No.

In the
Supreme Court of the United States

MARGARET ADELINE VELTRE, by Executor DINA MILLER,
Petitioners,

v.

FIFTH THIRD BANK,
Respondent,

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

PETITION FOR A WRIT OF CERTIORARI

David A. Colecchia*
Law Care
324 South Maple Avenue
Greensburg, PA 15601
(724)-837-2320
(724)-837-0602-fax
Colecchia542@comcast.net
*Counsel of Record Attorney for Petitioners

PA. I.D. 71830

STATEMENT OF THE QUESTION PRESENTED

§547(b) of the Bankruptcy Code permits a debtor-in-possession to avoid a preferential transfer. The Bankruptcy Code defines a preferential transfer as a property transfer made within 90 days prior to a bankruptcy filing if the debtor was insolvent at the time of the transfer, if that transfer was made to a creditor on account of an antecedent debt, and if that transfer enabled the creditor to receive more than it would have received in a hypothetical Chapter 7 bankruptcy where the transfer never occurred and the creditor received payment of its debt to the extent provided by the Bankruptcy Code.

In this case, a creditor of Ms. Veltre, respondent Fifth Third Bank, transferred her residence to itself by purchasing it at a sheriff's sale. The transferred occurred within ninety days prior to Ms. Veltre's Bankruptcy filing. The residence had a fair market value of $196,000, but was sold at sheriff sale for $90,000 to one of the debtor's prepetition creditors. As the result of the sale the debtor's other prepetition creditors including the IRS will receive nothing, while if the sale was set aside and the property marketed, these creditor would receive payment of their claims in full.

The question presented is as follows:

Whether the Bankruptcy Code mandates a Bankruptcy Court determine the value of property transferred to a creditor within ninety days prior to a Bankruptcy filing based only on "liquidation value", as decided by the Third and Ninth Circuits, or whether the Bankruptcy Court has discretion to use one of several valuation tests, as decided by the Eleventh Circuit.

LIST OF PARTIES

The Petitioner Margaret Adeline Veltre is an individual who filed a voluntary Chapter 11 Bankruptcy Petition. As the Petitioner died during the course of this litigation, Dina Miller is acting on the Petitioner's behalf as executrix to the Petitioner's estate. Respondent Fifth Third Bank is a national bank and the purchaser of Petitioner's real estate prior to the filing of the Chapter 11 Bankruptcy.

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Petitioner Margaret Adeline Veltre, through Executrix Dina Miller, respectfully petitions this Honorable Court for a Writ of Certiorari to review the judgment of the Third Circuit Court of Appeals.

OPINIONS AND ORDERS BELOW

The opinion of the United States Bankruptcy Court is reported at ***In re Veltre***, 562 B.R. 890 (Bank. W.D. PA 2017)(opinion by Böhm J). Judge Conti's District Court opinion affirming in part the opinion of Judge Böhm is unreported at ***In re Veltre***, 2017 WL 3481077 (W.D.Pa. 2017). The opinion of the Third Circuit affirming Judge Conti's opinion is also unreported at ***In re Veltre***, 732 Fed.Appx. 171 (3d. Cir. 2018). All Opinions and orders of the courts below are reproduced and may be found within Appendix Vol. 1 as stated within the Table of Contents, *supra*.

STATEMENT OF JURISDICTION

The Third Circuit Court of Appeals entered judgment on July 19, 2018. Petitioner filed a timely motion for rehearing *en banc* on August 2, 2018, which the Third Circuit denied on August 20, 2018.

The time to file a Petition for Certiorari expires on November 18, 2018. This Court has jurisdiction to review the decision of the Third Circuit Court of Appeals by issuance of a writ of certiorari pursuant to **28 USC §1254(1)**.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The following statutory provisions involved in this case are included within the Appendix volume 1, at the pages cited:
11 USC §101(54)

11 USC §506

11 USC §522(a)(2)

11 USC §547(b)

11 USC §548(a)

11 USC §1129(a)(7)(ii)

11 USC §1225(a)(4)
11 USC §1325(a)(4)

F.R.Bankr.P. 1016

STATEMENT OF THE CASE

Ms. Veltre owned and resided in a house located at 2317 Haymaker Road, Monroeville. This property was subject to two mortgages: The first to Capital One Bank, and the second to Fifth Third Bank. Capital One Bank sued Ms. Veltre in mortgage foreclosure, and ultimately obtained a foreclosure judgment. On July 5, 2016 the property was sold at a Sheriff's Sale to the second mortgagor, Fifth Third Bank, for $90,000. On October 2, 2016, the 90th day after the sale, Ms. Veltre filed the within Chapter 11 Bankruptcy. In the Bankruptcy schedules, Ms. Veltre listed the fair market value of her home as $196,000. On November 17, 2016, Ms. Veltre filed suit against Fifth Third Bank and alleged it received a preference as defined by **11 USC §547(b).**

Specifically, Ms. Veltre alleged the transfer to Fifth Third Bank foreclosed her equity of redemption and gave it legal title. Ms. Veltre also alleged the transfer was made while she was insolvent, and on account of an antecedent debt, her second mortgage to Fifth Third Bank. Most important, the Debtor alleged the transfer allowed Fifth Third Bank to receive more than it would have received in a hypothetical Chapter 7 Bankruptcy.

Fifth Third Bank filed a Motion to Dismiss the Debtor's complaint based on the legal theory that a valid, non-collusive Sheriff Sale cannot be the subject of a **§547** preference action as a matter of law. Ultimately, the Bankruptcy Court agreed, and dismissed the lawsuit. The Bankruptcy Court believed a creditor who purchases property at a valid non-collusive Sheriff's Sale does not receive more than it would receive in a Chapter 7 Bankruptcy. The Court acknowledged that a split of authority existed on this point both in the 3rd Circuit and among the other Circuits, yet it decided to follow the line of decisions based on an opinion by Judge Markovitz's in ***In re Pulcini***, 261 B.R. 836 (Bank. W.D.Pa. 2001). The Debtors appealed this decision.[1]

The District Court affirmed the decision of the Bankruptcy Court, but on alternative grounds. The District Court agreed with the Debtor that the Court must first look to the plain language of **§547(b)** to determine whether an avoidable preference occurred. The District Court then agreed with the debtor that a non-collusive sheriff's sale to a creditor could be overturned as a preference. However, a preference would only exist if the creditor received more than it would have received if the case were a case under Chapter 7 of the Bankruptcy Code and the creditor received payment according to the provisions of the Bankruptcy Code.

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[1] During the pendency of this bankruptcy, the Debtor Margaret Veltre passed away. However, by operation of **F.R.Bankr.P. 1016**; the Executrix of her estate, Ms. Dina Miller, Ms. Veltre's heir and the person currently residing in the home, elected to continue the current bankruptcy as if the Debtor had not passed away.

At that point the District Court addressed the question of how one should value property sold at a sheriff's sale for purposes of ***§547(b)***. The District Court cited a series of Pennsylvania state cases for the proposition that the price obtained at a public sale is presumed to be the highest obtainable price for a piece of property. From there, the District Court created a presumption of value in the **§547** context, and held "Fair market value" can never be used as a basis for a hypothetical Chapter 7 liquidation, only "liquidation value". To that end, the District Court held the amount obtained at a sheriff sale was always the upper limit of what could be obtained in a hypothetical Chapter 7 liquidation absent gross inadequacy under state law. As a result, the Debtor could not pursue a §547(b) claim.

The Debtor appealed to the Third Circuit Court of Appeals and it affirmed the District Court's opinion and rationale. Thereafter, this petition resulted.

REASONS FOR ALLOWANCE OF THE WRIT

I. The Third Circuit's decision deepens an existing Circuit split concerning the determination of property value in a preference lawsuit.

Once the "hammer falls" and a creditor purchases the debtor's real property at a sheriff's sale, the trustee or the debtor in possession can avoid the transfer. **11 USC §101(54)(C)**. The plain language of the Bankruptcy Code permits the avoidance of a transfer when the creditor receives "more than such creditor would receive if (A) the case were a case under Chapter 7 of this title; (B) the transfer had not been made; (C) and such creditor received payment of such debt to the extent provided by this title." **11 USC §547(b)(5)**. **11 USC §547(b)(5)**, better known as the "greater amount" test, raises its own question: How does a court determine the value of transferred property? This court previously discussed valuation in the context of both fraudulent transfers and in the context of plan confirmation or cram down. ***Associates Consumer Corporation v. Rash***, 117 S.Ct. 1879 (1997) and ***BFP v. Resolution Trust***, 114 S.Ct. 1757 (1994). However, this Court has not addressed the issue of how a bankruptcy court is to value property transferred as a preference. Unfortunately, the decision of the Third Circuit below deepens a split between the Circuits on this issue.

The split formed with the 9th Circuit's decision in ***In re Ehring***, 900 F.2d 184 (9th Circuit 1990). In ***Ehring***, the Ninth Circuit held a pre-petition sale of the Debtor's residence could not be a preferential transfer, even though the creditor resold the property at a substantial profit shortly after the foreclosure sale. ***Id***. 185-186. The 9th Circuit held the bankruptcy court must use the property's liquidation sale value, which is the value obtained at the foreclosure sale, because this value treats the creditor the same as a third-party purchaser in the context of foreclosure

sales. ***Id***. at 188-189. The Ninth Circuit also held a sheriff sale cannot satisfy the "greater amount" test as that test "likely presumes" a liquidation sale. ***Id***. at 189.

This decision by the Ninth Circuit neither mentions nor addresses a 1985 decision by the Eleventh Circuit concerning preferences. ***In re: Lacklow Brothers, Inc.***, 752 F.2d 1529, 1531 (11th Cir. 1985) also discusses the valuation of property in the preference context. In ***Lacklow Brothers***, the context was the "improvement in position" exception to a preference action found in ***11 USC §547(c)***. 1530. The Court in ***Lacklow Brothers*** had to determine the valuation of the property because the complaining Trustee sought to recover cash payments made to a creditor holding a floating lien on Debtor's inventory of jewelry. ***Id***.

In ***Lacklow Brothers***, the Trustee argued the jewelry should have been examined using its liquidation value. ***Id***. at 1531. Under a liquidation value analysis, the creditor was under-secured and the cash payments the creditor received improved its position. ***Id***. 1531-1532. On the other hand, the Creditor wanted to use the going concern value of the jewelry, which would have left the Creditor over-secured and thus immune to a preference lawsuit. ***Id***. The Eleventh Circuit looked to ***11 USC §506*** for guidance in resolving the dispute. ***Id***. at 1532. The Court then held that value must be determined on a case-by-case basis, taking into account the facts of each case. ***Id***. Using this rule, the Eleventh Circuit held the Bankruptcy Court had to use the 'going concern' value of the jewelry in this case, as the 'going concern' value was the only one that could reasonably be calculated under these circumstances. ***Id***.

This background put the Third Circuit in the unenviable position where any decision it made would exacerbate this pre-existing circuit split. In this case, the decision was against the Petitioner and the Eleventh Circuit, and for the Respondent and the Ninth Circuit. Both the ***Ehring*** and ***Lacklow Brothers*** decisions remain good law on the question of determining value in a preference action for their respective Circuits. Neither case is in danger of reversal. The Third Circuit's decision in this case will not turn the weight of authority one way or another. Instead, it acts as an excellent vehicle to allow this Court to resolve a long-simmering issue at the heart of preference analysis.

II. The Third Circuit's holding improperly expands this Court's holding in *BFP v. Resolution Trust* beyond its natural contours.

The Third Circuit cloaked its decision to affirm the District Court's rationale as an extension of this Court's decision in ***BFP v. Resolution Trust Corp.***, 511 U.S. 531 (1994) The Third Circuit held that the question of valuing a property sold at foreclosure sale, in every possible bankruptcy circumstance, is ambiguous, and it cited to ***BFP*** as support for that theory. ***Veltre***, 732 F.Appx 171 at 173. While ***BFP*** states the underlying question is 'what is the foreclosed property worth', it only does so in the context of determining the meaning behind a new and unique

piece of language in the Bankruptcy Code, i.e. "reasonably equivalent value." The Court's assumptions and analysis in the context of **11 USC §548(a)** simply do not apply to a similar analysis under **11 USC §547(b)**.

To start, while **§548(a)** has a very broad reach to 'all transfers' within the past two years by its terms, **§547(b)** only applies to creditors of the Debtor where the transfer occurred within 90 days of filing. ***BFP*** also was concerned with the existing conditions of the sale, while **§547(b)** specifically rejects such an analysis in favor of a hypothetical Chapter 7 Trustee sale. A preferential transfer can be a sale for a reasonable value, and yet still be avoidable as providing an unequal benefit to the purchasing creditor and a detriment to all other creditors. As explained later, a **§547(b)** preference is a mathematical test, nothing more.

The Third Circuit's opinion assumed that a Trustee could only sell property at liquidation value, since fair market value conditions cannot exist in a Chapter 7 bankruptcy. Extending the analysis of ***BFP*** to **§547(b)** ignores how a Chapter 7 Trustee sells real estate. A Chapter 7 Trustee is not automatically forced to get rid of property at fire sale values on short notice, but instead has the power, the authority, and the duty to take the time needed to obtain the best available value for the property. ***See, e.g., Heath v. Farmer (In re Heath)***, No. CC-06-1275-PaDMo, 2007 Bankr. LEXIS 4847, at *2 (B.A.P. 9th Cir. Apr. 2, 2007) (trustee employed realtor, and sold debtor's residence approximately 18 months after the Chapter 7 was filed – at a price well beyond the debtor's estimated value); ***In re Locklear***, 386 B.R. 911, 914 (Bankr. S.D. Ga. 2007) ("This Court takes judicial notice of the hundreds of cases over which it has presided over the past twenty-plus years in which realtors are hired by trustees to assist in the liquidation of assets."); *see also* **Hon. W. Homer Drake, Hon. Paul W. Bonapfel & Adam M. Goodman, Chapter 13 Practice & Procedure §9E:7**, at 1017 (2012) ("the key question is what the Chapter 7 trustee could obtain in a liquidation sale. Thus, fair market value of property, rather than its forced sale, governs…")

In fact, as ***BFP*** itself notes, the definition of 'value' depends on the section of the Code at issue. For example, **11 USC§522(a)(2)** specifically refers to 'fair market value'. The Third Circuit's broad conclusion to use liquidation value to value property transferred as a pre-petition preference reads such language out of the Bankruptcy Code. Just as the phrase 'reasonably equivalent value' is only found in **§548(a)**, so too must the ***BFP*** Court's decision interpreting the value of property transferred for purposes of 'reasonably equivalent value' be limited to the **§548(a)** context.

III: **The decisions of the Third and Ninth Circuit reject the express terms of the Bankruptcy Code and cripple the Bankruptcy Court's ability to determine appropriate value in a variety of contexts**.

At its core, by holding that a Court is to use State Law liquidation value to determine the value of property transferred on the eve of a Bankruptcy, the Third and Ninth Circuits conflated the concept of liquidation value with the concept of a hypothetical Chapter 7 Bankruptcy liquidation. To reach its conclusion these Circuits ignored black letter rules of statutory interpretation and perverted the plain text of the Bankruptcy Code. This ignorance and corruption of the Bankruptcy Code's text creates multiple intractable problems within the Bankruptcy system for which this Court's intervention is necessary.

Every exercise of statutory interpretation begins with the plain language of the Statute. ***See Santa Fe Med. Servs., Inc. v. Segal* (*In re Segal*),** 57 F.3d 342, 345 (3d Cir.1995) (citing ***Mansell v. Mansell,*** 490 U.S. 581, 588 (1989)); ***United States v. Pelullo,*** 14 F.3d 881, 903 (3d Cir.1994). Where the statutory language is plain and unambiguous, further inquiry is not required, and the sole function of the Courts is to enforce the Statute according to its terms. ***See In re Segal****, supra,* and ***Hartford Underwriters v. Union Planters Bank, N.A.***, 530 US 1, 6 (2000). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the Statute as a whole." ***Robinson v. Shell Oil Co.,*** 519 U.S. 337, 341, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997). *See also* ***Price v. Delaware State Police Federal Credit Union,*** 370 F.3d 362, 369 (3rd Cir.2004). "Certain provisions of a Statute may be "awkward, and even ungrammatical," but that does not require a finding that the provision at issue is ambiguous." ***Lamie v. United States Trustee,*** 540 U.S. 526, 534, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004)(internal citations omitted). "Statutory context can suggest the natural reading of a provision that in isolation might yield contestable interpretations." ***Price,*** 370 F.3d 369.

In ***Price***, the Third Circuit noted that particularly when interpreting the Bankruptcy Code, "the Supreme Court has been reluctant to declare its provisions ambiguous, preferring instead to take a broader, contextual view, and urging courts to not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." ***Id.****, citing* ***Kelly v. Robinson,*** 479 U.S. 36, 43, (1986). A Court may depart from the plain language of a Statute only by an extraordinary showing of a contrary Congressional intent in the legislative history. ***See Garcia v. United States,*** 469 U.S. 70, 75 (1984).

When one examines the Bankruptcy Code's text, it is apparent Congress envisioned a system where one employs the same rules for valuing property at the time of confirmation as one values property at the time of a preferential transfer. As previously stated, **§547(b)(5)** allows the Debtor-in- Possession or the Trustee to set aside a transfer occurring within ninety days of a bankruptcy filing if:

> that [transfer] enables such creditor to receive more than such creditor would receive if--
> **(A)** the case were a case under chapter 7 of this title;

> **(B)** the transfer had not been made; and
> **(C)** such creditor received payment of such debt to the extent provided by the provisions of this title.
> 11 USC §547(b)(5)

§547(b)(5)(A) creates a hypothetical bankruptcy, wherein the Debtor's case was filed under the provisions of Chapter 7. Subsections (B) and (C) provide further restrictions on this hypothetical bankruptcy – first, (B) requires the Court to assume the complained-of transfer never occurred before the case was filed. Second, (C) requires the bankruptcy court to assume that, instead of receiving the transferred property, the creditor received what it would be entitled to after case administration according to the rules of Chapter 7. If what the creditor received from the actual transfer was more valuable than what the creditor would have received in the hypothetical Chapter 7, then the transfer can be avoided as a preferential transfer. The "greater amount" test does not ask for a "reasonably equivalent value", or for some form of 'undue benefit'. Instead, it uses the mathematical formula of "more" – is A greater than B, or not?

This same mathematical test is used as one of the bedrock requirements for Bankruptcy Plan confirmation. The language in §547(b)(5) is the same language found in every Chapter in the Bankruptcy Code dealing with confirmation. For example **11 USC §1225(a)(4)** requires a Chapter 12 Plan to satisfy the following requirement:

> **4)** the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

11 USC §1225(a)(4)

11 USC §1129(a)(7)(ii) requires a Chapter 11 Plan to ensure unsecured creditors obtain the following:

> **(ii)** will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date;

11 USC §1129(a)(7)(ii)

11 USC 1325(a)(4) also provides the following requirement for Chapter 13 plan confirmation:

> **4)** the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

11 USC §1325(a)(4)

There is a presumption of statutory construction that similar words used within a statutory scheme are intended to have the same meaning. See, e.g., ***Henson v. Santander Consumer USA***, 137 S.Ct. 1718, 1722-1723 (2017), ***Gustafson v. Alloyd Company Inc.***, 115 S.Ct. 1061, 1067 (1995), ***Mohamed v. Palestinian Authority***, 132 S.Ct. 1702, 1708 (2012), and ***IBP Inc. v. Alverez***, 126 S.Ct. 514, 523-524 (2005). Moreover, this approach must also be read in the context of the overall statutory goals as it is the job of the Courts to apply faithfully the law as Congress has written and not to rewrite a Constitutionally valid text. ***Henson supra*** at 1725; ***Environmental Defense v. Duke Energy Corporation***, 127 S.Ct. 1423 (2007); ***United States v. Cleveland Indians Baseball Co.***, 121 S.Ct. 1433, 1441 (2001).

In every other case where the "greater value" formula is used, a Plan cannot be confirmed unless the Court is satisfied the creditors' pool is not harmed in comparison to a hypothetical Chapter 7. It is the same for **§547(b)** preferences: This section provides a trustee or debtor-in-possession the ability to ensure the creditor's pool is not harmed by the transfer in comparison to a hypothetical chapter 7.

The legislative history also serves to confirm this analysis. §**547** was included in the **Bankruptcy Reform Act of 1978. 3 Pub. L. No. 95-598, 92 Stat. 2549 (1978)**. Describing element **547(b)(5)**, the Senate Committee Report states "the transfer must enable the creditor ... to receive a greater percentage of his claim than he would receive under the distributive provisions of the bankruptcy code." **S. Rep. No. 95-989, at 87 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5873 (emphasis added)**. The phrase "distributive provisions" might be thought to narrow the hypothetical liquidation to disbursement under chapter 7, but the very next sentence clarifies the meaning of the phrase:

> "Specifically, the creditor must receive more than he would if the case were a liquidation case, if the transfer had not been made, and if the creditor received payment of the debt to the extent provided by the provisions of the code." ***Id***. (emphasis added). The House Report echoes this language: "A preference is a transfer that enables a creditor to receive payment of a greater percentage of his claim against the debtor than he would have received if the transfer had not been made and he had participated in the distribution of the assets of the bankrupt estate."

H.R. Rep. No. 95-595, at 177 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6138.

In amending the Bankruptcy Code, Congress noted that the purposes behind the preference section are to discourage Creditors "from racing to the courthouse to dismember the Debtor during his slide into bankruptcy.... [and to] facilitate the prime bankruptcy policy of equality of distribution among Creditors." **H.R.Rep. No. 595, 95th Cong., 1st Sess. 177–78 (1977), U.S.Code Cong. & Admin.News 1978, pp. 5787, 6138**. ***See also In re Pineview Care Ctr., Inc.***, 152 B.R. 703, 705 (D.N.J. 1993)(§547's primary purpose is to foster equality of treatment among Creditors and to discourage Creditors from incapacitating a firm by racing to attach its assets shortly before bankruptcy). ***See generally*** **Benjamin Weintraub & Alan Resnick, *Bankruptcy Law Manual*** ¶ 7.05, at 7–18 (3d ed. 1992)).

The Third and Ninth Circuit's use of state law liquidation value to value property transferred on the eve of a Bankruptcy does not follow the plain text of **§547(b)** and the "greater amount" test. The text of **§547(b)(5)** requires a Court to use the provisions of "this Title," **Title 11**, in order to value property transferred as a preference. By its own terms, state law is excluded from this analysis. ***In RE: Tenderloin Health,*** 849 F.3d 1231**,** 1236 (9th Cir. 2017). However, the Third and Ninth Circuits erred by looking to state law, instead of the Bankruptcy Code, for a solution. This error infects the remaining analysis of the Third and Ninth Circuits.

Both the Third and Ninth Circuits magnify this error by following a crabbed interpretation of §**547(b)** by presuming the maximum amount a Chapter 7 Trustee could realize in a Chapter 7 liquidation is the amount realized at a forced or sheriff's sale. However, this result is not within the plain text of §547(b). §547(b) instead requires the Court to employ a fair market value standard because it requires the Court to analyze the transfer not in reality, but in the hypothetical. In analyzing the case in the hypothetical one must view the Bankruptcy Code as a whole, including §§506 and 522(a)(2). Both of these sections explicitly contemplate a fair market value analysis; §506 requires the courts to view the property as a residence, i.e. in light of the prepared distribution or use of said property.

The errors of the Ninth and Third Circuit also have impacts beyond §547(b) and plan confirmation. The rationale of the Third and Ninth Circuits provide no limiting principle. Just as the preference provisions could create a cloud on sheriff sales, these provisions could create a cloud on tax sales, or private sales of vehicles, or any forced sale whatsoever. The error of the Third and Ninth Circuit calls out for a simple solution: Value the property according to the explicit language in the Bankruptcy Code, i.e value the property according to its fair market value.[2]

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[2] On its face the Third Circuit's dismissal of the debtor's complaint does not make sense according to the Federal Rules of Civil Procedure. As stated in the statement of the case the debtor's complaint was dismissed at the initial pleadings stage. If Pennsylvania law provides a presumption that the amount obtained as the result of

If applied consistently, the use of liquidation value in the "greater amount" test systematically and consistently harms creditors, trustees, and Debtors-in-possession. As liquidation value is necessarily lower than fair market value, every plan would require less money to be provided to unsecured creditors for conformation, every second mortgage would be at greater risk of being stripped off in a **§506** action, fewer debtors would be required to employ a homestead exemption for property secured by a mortgage, and every creditor outside of a Chapter 7 trustee sale would agree on less money than they could receive or would otherwise deserve. Such a result flies in the face of the requirements of the Code, to ensure that all creditors be treated equitably through the bankruptcy process. If this analysis is only limited to sheriff sales, on the other hand, then the analysis runs into serious issues of uniformity – one class of property receives treatment different from other classes of property.

Furthermore, if the analyses of the Third and Ninth Circuits were allowed, then the Bankruptcy Courts would be faced with inconsistent results based on the class of creditor at issue. For example, under the Third Circuit's theory, a vehicle may hold equity under §506's 'replacement value' analysis. ***Rash*** supra at 1885-1886. However, that same property might not hold any equity for purposes of plan confirmation due to the 'liquidation value' used in the greater value test. In fact, it would create a situation where property might not be fully exemptible under §522(a)(2), which defines value as being fair market value, but still not provide any requirement to pay money to unsecured creditors under the 'greater value' test. Such a result is unreasonable and does not track the statutory intent of the Bankruptcy Code. It is also patently unfair to unsecured creditors, as it allows their interests to be disregarded compared to that of a secured creditor. The Bankruptcy system cannot function by requiring Courts to using multiple different versions of property valuation to satisfy one particular interest or party in a Bankruptcy.

The Third and Ninth Circuits attempt to create a one size fits all rule to protect secured creditors. In doing so, they harmed unsecured creditors, debtors, and the Bankruptcy Estate. These Circuits also limited the power of the Bankruptcy Court and any trustee to insure similarly situated creditors are treated the same and the debtor is not dismantled on the eve of Bankruptcy to the detriment of the Bankruptcy Estate. The error must be reviewed, and thereafter reversed, by this Court.

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a foreclosure sale is presumed to be the highest amount that may be realized as the result of a foreclosure sale, then the debtor as a matter of Due Process should have the ability to rebut that presumption beyond the theory of "gross irregularity" proposed by the courts below by filing an amended complaint.

CONCLUSION

For the above reasons, Petitioners respectfully request this Court grant the Petition for Writ of Certiorari. After briefing and argument in this matter the petitioners request this Court reverse the judgment of the Third Circuit and remand the matter to the Bankruptcy Court for a hearing to 1) determine the appropriate valuation of the transferred property and 2) decide whether to set aside the sheriff's sale or award the debtor and the debtor's estate a judgment for the loss of the debtor's equity on the eve of her Bankruptcy filing.

Respectfully Submitted,

/s/David A. Colecchia
David A. Colecchia
Law Care
324 South Maple Avenue
Greensburg, PA 15601
(724)-837-2320