



[Print This Page](#) | [Close Window](#)

---



[Home](#) < [Committees](#) < [Bankruptcy & Insolvency Litigation](#) < [Circuit Notes](#) < [Supreme Court](#)  
**BANKRUPTCY & INSOLVENCY LITIGATION**

## Circuit Notes: Supreme Court

### **Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.**

06/16/08

05-996

**The Supreme Court holds that the stamp tax exemption provided by Section 1146(a) of the Bankruptcy Code does not apply to preconfirmation transfers.**

On June 16, 2008, the Supreme Court resolved the split in authority between the Circuit Courts of Appeal concerning whether Section 1146(a) exempts a transfer from stamp tax, when the transfer occurs prior to the conformation of a plan under Chapter 11. *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 2008 WL 2404077 (U.S. June 16, 2008), 76 USLW 4471. Justice Thomas delivered the Court's opinion, joined by Justices Roberts, Scalia, Kennedy, Souter, Ginsburg and Alito. Justice Breyer filed a dissenting opinion, in which Justice Stevens joined.

Section 1146(a) of the Bankruptcy Code states that the "issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax." 11 U.S.C.A. §1146(a).

Piccadilly was granted a stamp tax exemption on the sale of substantially all of its assets outside the ordinary course of business shortly after it filed Chapter 11. Before Picadilly's plan was confirmed, Florida filed an objection to the plan, asserting that the transferred assets fell outside of Section 1146(a)'s stamp tax exemption because the transfer was not "under a plan confirmed" under Chapter 11. The bankruptcy court confirmed the plan. On cross motions for summary judgment, the Court ruled in favor of Piccadilly, finding

the sale was under a confirmed plan because the sale was “necessary to consummate” the plan. *In re Piccadilly Cafeterias, Inc.*, 379 B.R. 215, 226 (S.D. Fla. 2006).

Florida appealed the ruling, and the Eleventh Circuit affirmed, rejecting the strict interpretation of Section 1146(a) advanced by Florida. In doing so, the Eleventh Circuit also rejected the prior decisions of the Third and Fourth Circuit, which held that the exemption was not available unless the sale was authorized under a previously conformed plan. The Eleventh Circuit held the stamp tax exemption applied to preconfirmation transfers when there is a “nexus” between the preconfirmation transfer and the confirmed plan, such that the transfer was necessary to the consummation of a subsequently confirmed plan. *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 484 F.3d 1299, 1304 (11th Cir. 2007). In reaching its decision, the Eleventh Circuit found the text of Section 1146(a) to be ambiguous, and stated that its interpretation also accounted for “the practical realities of Chapter 11 reorganization cases.” *Id.*

The Supreme Court granted certiorari to resolve the split between the Circuits. Florida argued the word “under” means “subject to,” so that the transfer must be made subject to a plan that has already been confirmed. *Florida Dept. of Revenue*, 2008 WL 2404077 at \*4. Piccadilly argued that the text of Section 1146(a) did not require the transfer to proceed conformation of the plan because a “plan confirmed” does not equate to a “confirmed plan.” *Id.* at \*5. The Supreme Court considered the competing interpretations, and noted that Congress could have used more precise language, but found Florida’s interpretation was preferable, as Picadilly’s “nexus” requirement placed an “unnecessary strain” on the statutory text. *Id.* The Supreme Court also rejected Piccadilly’s argument that the “practical realities” of the decrease in postconfirmation asset transfers in Chapter 11 reorganizations supported its interpretation of Section 1146 (a), noting any revisions to the statutory text were best handled by the Legislature, not the Judiciary. *Id.* at \*13.

As a result of the decision, there is no longer any question that Section 1146(a)’s exemption applies only to transfers made under a confirmed Chapter 11 plan. As a result, both bidding procedures and negotiations will increasingly address the allocation of transfer taxes between the buyer and the seller.

#### **Marrama v. Citizens Bank of Massachusetts, et al.**

02/21/07

05-996

#### **Limits Upon a Debtor's Right to Convert Chapter 7 Case to Chapter 13**

*Majority Opinion:* Where an individual debtor files misleading and inaccurate schedules in his chapter 7 case to protect his principal assets from his creditors, the debtor does not possess the absolute right to convert the case to chapter 13 pursuant to § 706(a) of the Bankruptcy Code. References to such an “absolute right” within the legislative history are equivocal given certain express qualifications of the right to convert contained within § 706. Among those qualifications is the prerequisite that an individual may only convert a case when he qualifies as a debtor under that chapter. Where an individual's chapter 13 case

would likely be dismissed pursuant to § 1307(c) on account of his prepetition bad faith (which bad faith must be "atypical" and "extraordinary"), the individual does not qualify as a debtor under chapter 13 and § 706(d) provides authority for denial of a motion to convert. Moreover, § 105(a) — and possibly a federal court's inherent power to sanction abusive litigation practices — is adequate to authorize the denial of a motion to convert that merely postpones the allowance of equivalent relief. (*Stevens, J., joined by Kennedy, Souter, Ginsburg and Breyer, JJ.*)

*Dissenting Opinion::* Conditioning a debtor's right to convert his chapter 7 case to another chapter upon a bankruptcy judge's finding of the debtor's good faith is inconsistent with the Bankruptcy Code, which nowhere authorizes a bankruptcy judge to override a debtor's exercise of § 706(a)'s unambiguous conversion right on grounds not expressly set forth in the Bankruptcy Code. Congress demonstrated that it could limit the authority to convert in §§ 1112(b), 1208(b) and (d) and 1307(c); it did not use equivalent language in § 706(a). The Bankruptcy Code includes numerous provisions designed to address a debtor's bad faith (*e.g.*, denial of discharge under § 727(a)); the majority's additional safeguard is unnecessary. By eliminating the procedural exercise of converting, and subsequently dismissing, a debtor's chapter 7 case, the majority (a) circumvents the debtor's procedural right to notice and a hearing regarding dismissal of its converted case and (b) eliminates the possibility that a debtor may "cure" bad faith through, *e.g.*, the proposal of a good faith plan of reorganization. Finally, § 105(a) and a court's inherent powers are inadequate to overrule the clear terms of the Bankruptcy Code. (*Alito, J., joined by Roberts, C.J., and Scalia and Thomas, JJ.*)

## **Cent. Virginia Cmty. Coll. v. Katz**

01/23/07

04-885

A bankruptcy trustee's proceeding to set aside the debtor's preferential transfers to state agencies is not barred by sovereign immunity. Pursuant to the Bankruptcy Clause, Congress may, at its option, either treat states in the same way as other creditors insofar as concerns "Laws on the subject of Bankruptcies" or exempt them from operation of such laws.

### **INSIDE THIS COMMITTEE**

- » [Home](#)
- » [Message from the Chairs](#)
- » [Articles](#)
- » [Circuit Notes](#)
- » [Newsletter](#)
- » [Online Resources](#)
- » [Subcommittees](#)
- » [Join this Committee](#)

*Supreme Court: Leane Capps Medford*

**This page was printed from:** [http://www.abanet.org/litigation/mo/premium-lt/notes/bankruptcy/circuit\\_supreme.html](http://www.abanet.org/litigation/mo/premium-lt/notes/bankruptcy/circuit_supreme.html)

[Close Window](#)

© 2008. American Bar Association. All Rights Reserved. [ABA Privacy Statement](#)