

11-166 RADLAX GATEWAY HOTEL V. AMALGAMATED BANK

DECISION BELOW: 651 F.3d 642

LOWER COURT CASE NUMBER: 10-3597, 10-3598

QUESTION PRESENTED:

Section 1129(b)(2)(A) of the Bankruptcy Code sets forth three alternative standards for determining if a chapter 11 plan is "fair and equitable" with respect to an objecting class of secured creditors. Petitioners, the Debtors, proposed a chapter 11 plan involving the sale of assets free of liens that satisfies one of these standards by providing their secured lender with the "indubitable equivalent" of its claim pursuant to Section 1129(b)(2)(A)(iii). In an appeal certified directly from the bankruptcy court, the Seventh Circuit held that the Debtors could only satisfy the statute by allowing their secured creditor to bid its claim in lieu of cash (i.e., credit bid) at the sale pursuant to Section 1129(b)(2)(A)(ii). This holding directly conflicts with the Third Circuit's decision in *In re Philadelphia Newspapers*, 599 F.3d 298 (3d Cir. 2010), and the Fifth Circuit's decision in *Scotia Pacific Co., LLC v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009). The question presented is:

Whether a debtor may pursue a chapter 11 plan that proposes to sell assets free of liens without allowing the secured creditor to credit bid, but instead providing it with the indubitable equivalent of its claim under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code.

CERT. GRANTED 12/12/2011