

SCOTUS: 2nd mortgages on underwater homes cannot be voided in Chapter 7 bankruptcy

1 Jun 2015

In *Bank of America v. Caulkett*, the Court declined to allow a Chapter 7 bankruptcy debtor to strip down a mortgage lien that is junior to liens that claim all of the equity in a home, thus allowing those underwater liens to survive a discharge. Caulkett owned a house where the senior mortgage lien was greater than his property's current market value, and he sought under Chapter 7 to void a junior mortgage lien under section 506 of the Bankruptcy Code on the basis that the junior lien was not an allowed secured claim. The Eleventh Circuit affirmed ordering the junior lien voided, and the Court, in a unanimous opinion by Justice Thomas, reversed. Although such underwater liens would appear to be unsecured under the definition of 506(a)(1), the Court held that its opinion in *Dewsnup v. Timm*, 502 U.S. 410 (1992), mandated that such liens were secured regardless of whether the value of the property was sufficient to cover the claim, regardless of whether the subject lien was partially or wholly uncovered. Justices Kennedy, Breyer, and Sotomayor joined in the opinion except with regard to a single footnote that pointed out the unpopularity of *Dewsnup*, which the parties had not argued to overrule—perhaps indicating that the other six justices might favorably entertain such a future challenge. [A link to the opinion is here.](#)

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