a) would prohibit BHA
22 only from denying Stoltz, upon reapplication, a future lease
23 because of her prepetition defaults.

24 We reject this artificially narrow construction of section
25 525(a) because the plain language of the provision indicates that

1 eviction would revoke a protected grant, i.e., the lease, in
2 violation of section 525(a). "[W]e begin [statutory
3 interpretation] with the understanding that Congress says in a
4 statute what it means and means in a statute what it says."
5 Hartford Underwriters Ins. Co. v. Union Planters Bank, 530 U.S.
6 1, 6, 120 S. Ct. 1942, 1947 (2000) (internal quotation marks and
7 citation omitted). "The plain meaning of legislation should be
8 conclusive, except in the rare cases in which the literal
9 application of a statute will produce a result demonstrably at
10 odds with the intentions of its drafters." United States v. Ron
11 Pair Enter., 489 U.S. 235, 242, 109 S. Ct. 1026, 1031 (1989)
12 (internal quotation marks and citation omitted).

13 The text of section 525(a) states that it protects a
14 debtor's interest in a "license, permit, charter, franchise, or
15 other similar grant" provided by a governmental unit. The term
16 "other similar grant" is not defined by the code.⁴ In common
17 parlance, a grant is "a transfer of property by deed or writing."
18 Merriam Webster's Collegiate Dictionary 507 (10th ed. 2000). As
19 a legal term, a grant is "[a]n agreement that creates a right of

1 "The omission of a statutory definition for the term "other
2 similar grant" is unsurprising in light of the antidiscrimination
3 provision's legislative history, which indicates that "... the
4 section is not exhaustive. The enumeration of various forms of
5 discrimination against former bankrupts is not intended to permit
6 other forms of discrimination ..." and delegates to the judiciary
7 the responsibility "to mark the contours of the anti-
8 discrimination provision in pursuit of sound bankruptcy policy."
9 H. Rep. No. 95-595, at 366-67 (1977), reprinted in 1978
10 U.S.C.C.A.N. 5787, 6323.

1 any description other than the one held by the grantor. Examples
2 include leases, easements, charges, patents, franchises, powers,
3 and licenses." Black's Law Dictionary 707 (7th ed. 1999)
4 (emphasis added). Similarly, a lease is "[a] contract by which a
5 rightful possessor of real property conveys the right to use and
6 occupy that property in exchange for consideration." Id. at 898.
7 Thus, a public housing lease is a grant by which a public housing
8 authority conveys to a public housing tenant the right to use and
9 occupy public housing in exchange for rent. The only question
10 that remains is whether a public housing lease is a grant
11 "similar" to a "license, permit, charter, [or] franchise."

12 The common qualities of the property interests protected
13 under section 525(a), i.e., "license[s], permit[s], charter[s],
14 franchise[s], and other similar grants," are that these property
15 interests are unobtainable from the private sector and essential
16 to a debtor's fresh start. For instance, a real estate license,
17 state university transcript, or driver's license may only be
18 obtained from a particular governmental unit. A debtor who
19 cannot obtain her real estate license will be unable to pursue
20 her chosen profession; a debtor who cannot obtain his transcript
21 will be unable to apply for certain jobs or further schooling; a
22 debtor who cannot obtain a driver's license will be unable to
23 commute to many jobs or school.

24 Public housing leases, too, are property interests
25 unobtainable from the private sector and essential to a debtor's

1 fresh start. Public housing leases are, by definition,
2 obtainable only from governmental entities.⁵ Furthermore, a
3 public housing lease is essential to a debtor's fresh start. An
4 individual qualifies for public housing because he or she cannot
5 afford housing at prevailing market rates. In light of the
6 notoriously lengthy waiting lists that may exist for public
7 housing, see, e.g., Housing Auth. Of Pittsburgh v. Collins (In re
8 Collins), 199 B.R. 561, 568 n.13 (Bankr. W.D. Pa. 1996), an
9 evicted debtor-tenant, along with any dependants, would quite
10 possibly become homeless - a status not conducive to economic
11 survival. A debtor-tenant's future right to participate in
12 public housing programs - on a space available basis - would
13 therefore be of little or no practical value upon eviction. A
14 debtor-tenant's "entire economic status [therefore] is dependent
15 on" his or her current public housing lease, In re Day, 208 B.R.
16 358, 367 (Bankr. E.D. Pa. 1997), which is his or her "single most
17 significant material possession," In re Whitsett, 163 B.R. 752,
18 755 (Bankr. E.D. Pa. 1994). Eviction-induced homelessness would
19 "seriously affect the debtors' livelihood [and] fresh start." H.
20 Rep. No. 95-595, at 367 (1977), reprinted in 1978 U.S.C.C.A.N.
21 5963, 6268. Conversely, preventing homelessness promotes the

1 ⁵Section 8 leases, on the other hand, arguably do not fall
2 within the protection of section 525(a) because they are
3 government-subsidized leases for privately owned housing units
4 between a qualifying tenant and a private landlord. See In re
5 Rosemond, 105 B.R. 8, 9 (W.D. Pa. 1989).

1 Code's fresh start policy by helping debtors maintain steady
2 employment and self-sufficiency.

3 BHA urges us to follow, as did the bankruptcy court below,
4 the reasoning of In re Bacon, 212 B.R. 66 (Bankr. E.D. Pa. 2000).
5 The Bacon analysis bifurcated the public housing authority into
6 separate creditor and grantor roles, finding that a public
7 housing authority is constrained by section 525(a) only in its
8 role as a grantor of a public benefit, but remains unconstrained
9 in its role as a creditor, "so long as [the debtor-creditor
10 relationship] is not being utilized to deprive the [d]ebtor of a
11 protected grant." Id. at 75-76. The Bacon court then defined
12 the protected grant as "the [future] right to participate in
13 public housing," id. at 75, and it expressly declined to include
14 the public housing lease itself in its definition of the
15 protected grant, id. at 75, n.17. Bacon then concluded that a
16 public housing authority, in its creditor role, may evict a
17 debtor-tenant for nonpayment of discharged, prepetition rent
18 because such eviction would not deprive the debtor of his or her
19 future right to participate in the public housing program, even
20 though it would result in "temporary loss of a public housing
21 unit for the Debtor as she awaits the assignment of a new unit."
22 Id. at 76. Thus, Bacon's holding results in a strained temporal
23 separation of the public housing grant into a current,
24 unprotected right to participate in public housing and a future,
25 protected right to participate in public housing.

1 We see two serious errors with this approach. First, the
2 Bacon court's interpretation of section 525(a)'s protected grant
3 in the public housing context is not based on the text of section
4 525(a). Bacon constructed its interpretation of a protected
5 public housing grant based on its belief that it need not
6 preserve the debtor-tenant's right to fully participate in the
7 government program, but instead need only preserve the debtor-
8 tenant's right to participate in the public housing program to
9 some degree. Bacon, 212 B.R. at 75, n.17. Nothing in section
10 525(a)'s text or legislative history, however, indicates that the
11 protected grant should be defined as anything less than the grant
12 in its entirety, let alone as the debtor's smallest discernable
13 interest in the benefit at issue.

14 Second, the text of section 525(a) expressly proscribes
15 revocation and suspension of a protected grant, not just denial
16 of or refusal to renew a grant upon application. Because
17 eviction results in revocation of the debtor-tenant's current
18 participation in the public housing program, eviction revokes the
19 protected grant in violation of 525(a). Permitting the debtor
20 only to reapply to receive future housing benefits does not
21 ameliorate the discriminatory revocation of the debtor-tenant's
22 protected public housing lease.

23 Beyond its incompatibility with the text of section 525(a),
24 Bacon's holding is also problematic because it does not comport
25 with the congressional intent underlying section 525. Section

1 525(a) was enacted to protect debtors from bankruptcy-based
2 discrimination by governmental units that provide essential
3 services. Yet, Bacon's holding would effectively protect the
4 debtor's interest in essential services only where the
5 governmental unit is a non-creditor. Where the governmental unit
6 is a grantor and a creditor - that is, where the governmental
7 unit is even more involved, and private actors are not involved -
8 the debtor would effectively receive no protection from section
9 525(a) against the governmental unit's bankruptcy-based
10 discrimination. This incongruous result cannot be what Congress
11 intended.

12 D. Whether Eviction is "[S]olely [B]ecause" of Discharged
13 Prepetition Rent

14 Alternatively, BHA focuses on section 525(a)'s "solely
15 because" language and argues that it desires to evict Stoltz only
16 because she breached her public housing lease, not because she
17 failed to pay prepetition rent that was discharged in bankruptcy.
18 This unpersuasive argument is premised on an "illusory
19 distinction" between the breach of the lease and the nonpayment
20 of the discharged prepetition rent. Bacon, 212 B.R. at 75. The
21 breach is not an additional basis for eviction beyond that
22 prohibited by section 525(a); it is the very basis for
23 discrimination prohibited by 525(a). Had Stoltz breached the
24 lease by failing to comply with an enumerated tenant duty other
25 than the duty to pay prepetition rent, BHA might have a

1 permissible basis for eviction under section 525(a). That
2 factual scenario is not before us. Stoltz breached the lease
3 because she failed to pay prepetition rent, which was later
4 discharged in bankruptcy. Therefore, saying that BHA desires to
5 evict Stoltz for breach of the lease is the equivalent of saying
6 BHA desires to evict her "solely because . . . [she] has not paid
7 a debt that was discharged under the Bankruptcy Act." 11 U.S.C.
8 § 525(a) (2001). Evicting Stoltz under these circumstances would
9 constitute discrimination against her in violation of section
10 525(a).

11 Because we have discerned from the plain text of section
12 525(a) that a public housing lease, and therefore the debtor-
13 tenant's current right to participate in the public housing
14 program, is a protected grant, it is unnecessary to delve into
15 section 525(a)'s legislative history. We note briefly, however,
16 that the legislative history fully supports our interpretation of
17 "other similar grants" as inclusive of public housing leases.⁶

1 ⁶The legislative history specifically rejects a narrow
2 construction of the antidiscrimination provision and makes clear
3 that 525(a) protects the debtor's fresh start.

4 [S]ection [525(a)] is not exhaustive. The enumeration of
5 various forms of discrimination against former bankrupts is
6 not intended to permit other forms of discrimination. The
7 courts have been developing the Perez rule. This section
8 permits further development to prohibit actions by
9 governmental or quasi-governmental organizations that
10 perform licensing functions, such as a state bar association
11 or a medical society, or by other organizations that can
12 seriously affect the debtors' livelihood or fresh start,
(continued...)

1 E. Resolving the Conflict Between Sections 525(a) and 365

2 Because section 525(a) protects debtor-tenants like Stoltz
3 from eviction for nonpayment of discharged prepetition rent,
4 section 525(a) conflicts with section 365. The bankruptcy
5 trustee did not assume the lease under section 365(b)(1);
6 accordingly, Stoltz's public housing lease has been deemed
7 rejected under section 365(d)(1), thus permitting BHA to pursue
8 state law remedies on the ground that Stoltz breached the lease
9 prepetition, see section 365(g).⁷ Sections 525(a) and 365

6(...continued)

1 such as exclusion from a union on the basis of discharge of
2 a debt to the union's credit union. The effect of the
3 section, and of further interpretations of the Perez rule,
4 is to strengthen the anti-reaffirmation policy found in
5 section 524(b). Discrimination based solely on nonpayment
6 could encourage reaffirmations, contrary to the expressed
7 policy.

8 H. Rep. No. 95-595, at 367 (1977), reprinted in 1978 U.S.C.C.A.N.
9 5787, 6323.

1 ⁷Section 365(b)(1) states, in relevant part, that:

2 If there has been a default in an . . . unexpired lease
3 of the debtor, the trustee may not assume such . . .
4 lease unless, at the time of assumption of such . . .
5 lease, the trustee - (A) cures, or provides adequate
6 assurance that the trustee will promptly cure, such
7 default; (B) compensates, or provides adequate
8 assurance that the trustee will promptly compensate, a
9 party other than the debtor to such . . . lease, for
10 any actual pecuniary loss to such party resulting from
11 such default; and (C) provides adequate assurance of
12 future performance under such . . . lease.

13 11 U.S.C. § 365(b)(1)(A)-(C). Section 365(d)(1) states, in
14 relevant part, that:

(continued...)

1 therefore cannot simultaneously be given their full effect. If
2 we protect Stoltz from bankruptcy-based discrimination under
3 section 525(a), we cannot allow BHA to evict her. If we do not
4 allow BHA to evict Stoltz, however, then we cannot enforce the
5 executory contract assumption requirements or the implications of
6 rejection under section 365. Thus, we face a conflict between
7 sections 525(a) and 365 of the Bankruptcy Code. Unlike the Zax
8 in the prairie of Prax, however, these important Bankruptcy Code
9 provisions cannot be left in conflict, unbudged in their tracks.

10 1. Specificity Analysis

11 Many courts have resolved this impasse by concluding that
12 either section 525(a) or section 365⁸ is the more specific

7(...continued)

1 In a case under chapter 7 of this title, if the trustee
2 does not assume or reject an . . . unexpired lease of
3 residential real property . . . of the debtor within 60
4 days after the order for relief, . . . then such . . .
5 lease is deemed rejected.

6 11 U.S.C. § 365(d)(1). Section 365(g)(1) states, in relevant
7 part, that:

8 [R]ejection of an . . . unexpired lease of the debtor
9 constitutes a breach of such . . . lease . . .
10 immediately before the date of the filing of the
11 petition

12 11 U.S.C. § 365(g)(1).

1 ⁸Some courts argue that section 365(b)(1), which sets forth
2 the requirements for assumption of an unexpired lease, is more
3 specific than section 525(a). Others refer to 365(d)(1), which
4 states that an unexpired lease that has not been assumed or
5 rejected by the bankruptcy estate within sixty days of the
6 bankruptcy filing will be deemed rejected, as the more specific

(continued...)

1 provision and therefore trumps the other, more general provision.
2 Compare Curry, 148 B.R. at 972 (finding section 525(a) more
3 specific than section 365(b)(1)(A) because section 525(a)
4 addresses a specific type of creditor and creditor behavior),
5 with In re Collins, 199 B.R. 561, 567 (Bankr. W.D. Pa. 1996)
6 (finding section 365 more specific than section 525(a) because
7 section 365 is "about as specific as it can be about what it
8 takes to assume a lease and section 525(a) does not even mention
9 leases"), In re James, 198 B.R. 885, 890 (Bankr. W.D. Pa. 1996)
10 (same), In re Caldwell, 174 B.R. 650, 654 (Bankr. N.D. Ga. 1994)
11 (same). The bankruptcy court in this case, for instance, ruled
12 that "the more specific language of § 365(d)(1) must be read to
13 trump the general provisions of § 525(a)." The district court
14 determined that section 525(a) is more specific, even though
15 "'specificity' is not easily measured, because Congress acted to
16 codify a judicial holding that addressed a specific set of facts
17 and because it fashioned the provision to compel only
18 'governmental units' to take measures to prevent interference
19 with a debtor's fresh start." Stoltz, 259 B.R. at 260-61.

20 It is a "basic principle of statutory construction that a
21 specific statute . . . controls over a general provision," HCSC-
22 Laundry v. United States, 450 U.S. 1, 6, 101 S. Ct. 836, 839
23 (1981). Based on the text alone, without regard to each

⁸(...continued)
1 provision. We consider both sections, alone and in combination.

1 provision's meaning, section 365's claim to greater specificity,
2 based on the invocation of the more specific word "lease" instead
3 of the more general term "grant," seems no more compelling than
4 section 525(a)'s claim to greater specificity, based on its use
5 of the specific term "governmental unit," as compared to section
6 365's failure to discuss the public or private status of the
7 grantor. Focusing on the meaning of sections 525(a) and 365 in
8 the housing context, however, makes plain that section 525(a) is
9 the more specific provision. As discussed above, section 365
10 indicates that landlords (in general) may evict debtor-tenants
11 for nonpayment of discharged prepetition rent. Section 525(a),
12 on the other hand, specifically prohibits landlords who are also
13 governmental units from evicting debtor-tenants solely because of
14 nonpayment of discharged prepetition rent. Thus, these two
15 sections dictate precisely opposite outcomes - except that
16 section 365 applies to all landlords, whereas section 525(a)
17 applies only to landlords which are also governmental units.
18 Coupled with the district court's persuasive reasoning, our
19 specificity analysis convinces us that section 525(a) is the more
20 specific provision.⁹

1 ⁹In its amicus curiae brief, the United States contends that
2 section 525(a) should be construed narrowly to avoid
3 "undermin[ing] . . . important housing statutes" that provide for
4 eviction of public housing tenants for nonpayment of rent.
5 Section 525(a) specifically exempts three federal statutes from
6 its scope, and no federal housing statutes are among them. If,
7 as amicus curiae suggests, Congress clearly intended for these

(continued...)

1 11 U.S.C. § 365(b)(1)(B), and provide adequate assurance, 11
2 U.S.C. § 365(b)(1)(C), thereby protecting the creditor's
3 pecuniary interests before requiring a creditor to continue a
4 contractual relationship with a debtor. If a debtor or trustee
5 does not assume an unexpired lease under section 365(b)(1), then
6 the lease is deemed rejected under section 365(d)(1). The
7 landlord may then pursue state law remedies for breach, so long
8 as the landlord does not attempt to reaffirm the debt in
9 violation of section 524.¹⁰

10 Giving section 525(a) its full effect, however, will only
11 marginally abbreviate the benefit BHA receives under section 365.
12 It is undisputed that BHA, as a governmental unit, may not deny
13 Stoltz a future public housing lease on the basis of the
14 discharged prepetition rent. The only benefit BHA seeks,
15 therefore, is eviction. Whether Stoltz remains in her apartment
16 or is evicted and later readmitted to BHA's public housing, she
17 is obligated to pay all postpetition rent. Neither Stoltz's
18 discharge nor section 525(a) diminishes her obligation to pay
19 postpetition rent, and the Code expressly prohibits Stoltz from
20 receiving another discharge under bankruptcy for at least six
21 years. 11 U.S.C. § 727(a)(8). In the interim, Stoltz may be
22 evicted if she breaches her lease by postpetition default.

1 ¹⁰Eviction would not run afoul of section 524's
2 antireaffirmation policy, which prohibits public and private
3 creditors from seeking to reaffirm prepetition debt discharged in
4 bankruptcy. 11 U.S.C. § 524.

1 Therefore, all of BHA's creditor-interests are protected,
2 regardless of whether Stoltz is evicted or not.¹¹

3 Given the serious harm posed to Stoltz's fresh start, and
4 the minimal benefit BHA would receive, curtailment of BHA's state
5 law remedy of eviction serves the sound public policy of granting
6 debtors a fresh start and does the least mischief to the purposes
7 underlying sections 525(a) and 365 of the Bankruptcy Code. We
8 therefore conclude that, when sections 365(b) and 525(a) come
9 "foot to foot" in the public housing context, section 365(b) must
10 step aside and let section 525(a) pass.

11 III. CONCLUSION

12 For the foregoing reasons, we affirm the district court's
13 reversal of the bankruptcy's court's order to lift the automatic
14 stay. Section 525(a) protects debtor-tenants like Stoltz from
15 eviction on the basis of nonpayment of discharged prepetition
16 rent. To the extent sections 525(a) and 365 of the Bankruptcy
17 Code conflict, the rules of statutory construction and sound
18 bankruptcy policy dictate that section 525(a) must prevail. BHA
19 is therefore permanently enjoined from enforcing its judgment for
20 possession against Stoltz.

21 Accordingly, we AFFIRM the judgment of the district court.

1 ¹¹Perhaps BHA seeks the benefit of the lengthy public
2 housing waiting lists, a "benefit" not contemplated by the text
3 of section 365, that would enable it to evict Stoltz and then
4 deny her public housing for years on the basis of the waiting
5 list.

1 JOHN M. WALKER, JR., Chief Judge, dissenting:

2 Because I believe that 11 U.S.C. § 525(a) of the Bankruptcy
3 Code does not apply to residential leases and that 11 U.S.C. §
4 365 does apply to public housing leases, I respectfully dissent.

5 Like the Majority, I start with the text of § 525(a). "[A]
6 governmental unit may not deny, revoke, suspend, or refuse to
7 renew a license, permit, charter, franchise, or other similar
8 grant . . . solely because" a person is or has been bankrupt. 11
9 U.S.C. § 525(a). Because a residential lease is not included
10 among the four enumerated governmental grants to which § 525
11 applies, the question is whether a residential lease is a
12 "similar grant."

13 The Majority states that the common quality connecting
14 "license, permit, charter [and] franchise" is "that these
15 property interests are unobtainable from the private sector and
16 essential to a debtor's fresh start." Maj. Op., supra, at 17.
17 But the fact that these interests are unobtainable from the
18 private sector derives from the fact that § 525(a) is directed to
19 "government unit[s]" and not to the particular character of
20 licenses, permits, charters and franchises, as these interests
21 can also be obtained from the private sector. Nor does the
22 quality of being "essential to the debtor's fresh start" plainly
23 derive from "license, permit, charter, [and] franchise."
24 Although some interests such as a vendor license, may be

1 essential to a bankrupt's fresh start, others, such as a
2 recreational fishing license, are not. The Majority seems to
3 have read "similar" out of the statute because its definition of
4 "similar grant" is likely to encompass all possible government
5 grants to individuals.

6 The specified grants -- license, permit, charter, and
7 franchise -- share a more definite similarity: Each allows the
8 grant-holder to engage in certain regulated conduct. The
9 government grants real estate, drivers, liquor, or medical
10 licenses; building or emissions permits; bank or corporate
11 charters; and cable television or electricity distribution
12 franchises. As the Sixth Circuit recently stated, the common
13 thread is the "government's role as a gatekeeper in determining
14 who may pursue certain livelihoods." Toth v. Mich. State Hous.
15 Auth., 136 F.3d 477, 480 (6th Cir. 1998) (holding that § 525(a)
16 does not apply to an extension of a home improvement loan).
17 Thus, I believe that a "similar grant" is a grant relating to
18 authorization to engage in income-generating conduct. This
19 interpretation of "similar grant" is supported by the focus on
20 employment in the remainder of § 525(a) and in § 525(b), each of
21 which forbids the firing of bankrupt employees. 11 U.S.C. §
22 525(a) and (b). Because education is often critical to getting a
23 job, § 525(c)'s prohibition of discrimination against bankrupts
24 in the granting of student loans is also consistent with the goal

1 of allowing bankrupts to earn a living. 11 U.S.C. § 525(c).

2 Therefore, I read § 525(a) not to apply to a residential
3 lease. Such leases do not directly enable their holders to
4 engage in the kind of an income-generating activity as do
5 licenses, permits, charters, and franchises. This reading finds
6 additional support from the fact that Congress specifically
7 refers to leases elsewhere in the Bankruptcy Code, see, e.g., 11
8 U.S.C. §§ 363, 365, 929, and 1169, but failed to include leases
9 among § 525(a)'s enumerated interests.

10 Any lingering uncertainty about this interpretation
11 evaporates when one considers § 525(a) in the context of the
12 entire Bankruptcy Code. "[E]very part of a statute must be
13 construed in connection with the whole, so as to make all the
14 parts harmonize" Market Co. v. Hoffman, 101 U.S. 112,
15 116 (1879). In particular, "where possible, provisions of a
16 statute should be read so as not to create a conflict." La. Pub.
17 Serv. Comm'n v. FCC, 476 U.S. 355, 370 (1986).

18 Thus, the potential conflict between § 365 and § 525(a) is
19 properly considered when interpreting § 525(a). As the Majority
20 recognizes, if we read § 525(a) to apply to residential leases,
21 it is placed in direct conflict with § 365 of the Bankruptcy
22 Code. Maj. Op., supra, at [23]. Thus, as a matter of sound
23 statutory construction, if it is reasonable to construe "similar
24 grants" as not including residential leases, that course is

1 preferable if it will avoid creating a conflict.

2 Finally, construing § 525(a) to not include leases makes
3 sense as a matter of public housing policy. It is important to
4 recognize that Stoltz is not simply asking to be allowed to keep
5 her lease; she is asking for a preference over other families
6 waiting for public housing whose need for housing is as great as
7 hers. Moreover, governments depend on the rent received on
8 public housing leases to sustain the viability of the entire
9 program. Congress emphasized the importance of requiring prompt
10 rental payments from public housing tenants when it conditioned
11 contributions to public housing agencies on "the establishment of
12 satisfactory procedures designed to assure the prompt payment and
13 collection of rents and the prompt processing of evictions in the
14 case of nonpayment of rent." 42 U.S.C. § 1437d(c)(4)(B). The
15 Majority's interpretation will remove the incentive for bankrupt
16 public housing tenants to assume the lease and cure pre-petition
17 debts to the public housing authority as is required by § 365.
18 See 11 U.S.C. § 365(b)(1)(A). My interpretation will better
19 enable public housing systems to remain viable through a regime
20 of prompt rental receipts. Replacing delinquent tenants who have
21 rejected their lease during bankruptcy with the next needy family
22 in line will encourage assumption of residential leases during
23 bankruptcy and enhance the system as a whole.

24 I respectfully dissent.

Clerk, U.S. Bankruptcy Court, Brattleboro, VT
U.S. Bankruptcy Court VT
District of Vermont
The Opera House, 67 Merchants Row
P.O. Box 6648
Rutland, VT 05702-6648
