

# United states supreme court

Law



**ASSIGN  
BUSTER**

Petitioner Dewsnap, the debtor in this case, borrowed \$119, 000 from creditor/respondent Timm. This loan was secured through a Deed of Trust which granted the creditor liens on two parcels of Utah farmland owned by the debtor. The debtor defaulted in 1979; later, in 1981, the creditor issued a Notice of Default and foreclosure proceedings were commenced. A stay against foreclosure of the collateral was issued by the Bankruptcy Court pending resolution of various claims made by the debtor pursuant the Bankruptcy Code. The immediate issue in this case arises from the debtor's filing of an adversary proceeding pursuant to section 506(d) of the Bankruptcy Code. This issue is important because the fair market value of the collateral (\$39, 000) is less than the debt's amount.

The question presented is whether a debtor can “ strip down” the lien of the creditor on the real property pledged as collateral for the debt to the value of the collateral; more specifically, the United States Supreme Court was asked to determine the applicability of section 506(d) to this particular set of circumstances. For the reasons discussed below, the Court held that section 506(d) did not allow the debtor to “ strip down” the lien.

As an initial matter, the Court admits that section 506(d) is ambiguous, that both parties have made valid points, but that sound policy and harmonization of the modern Code section with pre-Code rules mandates a holding that section 506(d)'d lien-voiding provisions are not applicable. The Court began its analysis by examining the relationship between sections 506(a) and 506(d); this is because the debtor argued that section 506(a) demanded that a claim was “ secured only to the extent of the judicially determined value of the real property on which the lien is fixed.” This is <https://assignbuster.com/united-states-supreme-court/>

significant, the petitioner argued, because section 506(a) must be read together with section 506(d), resulting in a determination that a debtor can rely upon this value reduction language in order to later secure a lien avoidance under section 506(d) to the extent of the difference between the value of the debt and the new judicially determined value of the underlying collateral. The Court, however, refused to treat these Code sections as complementary; quite the contrary, they stated that where a claim is fully allowed under section 502 and secured by a lien, that the debtor cannot use the language of 506(a) in such a way as to independently justify the lien avoidance mechanism offered by section 506(d).

The Court's holding, it must be noted, was not unanimous. Two Justices, Scalia and Souter, dissented. The dissenting opinion argued that sections 506(a) and 506(d) ought to have been read as complementary sections, that Congress' ambiguity should not be remedied by the majority's interpretation, and that the debtor was correct in arguing that the lien avoidance provisions of 506(d) were applicable.

In the final analysis, this is a strong majority opinion and probably not subject to change in the future. Sections 506(a) and 506(d) deal with independent legal issues, the language of 506(a) may not be used to invoke the lien avoiding language of 506(d), and debtors must suffer the burden of such disparities between the value of the underlying collateral and the debt itself.

## References

Dewsnup v. Timm 116 L. Ed. 2d 903, 112 S. Ct. 773 (1992). Available:  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=502&page=410>  
<https://assignbuster.com/united-states-supreme-court/>