



## Virginia Business Lawyers

### SCOTUS: Secured Creditors Cannot Be Denied the Right to Credit-Bid

By: Ashley Burgess. Thursday, June 14th, 2012



United States Supreme Court (Photo credit: Wikipedia)

On May 29, 2012, the **United States Supreme Court** decided **Radlax Gateway Hotel, LLC v. Amalgamated Bank**, ruling that **secured creditors** cannot be denied the right to credit-bid on the sale of property or assets in the context of a **Chapter 11 bankruptcy** plan of reorganization. The Chapter 11 debtors were the owners of the Radisson Hotel at Los Angeles International Airport, along with adjacent structures. The lenders possessed a blanket lien on all of the debtors' assets to secure the loan. Due to mounting construction costs, the debtors were forced to file a voluntary petition for relief under Chapter 11 of the **Bankruptcy Code**.

The Radlax debtors proposed to dissolve the entity and sell substantially all of its assets pursuant to bankruptcy sale and bid procedures. The sale proceeds would be used to fund the plan, primarily by repaying the bank. However, under the proposed auction procedures, the secured lender would not be allowed to place a credit-bid. Instead, the secured lender would be forced to bid in cash. In anticipation of the lender's objection, the debtors sought to obtain confirmation of the plan under the cramdown provisions of the Bankruptcy Code. The **Seventh Circuit Court of Appeals** held that the lenders must be allowed to credit-bid. Conversely, in recent years, other lower courts, including the Third Circuit, allowed or upheld the confirmation of plans which denied the lender the right to credit-bid.

The United States Supreme Court, **Justice Antonin Scalia** writing for the majority, unanimously affirmed the lower court, holding that the debtors cannot obtain confirmation of a Chapter 11 cramdown plan that provides for the sale of collateral free and clear of the secured lender's lien, but does not permit the lender to credit-bid at the sale. The decision is important for secured creditors involved in chapter 11 bankruptcy proceedings for several reasons, including: (a) it provides more control over the destiny of the collateral used to secure the secured party's agreement; (b) it avoids the additional hurdles imposed by a cash bid requirement and (c) when it comes to the treatment of a secured creditor, it impacts the debtor/creditor balance by limiting the options of the debtor seeking to sell property free and clear of liens.

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Creditors in a **bankruptcy proceeding** who have questions about the classification, treatment or protection of claims would be well-advised to contact a **Virginia creditors' rights attorney** specializing in this area of the law.

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