No. 13-581

In the Supreme Court of the United States

PATRICK J. RYAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
KATHRYN KENEALLY
Assistant Attorney General
BRIDGET M. ROWAN
RACHEL I. WOLLITZER
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the court of appeals correctly held that 11 U.S.C. 506(d) does not authorize the voiding of a lien securing a claim that is allowed under 11 U.S.C. 502.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Miscellaneous:

In the Supreme Court of the United States

No. 13-581

PATRICK J. RYAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is reported at 725 F.3d 623. The merits opinion of the bankruptcy court (Pet. App. 30a-43a) is unreported but is available at 2012 WL 4959632. The bankruptcy court's opinion certifying the question for direct appeal to the court of appeals (Pet. App. 11a-29a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on July 8, 2013. The petition for a writ of certiorari was filed on October 4, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner brought an adversary proceeding in his Chapter 13 bankruptcy case, seeking to partially void

the liens securing his federal tax liabilities. The bankruptcy court denied petitioner's request, and the court of appeals affirmed. Pet. App. 1a-10a.

1. Petitioner failed to pay his federal income taxes for 2006 through 2010, resulting in tax liabilities exceeding $136,000. Pet. App. 1a-2a. In January 2011, pursuant to 26 U.S.C. 6323, the Internal Revenue Service (IRS) recorded with the Cook County Recorder of Deeds a notice of federal tax lien (which arose pursuant to 26 U.S.C. 6321) against petitioner's possessions in the amount of petitioner's tax liabilities for 2006 through 2009. Pet. App. 2a.

2. In August 2011, petitioner filed a voluntary Chapter 13 bankruptcy petition pursuant to 11 U.S.C. 1301, seeking to reorganize his debts. Pet. App. 2a. The IRS filed a proof of claim for petitioner's tax liabilities. *Id.* at 12a. Although petitioner did not object to the IRS's proof of claim, he filed an adversary proceeding seeking to void the IRS's liens to the extent they exceeded the value of his personal property, which was worth a total of $1625. *Ibid.*

In support of that request, petitioner relied on 11 U.S.C. 506. Section 506(a)(1) provides that "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest * * * is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property * * * and is an unsecured claim to the extent that the value of such creditor's interest * * * is less than the amount of such allowed claim." 11 U.S.C. 506(a)(1). Section 506(d) states: "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such a lien is void, unless" certain exceptions apply. 11 U.S.C. 506(d). Petitioner

argued that the tax liens are secured only to the extent of the $1625 value of his property pursuant to Section 506(a) and that the portion of the liens that exceeds that amount is void pursuant to Section 506(d). Pet. App. 2a, 35a-36a.

3. The bankruptcy court granted the United States' motion to dismiss the portions of petitioner's complaint that sought to void the tax liens pursuant to 11 U.S.C. 506(d).[1] Pet. App. 21a-29a. The court concluded that petitioner has no right under Section 506 "to strip off or strip down the IRS lien even if the lien is wholly or partially unsecured under section 506(a) because it is wholly or partially unsupported by collateral value." *Id.* at 23a.

The bankruptcy court acknowledged that Section 506(a)(1) divides a lienholder's undersecured claim into a secured claim to the extent of the value of the underlying collateral and an unsecured claim for the remainder of the claim. Pet. App. 23a. Relying on this Court's decision in *Dewsnup* v. *Timm*, 502 U.S. 410 (1992), however, the court concluded that Section 506(d)—which provides that certain liens may be void if they do not relate to "allowed secured claim[s]"—does not allow a debtor to strip down an undersecured lien (or to strip off a wholly unsecured lien). Pet. App. 24a. As the bankruptcy court noted, the Court in *Dewsnup* held that "section 506(d) does not permit lien-stripping in a chapter 7 case." *Ibid.* The bankruptcy court reasoned that, because Section 506 "appl[ies] equally to cases under chapter 13," "section

---

[1] In the adversary proceeding, petitioner also requested a determination that certain of his tax liabilities were dischargeable. That issue was resolved by agreement of the parties. Pet. App. 12a-13a.

506(d) [is] unavailable as a lien-stripping device in a chapter 13 case" as well. *Ibid.* The court further held that Section 506(d) does not apply on its own terms because the IRS lien at issue is an "allowed secured claim" pursuant to 11 U.S.C. 502(a). Pet. App. 24a; see 11 U.S.C. 506(d).

The bankruptcy court rejected petitioner's argument that the rule announced in *Dewsnup* is limited to Chapter 7 cases. The court concluded that "*Dewsnup* was an interpretation of a provision of chapter 5 [of the Bankruptcy Code], and there is no getting around the fact that [11 U.S.C.] 103(a) makes the provisions of chapter 5 applicable in chapter 13 cases." Pet App. 26a-27a. Under petitioner's view, the court explained, Section 506 would have "one meaning in a chapter 7 case and another in a chapter 13 case," thus "violat[ing] the 'well entrenched' rule against multiple interpretations of the same statute in different contexts." *Id.* at 27a (citing *In re Woolsey*, 696 F.3d 1266, 1277 (10th Cir. 2012)). The bankruptcy court noted that "liens can be stripped in a chapter 13 case," but only pursuant to "the reorganization provisions of chapter 13 themselves." *Ibid.*

The bankruptcy court certified petitioner's direct appeal to the court of appeals pursuant to 28 U.S.C. 158(d)(2). Pet. App. 11a.

4. The court of appeals affirmed. Pet. App. 1a-10a.

The court of appeals explained that "Section 506(a) of the Bankruptcy Code separates [claims] into secured and unsecured portions," so that the amount of an undersecured claim that exceeds the value of collateral is unsecured. Pet. App. 2a-3a. As the court of appeals noted, the United States conceded in this case that its tax claim is unsecured for the amount that

exceeded the $1625 value of petitioner's property. *Id.* at 3a.

The court of appeals affirmed the bankruptcy court's holding that the authority in Section 506(d) to void a lien "[t]o the extent [such] lien secures a claim against the debtor that is not an allowed secured claim" does not authorize the voiding of an unsecured portion of a lien securing an allowed undersecured claim. Pet. App. 3a-4a; 11 U.S.C. 506(d). The court relied on this Court's holding in *Dewsnup* that Section 506(d)'s use of the phrase "allowed secured claim" need not be construed as referring to Section 506(a)'s division of an undersecured claim into secured and unsecured claims. Pet. App. 3a-4a. Instead, "consistent with pre-Code rules that liens pass through bankruptcy unaffected, the term 'allowed secured claim' in § 506(d) means a claim that is, first, allowed under § 502 and, second, secured by a lien enforceable under state law, without regard to whether that claim would have been deemed secured or unsecured under § 506(a)." *Id.* at 4a (citing *Dewsnup*, 502 U.S. at 777-778; *In re Woolsey*, 696 F.3d at 1273).

Petitioner did not meaningfully dispute that, if the *Dewsnup* interpretation of Section 506(d) applies to Chapter 13 cases, he cannot void the tax lien. Pet. App. 4a. Petitioner argued, however, that courts should construe the language of Section 506(d) differently in Chapter 7 and Chapter 13 cases. See *ibid.* The court of appeals rejected that argument. *Id.* at 4a-10a. Relying on 11 U.S.C. 103(a)'s statement that, except when otherwise specified, the provisions of Chapter 5 of the Bankruptcy Code "apply in a case under chapter 7, 11, 12, or 13" of the Code, the court concluded that Section 506(d) "appl[ies] equally to

Chapters 7 and 13." Pet. App. 5a; see *id.* at 5a-10a (relying on the general rule that statutory text should not be given different meanings when applied in different types of cases).

Finally, the court of appeals noted that various Chapter 13 provisions specifically address the modification of liens and provide appropriate safeguards and procedures for such modifications. Pet. App. 6a-7a (citing 4 *Collier on Bankruptcy* ¶ 506.06[1][c], at 506-139 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013) (*Collier on Bankruptcy*)). Accepting petitioner's broad view of Section 506(d), the court noted, would allow lien stripping in Chapter 13 cases without any of the specified protections or adherence to any of the specified procedures. *Ibid.*

ARGUMENT

Petitioner contends that 11 U.S.C. 506(d) authorizes a Chapter 13 debtor to void the unsecured portion of an undersecured lien. The court of appeals correctly applied this Court's decision in *Dewsnup* v. *Timm*, 502 U.S. 410 (1992), in rejecting that argument, and the court's decision does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. The court of appeals correctly held that 11 U.S.C. 506(d), as interpreted by this Court in *Dewsnup*, has the same meaning in Chapter 13 bankruptcy cases that it has in Chapter 7 bankruptcy cases. Petitioner's contrary arguments (Pet. 9-10) lack merit.

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." 11 U.S.C. 506(d). In *Dewsnup*, this Court held that Section 506(d) does not authorize the voiding or stripping

down of an unsecured portion of a lien when a "claim is secured by a lien and has been fully allowed pursuant to [11 U.S.C.] 502," even when such a claim is bifurcated into secured and unsecured portions for purposes of Section 506(a). *Dewsnup*, 502 U.S. at 417. Section 506(d), the Court held, voids only liens securing claims that are not allowed. *Id.* at 415-417. As the Court explained, allowing a debtor to void or strip down a lien underlying a secured claim would be inconsistent with pre-Code practices, which allowed liens to pass through bankruptcy unaffected. *Id.* at 418. The Court also noted that, if Section 506(d) were construed to authorize the voiding or stripping down of such a lien, creditors would improperly be deprived of the benefit of any increase in the value of collateral by the time of a foreclosure sale. *Id.* at 417. The IRS's claim in this case was allowed under Section 502 and is secured by a lien. The court of appeals therefore correctly held that petitioner could not void any portion of the lien pursuant to Section 506(d). Pet. App. 3a-10a.

Petitioner argues (Pet. 9-10) that the interpretation of Section 506(d) announced in *Dewsnup* applies only in Chapter 7 bankruptcies. The court of appeals correctly rejected that contention. Pet. App. 4a-5a. Nothing in Section 506(d) itself indicates that it should have a different meaning or scope depending on the type of bankruptcy at issue. And Section 103(a) of the Bankruptcy Code indicates the opposite, specifying that the provisions of Chapter 5 shall apply "in a case under chapter 7, 11, 12, or 13 of" the Code. 11 U.S.C. 103(a). Courts generally give statutory terms the same meaning in different categories of cases, see *Pasquantino* v. *United States*, 544 U.S. 349, 358

(2005); *Clark* v. *Martinez*, 543 U.S. 371, 386, 391 (2005), and the court of appeals correctly found no reason to depart from that rule here, see Pet. App. 7a-10a. See *Collier on Bankruptcy* ¶ 506.06[1][c], at 506-139 ("[T]here is no principled way to conclude that, although section 506(d) does not authorize lien stripping in chapter 7 cases, it has a different meaning in chapter 11, 12 and 13 matters."). Indeed, even petitioner asserts at one point that "Sections 506(a) and (d) should mean the same thing in both Chapter 7 and Chapter 13 cases." Pet. 7. That is precisely what the court of appeals held.

To the extent that adjustments to lien rights are permitted in Chapter 13 cases, such adjustments are governed by the particular safeguards and procedures spelled out in the provisions of Chapter 13. Sections 1322(b)(2), 1325(a)(5)(B), 1327(b), and 1327(c) specifically address the retention, modification, and termination of liens in Chapter 13 bankruptcies. As the leading treatise on bankruptcy explains, "it would make no sense to conclude that, while a plan proponent is expressly authorized to adjust the lien rights of a secured creditor under" provisions such as Section 1322(b)(2), "subject to certain enumerated exceptions, that authority is likewise duplicated in section 506(d) but without the limitations contained in" the lien-related provisions of Chapter 13. *Collier on Bankruptcy* ¶ 506.06[1][c], at 506-139. "The better view," the treatise explains, "is that section 506(d) does not authorize lien stripping" because "the ability to adjust the lien rights of secured creditors is provided for elsewhere in the Code." *Ibid.* Petitioner acknowledges that courts of appeals allow modification of some liens pursuant to the specific provisions of Chapter 13

that govern lien modification (*e.g.*, 11 U.S.C. 1322). See Pet. 7-8 (citing *In re Pond*, 252 F.3d 122 (2d Cir. 2001); *In re McDonald*, 205 F.3d 606 (3d Cir.), cert. denied, 531 U.S. 822 (2000); *In re Bartee*, 212 F.3d 277 (5th Cir. 2000); *In re Lane*, 280 F.3d 663 (6th Cir. 2002); *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002); *In re Tanner*, 217 F.3d 1357 (11th Cir. 2000)). The court below correctly held that those specific provisions, not Section 506(d), govern lien modification in Chapter 13 cases.

Petitioner also contends (Pet. 9) that the holding of *Dewsnup* does not apply outside the context of liens on a primary residence. That argument lacks merit. Section 506(d) does not distinguish between consensual liens such as those securing a home mortgage and nonconsensual liens such as the tax liens at issue here. This Court rejected just such a distinction in interpreting Section 506(b), which permits the collection of interest on oversecured allowed claims. See *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 243-244 (1989).[2]

---

[2] Petitioner is also wrong in contending that the Court in *Dewsnup* "stated that it did not intend its reasoning to apply to the 'reorganization' chapters of the Bankruptcy Code." Pet. 9. The Court in *Dewsnup* noted that the only provisions of the pre-Code Bankruptcy Act that permitted "involuntary reduction of the amount of a creditor's lien for any reason other than payment on the debt" were certain provisions governing corporate reorganization. See 502 U.S. 418-419 (citing 11 U.S.C. 616(1) and (10) (1976)). As noted, however, the inclusion of specific provisions governing modification of liens in certain circumstances supports (rather than undercuts) the conclusion that Section 506(d) does not wipe away the particulars of those provisions by generally permitting the voiding of liens.

2. Contrary to petitioner's contention (Pet. 4-5), the decision below does not conflict with any decision of another court of appeals. The only two courts of appeals that have considered whether Section 506(d) authorizes the partial voiding of an undersecured lien in a Chapter 13 case agree that it does not. Pet. App. 3a-10a; *Woolsey*, 696 F.3d at 1272-1279. This Court's intervention therefore is unwarranted.

Petitioner's reliance (Pet. 5) on *In re McNeal*, 735 F.3d 1263 (11th Cir. 2012), is misplaced. The court below held that this Court's interpretation of Section 506(d) in *Dewsnup* applies in Chapter 13 bankruptcies. *McNeal* was not a Chapter 13 case; it was a Chapter 7 case involving a lien that was entirely unsupported by collateral value. 735 F.3d at 1264. In holding that the Chapter 7 debtor should have been allowed to strip off the unsecured lien at issue, the Eleventh Circuit relied on pre-*Dewsnup* circuit precedent that, in turn, relied on an interpretation of Section 506(d)'s text that the Eleventh Circuit acknowledged was "reject[ed]" in *Dewsnup*. *Id.* at 1265-1266 (citing *In re Folendore,* 862 F.2d 1537, 1538-1539 (11th Cir. 1989)). In *McNeal*, the Eleventh Circuit distinguished the holding of *Dewsnup*, noting that *Dewsnup* involved the possibility of stripping down an undersecured lien while *McNeal* involved the possibility of stripping off a wholly unsecured lien. *Id.* at 1265. Whatever the merits of that distinction,[3] it does not

[3] Other courts of appeals have rejected the distinction embraced in *McNeal* between "strip downs" and "strip offs." See *Palomar* v. *First Am. Bank*, 722 F.3d 992, 994 (7th Cir. 2013); *Woolsey*, 696 F.3d at 1267; *In re Talbert*, 344 F.3d 555, 557-558 (6th Cir. 2003); *Ryan* v. *Homecomings Fin. Network*, 253 F.3d 778, 782 (4th Cir. 2001).

cast doubt on the decision below, which rejected petitioner's effort to strip down the IRS's undersecured lien.[4]

Petitioner also suggests (Pet. 8-9) that refusing to allow Chapter 13 lien modifications pursuant to Section 506(d) creates inconsistent applications of bankruptcy law because the United States has not waived its sovereign immunity to specific provisions of Chapter 13 (*e.g.*, 11 U.S.C. 1322) that allow some modification of liens held by private parties. The court of appeals correctly rejected that contention, finding "no support for basing statutory interpretation on the government's decision to waive, or not waive, sovereign immunity." Pet. App. 7a.

---

[4] Petitioner appears to argue (Pet. 6) that this case involves a strip off of wholly unsecured liens rather than a strip down of undersecured liens. Petitioner has forfeited that argument by failing to present it to the lower courts and by failing to develop it in his petition for a writ of certiorari. See Pet. App. 3a (noting that this case involved a request for a strip down). In any event, petitioner could not seek a strip off by allocating all of the collateral to his liability for only one tax year, leaving the IRS's claims for other tax years unsecured. Unlike most liens, a federal tax lien attaches to all of a taxpayer's property and rights to property, see 26 U.S.C. 6321, thus allowing the IRS to allocate its collateral among various tax years in accordance with the government's best interests.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
KATHRYN KENEALLY
Assistant Attorney General
BRIDGET M. ROWAN
RACHEL I. WOLLITZER
Attorneys

FEBRUARY 2014