No. 18A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

SONJA RITTER,

Applicant,

v.

LOIS I. BRADY,
Chapter 7 Trustee,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

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APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

TO: Chief Justice John G. Roberts, Jr., Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Under this Court's Rules 13.5 and 22, Applicant Sonja Ritter requests an extension of sixty days to file her petition for a writ of certiorari. The petition will challenge a decision of the U.S. Court of Appeals for the Ninth Circuit in *Ritter v. Brady* (*In re* Ritter), BAP No. 17-1001, No. 17-60064 (9th Cir. July 13, 2018), a copy of which is attached. In support of this application, Applicant provides the following information:

1. The Ninth Circuit issued its decision on July 13, 2018. App. 1. Without an extension, the petition for a writ of certiorari would be due on October 11, 2018. With the requested extension, the petition would be due on December 10, 2018. This Court's jurisdiction will be based on 28 U.S.C. § 1254(1).

2. This case is a serious candidate for review. Applicant Ritter was denied relief in the courts below because of *Dewsnup v. Timm*, 502 U.S. 410 (1992), which, "[f]rom its inception, … has been the target of criticism." *Bank of Am. v. Caulkett*, 135 S. Ct. 1995, 2000 n.† (2015). Ms. Ritter contends that *Dewsnup* is rightfully the subject of criticism, and her petition for a writ of certiorari will ask this Court to overrule it.

Under Chapter 7 of the Bankruptcy Code, a debtor's assets are liquidated and sold to satisfy the debtor's obligations to creditors. The Code

treats those creditors differently depending on whether their claims are secured or unsecured—with the secured claims having priority when assets are distributed. Generally speaking, a secured claim is one in which the creditor's interest is secured by a lien on property. *See United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 239 (1989). But when a secured claim is undersecured, or "underwater"—that is, when the debt owed is more than the underlying property's value—Section 506(a) of the Code treats the claim as a "secured claim" only up to the value of the property. 11 U.S.C. § 506(a)(1). The rest of the claim is unsecured. *Id.* And under Section 506(d), "to the extent that a lien secured a claim against the debtor that is not an allowed secured claim, such lien is void." 11 U.S.C. § 506(d).

In *Dewsnup*, the Court was asked to determine if the term "allowed secured claim" in 506(d) adopts 506(a)'s definition of "secured claim." Instead of using a consistent definition of the terms across Section 506, the Court held that Section 506(d)'s use of the term "allowed secured claim" is unrelated to Section 506(a)'s language. 502 U.S. at 417. Instead, the Court decided that so long as a creditor's claim is otherwise allowed and is secured by a lien, Section 506(d) does not void any portion of the lien, regardless of the value of the underlying property. *Id.* at 415, 418. In short, *Dewsnup* held that Section 506(d) does *not* void the portion of a lien that Section 506(a) treats as unsecured. *Id.* at 417. And in *Caulkett*, the Court held that

Dewsnup's reading of Section 506(d) controlled when applied to junior liens that are completely underwater. 135 S. Ct. at 2001.

This Court's understanding of Section 506, as enunciated in *Dewsnup* and reiterated in *Caulkett*, was the sole basis for the decision below. Before Ms. Ritter entered Chapter 7 bankruptcy in 2013, her property was encumbered by two mortgage liens—the senior lien was partially underwater and the junior lien was completely underwater. After the bankruptcy discharge, and with a fresh financial start, Ms. Ritter sought to refinance her first mortgage. But she could not because the junior lien had survived the bankruptcy. She asked the Bankruptcy Court for the Northern District of California to reopen her Chapter 7 case to strip down the value of the underwater junior lien. The bankruptcy court denied her request, explaining that it was bound by *Caulkett* and so reopening the case would be futile. A Bankruptcy Appellate Panel of the Ninth Circuit and the Ninth Circuit both affirmed solely on the basis of *Dewsnup* and *Caulkett*.

3. The issue in this case is cleanly presented and dispositive. If *Dewsnup* is overruled, Ms. Ritter's bankruptcy case could be reopened and the junior lien could be voided. And if it is not, Ms. Ritter's property would continue to be encumbered by the junior lien.

4. The issue presented is important. In *Dewsnup*, the Court relied on broad policy rationales and eschewed Section 506(d)'s text. *See Dewsnup*, 502 U.S. at 417-18. In doing so, the Court gave one term—allowed secured

claim—two different meanings in a single statutory section, Section 506. But the term "allowed secured claim" appears throughout the Bankruptcy Code. *See id.* at 421-22 (Scalia, J., dissenting). And as predicted in the *Dewsnup* dissent, *see id.* at 435-36, the decision has resulted in "methodological confusion" in lower courts' construction of terms throughout the Code. *Caulkett*, 135 S. Ct. at 2000 n.† (quoting *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 463 & n.3 (1999) (Thomas, J., concurring in judgment) (collecting cases)). Overruling *Dewsnup* will begin to clear up that confusion and will guide lower courts, not only in applying Section 506, but in promoting consistent application of the Code's terms across the board.

Overruling *Dewsnup* would affect many people and businesses who, like Ms. Ritter, need to file for bankruptcy and who would benefit from reliable application of the Bankruptcy Code. Last year alone saw 790,830 new bankruptcy cases. *See* U.S. Courts, Judicial Facts and Figures, Table 7.1 (Sept. 30, 2017), http://www.uscourts.gov/sites/default/files/data_tables/jff_7.1_0930.2017.pdf. Courts handling those cases should know how to interpret the Code. And debtors and creditors in those cases should understand their rights and responsibilities as Congress envisioned them.

5. This application seeks to accommodate Applicant's legitimate needs. Undersigned counsel at the Georgetown Law Appellate Courts Immersion Clinic has recently taken this case. The requested extension is necessary for

counsel and other members of the Clinic to fully familiarize themselves with the relevant provisions of the Bankruptcy Code and this Court's decisions. In light of the Clinic's other obligations—which include other appellate matters and an appellate argument—and because the Clinic's fall semester has only recently begun, the Clinic would not be able adequately to complete these tasks by October 11. A sixty-day extension would ensure that the Clinic is able to produce a petition that fully and fairly presents the issues in this case.

For these reasons, Applicant requests that the due date for her petition for a writ of certiorari be extended to December 10, 2018.

Respectfully submitted,

By: _____

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NOT FOR PUBLICATION

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: SONJA RITTER, Debtor. ---------- SONJA RITTER, Appellant, v. LOIS I. BRADY, Chapter 7 Trustee, Appellee.	No. 17-60064 BAP No. 17-1001 MEMORANDUM*

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Faris, Brand, and Jury, Bankruptcy Judges, Presiding

Submitted July 10, 2018**

Before: CANBY, W. FLETCHER, and CALLAHAN, Circuit Judges.

Sonja Ritter appeals pro se from the Bankruptcy Appellate Panel's ("BAP")

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

judgment affirming the bankruptcy court's order denying her motion to reopen her bankruptcy case. We have jurisdiction under 28 U.S.C. § 158(d). We review de novo BAP decisions and apply the same standard of review that the BAP applied to the bankruptcy court's ruling. *Boyajian v. New Falls Corp. (In re Boyajian)*, 564 F.3d 1088, 1090 (9th Cir. 2009). We affirm.

The bankruptcy court did not abuse its discretion by denying Ritter's motion to reopen and motion for reconsideration because Ritter failed to demonstrate grounds for such relief. *See Curry v. Castillo (In re Castillo)*, 297 F.3d 940, 945 (9th Cir. 2002) ("A bankruptcy court's decision to reopen is entirely within its sound discretion, based upon the circumstances of each case." (citation and internal quotation marks omitted)); *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (standard of review and grounds for relief under Fed. R. Civ. P. 59(e) or 60(b)); *see also* Fed. R. Bankr. P. 9023, 9024 (making Rules 59 and 60 applicable to bankruptcy cases). Contrary to Ritter's contention, the Supreme Court has held that the lien avoidance mechanism in 11 U.S.C. § 506(d) is not available when a claim secured by a lien has been allowed under § 502. *See Dewsnup v. Timm*, 502 U.S. 410, 416-20 (1992); *accord Bank of Am., N.A. v. Caulkett*, 135 S. Ct. 1995, 1999-2001 (2015) (applying *Dewsnup*'s interpretation of § 506(d) to wholly underwater mortgage liens).

We reject as without merit Ritter's contention that the bankruptcy court was

required to grant her motion to avoid PNC Bank's junior lien on the basis of PNC Bank's failure to oppose the motion. We reject as unsupported by the record Ritter's contentions that the bankruptcy court was biased against her as a pro se litigant or failed to give due consideration to her motion to reopen or motion for reconsideration.

AFFIRMED.