

In the
Supreme Court of the United States

LLOYD ALLAN JONES,

Petitioner,

v.

U.S. BANK, N.A., AS TRUSTEE FOR RESIDENTIAL ASSET SECURITIES
CORPORATION, HOME EQUITY MORTGAGE ASSET-BACKED,
PASS-THROUGH CERTIFICATES, SERIES 2006-EMX9, AND
AMERICA'S SERVICING COMPANY,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

J. ZAC CHRISTMAN, ESQ.

COUNSEL OF RECORD

530 MAIN STREET

STROUDSBURG, PA 18360

(570) 234-3960

ZAC@FISHERCHRISTMAN.COM

QUESTION PRESENTED

This Petition presents the Court with an issue that would define how the American dream of a home ownership is supported by the Bankruptcy Code and clarify the manner in which the Bankruptcy Code allows property owners to retain their property in exchange for the payment of the present value of that property to a creditor with a security interest in that property. Petitioner is a Chapter 13 Debtor attempting to save his home. The United States Court of Appeals for the Third Circuit ignored the plain English meaning of the word “modification” and recent Supreme Court commentary to subject the case to an overly broad interpretation of this Court’s holding in *Nobelman v. Am. Savings Bank*, 508 U.S. 324, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993).

THE QUESTION PRESENTED IS:

Whether 11 U.S.C. § 1325(a)(5)(B) allows Petitioner to satisfy Respondents’ claim secured by Petitioner’s home via a Chapter 13 Plan pursuant to 11 U.S.C. § 1325(a)(5)(B)?

CORPORATE DISCLOSURE STATEMENT

Petitioner is not a corporation, therefore Rule 29.6 of this Court's Rules is inapplicable.

LIST OF PROCEEDINGS

United States Court of Appeals for the Third Circuit, No. 19-3899, *In Re: Lloyd Allan Jones a/k/a Lloyd A. Jones; a/k/a Lloyd Jones, Debtor; Lloyd Allan Jones v. U.S. Bank, N.A., as Trustee for Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed, Pass-through Certificates, Series 2006-EMX9, and America's Servicing Company*. Opinion dated October 1, 2020. Order Denying Petition for Rehearing dated October 28, 2020.

United States District Court for the Middle District of Pennsylvania, No. 3:18-cv-01680-RDM, *Lloyd Allan Jones v. U.S. Bank, N.A., as Trustee For Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed, Pass-Through Certificates, Series 2006-EMX9, and America's Servicing Company*. Opinion dated October 18, 2019.

United States Bankruptcy Court for the Middle District of Pennsylvania, Adversary Proceeding 5:17-ap-00036, *Lloyd Allan Jones v. U.S. Bank, N.A., as Trustee for Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed, Pass-Through Certificates, Series 2006-EMX9, and America's Servicing Company*. Order Granting Summary Judgment dated March 22, 2018.

United States Bankruptcy Court for the Middle District of Pennsylvania, Chapter 13 No. 5:16-bk-02223, *In Re: Lloyd Allan Jones a/k/a Lloyd A. Jones; a/k/a Lloyd Jones, Debtor*. Opinion issued March 8, 2018.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the opinion of the United States Court of Appeals for the Third Circuit.



OPINIONS BELOW

United States Court of Appeals for the Third Circuit, No. 19-3899, Opinion dated October 1, 2020.

United States District Court for the Middle District of Pennsylvania, No. 3:18-cv-01680-RDM, Opinion dated October 18, 2019.

United States Bankruptcy Court for the Middle District of Pennsylvania, Adversary Proceeding 5:17-ap-00036, Order Granting Summary Judgment dated March 22, 2018.

No opinions below have been published in an official reporter.



JURISDICTION

This Petition seeks review of the Opinion of the United States Court of Appeals for the Third Circuit dated October 1, 2020. The deadline was extended by a Petition for Rehearing, which was denied by Order dated October 28, 2020. The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).



STATUTORY PROVISIONS

The statutes critically applicable to this Petition:

- 11 U.S.C. § 506 (App.39a)
- 11 U.S.C. § 1322 (App.41a)
- 11 U.S.C. § 1325 (App.46a)



STATEMENT OF THE CASE

A. Introduction

A variety of circumstances make this a unique opportunity for the Court to address the ability of a debtor to satisfy a mortgage secured solely by a residence via a Chapter 13 Plan. *Nobelman*, the case relied upon by the United States Court of Appeals for the Third Circuit involved a debtor attempting to modify his mortgage to the value of the residence in question and continue to make payments to the mortgagee under modified terms. *Nobelman*, 508 U.S. at 331-32. Prior to the real estate market crash that resulted in the Great Recession, payment of the value of home through a chapter 13 plan was simply not viable. Absent the ability to pay the present value of a home through a chapter 13 plan, such a case could not reach this Court. Petitioner's case is unique because such a Plan is viable, due to the real estate market crash, a peculiar statutory scheme for real estate taxes in Pennsylvania, and the particular circumstances of the market in which his home is located.

B. Statement of Facts

Petitioner filed a Chapter 13 Bankruptcy Case in the United States Bankruptcy Court for the Middle District of Pennsylvania ("the Bankruptcy Court") on May 25, 2016. At the time, Petitioner owned a home, the value of which was subsequently stipulated to be \$136,000. Petitioner's home was subject to a mortgage held by Respondents with a balance of \$446,812.25. Petitioner's pending Chapter 13 Plan ("the Plan")

provides for payments equal to the stipulated \$136,000 value of the home, with interest over the life of the Plan, for total of \$155,865.60. The Plan seeks to satisfy Respondents' mortgage interest in his home. The Plan provides for monthly installment payments to Respondents in strict accordance with 11 U.S.C. § 1325(a)(5) (B)(iii). Respondents' mortgage is not secured by additional collateral.

C. Procedural History

Petitioner filed an Adversary Proceeding in the Bankruptcy Court against Respondents' on March 6, 2017, seeking to determine the secured status of Respondents' claim, an objection to that claim and declaratory judgment. Petitioner and Respondents stipulated to all material facts and filed Motions for Summary Judgment, which resulted in the Bankruptcy Court entering an Order Granting Summary Judgment in favor of Respondents on March 22, 2018. After filing a Motion to Extend Time to Appeal, which was subsequently granted, Petitioner filed a timely Notice of Appeal on April 19, 2018. After a Petition for Direct Appeal was denied, the appeal was docketed in the United States District Court for the Middle District of Pennsylvania ("District Court") on August 23, 2018.

The District Court affirmed the Bankruptcy Court's March 22, 2018 Order on October 18, 2019. After filing a Motion to Extend Time to Appeal, which was subsequently granted, Petitioner filed a timely Notice of Appeal on December 13, 2019. The Appeal was docket in the United States Court of Appeals for the Third Circuit ("the Third Circuit") on December 24, 2019.

The Third Circuit affirmed the District Court, to the extent the District Court affirmed the Bankruptcy Court’s March 22, 2018 Order, on October 1, 2020. A timely filed Motion for Rehearing was Denied on October 28, 2020.



REASONS FOR GRANTING THE PETITION

I. THE LOWER COURTS EXPRESSED CONFLICTING VIEWS ON THIS ISSUE.

The Third Circuit’s decision is contrary to its own decision in *McDonald v. Master Fin., Inc.* (*In re McDonald*), 205 F.3d 606 (3rd Cir. 2000). In 2000, the Third Circuit interpreted *Nobelman* in a manner that allowed it to overrule a lower courts’ conclusion “that the second mortgage on the McDonalds’ residence is subject to the [section 1322(b)(2)] antimodification clause, even if the value of their home is less than the outstanding balance of the first mortgage, leaving the second mortgage wholly unsecured.” *In re McDonald*, at 608. Despite acknowledging Justice Thomas’ clear indication that “the term ‘rights’ was . . . defined by . . . state law,” the Third Circuit held that “a wholly unsecured mortgage is not subject to the antimodification clause in § 1322(b)(2).” *Id.*, at 610 and 615. Significantly, the Third Circuit determined that it was important to “not idly ignore considered statements the Supreme Court makes in dicta.” *Id.*, at 612. The Third Circuit then set a “bright-line rule” with an “arbitrary cut off point” and compared it to the rule set out by *Taylor v. Freeland & Kronz*. *Id.* at 613. By reviewing the Third Circuit’s interpretation of *Nobelman*, both

in the instant case and in the *McDonald* decision, this Court can now avoid another inappropriate “bright-line rule” resulting from misinterpretation of a Supreme Court decision. *See Schwab v. Reilly*, 560 U.S. 770, 788, 130 S.Ct. 2652, 177 L. Ed.2d 234 (2010) (limiting and clarifying the holding of *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S.Ct. 1644, 118 L. Ed.2d 280 (1992)).

II. THE LOWER COURTS ERRED IN THE OPINIONS BELOW.

The Third Circuit ignored guidance from this Court in its opinion. Justice Thomas expressed his disapproval of this Court’s holding in *McDonald* by indicating “[t]here is scant support for the view that § 506(d) applies differently depending on whether a lien was partially or wholly underwater.” *Bank of America, N.A., v. Caulkett*, 575 U.S. 496, 135 S.Ct. 1995, 192 L.Ed.2d 52, at 59 (2015). Justice Thomas’ discussion of the issue in *Caulkett* clarifies that his opinion in *Nobelman* did not turn on whether a mortgage was partially or wholly unsecured.

The conflict between the Third Circuit’s allowance of elimination or satisfaction of the mortgage in *In re McDonald* and Justice Thomas’ opinion to the contrary in *Bank of America, N.A., v. Caulkett* turns on the definition and distinction of the term “modification” from the terms “elimination” or “satisfaction,” which in turn distinguish the present case from *Nobelman v. Am. Savings Bank*.

Section 1325 of the Bankruptcy Code allows a debtor, via a Chapter 13 Plan, to eliminate or satisfy a “secured claim” conditioned upon the holder receiving a distribution from the plan not less than the “value, as of the effective date of the plan” of such secured

claim. 11 U.S.C. § 1325(a)(5)(B)(ii). Section 1322 of the Bankruptcy Code allows a debtor to “modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.” 11 U.S.C. § 1322(b)(2). “Modify” is defined as: “To alter; to change in incidental or subordinate features; enlarge, extent; amend; limit, reduce. Such alteration or change may be characterized, in quantitative sense, as either an increase or decrease.” *Black’s Law Dictionary* 1004 (6th ed. 1990). That is the word used in section 1322(b)(2), and the word used in *Nobelman*. Modification is defined as: “A change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact.” *Id.* (Emphasis added.) Satisfaction is most simply defined as the “discharge of an obligation.” *See Id.*, at 1342.¹

A comparison of section 1322(b)(2) with the “hanging paragraph” of section 1325(a) reveals the obvious conflict between the Third Circuit’s reasoning in *McDonald* and the October 1, 2020 opinion. This conflict can be avoided by accepting the definition of the word “modification” and discontinuing its attempt to equate “modification” with the “satisfaction” or “elimination” of a claim.

¹ A search of THE LAW DICTIONARY FEATURING BLACK’S LAW DICTIONARY FREE ONLINE LEGAL DICTIONARY, 2ND Ed. <https://the-lawdictionary.org> on October 15, 2020, reveals that these definitions have not changed in any substantial or material manner.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

11 U.S.C. § 1325(a) (“hanging paragraph”). Congress knows how to write a section of the Bankruptcy Code that prevents satisfaction of secured claim via section 1325(a). “[I]t is generally presumed that Congress acts intentionally and purposefully’ when it ‘includes particular language in one section of a statute but omits it in another.” *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994) (quoting *Chicago v. Environmental Defend Fund*, 511 U.S. 328, 338, 114 S.Ct. 1588, 128 L.2d 302 (1994) (quoting *Keene Corp. v. United States*, 508 U.S. 200, 208, 113 S.Ct. 2035, 124 L.Ed.2d 118 (1993))). The only sound interpretation of the interplay between section 1322(b) and 1325(a)(5) is one that distinguishes “modification” in the former from the “satisfaction” and “elimination” of a secured claim by the latter. Such a conclusion is mandated by the rules of statutory construction. Such a conclusion also reconciles *McDonald* with *Nobelman*.

III. THE ISSUE IS OF GREAT LEGAL AND NATIONAL SIGNIFICANCE.

Review of the decisions of the courts below will restore continuity in the resolution of issues regarding secured claims in bankruptcy. The circumstances of Petitioner may be unique, but similar circumstances might allow future debtors to retain their homes by satisfying mortgage security interests via a chapter 13 plan, where no other option were viable. Though this assumes a reversal of the courts below, even affirmation of the Third Circuit could clarify the status of “wholly unsecured” mortgages. While Respondents will surely disagree, allowing the satisfaction of mortgage security interest based on the market value of real estate will have some benefit to mortgagees, as distressed sales do not generally bring a return equal to the full market value.

Review of decision of the courts below will impact the ability of citizens to retain their residences from foreclosure after suffering the adversity of the COVID-19 pandemic. The demographics of the COVID-19 pandemic are certain to cause property valuations in some areas to fluctuate wildly. There will be winners and losers among homeowners, but the ability to retain their homes by satisfying mortgage security interests via a chapter 13 plan would allow some of the losers to avoid homelessness. Given the disparate impact of the pandemic on the elderly, a reversal of the courts below may allow those seniors on fixed incomes to retain their homes despite an increase in expenses and the inability to sell their homes to satisfy a mortgage and relocate.



CONCLUSION

For the reasons above, Petitioner Lloyd Allan Jones respectfully prays this Honorable Court grant this Petition for Writ of Certiorari, and for such other and further relief as the Honorable Court deems just and appropriate.

Respectfully submitted,

J. ZAC CHRISTMAN, ESQ.

COUNSEL OF RECORD

530 MAIN STREET

STROUDSBURG, PA 18360

(570) 234-3960

ZAC@FISHERCHRISTMAN.COM

COUNSEL FOR PETITIONER

JANUARY 25, 2020