



In The
Supreme Court of the United States

JASON M. RANSOM,

Petitioner,

v.

MBNA AMERICA BANK, N.A.,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

**BRIEF OF RESPONDENT
MBNA AMERICA BANK, N.A.
IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

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QUESTION PRESENTED FOR REVIEW

Whether the United States Bankruptcy Court for the District of Nevada correctly denied confirmation of the proposed Chapter 13 plan of Debtor Jason M. Ransom, such plan as failed to apply all of his projected disposable income to make payments to unsecured creditors as required by 11 U.S.C. § 1325(b)(1)(B), and as otherwise failed to show full payment of all allowed unsecured claims, 11 U.S.C. § 1325(b)(1)(A), because the plan included an expense for the amount for transportation ownership set by the Local Standards of the Internal Revenue Service for vehicles for which the debtor is not obligated by a loan or lease.

**CORPORATE DISCLOSURE
STATEMENT PURSUANT TO RULE 29.6**

MBNA America Bank, N.A. is wholly owned by Bank of America Corporation as a result of the latter's acquisition of one hundred percent of the outstanding stock of the former on January 1, 2006. Bank of America Corporation, a Delaware corporation, is publicly held and traded.

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ARGUMENT

In order to gain confirmation of a Chapter 13 plan if it faces objection by the trustee or the holder of an unsecured claim, a debtor must pay in full each allowed unsecured claim, 11 U.S.C. § 1325(b)(1)(A), or devote to the plan all *projected* disposable income to be received during the applicable commitment period, 11 U.S.C. § 1325(b)(1)(B) (emphasis added). Thus, confirmation rests, if allowed unsecured claims are not completely satisfied, on a qualifying amount of money paid over a qualifying span of time.

The Bankruptcy Code explicitly defines disposable income as current monthly income, itself further defined in the Bankruptcy Code (*see* 11 U.S.C. § 101(10A)),¹ less amounts that are reasonably

¹ The statute reads:

(10A) The term “current monthly income” –

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor’s spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on –

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii) [11 USCS § 521(a)(1)(B)(ii)]; or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii) [11 USCS § 521(a)(1)(B)(ii)]; and

(Continued on following page)

necessary to be expended for a debtor's support, for a debtor's dependent's support, and for other enumerated expenses. 11 U.S.C. § 1325(b)(2). If a debtor's current monthly income exceeds the median family income of her state,² the reasonableness of the expenditure amounts is "determined in accordance with" 11 U.S.C. §§ 707(b)(2)(A) and (B). 11 U.S.C. § 1325(b)(3).

The Bankruptcy Code, in 11 U.S.C. § 707(b)(2)(A), as directed by 11 U.S.C. § 1325(b)(3), sets forth how the amounts of an "above median" debtor's expenses are determined to be reasonably necessary. The former statute provides that most allowable expenses are determined under the standards for National, Local, and Other Necessary Expenses, issued by the Internal Revenue Service.

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act [42 USCS §§ 301 et seq.], payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18 [18 USCS § 2331]) or domestic terrorism (as defined in section 2331 of title 18 [18 USCS § 2331]) on account of their status as victims of such terrorism.

11 U.S.C. § 101(10A).

² A so-called above median debtor.

Critical to an analysis of the Bankruptcy Code's requirement that a debtor pay *all* of her *projected* disposable income to her unsecured creditors is the participial adjective "projected", modifying "disposable income" in 11 U.S.C. § 1325(b)(1). "Project" may be defined as "to plan, figure, or estimate for the future." See Merriam-Webster's Online Dictionary, available at <http://www.merriam-webster.com/dictionary/projected> (last visited Feb. 23, 2010); see *City of Lincoln v. Ricketts*, 297 U.S. 373, 376 (1936) ("In construing the words of an act of Congress, we seek the legislative intent. We give to the words their natural significance unless that leads to an unreasonable result plainly at variance with the evident purpose of the legislation."); *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 460 (1999) (using a dictionary to illuminate the meaning of "on account of").

Before the Court, in *Hamilton v. Lanning*, No. 08-998 (scheduled for oral argument, March 22, 2010), is this question: "Whether, in calculating the debtor's 'projected disposable income' during the plan period, the bankruptcy court may consider evidence suggesting that the debtor's income or expenses during that period are likely to be different from her income or expenses during the pre-filing period."

Respondent MBNA America Bank argues that the question in the instant matter is subsumed by the question presented in *Hamilton v. Lanning*. In that case, it seems apparent that the Court's analysis and decision will determine, *inter alia*, whether the

projection of disposable income will include the expensing of costs that a debtor will not pay during the plan period. For example, if the Court in *Hamilton v. Lanning* decides that the calculation of projected disposable income may or shall be adjusted for differences between a debtor's pre-filing expenses and those paid during the plan period, then, of necessity, any expense, such as a vehicle loan or lease payment, that a debtor will not pay during the plan period is excluded from the calculation of projected disposable income. If, on the other hand, the Court decides that a debtor's expenses during the plan period must conform to his pre-filing expenses, then, once again, the calculation of his projected disposable income may not include a vehicle ownership expense if he was paying none prior to the filing of his petition.



CONCLUSION

MBNA America Bank, N.A. urges the Court to deny the Petitioner's Petition for Writ of Certiorari because the question presented is duplicative of, and subsumed by, the question in *Hamilton v. Lanning*, No. 08-998 (scheduled for oral argument, March 22, 2010).

Respectfully submitted,

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