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*501 U.S. 157, *; 111 S. Ct. 2197, **;*
*115 L. Ed. 2d 145, ***; 1991 U.S. LEXIS 3484*

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SHELDON BARUCH TOIBB, PETITIONER *v.* STUART J. RADLOFF

No. 90-368

SUPREME COURT OF THE UNITED STATES

501 U.S. 157; 111 S. Ct. 2197; 115 L. Ed. 2d 145; 1991 U.S. LEXIS 3484; 59 U.S.L.W. 4633; Bankr. L. Rep. (CCH) P73,994; 24 Collier Bankr. Cas. 2d (MB) 1179; 21 Bankr. Ct. Dec. 1296; 91 Cal. Daily Op. Service 4439; 91 Daily Journal DAR 6949

April 22, 1991, Argued
June 13, 1991, Decided

PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

DISPOSITION: 902 F.2d 14, reversed.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner debtor appealed from an order of the United States Court of Appeals for the Eighth Circuit, finding that petitioner failed to qualify for relief under Chapter 11 bankruptcy.

OVERVIEW: Petitioner was a former staff attorney with the Federal Energy Regulatory Commission. He was employed as a consultant a company he and two others organized to produce and market electric power. The company terminated petitioner, and eventually petitioner filed for Chapter 7 bankruptcy. When petitioner learned his company stock was valuable, he wanted to convert to Chapter 11 because he was an individual. The lower courts held petitioner failed to qualify for relief under Chapter 11. Reversing the lower courts' denial of Chapter 11 relief, the Supreme Court held that petitioner was eligible to reorganize under Chapter 11. The plain language of the Bankruptcy Code permitted individual debtors to reorganize under Chapter 11. The Bankruptcy Code, 11 U.S.C.S. §§ 109 and 101(35), indicated that a "person" could be a debtor under Chapter 11, and § 101(35) stated that a "person" included an individual.

OUTCOME: The Supreme Court reversed and held that an individual debtor not engaged in business was eligible to reorganize under Chapter 11 of the Bankruptcy Code. The plain language of the code permitted individual debtors to reorganize.

LEXISNEXIS® HEADNOTES Hide

Bankruptcy Law > Reorganizations > Eligibility

HN1 See the Bankruptcy Code, 11 U.S.C.S. § 109(d). *Shepardize:* Restrict By Headnote

Bankruptcy Law > Liquidations > Eligibility

Bankruptcy Law > Reorganizations > Eligibility

WHITE, MARSHALL, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. STEVENS, J., filed a dissenting opinion, post, p. 166.

OPINION BY: BLACKMUN

OPINION

[*158] [*149] [**2198]** JUSTICE BLACKMUN delivered the opinion of the Court.

In this case we must decide whether an individual debtor not engaged in business is eligible to reorganize under Chapter 11 of the Bankruptcy Code, 11 U. S. C. § 1101 *et seq.*

I

From March 1983 until April 1985, petitioner Sheldon Baruch Toibb, a former staff attorney with the Federal Energy Regulatory Commission, was employed as a consultant by Independence Electric Corporation (IEC), a company he and two others organized to produce and market electric power. Petitioner owns 24 percent of the company's shares. After IEC terminated his employment, petitioner was unable to find work as a consultant in the energy field; he has been largely supported by his family and friends since that time.

On November 18, 1986, petitioner filed in the United States Bankruptcy Court for the Eastern District of Missouri a voluntary petition for relief under Chapter 7 of the Code, 11 U. S. C. § 701 *et seq.* The Schedule of Assets and Liabilities accompanying petitioner's filing disclosed no secured debts, a disputed federal tax priority claim of $ 11,000, and unsecured debts of $ 170,605. [1] Petitioner **[***150]** listed as nonexempt assets his IEC shares and a possible claim against his former business associates. He stated that the market value of each of these assets was unknown.

FOOTNOTES

1 Because petitioner's unsecured debts exceeded $ 100,000 and he had no regular income, he was ineligible to proceed under Chapter 13 of the Code, 11 U. S. C. § 1301 *et seq.* See § 109(e).

On August 6, 1987, the Chapter 7 trustee appointed to administer petitioner's estate notified the creditors that the **[*159]** Board of Directors of IEC had offered to purchase petitioner's IEC shares for $ 25,000. When petitioner became aware that this stock had such value, he decided to avoid its liquidation by moving to convert his Chapter 7 case to one under the reorganization provisions of Chapter 11.

The Bankruptcy Court granted petitioner's conversion motion, App. 21, and on February 1, 1988, petitioner filed a plan of reorganization. *Id.*, at 70. Under the plan, petitioner proposed to pay his unsecured creditors $ 25,000 less administrative expenses and priority tax claims, a proposal that would result in a payment of approximately 11 cents on the dollar. He further proposed to pay the unsecured creditors, for a period of six years, 50 percent of any dividends from IEC or of any proceeds from the sale of the IEC stock, up to full payment of the debts.

On March 8, 1988, the Bankruptcy Court on its own motion ordered petitioner to show cause why his petition should not be dismissed because petitioner was not engaged in business and, therefore, did not qualify as a Chapter 11 debtor. *Id.*, at 121. At the ensuing hearing, petitioner unsuccessfully attempted to demonstrate that he had a business to reorganize. [2] Petitioner also argued that Chapter 11 should be available to an individual debtor not engaged in an ongoing **[**2199]** business. On August 1, the Bankruptcy Court ruled that, under the authority of

Wamsganz v. *Boatmen's Bank of De Soto*, 804 F.2d 503 (CA8 1986), petitioner failed to qualify for relief under Chapter 11. App. to Pet. for Cert. A-17 and A-19.

FOOTNOTES

2 Petitioner does not seek further review of the question whether he is engaged in an ongoing business.

The United States District Court for the Eastern District of Missouri, also relying on *Wamsganz*, upheld the Bankruptcy Court's dismissal of petitioner's Chapter 11 case. App. to Pet. for Cert. A-8 and A-9. The United States Court of Appeals for the Eighth Circuit affirmed, holding that the Bankruptcy Court had the authority to dismiss the **[*160]** proceeding *sua sponte*, and that the Circuit's earlier *Wamsganz* decision was controlling. *In re Toibb*, 902 F.2d 14 (1990). [3] Because the Court of Appeals' ruling that an individual nonbusiness debtor may not reorganize under Chapter 11 clearly conflicted with the holding of the Court of Appeals for the Eleventh Circuit in *In re Moog*, 774 F.2d 1073 (1985), we granted certiorari to resolve the conflict. [4] 498 U.S. 1060 (1991).

FOOTNOTES

3 The Eighth Circuit also agreed with what it regarded as the supporting precedent of *In re Little Creek Development Co.*, 779 F.2d 1068 (CA5 1986), and *In re Winshall Settlor's Trust*, 758 F.2d 1136 (CA6 1985).

4 The named respondent, Stuart J. Radloff, was dismissed as Chapter 7 trustee when the Bankruptcy Court converted petitioner's case to one under Chapter 11. Mr. Radloff did not participate in the proceedings before the Court of Appeals and refrained from responding to Mr. Toibb's petition for certiorari filed with this Court. We therefore specifically requested the United States Trustee, see 28 U. S. C. § 581(a)(13), to respond. In doing so, the United States Trustee indicated his agreement with petitioner's position and suggested that, if this Court decided to review the case, it might wish to appoint counsel to defend the Eighth Circuit's judgment. We then invited James Hamilton, Esq., of Washington, D. C., a member of the Bar of this Court, to serve as *amicus curiae* in support of the judgment of the Court of Appeals. 498 U.S. 1065 (1991). Mr. Hamilton accepted this appointment and has well fulfilled this assigned responsibility.

[*151]** II

A

In our view, the plain language of the Bankruptcy Code disposes of the question before us. Section 109, 11 U. S. C. § 109, defines who may be a debtor under the various chapters of the Code. Section 109(d) provides: *HN1* "Only a person that may be a debtor under chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title." Section 109(b) states: *HN2* "A person may be a debtor under chapter 7 of this title only if such person is not -- (1) a railroad; (2) a domestic insurance company, bank, . . .; or (3) a foreign insurance company, bank, . . . engaged in such business in the United States." **[*161]** *HN3* The Code defines "person" as used in Title 11 to "include [an] individual." § 101(35). Under the express terms of the Code, therefore, *HN4* petitioner is "a person who may be a debtor under chapter 7" and satisfies the statutory requirements for a Chapter 11 debtor.

The Code contains no ongoing business requirement for reorganization under Chapter 11, and

we are loath to infer the exclusion of certain classes of debtors from the protections of Chapter 11, because Congress took care in § 109 to specify who qualifies -- and who does not qualify -- as a debtor under the various chapters of the Code. Section 109(b) expressly excludes from the coverage of Chapter 7 railroads and various financial and insurance institutions. Only municipalities are eligible for the protection of Chapter 9. § 109(c). Most significantly, § 109(d) makes stockbrokers and commodities brokers ineligible for Chapter 11 relief, but otherwise leaves that Chapter available to any other entity eligible for the protection of Chapter 7. Congress knew how to restrict recourse to the avenues of bankruptcy relief; it did not place Chapter 11 reorganization beyond the reach of a nonbusiness individual debtor.

[2200]** B

The *amicus curiae* in support of the Court of Appeals' judgment acknowledges that Chapter 11 does not expressly exclude an individual nonbusiness debtor from its reach. He echoes the reasoning of those courts that have engrafted an ongoing-business requirement onto the plain language of § 109(d) and argues that the statute's legislative history and structure make clear that Chapter 11 was intended for business debtors alone. See, *e. g., Wamsganz* v. *Boatmen's Bank of De Soto*, 804 F.2d at 505 ("The legislative history of the Bankruptcy Code, taken as a whole, shows that Congress meant for chapter 11 to be available to businesses and persons engaged in business, and not to consumer debtors"). We find these arguments unpersuasive for several reasons.

[*162] [*152]** First, this Court has repeated with some frequency: "Where, as here, the resolution of a question of federal law turns on a statute and the intention of Congress, we look first to the statutory language and then to the legislative history if the statutory language is unclear." *Blum* v. *Stenson*, 465 U.S. 886, 896, 79 L. Ed. 2d 891, 104 S. Ct. 1541 (1984). The language of § 109 is not unclear. Thus, although a court appropriately may refer to a statute's legislative history to resolve statutory ambiguity, there is no need to do so here.

Second, even were we to consider the sundry legislative comments urged in support of a congressional intent to exclude a nonbusiness debtor from Chapter 11, the scant history on this precise issue does not suggest a "clearly expressed legislative intent . . . contrary . . ." to the plain language of § 109(d). See *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108, 64 L. Ed. 2d 766, 100 S. Ct. 2051 (1980). The *amicus* does point to the following statement in a House Report:

> "Some consumer debtors are unable to avail themselves of the relief provided under chapter 13. For these debtors, straight bankruptcy is the only remedy that will enable them to get out from under the debilitating effects of too much debt." H. R. Rep. No. 95-595, p. 125 (1977).

Petitioner responds with the following excerpt from a later Senate Report:

> "Chapter 11, Reorganization, is primarily designed for businesses, although individuals are eligible for relief under the chapter. The procedures of chapter 11, however, are sufficiently complex that they will be used only in a business case and not in the consumer context." S. Rep. No. 95-989, p. 3 (1978).

These apparently conflicting views tend to negate the suggestion that the Congress enacting the current Code operated with a clear intent to deny Chapter 11 relief to an individual nonbusiness debtor.

[*163] Finally, we are not persuaded by the contention that Chapter 11 is unavailable to a debtor without an ongoing business because many of the Chapter's provisions do not apply to a nonbusiness debtor. There is no doubt that Congress intended that a business debtor be among those who might use Chapter 11. Code provisions like the ones authorizing the appointment of an equity security holders' committee, § 1102, and the appointment of a trustee "for cause,

including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management . . .," § 1104(a)(1), certainly are designed to aid in the rehabilitation of a business. It does not follow, however, that a debtor whose affairs do not warrant recourse to these provisions is ineligible for Chapter 11 relief. Instead, these provisions -- like the references to debtor businesses in the Chapter's legislative history -- reflect an understandable expectation that Chapter 11 would be used *primarily* by debtors with ongoing businesses; they do not constitute an additional prerequisite for Chapter 11 eligibility beyond those established in § 109(d).

[2201]** III

Although the foregoing analysis is dispositive of the question presented, we deal briefly with *amicus'* contention **[***153]** that policy considerations underlying the Code support inferring a congressional intent to preclude a nonbusiness debtor from reorganizing under Chapter 11. First, it is said that bringing a consumer debtor within the scope of Chapter 11 does not serve Congress' purpose of permitting business debtors to reorganize and restructure their debts in order to revive the debtors' businesses and thereby preserve jobs and protect investors. This argument assumes that Congress had a single purpose in enacting Chapter 11. Petitioner suggests, however, and we agree, that Chapter 11 also embodies the general Code policy of maximizing the value of the bankruptcy estate. See *Commodity Futures Trading Comm'n* v. *Weintraub*, 471 U.S. 343, 351-354, 85 L. Ed. 2d 372, 105 S. Ct. 1986 (1985). Under certain **[*164]** circumstances a consumer debtor's estate will be worth more if reorganized under Chapter 11 than if liquidated under Chapter 7. Allowing such a debtor to proceed under Chapter 11 serves the congressional purpose of deriving as much value as possible from the debtor's estate.

Second, *amicus* notes that allowing a consumer debtor to proceed under Chapter 11 would permit the debtor to shield both disposable income and nonexempt personal property. He argues that the legislative history of Chapter 11 does not reflect an intent to offer a consumer debtor more expansive protection than he would find under Chapter 13, which does not protect disposable income, or Chapter 7, which does not protect nonexempt personal assets. As an initial matter, it makes no difference whether the legislative history affirmatively reflects such an intent, because the plain language of the statute allows a consumer debtor to proceed under Chapter 11. Moreover, differences in the requirements and protections of each chapter reflect Congress' appreciation that various approaches are necessary to address effectively the disparate situations of debtors seeking protection under the Code.

Amicus does not contend that allowing a consumer debtor to reorganize under Chapter 11 will leave the debtor's creditors in a worse position than if the debtor were required to liquidate. See Tr. of Oral Arg. 29-31. Nor could he. Section 1129(a)(7) provides that a reorganization plan may not be confirmed unless all the debtor's creditors accept the plan or will receive not less than they would receive under a Chapter 7 liquidation. Because creditors cannot be expected to approve a plan in which they would receive less than they would from an immediate liquidation of the debtor's assets, it follows that a Chapter 11 reorganization plan usually will be confirmed only when creditors will receive at least as much as if the debtor were to file under Chapter 7. Absent some showing of harm to the creditors of a nonbusiness debtor allowed to reorganize under Chapter 11, we see nothing in the **[*165]** allocation of "burdens" and "benefits" of Chapter 11 that warrants an inference that Congress intended to exclude a consumer debtor from its coverage. See Herbert, Consumer Chapter 11 Proceedings: Abuse or Alternative?, 91 Com. L. J. 234, 245-248 (1986).

Amicus also warns that allowing consumer debtors to proceed under Chapter 11 will flood the bankruptcy courts with plans of reorganization that ultimately will prove unworkable. We think this fear is unfounded **[***154]** for two reasons. First, the greater expense and complexity of filing under Chapter 11 likely will dissuade most consumer debtors from seeking relief under this Chapter. See S. Rep. No. 95-989, at 3; see also Herbert, *supra*, at 242-243. Second, the Code gives bankruptcy courts substantial discretion to dismiss a Chapter 11 case in which the

debtor files an untenable plan of reorganization. See §§ 1112(b) and 1129(a).

Finally, *amicus* asserts that extending Chapter 11 to consumer debtors creates the risk that these debtors will be forced into **[**2202]** Chapter 11 by their creditors under § 303(a), a result contrary to the intent reflected in Congress' decision to prevent involuntary bankruptcy proceedings under Chapter 13. In particular, he suggests that it would be unwise to force a debtor into a Chapter 11 reorganization, because an involuntary debtor would be unlikely to cooperate in the plan of reorganization -- a point that Congress noted in refusing to allow involuntary Chapter 13 proceedings. See H. R. Rep. No. 95-595, at 120.

We find these concerns overstated in light of the Code's provisions for dealing with recalcitrant Chapter 11 debtors. If an involuntary Chapter 11 debtor fails to cooperate, this likely will provide the requisite "cause" for the bankruptcy court to convert the Chapter 11 case to one under Chapter 7. See § 1112(b). In any event, the argument overlooks Congress' primary concern about a debtor's being forced into bankruptcy under Chapter 13: that such a debtor, whose future wages are not exempt from the bankruptcy estate, **[*166]** § 1322(a)(1), would be compelled to toil for the benefit of creditors in violation of the Thirteenth Amendment's involuntary servitude prohibition. See H. R. Rep. No. 95-595, at 120. Because there is no comparable provision in Chapter 11 requiring a debtor to pay future wages to a creditor, Congress' concern about imposing involuntary servitude on a Chapter 13 debtor is not relevant to a Chapter 11 reorganization.

IV

HN5 The plain language of the Bankruptcy Code permits individual debtors not engaged in business to file for relief under Chapter 11. Although the structure and legislative history of Chapter 11 indicate that this Chapter was intended primarily for the use of business debtors, the Code contains no "ongoing business" requirement for Chapter 11 reorganization, and we find no basis for imposing one. Accordingly, the judgment of the Court of Appeals is reversed.

It is so ordered.

. . .