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Section 506(a) of the Bankruptcy Code provides that a creditor's claim is a "secured claim to the extent of the

value of such creditor's interest in the estate's interest in such property"—that is, it is a secured claim for an

amount equal to the present value of the collateral—and is an “unsecured claim” for the remainder. Section 506(d)

provides that, “[t]o the extent that a lien secures a claim against the debtor that is not an allowed secured claim,

such lien is void.”

Lower courts were divided over whether a Chapter 7 debtor with multiple mortgages may void, or “strip off,” a

junior mortgage lien in its entirety under section 506(d) when the value of the senior mortgage lien exceeds the

current value of the property—that is, when the junior lien is entirely underwater and thus unsecured within the

meaning of section 506(a). In *Dewsnup v. Timm*, 502 U.S. 410 (1992), the Supreme Court held that a Chapter 7

debtor could not “strip down” a *partially* underwater lien to the present value of the collateral, but the Court did not

address whether the same rule applied to a wholly unsecured lien. In the decisions below, the Eleventh Circuit

limited *Dewsnup* to partially underwater liens and held that Chapter 7 debtors may strip off a wholly underwater

junior mortgage lien; the Fourth, Sixth, and Seventh Circuits have reached the opposite conclusion.

Today, in the consolidated cases of *Bank of America, N.A. v. Caulkett*, No. 13-1421, and *Bank of America, N.A. v.*

*Toledo-Cardona*, No. 14-163, a unanimous Supreme Court reversed the Eleventh Circuit.

In an opinion written by Justice Thomas, the Court acknowledged that a “straightforward reading of the statute”

avored the Eleventh Circuit’s interpretation. Because the value of a wholly underwater junior lien is “zero,” it is

unsecured within the meaning of section 506(a). And given that section 506(d) uses the same term—“secured

claim”—as section 506(a), “one would think” that the wholly underwater lien would also be unsecured, and thus

voidable, within the meaning of section 506(d).

The Court concluded, however, that *Dewsnup* “forecloses this textual analysis.” *Dewsnup* “defined the term

‘secured claim’ in § 506(d) to mean a claim supported by a security interest in property, regardless of whether the

value of that property would be sufficient to cover the claim.” Under this reading, the function of section 506(d) “is

reduced to ‘voiding a lien whenever a claim secured by the lien itself has not been allowed’” under the Bankruptcy

Code. Because the bank’s claims in these cases were “both secured by liens and allowed under” the Bankruptcy

Code, they could not be “voided under the definition given to the term ‘allowed secured claim’ by *Dewsnup*.”



Finally, the Court rejected the debtors' arguments that *Dewsnup* should be limited to partially underwater liens. The

Court noted that treating a junior lien that is one dollar shy of being completely underwater differently from a junior

lien that is wholly underwater "could lead to arbitrary results." The Court suggested that the policy arguments

proposed by the debtors were better addressed to Congress.

The Supreme Court's resolution of the lien-stripping issue is of significant interest to the business community

because it is of central importance to the administration of Chapter 7 bankruptcies and the treatment of home

mortgages in particular.

Any questions about this case should be directed to [Michele Odorizzi](#) (+1 312 701-7309) in our Chicago office or

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