OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: ALETHA DEWSNUP, Petitioner v.

LOUIS L. TIMM, et al.,

CASE NO: 90-741

PLACE: Washington, D.C.

DATE: Tuesday, October 15, 1991

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IN THE SUPREME COURT OF THE UNITED STATES

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ALETHA DEWSNUP, :

Petitioner :

v. : No. 90-741

LOUIS L. TIMM, et al. :

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Washington, D.C.

Tuesday, October 15, 1991

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:54 a.m.

APPEARANCES:

TIMOTHY B. DYK, ESQ., Washington, D.C.; on behalf of the Petitioner.

RICHARD G. TARANTO, ESQ., Washington, D.C.; on behalf of the Respondents.

RONALD J. MANN, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; as amicus curiae, supporting the Respondents.

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P R O C E E D I N G S

(10:54 a.m.)

CHIEF JUSTICE REHNQUIST: We will hear argument next in No. 90-741, Aletha Dewsnup v. Louis Timm. Spectators are admonished not to talk until they leave the courtroom. The court is still in session.

Mr. Dyk, you may proceed whenever you are ready.

ORAL ARGUMENT OF TIMOTHY B. DYK

ON BEHALF OF THE PETITIONER

MR. DYK: Mr. Chief Justice and may it please the Court:

This case involves an important question under the bankruptcy code, namely whether liens that exceed the value of property in bankruptcy are to be avoided under section 506.

The present bankruptcy is a Chapter 7 bankruptcy, a liquidation bankruptcy in which the assets of the debtor are generally sold to pay the claims of creditors. But the interpretation has significance also for the reorganization chapters, Chapters 11 and 13, which deal with business and consumer reorganizations.

Before the 1978 code, the status of secured creditors in bankruptcy was somewhat unclear. Incredibly enough, Chapters 11 and 13 under the old code did not deal with secured creditors and, even in a liquidation

bankruptcy, the effect of the bankruptcy on a lien was unclear.

What Congress did was to enact section 506. The two sections of 506 that are relevant here today are section 506(a) and section 506(d). There is really no dispute between the parties as to the interpretation of section 506(a). section 506(a) deals with allowed claims, that is, claims which are approved or otherwise come into the bankruptcy proceeding and which are not disallowed by the bankruptcy court.

QUESTION: Mr. Dyk, did you say a moment ago that under the act of 1898 and the Chandler Act, the pre-code, that it was unclear what happened to liens?

MR. DYK: It was unclear. There were essentially three situations. This was discussed to some extent in the Chase -- this Court's decision in the Chase case, which is cited in the briefs. Under Long v. Bullard, the creditor -- the secured creditor could choose to ignore the bankruptcy proceedings entirely and the lien would survive the bankruptcy.

On the other hand, if the secured creditor went into the bankruptcy proceeding and proved his claim to the full amount, he would have waived his lien. The situation that was unclear was when under 57(h), for example, a secured creditor went into bankruptcy and tried to prove

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part of his claim; that is, the claim that exceeded the value of the property. And I think it was unclear, and none of the cases cited by the respondents or the United States really deals with this situation -- unclear in that situation what happened to the excess lien. Our suggestion is that one of the purposes of section 506 was to deal with that.

What 506(a) does is to divide this claim of a secured creditor into two parts. Part one is to the extent that there is value in the property. The creditor has an allowed secured claim in the bankruptcy proceeding and that phrase is not only used in section 506 but in various other sections of the code as well.

Then section 506(a) also says to the extent that the lien exceeds the value of the property, that the creditor has an allowed unsecured claim.

QUESTION: Well, Mr. Dyk, does the secured creditor still have the option of staying under the bankruptcy?

MR. DYK: Well, the answer is yes and no. He does have the option to stay out of the bankruptcy, but there is a new provision in the '78 code, section 501(c), which allows the trustee or the debtor to force the secured creditor into bankruptcy and to --

QUESTION: So he doesn't have a choice.

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MR. DYK: Well, he has a choice, but it's not just his choice. If he stays out of the bankruptcy, the trustee or the debtor can override that and bring him in.

QUESTION; He doesn't have the same choice he did under the pre-code bankruptcy?

MR. DYK: No, and that was an important part of the 1978 code, was to bring the secured creditors into the bankruptcy to deal with their claims and to avoid these wandering liens which might exist to the extent that the lien exceeded the value of the property.

Now there is no question about this bifurcation into the secured claim and the unsecured claim that's accomplished by 506(a). And I think there's no dispute that 506(a) applies to property that will be abandoned or has been abandoned just as it must apply to exempt property.

QUESTION: Could you tell us, Mr. Dyk, how does the valuation work? Is the valuation, I take it, at the time of filing? And what happens if the value increases? Is there a hearing on valuation? Can you just tell me how that works?

MR. DYK: Yes. 506(a) provides for a hearing to determine the value. Most courts have said that the value, I think, is to be determined at the time of the filing of the petition. And the court sets the value and

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that then determines what the secured claim is allowed -- the secured claim is and what the allowed unsecured claim is.

QUESTION: I suppose if the value has gone up after the time of filing, then the trustee wouldn't abandon it and we wouldn't have this problem.

MR. DYK: Well, that's true, and there is a contention here that allowing the debtor to keep any increase in the case of abandoned property creates an unfairness. Now, one of the reasons that the property may go up in value is that the debtor has continued to make improvements on the property, planted crops in the case of farmland, or something like that.

It is also possible, of course, that the market has changed or that the bankruptcy court has misvalued the property. But I think the opposing parties concede that that kind of misvaluation doesn't happen very often.

QUESTION: If there is a misvaluation, supposing the bankruptcy court says the property is worth $50,000, it turns out it's later sold without any interim improvements for $125,000. Which value prevails?

MR. DYK: Well, there is only a provision for the setting of one value in the bankruptcy proceeding, and the first value would prevail. But of course, the creditor in the bankruptcy proceeding, if you have

property which has no value to the estate, can move for the lifting of the automatic stay. And that would allow the creditor to immediately foreclose on the property.

So there need not be any time difference between the valuation and the actual sale.

There was another concern, and I think it's reflected in the legislative history, and that is that if the creditor could keep the lien to the excess value, he could in essence coerce the debtor to give him more than he might otherwise be entitled to. That is true because property often has more value to the person who was using it than to a third-party purchaser.

QUESTION: Well, that's always true, I take it, in the relations between the debtor and the lienholder.

MR. DYK: Well, there's always a tension between the debtor and the lienholder.

QUESTION: Of course, that's what the lienholder bargained for.

MR. DYK: The lienholder bargained for that, but the idea of bankruptcy is to discharge some of these debts as personal liabilities and to enable the parties to go forward. For example, if you have a senior lienholder and a junior lienholder, if the junior lien is worthless, this provision allows the elimination of that junior lien so that the debtor can negotiate with the senior creditor and

work out a plan for repayment over a period of time.

If you allow the lien to wander around in secured claims, you have all sorts of problems. One of those problems is if the creditor in the bankruptcy has secured a payment on this second half of the claim, the allowed unsecured claim. Then what happens? Let's assume that we have a piece of property that's with a $150 lien on it; it's worth $100. That means that under this provision of the code, that there's a secured claim for $100 and an unsecured claim for $50.

Well, what happens if the creditor in the bankruptcy secures a distribution from the estate of an additional $25 on the unsecured claim? Under the proposal that the opposing parties make here, there isn't any provision in the bankruptcy code to deal with that. Does the creditor keep the $150 lien even though he's already been paid part of his unsecured claim, or what happens?

QUESTION: Is that true under the Attorney General's interpretation?

MR. DYK: Under the Attorney General's interpretation, the only part of the lien -- the only time that a lien would be avoided under 506(d) is if it were a disallowed claim. That cannot have been what Congress meant in the statute.

What the United States attempts to do and what

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the respondents attempt to do is to divorce section 506(d) from section 506(a). What they are saying essentially is even though 506(a) bifurcates the claims into secured claims and unsecured claims, that the lien continues with respect to the unsecured claim. And it continues after bankruptcy and can be enforced against any appreciation.

But that's not what 506(d) provided. It said that liens are void to the extent that they secure claims which are not allowed secured claims, which includes two categories. It includes claims that are disallowed, and it includes claims that are allowed unsecured claims.

It's almost inconceivable that Congress would have wished to continue a lien with respect to a claim that it had characterized as an allowed unsecured claim and treat it in that respect throughout the bankruptcy proceedings and in various other sections of the code.

Now the respondents' argument in this case -- and the respondents and the United States themselves do not approach this question the same way. They want the same result but they cannot agree, apparently, on the reasoning.

While the United States urges that section 506(d) is to be limited to a disallowance situation, the respondents in this case try to reach the result that they want by contending that the section 506(d) does not apply

to abandoned property.

Now the difficulty, of course, in this case is that at the time of the valuation, the property was not abandoned. It was only after the valuation that the secured creditors, and they were the ones that requested the abandonment, requested the abandonment and the trustee abandoned the property. So it was only after the valuation that this occurred.

What the respondents suggest is that the code provision should be read to suggest that property that is abandoned or will be abandoned or might be abandoned somehow should not be covered by section 506(d). The problem with this interpretation is that they admit that section 506(a) must apply to abandoned property. There can be no question about that because section 506(a), by their own admission, is a critical predicate to the redemption provision of section 722 of the code.

So if section 506(a) applies to abandoned property, as it must, there is no basis for saying that 506(d) does not apply. And the only argument that the respondents make for this limitation is that there is a phrase in 506(a), property in which the estate has an interest. They want to take that phrase from 506(a), read it into 506(d), and then say it has a different meaning in 506(d), that it doesn't include abandoned properties.

QUESTION: The court of appeals said that 506(a) didn't apply to abandoned property.

MR. DYK: I understand the court of appeals said that. I do not understand the respondents to contend that and for the reason that I suggested, it just can't be true that 506(a) plays an important role in lien bifurcation with respect to abandoned property. And I think that the parties admit that you have to do that in order for section 722, the personal property redemption section, to work at all.

Now there's various reliance by the respondents and the United States on the legislative history. They seem to admit that our reading of this provision is the simple meaning, by which I take it they mean the plain and simple meaning.

But they say that the legislative history should cause the court to read the provision differently. And they urge that pre-code, it was clear that the lien in this situation was not avoided. I have explained why I believe that's a misreading of the pre-code history. It was unclear what happened to a lien in the circumstances pre-code; not unclear in what happened in the Long v. Bullard situation where the creditors stay out of the bankruptcy, but unclear what happened to the lien when he came into the bankruptcy.

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Then they try to read the legislative history of section 506(d) separately from the legislative history of section 506(a), just again to separate the two of them. But the legislative history of section 506(a) makes clear that Congress thought it was making a rather significant change in this area. And indeed the legislative history of 506(a) mentions the concern about what happens to liens in this bifurcation situation.

So what we suggest is that there is no clear pre-code practice, point one; point two, that if you read the legislative history in its entirety, that it is clearly suggesting that there is a significant change being wrought here.

I think if you look at the way 506(a) and (d) are designed to work and the way they carry forward into other sections of the bankruptcy code, you see that the congressional design in this provision could not be fulfilled if you were to adopt either of the readings of the respondents or the United States in this case.

If there are no further questions, I would like to reserve the remainder of my time.

QUESTION: Very well, Mr. Dyk.

Mr. Taranto, we will hear now from you.

ORAL ARGUMENT OF RICHARD G. TARANTO

ON BEHALF OF RESPONDENTS

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MR. TARANTO: Thank you, Mr. Chief Justice, and may it please the Court:

Everyone agrees that 506(d) reduces a lien to the extent that the underlying claim has been disallowed in the bankruptcy proceeding.

Our position is that that is all 506(d) does. Petitioner says that the provision also serves a second, completely different function; to deprive secured creditors with wholly valid, still unpaid claims, of their full State law rights in the property, and to transfer some of the actual value of the property to the debtor, allowing her to force a judicial valuation and redeem the property at the court-determined price, and immediately resell it for a profit, if the actual market value turns out to be higher.

QUESTION: Mr. Taranto, would you state again what everybody agrees 506(d) accomplishes?

MR. TARANTO: That if the claim secured by the lien has been partly or wholly disallowed, the lien is reduced to reflect the disallowance of the claim.

QUESTION: Well, that's the United States' position, is that it?

MR. TARANTO: It is also the Government's position that -- that's right. In our brief, we set forth two positions.

QUESTION: Yes.

MR. TARANTO: The fact that --

QUESTION: Under your other position, what does 506(d) do?

MR. TARANTO: It reaches the identical result.

Our lead position in the brief is not so much an affirmative theory of what 506(d) does apply to, as it is a limiting theory of what it cannot sensibly apply to. And as a matter of fact, the two theories amount to the same thing.

Take the two types of cases -- Chapter 11 and 13 on the one hand, where the debtor is supposed to keep the property for future income, and Chapter 7 on the other hand. In Chapter 11 and 13, the only property that will not be abandoned is property the debtor is to keep. But 506(d) is completely unnecessary in that, in Chapter 11 and 13, because those chapters provide their own lien-reducing provisions. And they do so by carefully balancing creditor and debtor rights. The debtor gets the benefit of the lien reduction only by promising to pay -- pay -- promising personal liability in the future.

In Chapter 7, if the property is secured by a lien for more than the property is worth, we entirely agree with petitioner that the property will virtually always be abandoned. The only exception will be where the

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property is either going to be purchased under 722, the redemption provision, in which case lien-stripping is completely unnecessary, or will be sold as part of a larger asset.

So as a consequence, once one has taken abandoned property which plays no role in the administration of the bankruptcy estate out of the equation, the only thing left for 506(d) to do is to reduce liens on disallowed claims.

We have two fundamental reasons why it seems to us clear that Congress did not intend this second --

QUESTION: May I interrupt, to be sure I follow the argument. You say it just applies to disallowed claim. But it doesn't, doesn't say it's void to the extent that it secures something that is not an allowed secured claim.

MR. TARANTO: Yes.

QUESTION: And isn't it, in this case, the amount over the value of the property -- that is not an allowed secured claim, is it?

MR. TARANTO: Well, I think that that would --

QUESTION: It's an unsecured claim.

MR. TARANTO: I think the language could be read that way, and would not dispute the petitioner's reading is a permissible reading of that language, in isolation.

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I think that language could also be read to refer to the claim that a secured creditor comes into court with. It's a secured claim, and if it's allowed, it's an allowed secured claim.

QUESTION: Right.

MR. TARANTO: Petitioner herself does not read that language in isolation or literally. Instead, she says (d) must be interpreted by virtue of (a). We think that's wrong, essentially for three reasons.

One, (a) is not -- even if (a) was to be looked to to interpret (d), the analysis can't stop there. And it seems to us clear that the other evidence of what Congress intended, in terms of the substantive effect of the statute, disproves that that's the right way to look at it.

Second, there's no particular reason to think that (d) must be construed in light of (a), simply because they're in 506. 506 deals with all of the general aspects of secured claims. And, indeed, (a) and (d) deal with two completely separate subjects -- (a) adjusts the relative payout priorities between secured creditors and unsecured creditors. Debtors have no interest in the outcome of the bifurcation under (a).

(d) has nothing to do with the unsecured creditors. (d) speaks only to the relationship after

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bankruptcy, given the property between the debtor and the secured creditor.

And there is also a practical reason why the picture that petitioner relies on of (d) simply following (a) can't be right. Her theory says, (a) and (d) are really a two-part process; first bifurcate the claim, then reduce the lien. But if she's right about what (d) does, that picture is simply upside down. In virtually all Chapter 7 cases -- perhaps as many as 97 percent -- there will be no bifurcation of claims under (a), because there are no assets to distribute to unsecured creditors. And so there is no reason to go through a judicial valuation.

Yet, in all those cases where the collateral is valued less than the lien, the debtor has an incentive to come in, demand a judicial valuation with all the litigation that entails, in the hope that by the time a foreclosure takes place, that judicial valuation will turn out to be wrong -- either because of appreciation of the property, or because of judicial error.

And so her picture of (d) simply being the second part of a two-part process, which is, I think, the linchpin of her effort to rely on 506(a) in interpreting (d), is, in fact, exactly wrong, if (d) --

QUESTION: What about the 3 percent?

MR. TARANTO: Well, in the 3 percent, there will

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either be -- there will be a bifurcation of the claim, and (d) will then follow (a). It's perfectly clear that you can have both a bifurcation of the claim and then move on to decide what is to be done with the lien.

Our position is that Congress quite clearly continued the very clear pre-code rule that even if the creditor comes in and under (a) or under the former Bankruptcy Act, section 57(h) and splits its claim, the lien clearly survives.

QUESTION: That's Long against Bullard?

MR. TARANTO: That's Long against Bullard, as continued in the 1898 act by section 67(d), as explained by this Court in Louisville State -- Joint State Bank against Radford. It is simply untrue that the law about what happened to the in rem property rights of a creditor was unclear in any of the circumstances that petitioner has mentioned.

QUESTION: Okay, the secured creditor comes in and bifurcates the claim. Part of it's secured and part of it's unsecured.

MR. TARANTO: Yes.

QUESTION: Then what does (d) to -- (d) do to it?

MR. TARANTO: If the claim has been fully allowed, (d) is simply inapplicable. (d) is not the --

QUESTION: Well, the claim is that the -- the claim -- the claim has not been fully allowed as a secured claim.

MR. TARANTO: No, but it has been fully allowed as a claim under 502, which is the provision for the allowance of claims.

If there is to be a distribution to unsecured creditors, then (a) applies and the claim is bifurcated, in that rare 3 percent of cases. But in any event --

QUESTION: But then (d) has no application whatsoever, is that it?

MR. TARANTO: I'm -- that's right. If the claim has been fully allowed, (d) has no application. And indeed there is --

QUESTION: Now that's the Solicitor General's argument, as I understand it.

MR. TARANTO: Yes, and it's the second argument we presented in our brief, which we in fact think is the -- the only affirmative function served by 506(d).

QUESTION: So you're in agreement with his interpretation?

MR. TARANTO: Yes.

QUESTION: Well, let me just ask another question, because I'm a little dense on this.

Supposing the property is abandoned, and

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it's -- you've got a value on it. And then it's sold for $5,000 more than the valuation. You are saying that the lienholder is entitled to that $5,000 -- assuming he has a general unsecured claim for more than $5,000 at that point.

MR. TARANTO: He's entitled to that $5,000 unless receiving that $5,000 plus the actual amount distributed on his unsecured claim would give him more than the -- than the complete debt, unless he's getting paid --

QUESTION: All right, but we'd assume that that wouldn't happen, that there's enough in the general -- isn't that then saying that the lien continues to secure the unsecured portion of the total claim? Because you are saying the lienholder has priority as to the excess realized in the sale.

MR. TARANTO: It does in one sense. What we think the phrase allowed secured claim means in (d) is the claim that the secured creditor comes into court with. After the creditor comes into court, if there is a bifurcation process under 506(a), which is a very rare event under Chapter 7, then there -- that single allowed secured claim gets split into two claims, one of them still called an allowed secured claim, the other an allowed unsecured claim. But we think 506(d) applies

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to the claim as the creditor comes into court.

The reason, aside from the very clear evidence that Congress meant to preserve pre-code law, which this Court explained in three cases last term, is that if you look at the effect on the debtor, this -- petitioner's view gives the debtor exactly the same redemption right that Congress gave only to certain debtors, for only certain property in 722. Petitioner doesn't dispute -- and -- because it can't be disputed -- that if the lien is reduced to the value of the property, then under every State's law, the debtor can exercise her State law rights, pay-off that amount of the lien, and redeem the property. If 506(d) meant that, there would have been no need whatsoever, for 722. And the very careful limits that Congress placed on the redemptions that write in 722 would be simply overridden. 722 gives the specific right the petitioner claims to buy property at a judicially determined value only to individual debtors, only for consumer debts, and only for a narrow class of property used for personal, household, or family use.

506(d) would give that right to any debtor -- corporate or individual, in any type of bankruptcy proceeding, for any type of property, including commercial farmland. It simply makes no sense that Congress would give a very narrowly limited redemption

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right to debtors in 722, only to have that completely overridden in section 506(d).

QUESTION: Is it a plausible hypothetical that a creditor who is a lienholder would receive some distribution as a -- from the general estate to the extent that his claim is undersecured, and that that would happen before there is a sale on the property and a foreclosure of the lien?

MR. TARANTO: Well we're -- first of all, we're talking only about the 3 percent of cases out of half a million bankruptcy cases.

QUESTION: Well, within that 3 percent, is that a plausible hypothetical?

MR. TARANTO: It is plausible.

QUESTION: And what would happen then? He receives $10,000 as a -- from the general estate, and he has $100,000 left yet to be paid.

MR. TARANTO: Under State law, the amount of the lien follows the amount of the outstanding debt. And so if he actually receives a payment through the bankruptcy proceeding, the amount of the lien will be reduced accordingly.

QUESTION: But this -- then this is still, though, the same as Justice Stevens' question, to the extent that the amount of the foreclosure brings in more

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than the valuation of the property, he still takes that as a secured creditor?

MR. TARANTO: If he has already received a payment through the bankruptcy proceeding, before the foreclosure, then by the time of the foreclosure, the lien will have been reduced by that amount -- not by the amount of the unsecured claim, but by the perhaps 10 percent, 5 percent that he is being paid on that claim.

QUESTION: But to the extent that he is still undersecured, if the property does bring in more than anticipated, he still picks up the balance?

MR. TARANTO: Yes, because he is still, of course, owed money, the collateral has, in fact, produced money to repay his debt, what he bargained for was the right to proceed against that collateral -- and it seems to us, simply to be a windfall to the debtor to pay that money to the debtor.

One illustration of that is that it's perfectly clear that as to unsecured creditors and unencumbered property, if the property were to appreciate during the proceeding, the debtor is not given a preference over the unsecured creditor.

First of all, there is no judicial valuation of that property, so there's no opportunity for judicial error. And as far as appreciation is concerned, the

proceeds of any property of the estate remain the property of the estate. So if there is appreciation, it is perfectly clear that the unsecured creditors are -- receive the benefit of that, and the debtor is not preferred to them.

It makes no sense to prefer --

QUESTION: Was this same argument made in the court of appeals?

MR. TARANTO: The case, in fact, was not argued in the court of appeals. It was submitted on very short briefs.

QUESTION: Well, was it -- was it brief -- the same arguments made down in brief?

MR. TARANTO: Most of the supporting arguments, yes, indeed were. The theory that 506(d) is --

QUESTION: I take it you're not defending the court of appeals' rationale here.

MR. TARANTO: Basically, that's right. We are not. I don't think that --

QUESTION: They had a -- you don't defend the notion that the case can turn on whether or not the estate has an interest in the property, in abandoned property?

MR. TARANTO: No, in fact, I think that that phrase is, in fact, something of a red herring. It doesn't appear in 506(d). Petitioner looks to that phrase

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because it's in 506(a), and imports it into (d) as defining the scope of (d).

QUESTION: So you want to -- you want to affirm on another ground.

MR. TARANTO: For a different reason, on the same statutory ground, but yes, for a different reason, a different reading of the statute than the one that the Tenth Circuit relied on. As I say, I think that the affirmative explanation for what Congress actually had in mind in 506(d) is that liens are to be reduced only if the underlying claim has been disallowed.

The abandonment idea is, I think, illustrative of a fundamental bankruptcy policy, that State law property rights are not to be impaired in bankruptcy unless there's an affirmative reason to do so.

QUESTION: And you think it's perfectly clear that under the -- under the old code, the 1930 -- under the Chandler Act, that your client would have won?

MR. TARANTO: Yes, I don't think there's -- there can be any doubt about that at all. That's what --

QUESTION: I take it your colleague on the other side disagrees with you.

MR. TARANTO: Well, I haven't, frankly, just seen any -- any reason to doubt that. Section 67(d) of

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the 1898 act said, valid liens are valid through bankruptcy. The description of the general rule in the Radford case in 1935 was perfectly general, made no exception for what, in fact, would be the ordinary case, if there's going to be a bifurcation of the claim, in a Chapter 7 case. In the ordinary case, the creditor is not going to simply sit out of the proceeding. He will go in and prove, and bifurcate his claim.

If the rule of Long v. Bullard and the Radford case, which the legislative history explicitly brings forward in 7 -- 1978 -- was modified for the usual case, there's certainly no indication whatever that that's so.

QUESTION: Well, what is the incentive for a creditor to bifurcate his claim?

MR. TARANTO: If there is some money that will be distributed.

QUESTION: If the -- for general creditors.

MR. TARANTO: For general creditors. If he doesn't do that, then he loses whatever share of the general pool for general creditors --

QUESTION: Well, I suppose if there is money to be distributed to general creditors, and he comes in, and he wants to share in it -- and yet he also wants to -- to have -- he wants his lien to survive.

MR. TARANTO: Yes.

QUESTION: And so he gets his share of whatever is distributed to general creditors, to the extent he's got an unsecured claim, he gets to share in the distribution.

MR. TARANTO: Yes.

QUESTION: But then he also has his lien. And if the property is really worth more than they thought it was, he gets more than other creditors, but of course he's got a lien.

MR. TARANTO: Right, he's bargained for more than other creditors. That's why he's got a secured interest.

And if I can make one additional point about the windfall nature. It's not only the debtor who gets a windfall. An outsider who wants to come in and buy the property also gets a windfall.

An outsider -- take this case, for example -- an outsider can come in and buy this property for less than the market value. Somebody who is willing to pay $60,000 for this piece of property, the market value, can finance the debtor's purchase of the property for the $39,000 assigned by the court, and then buy it from the debtor for $50,000.00. The debtor comes out ahead. The outsider comes out ahead.

QUESTION: Yes, but in that case, would a

valuation -- as I read the statute, I thought the valuation generally would take place at the time of any proposed distribution. And if there were an offer for more outstanding, I would suppose that the court would value the property at the market value.

MR. TARANTO: This whole dispute arises in only two circumstances; either the petitioner is right that the value is of value as of the time of the filing of the petition, and there's appreciation -- which, in fact, the majority rule is to the contrary, or the judge makes an error. It seems to us in neither circumstance is there any bankruptcy giving the benefit of that too-low value to the debtor, when secured creditors remain unpaid and the collateral has the value to repay some of the secured creditors.

QUESTION: Mr. Taranto --

QUESTION: I'm sorry, can I --

QUESTION: Go ahead.

QUESTION: Do you read, in section 722, the same phrase -- you read it differently in 722 than you read it -- than you read it in 506(d).

MR. TARANTO: Yes.

QUESTION: Why?

MR. TARANTO: Well, because I think the purposes are quite different. 722 and a number of other places in

the code use the phrase allowed secured claim in the context of determining a payout amount, either in the 722 context by the debtor, or in other contexts by the bankruptcy estate, and where it is perfectly sensible that the phrase is used to refer back to the bifurcated claim under 506(a).

506(d) simply has -- is addressed to a completely different subject, and the term, therefore, bears the alternative meaning that we think the rest of the code demands.

Thank you.

QUESTION: Thank you, Mr. Taranto.

Mr. Mann, we will hear now from you.

ORAL ARGUMENT OF RONALD J. MANN

ON BEHALF OF THE UNITED STATES AS AMICUS CURIAE SUPPORTING THE RESPONDENTS

MR. MANN: Mr. Chief Justice, and may it please the Court:

The general interest of the United States in administration of the bankruptcy laws is augmented in this case because the United States, through the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, and other Federal agencies, is probably the largest undersecured creditor in the country.

The practical ramifications of this case show

why we care. If petitioner is correct, bankruptcy proceedings not only avoid a debtor's personal liability on its debts, but they also strip down the creditor's interest in its collateral to judicially determined abstract valuation, and allow the debtor to retain any excess sales proceeds -- free and clear not only of the lien, but of the claims of all creditors in the bankruptcy proceeding.

Now, before I get started, I'd like to address a problem that Justice Kennedy spoke about, which is the effect of a distribution on -- to unsecured creditors in the bankruptcy. As Mr. Taranto suggested, this does not happen that often, but the structure of the code does deal with it, under our view, in a perfectly rational way.

When the money -- section 506(a) will divide all claims that are allowed into secured claims and unsecured claims. If there is a distribution of an unsecured claim of -- to general unsecured creditors, the total amount that remains owing to the creditor will be reduced, dollar-for-dollar. And so under perfectly normal property principles, the lien also will be reduced.

If you start with a debt of $100, the bankruptcy judge says the collateral is worth $60, and general unsecured creditors get $5, the lien is now $95 because that's all the debt that's left. If there's a foreclosure

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sale, and the collateral sells for $70, the secured creditor would get $70.

If it sells for $100, the secured creditor would get the $95 he's owed, and the other $5 would go to the debtor, as the owner of the collateral before the sale.

QUESTION: But in that case, there is a windfall, in some sense, in that he's received pro rata too much from the unsecured portion of the estate.

MR. MANN: That's correct. It's not necessary to the decision of this case, I think, to decide how to deal with that. It's the United States' view that if the foreclosure occurs before the bankruptcy proceeding has been completed, you then have a marketplace determination of value, and the creditor's secured claim should be written up to the amount that occurs at the foreclosure sale -- or at least there should be a hearing to allow the parties to talk about the value, and introduce that as evidence.

Frankly, it does not seem to me that the reverse should be true: if the foreclosure sale brings a lower value, a lower value than what the bankruptcy judge placed on it, I don't think that in all circumstances the secured claim should be written down, because it's entirely likely that the secured creditor bought the asset for less. But there should be a hearing to determine what the value of

the -- the value after the sale, after it has been sold.

QUESTION: Isn't this all kind of -- you give the impression, Mr. Mann, this is all kind of optional, that well maybe it could be, maybe it couldn't -- the statute doesn't provide one way or the other?

MR. MANN: The statute is very unclear on this. And the lower courts have not done well with this particular point.

What the statute says is that the value shall be determined in light of the purpose of the valuation, and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use, or on a plan affecting such creditor's interest.

It's clear that from that, and from the legislative history, that in some circumstances there should be multiple valuations. The legislative history gives a number of specific examples.

It's not that clear whether a foreclosure is one of those situations. We think it makes good sense, and if the issue came to this Court, I mean that's what we think the Court should decide. I'm just saying that's not necessarily in this case, it's an issue that would come up after this case has been decided.

QUESTION: Do you know enough about bankruptcy practice to know what sort of a hearing this initial

valuation is? Do the parties call expert appraisal witnesses? Or is it just a kind of a seat-of-the-pants type of thing?

MR. MANN: I think it generally depends upon the value of the collateral, and the unlikeliness of an error, and the amount of money that's at stake. In a large Chapter 11, where you're valuing airplanes for Eastern Airlines, everybody's going to come in on every side of the case and submit as much expert testimony as they can to try and get a value.

If it's a Chapter 7 case, and it's a piece of raw land, it may be that the only valuation is the debtor's statement as to what he thinks it's worth. And then the secured creditor will just argue. I mean it depends on how much the people want to spend on the valuation, like any other judicial proceeding. You can spend a lot, or not much, and take the risk.

But I think that it's helpful to focus on what the purpose of section 506(a) is in doing the bifurcation, Justice Kennedy. It -- the purpose of this, as shown in the legislative history, is to facilitate reorganization. Indeed, the legislative history on which petitioner relies, and explains there's a significant change, explains exactly what the purpose of bifurcating the claims is. And the purpose of bifurcating the claims is

not directed at the wandering liens to which petitioner refers.

If you look on the very page of the legislative history to which petitioner refers, it explains the purpose. It is that the determination of the amount of the secured claim facilitates reorganization, by defining the precise extent of the claims against the debtor, that must be treated specially as secured claims.

In a reorganization proceeding, the property won't be sold. So you have to have a judicial valuation in order to determine how you're going to protect the secured creditor.

In a liquidation proceeding, the property will be sold in a foreclosure sale, and there'll be a marketplace determination. So there's no reason for Congress to have needed a judicial valuation in that context.

Um, I'd just like to make a few other brief points. Um, first I'd like to talk about the language of section 506(d), and second I'd like to speak about the pre-code practice, for just a moment.

QUESTION: May I ask you a question about pre-code practice before you get into that?

Was it perfectly clear before the code that an undersecured creditor would be treated as an unsecured

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creditor for the part of the excess -- the amount of the security was less than the amount of the total claim?

MR. MANN: Um, under pre-code practice, there were three options that a secured creditor had. A secured creditor could waive -- waive his security, and attempt to prove for a secured -- an unsecured claim for his entire claim.

QUESTION: Right.

MR. MANN: Okay, he could just stay out of the bankruptcy proceeding, not get anything --

QUESTION: Right.

MR. MANN: -- and then after the bankruptcy proceeding eventually foreclose, but he wouldn't have any personal recourse against the debtor. Or third, he could attempt to go into the bankruptcy and receive, in the pot with general unsecured creditors, as it were, his pro rata share.

But we think that's basically the way that it works under the code.

QUESTION: But did he -- is one -- was one of his options was to have the land protect his secured position to the value of the property, and be an unsecured creditor for the balance?

MR. MANN: We think that that's fairly clear. I can -- I can read to you exactly what this Court said when

it addressed the point in Radford -- which is the Court generally surveyed bankruptcy law in the course of invalidating a Federal statute that would accomplish the result that petitioner seeks here.

It says, although each of our national bankruptcy acts followed a major, or minor depression, none had -- prior to the Frazier-Limkey Amendment -- sought to compel the hold-over mortgage to surrender to the bankrupt either the possession of the mortgage property or the title, so long as any part of the debt thereby secured, remained unpaid.

It says, but unless the mortgagee released his security, in order to prove in bankruptcy for the full amount of his debt -- which is one of the options -- a mortgage, even of exempt property, was not disturbed by bankruptcy proceedings.

We think it's fairly clear from that, and from the other cases, that nothing was going to happen in the bankruptcy code that would alter the lien.

QUESTION: What case were you reading from?

MR. MANN: That's from Louisville Joint Stock Land Bank v. Radford, at pages 582 and 583.

QUESTION: Yeah, but what you've read -- what you've read I don't think addresses the precise question I asked.

MR. MANN: It doesn't address that precise question directly. But what it does is it says we've looked at the bankruptcy laws, and they don't do what petitioner says they do. It doesn't address every possible way to do it, but it says they don't do that in any provision of those laws, so --

If petitioner is right, the Court in Radford would have had to have made a mistake. And considering the weight that Congress placed on that analysis in Radford in the legislative history, I think it would be a relatively slender reed to suggest that the Radford Court made a mistake and Congress relied on that mistake. I really don't think that you can have pre-code practice much clearer than where the Supreme Court, itself, has said you can't do what petitioner wants to do. Congress has cited the provision in both of the reports -- the coming provision, and then this Court last year said we believe that that's what the legislative history means.

I just wanted to talk briefly about the language.

As we see it, petitioner's argument hinges on her assertion that the reference in section 506(d) to a claim that is not an allowed secured claim must be taken to refer to claims that are allowed but not secured.

Now, there's three real problems with that

reading. The most fundamental problem is that even petitioner is not willing to apply the provision literally to all claims that are allowed but not secured, because petitioner acknowledges that it would be -- implicitly in its brief -- that it would be absurd to void the liens on property owned by third parties that secure claims that are allowed but not secured.

The second problem with this reading, we think, is that it leaves section 506(d) in an odd place in the code.

QUESTION: Excuse me, go back over that last point for just a minute.

MR. MANN: Petitioner's general submission is that the reference in section 506(d) to a claim that is not an allowed, secured claim --

QUESTION: Right.

MR. MANN: -- refers not only to claims that are secured but not allowed -- with which we agree --

QUESTION: Right.

MR. MANN: -- but also to claims that are allowed but not secured. But petitioner is unwilling to have the provision apply to all claims that are allowed but not secured.

QUESTION: If I could ask you just one question? In (d), could you read the phrase, not an

allowed secured claim, to mean disallowed? To the extent that a lien secures a claim against the debtor that is a disallowed secured claim -- is that --

MR. MANN: If you read it that way, it would change the meaning of the statute. Because it covers not only claims that are disallowed, but claims covered by section 506(d)(2) that have not been allowed because the creditor did not come in under section 502.

QUESTION: Had you finished the answer to my question?

MR. MANN: No.

QUESTION: I didn't think so.

(Laughter.)

MR. MANN: I'm going to try and be as brief as possible.

Under section 506(a), if there is a secured creditor that has collateral owned by the debtor, and collateral owned by a third party, such as the debtor's brother, or a guarantor, and the collateral owned by the debtor is worth $60, and the collateral owned by the debtor's brother is worth $60, the debt is $100. After section 506(a) operates, there will be an allowed secured claim for $60, and an allowed unsecured claim for $40.

Pursuant to section 506(d), petitioner suggests it will void all of the lien on the -- it will void the

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$40 of the lien on the collateral owned by the debtor. Naturally, you would think, reading the statute as he says, is literally, it would void the other lien as well. And we obviously think you should not do that.

Thank you, Mr. Chief Justice.

QUESTION: Thank you, Mr. Mann.

Mr. Dyk, do you have rebuttal? You have 15 minutes.

REBUTTAL ARGUMENT OF TIMOTHY B. DYK

ON BEHALF OF PETITIONER

MR. DYK: Justice Scalia, I had difficulty in following the United States argument in that respect, too. I think the simple answer is that 506(d) only applies if it relates to property. The debtor doesn't, of course, apply where it's some third-party property or something like that.

What we are suggesting is that Congress had this phrase, allowed secured claim --

QUESTION: But, but may I just interrupt, because I'm trying to think through Justice Scalia's problem, too.

If it applies only to property of the debtor, could it not equally be read to apply only to property of the bankrupt estate?

MR. DYK: Well, I don't think it can be read

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that way because 506(a) necessarily has to apply to abandoned property.

There's also a question of when you make the --

QUESTION: Well, I'm not so sure about that. Because if it's abandoned, presumably at the time of the abandonment the valuation is made. And I take it -- I see what you're saying. It continues to apply. Then it becomes debtor's property, but not part of the estate property. That's what you're saying, if it had an abandonment.

MR. DYK: Right, the property in this case is abandoned to the debtor. It could be abandoned to somebody else under some circumstances. But under this -- in this case, it was abandoned to the debtor.

Now at the time that the petition was filed, it was property of the estate. It automatically became property of the estate.

And section 506(a) operates on that. It's not an elective provision, as the respondent suggests, not up to the creditor to decide whether to have the bifurcation or not. The Code says you bifurcate. And you bifurcate in every case. And it doesn't depend on whether --

QUESTION: But the purpose of that is to protect the creditor's interest to the extent it's unsecured, isn't that right? The basic purpose of (a) is to be sure

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that the creditor is not limited to his asset when he, in fact, has a larger claim.

MR. DYK: That is one purpose. It is not the only purpose. Because throughout the code, the effort here is to resolve things, to deal with the secured claim -- and this is true in the reorganization chapters, as well as the liquidation chapter -- is to figure out how much of that should be treated as a secured claim and how much of it should be treated as an unsecured claim.

And the theory that the respondents and the United States are articulating is that something which is an unsecured claim really still is a secured claim -- or maybe it becomes a secured claim again when the bankruptcy is over with.

It's difficult, I think, to read the words of the statute to achieve that result.

QUESTION: But is it not right, though, that the problem only arises if the valuation is not made at the time of the disposition?

MR. DYK: The -- well, I think the answer to that is no. And the reason is, it depends on what problem we're talking about. The argument of the respondents and the United States suggests that under our interpretation 506(d) is designed to deal with this problem of appreciated property, and to give the windfall to the

debtor. We're not suggesting that that was what led Congress to create this situation.

What led Congress to create 506(d) and 506(a) was the desire for certainty, the desire to have the bankruptcy proceeding resolve the matter, to pay off the creditor on his allowed secured claim, to give him an allowed unsecured claim which he could recover from the estate, and to allow the property to pass out of bankruptcy without some wandering lien covering some other amount.

One of the purposes of Congress in bankruptcy is to allow the property to go out and to continue to be used for productive purposes. Often, real property -- and in this case it's farmland -- gets used. Congress doesn't want the property to sit there. So what happens is that the debtor begins to plant the crops, and farm the property, and to make improvements on it. All of a sudden the value is increased. Well, under those circumstances it would hardly be fair to give that excess value to the secured creditor.

And yet if you do give that excess value to the secured creditor, what is going to happen? The debtor is going to just sit there and do nothing. The property will remain idle.

So it's an effort to resolve things, to come to

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a conclusion, and so that everybody knows where things stand at the end of the bankruptcy. And it's also --

QUESTION: That's almost built into the statute, that difficulty, from the way everybody says the initial valuation controls, even though the foreclosure sale produces a much different price.

MR. DYK: Well, I think there are many ways around it. Of course, the valuation doesn't have to be wrong on the down side. It could be wrong on the up side too.

QUESTION: Sure.

MR. DYK: But the code in the automatic stay provision says you can terminate the automatic stay if the property doesn't have value to the estate. You can have the valuation. You can have the sale immediately. There's no reason to have any period of time between those two.

So in the majority of cases, you wouldn't have any excess value if --

QUESTION: But you could still have judicial error.

MR. DYK: You could have judicial error. The creditor, of course, can appeal the valuation if he doesn't like it.

QUESTION: Well, suppose he doesn't, and the

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sale is held very quickly, but nevertheless for some reason or another it sells for more than the valuation. Who gets the money?

MR. DYK: Well, I think that depends. It depends on whether the property has been abandoned to the debtor or whether it remains as property of the estate.

If there is excess value there, and the property has not been abandoned -- in other words, the trustee says well, I think maybe this property is worth more than the court said it was worth -- the property can be retained by the trustee on behalf of the estate and the unsecured creditors would get the additional value.

QUESTION: Well, how does the secured creditor get his money?

MR. DYK: How does the secured -- by a foreclosure sale. And by working --

QUESTION: Once that foreclosure sale happens, it certainly isn't part of the estate anymore.

MR. DYK: No, but I thought the question was, if there's a difference between the judicially determined --

QUESTION: Yes.

MR. DYK: -- and the --

QUESTION: At the foreclosure sale the property sells for more than it was valued in the bankruptcy proceeding.

MR. DYK: And, Justice White, what I was suggesting is if the property has not been abandoned at that point, the excess goes to the unsecured creditors.

QUESTION: But this whole case is about property that has been abandoned, isn't it? Or am I --

MR. DYK: It is, but section 506(d) is dealing with a general run of situations.

QUESTION: Well, yes.

MR. DYK: And the language of it is pretty clear. It's using --

QUESTION: But in the hypothetical that you put, that was put to you by Justice White, if the property's been abandoned, then the debtor is the one that keeps the excess.

MR. DYK: That's true. There can be some circumstances in which that will happen. They are not going to be very frequent. And the question is, whether because of that possibility in some speculative number of cases, the whole statute is going to be rewritten so that it does not achieve in other circumstances the goals for which Congress designed it.

And we suggest that the best guide here to the result that Congress wanted was the language that it used. It said the lien is void if it secures a claim that is not an allowed secured claim. That is -- is language that is

used again and again and again in the code. And it has to have the meaning that we attribute to it.

I understand the respondents to agree that in all these other sections of the code it has the meaning to which we attribute to it. And they're trying to say well, when it gets to 506(d), we're going to give it a different meaning because there's some policy here that we think should be read in here about a windfall -- a policy which isn't reflected in the legislative history.

QUESTION: Could I go back to the other hypothetical you were just saying -- why should it -- why does it have to be that if the property is not abandoned by the estate, and then it sells for more than it was originally valued, why does it have to be that that excess would go to the unsecured creditors? Why could you simply not recalculate under (a) what the amount of the secured claim is? I mean, it seems to me quite wrong --

MR. DYK: Well, that suggestion --

QUESTION: -- that it should go to the unsecured creditors, rather than to the secured creditor.

MR. DYK: The suggestion of revaluation in the course of the bankruptcy proceedings has been made by the respondents. We think the code doesn't provide for it.

And the reason the code doesn't provide for it is that what you need is certainty, to be able to figure

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out in the reorganization chapters what the plan of reorganization looks like. And you need to know what's the secured claim and what's the unsecured claim.

And if you're going to keep revaluing it, it will be impossible to have a plan. And the same thing is true in the liquidation proceedings, that people will not know where they stand.

There may be errors. Life is filled with errors. But the question is, as I suggested earlier, is should one rewrite the statute just because of a possibility of a small number of errors. And we suggest that there isn't any basis for rewriting the statute -- certainly not on the face of the language, which we think is exceptionally clear, and certainly not in the legislative history, either.

I'd like just to take one moment to address the suggestion that there is this wonderful clarity in the pre-code practice.

There is wonderful clarity in the pre-code practice, if the secured creditor sits out the bankruptcy, the Long v. Bullard situation. There is not clarity if the secured creditor comes into bankruptcy and decides to prove part of his claim, that is --

QUESTION: Mr. Dyk, was the Louisville Joint Stock Bank a bifurcation case?

MR. DYK: No, it was not.

QUESTION: Or a sitting-out case?

MR. DYK: No, it -- what -- it was neither one of those. What Louisville was was a case in which, under the Frazier-Limkey Act, as originally drafted, the Congress wanted to help farmers. And they said, okay, if you've got a mortgage on your property, the debtor keeps the property for 5 years, no foreclosure for 5 years. The creditor gets 1 percent interest during that 5-year period. And then at the end of the 5-year period, that the debtor can redeem the property by paying its value.

It is not talking about this bifurcated situation. It is not talking about what used to be section 57(h) under the old Bankruptcy Act. And there has been no case that has been cited to us, not one case -- much less a well-settled practice -- not one case under the old Bankruptcy Act in which in this bifurcated situation that the lien was preserved as to the unsecured claim. Not one case one way or the other.

QUESTION: Mr. Dyk, suppose that when the property's valued there's an immediate sale, and the property sells for exactly the amount of the valuation.

Does the -- will the debtor have a right to redemption at all?

MR. DYK: That will depend on State laws.

QUESTION: All right, let's assume he does under State law.

MR. DYK: He can redeem it, often after the foreclosure sale occurs, for the amount of the lien -- which we say will be the value of the property.

QUESTION: Well, and this will be true even if -- even if at the end of the redemption time, which may be 2 years, 6 months -- suppose the property then is suddenly worth twice what it sold for?

MR. DYK: Well, I think that's a problem that you have in any foreclosure sale, whether you have this provision of the bankruptcy code involved or not. That if there's a foreclosure sale, and the property sells for X amount, it discharges the debt. And if the property goes up in value, there's a redemption.

QUESTION: Suppose a secured creditor buys it for the amount of the valuation. And he just owns the property, and it's suddenly worth more, twice more than it was, than what it sold for, what he paid for it. Can the debtor redeem by just paying the --

MR. DYK: Justice White, that depends on State law. And if there's any anomaly --

QUESTION: But not if the statute is read literally. Because as a matter of Federal law, the lien would be void.

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QUESTION: Exactly.

QUESTION: And I suppose it could no longer control the redemption price.

QUESTION: Exactly.

MR. DYK: No, but the Federal statute does not control how long the debtor has to redeem.

QUESTION: I know, but the price it will -- the price he has to pay if he does redeem -- State law says you can only redeem if you pay the full amount of the indebtedness or the full amount of the original lien.

And if the lien is void as a matter of Federal law, it seems to me you're invalidating that State statute.

MR. DYK: Well, you not invalidating the State statute. What you're doing is you're saying that bankruptcy has determined the amount of the lien. And everybody agrees that under some circumstances that --

QUESTION: But are you saying that Federal law would not have any impact on the redemption price that a State could require on those facts?

MR. DYK: Well, of course it has an impact on the redemption price, in the sense that the lien has been avoided. But it doesn't tell you when the redemption should be allowed, nor does it tell you that there has to be a redemption provision.

QUESTION: Not when, but what must be paid at the time of redemption.

MR. DYK: That's right, but the State doesn't have to have any redemption provision at all. It could say, well --

QUESTION: No, but if it does have one that says you've got to pay the full amount of the lien, would that State requirement survive under your theory, or not?

MR. DYK: Well, I think it would survive, but the full amount of the lien would be the lien that remained after the bankruptcy proceeding, after this process of bifurcation to secured and unsecured claims.

And that's what Congress intended to do. And it did it, I suggested earlier, in order to allow people to go on with their lives and improve the property and do things with it without having to worry about the recapture of that accreted value, and without giving the creditor the power at the foreclosure sale to say to the debtor, I can bid $150 for this $100 piece of property. And if you don't pay me more than it's worth, I will do that. And the reason that power exists is that property is often worth more to the debtor than it is to a third party.

For example, in Mrs. Dewsnup's case, you have property which was with -- in her family for generations. There's sentimental attachment. It's being used.

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QUESTION: Yeah, but I suppose also one of the purposes of the valuation is to prevent the creditor from buying into the property at an unreasonably low figure, and therefore retaining an unreasonably large unsecured claim.

MR. DYK: Well, then it certainly does not --

QUESTION: That's not this case, of course --

MR. DYK: No.

QUESTION: -- but that's one of the purposes I would think of this provision.

MR. DYK: That is correct.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Dyk. The case is submitted.

(Whereupon at 11:56 a.m., the case in the above-entitled matter was submitted.)

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

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ALETHA DEWSNUP, Petitioner, v. LOUIS L. TIMM, et al.

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and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY alan friedman

(REPORTER)