

"Supreme Court Confirms Right of Secured Party to Credit-Bid in Attempted Cramdown Plan Providing for the Sale of Collateral Free and Clear of Liens," American Bankruptcy Institute, August 2012

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In an opinion that Justice Scalia [1] described as “an easy case,” the U.S. Supreme Court resolved a circuit court split by holding that a debtor may not obtain confirmation of a chapter 11 cramdown plan [2] pursuant to 11 U.S.C. § 1129(b)(2)(A)[3] over the objection of a secured creditor if the plan provides for the sale of collateral free and clear of the creditor’s lien, but does not permit the creditor the right to credit-bid under § 363(k).[4] The RadLAX opinion overrules contrary opinions of the Third Circuit and the Fifth Circuit Courts of Appeal, holding that a cramdown plan providing for the sale of property free and clear of liens does not have to provide impaired secured creditors with the right to credit-bid. [5]