

Docket No. 14-80121

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**United States Court of Appeals  
for the Ninth Circuit**

MICHAEL A. COBB,

*Creditor-Appellant,*

– v. –

CITY OF STOCKTON, CALIFORNIA,

*Debtor-Appellee.*

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IN RE: CITY OF STOCKTON, CALIFORNIA

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From Stipulation And Order on Request For Certification To Court Of Appeals By  
All Parties Of the United States District Court For The Eastern District Of  
California

The Honorable Kimberly J. Mueller  
District Court Case Number, No. 2:14-CV-01272-KJM  
Bankruptcy Court Case Number No. 12-32118-C-9

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**Response to Petition of Michael A. Cobb For Permission to Appeal Pursuant  
to 28 U.S.C. § 158(d)**

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## INTRODUCTION

Defendant-Appellee the City of Stockton (“the City”) respectfully submits this response to Plaintiff-Appellant Michael A. Cobb’s petition for Permission to Appeal pursuant to 28 U.S.C. § 158(d) and Federal Rule of Appellate Procedure 5. *See* Fed. R. App. P. 5(b)(2). This dispute arises from Cobb’s objection to the City’s First Amended Plan for the Adjustment of Debts (“the Plan”) in the City’s pending municipal bankruptcy case under chapter 9 of the Bankruptcy Code, in which Cobb is a creditor. Cobb contends that the Plan’s proposed treatment of his claim violates the Fifth and Fourteenth Amendments of the U.S. Constitution. After full briefing and oral argument, the bankruptcy court overruled Cobb’s objection. Cobb filed a timely notice of appeal to the district court, and the parties then jointly requested the certification to have the appeal proceed directly to this Court. The district court granted the joint request.

While Cobb characterizes the underlying dispute in a skewed and distorted manner, the City fully agrees that Cobb’s appeal should be allowed to proceed directly to this Court. The City therefore joins in the request that this Court hear Cobb’s appeal.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. The Facts.**

The facts set forth below are drawn from a Joint Stipulation of Material Facts filed before the bankruptcy court and are not in dispute.

Andrew C. Cobb, the father of Creditor-Appellant Michael A. Cobb, was the owner of a parcel of land located at 4218 Pock Lane in Stockton, California, San Joaquin County Assessor's Parcel Number 179-180-07 (the "Parcel"). On August 10, 1998, the Stockton City Council issued Resolution No. 98-0353 determining that the public necessity required the condemnation of a strip of land across the Parcel for purposes of building a public road.

In conformance with the procedures set forth in California Civil Procedure Code § 1255.010, the City had an expert appraiser conduct an appraisal of the strip of land for purposes of determining the amount of compensation believed to be just, and produce a summary of the basis for the appraisal. The appraisal valued the land at \$90,200.00. On October 23, 1998, consistent with § 1255.010, the City deposited that amount with the California State Treasurer Condemnation Deposits Fund.

On October 23, 1998, the City initiated eminent domain proceedings in the Superior Court of California, County of San Joaquin (the "Eminent Domain Action") to condemn a permanent easement over the strip of land. On October 17,

2000, the Stockton City Council issued Resolution No. 00-0505 recognizing that the planned road over the Parcel had been completed and accepting that improvement. In November 2000, Michael A. Cobb, owner of the Parcel by operation of state probate and trust succession following the death of Andrew C. Cobb, withdrew the City's deposit of probable just compensation in the amount of \$90,200.00, subject and pursuant to California Civil Procedure Code § 1255.260.

On October 9, 2007, the Superior Court dismissed the Eminent Domain Action because it had not been brought to trial within five years of its commencement. On March 14, 2008, Cobb initiated an action in the Superior Court of the State of California, County of San Joaquin (the "Inverse Condemnation Action"), seeking relief pursuant to a claim of inverse condemnation.

On June 28, 2012, while the Inverse Condemnation Action was still pending, the City petitioned for bankruptcy under chapter 9. On August 16, 2013, Cobb filed a Proof of Claim in the chapter 9 case. Cobb listed the total amount of his claim as \$4,200,997.26, consisting of \$1,540,000.00 as the principal of his claim; \$2,282,997.26 as interest on the principal of his claim; \$350,000.00 as attorney's fees and litigation expenses; \$13,000.00 as costs of suit; and \$15,000.00 as real estate taxes, maintenance costs, and insurance costs. Cobb did not indicate on his

Proof of Claim that the claim was secured or that the claim was entitled to priority under 11 U.S.C. § 507(a).

**B. The Procedural Background.**

On November 15, 2013, the City filed the First Amended Plan for the Adjustment of Debts of City of Stockton, California. The City designated 19 classes of claims. Cobb's claim was included in Class 12 as a General Unsecured Claim. On February 3, 2014, the City filed its Memorandum of Law in Support of Confirmation of the First Amended Plan.<sup>1</sup>

On February 11, 2014, Cobb filed the "Objection of Creditor Michael A. Cobb to Plan and Confirmation Thereof." Cobb objected on the ground that treating his claim for payment as a general unsecured claim violates the Takings Clause of the Fifth and Fourteenth Amendments of the U.S. Constitution.

After receiving full briefing of the legal issues, hearing oral argument, and receiving a joint stipulation of facts from the parties, on May 7, 2014, the bankruptcy court overruled Cobb's objection. The court held that after taking the deposited funds, all Cobb possessed was an unsecured claim for money and that it did not violate the Constitution for the City's bankruptcy plan to place Cobb's claim in a class of unsecured creditors.

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<sup>1</sup> On August 8, 2014, the City filed the First Amended Plan for the Adjustment of Debts of City of Stockton, California, as Modified ("Modified Plan"). The Modified Plan does not alter the treatment of Cobb's claim.

On May 21, 2014, Cobb filed a timely notice of appeal. The parties then jointly filed an Official Form 24 – Certification to Court of Appeals by All Parties on June 3, 2014, and renewed the request for direct appeal before the district court on July 15, 2014. On August 6, 2014, the district court certified this matter for a direct appeal to this Court.

### **QUESTION PRESENTED**

The question presented by this appeal is whether a plan of adjustment in a chapter 9 bankruptcy case may be confirmed, consistent with the Takings Clause of the Fifth and Fourteenth Amendments, where the plan of adjustment proposes to treat a claim for payment of money arising from a state law inverse condemnation action as a general unsecured claim.

The bankruptcy court held in the affirmative, overruling Cobb’s objection to the confirmation of the plan.

### **STATUTORY AUTHORIZATION FOR DIRECT APPEAL**

28 U.S.C. § 158(d)(2)(A) confers jurisdiction upon the court of appeals of an appeal from an interlocutory order where “all the appellants and appellees (if any) acting jointly, certify that ... (i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States.” All appellants and appellees in this case have certified that the bankruptcy court’s order involves such a



question. This Court may therefore assume jurisdiction over the appeal by granting Cobb's petition.

### **REASONS FOR GRANTING REVIEW**

This Court has identified three factors that inform the Court's decision whether to grant a direct bankruptcy appeal: the importance of the issue, the extent to which the issue presented is an issue of law, and the existence of Supreme Court or circuit level precedent governing or informing the issues. *See Blausey v. U.S. Trustee*, 552 F.3d 1124, 1131 (9th Cir. 2009). The City agrees with Cobb that each of these factors supports direct appeal here.

This appeal presents a pure question of law concerning the intersection between Congress's bankruptcy power, U.S. Const. art. I, § 8, cl.4, and the Fifth Amendment's Takings Clause, prohibiting the taking of private property for public use "without just compensation." In particular, the legal question presented is whether a municipality seeking to adjust debts and emerge from bankruptcy may treat an unsecured claim for payment of money that arises from a state law inverse condemnation action as a general unsecured claim.

The bankruptcy court correctly ruled that the adjustment of Cobb's claim for money as an unsecured claim was fully consistent with the Constitution and did not effect an unconstitutional "taking" of property, any more than the adjustment of any other unsecured cause of action or claim. Notably, the bankruptcy court's

ruling did not convey any private property owned by Cobb to the City. Nor did the court's ruling extinguish any right Cobb had to his real property. Cobb limited those rights, under the governing state statute, years prior to the bankruptcy, when he withdrew the funds the City designated as the just compensation for Cobb's property rights taken by the easement. Under the governing state law, Cobb's withdrawal of the funds forfeited any right to challenge the taking of his property. California Civil Procedure Code § 1255.260. All he could do is assert a claim for additional payment. The novel question presented here is whether Cobb's claim for further payment of money can be treated as an unsecured claim, subject to adjustment in the chapter 9 case or whether doing so violates the Takings Clause.

While the City believes that the bankruptcy court correctly applied established bankruptcy and constitutional principles to this case, the City agrees with Cobb that no decision of the Supreme Court or the circuits directly and squarely addresses the issue presented here. This Court should grant the petition to resolve this novel issue of law. Doing so would not only resolve this matter, but could also provide important guidance in this and future bankruptcy cases.

The question of law is cleanly and squarely presented here. As noted above, the parties agreed upon and have stipulated to the facts underlying their dispute. Thus, there are no factual disputes presented by this appeal.

And requiring an appeal to the district court would simply delay consideration of the same legal question upon the same record before this Court and increase the cost of the litigation of this issue. The bankruptcy court was presented with full briefing, held oral argument, and issued a thoughtful and thorough opinion. Thus, there is a full record ready for this Court's review. The interests of all parties involved, as well as the interest in judicial economy, are therefore best served by proceeding on direct appeal before this Court.

### **CONCLUSION**

For the reasons stated, the City agrees that this Court should grant Cobb permission to proceed with his appeal before this Court.

Dated: September 11, 2014

Respectfully submitted,

By: /s/ Robert M. Loeb

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the under signed counsel for record for The City of Stockton certifies that the foregoing is proportionally spaced, has a typeface of 14 points or more, and contains 1681 words.

Dated: September 11, 2014

Respectfully submitted,

By: /s/ Robert M. Loeb

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 11, 2014, Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

*Counsel for Objector and Appellant Michael A. Cobb*

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Dated: September 11, 2014      Respectfully submitted,

By: /s/ Robert M. Loeb  
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