

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## U. S. BANCORP MORTGAGE CO. v. BONNER MALL PARTNERSHIP

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 93-714. Argued October 4, 1994—Decided November 8, 1994

After this Court granted the petition for a writ of certiorari and received briefing on the merits, the parties entered into a settlement and agreed that the case was thereby mooted. Petitioner, however, also requested that the Court exercise its power under 28 U. S. C. §2106 to vacate the judgment of the Court of Appeals. Respondent opposed the motion.

*Held:*

1. This Court does not lack the power to entertain petitioner's motion to vacate. Section 2106 supplies the vacatur power, and respondent's suggestion is rejected that Article III's case or controversy requirement *prohibits* the exercise of that power when no live dispute exists due to a settlement that has mooted the case. Although Article III prevents the Court from considering the merits of a judgment that has become moot while awaiting review, the Court may nevertheless make such disposition of the whole case as justice may require. *Walling v. Reuter Co.*, 321 U. S. 671, 677. Pp. 2-4.

2. Mootness by reason of settlement does not justify vacatur of a federal civil judgment under review. *United States v. Munsingwear*, 340 U. S. 36, 39-40, and subsequent cases distinguished. Equitable principles have always been implicit in this Court's exercise of the vacatur power, and the principal equitable factor to which the Court has looked is whether the party seeking vacatur caused the mootness by voluntary action. Where mootness results from settlement, the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim

to the extraordinary equitable remedy of vacatur. It is irrelevant that the party who won below also agreed to the settlement, since it is the losing party who has the burden of demonstrating equitable entitlement to vacatur. This result is supported by the public interest in the orderly operation of the federal judicial system; petitioner's countervailing policy arguments are not persuasive. Although exceptional circumstances may conceivably justify vacatur when mootness results from settlement, such circumstances do not include the mere fact that the settlement agreement provides for vacatur. Pp. 4-12.

U. S. BANCORP MORTG. CO. v. BONNER MALL

Syllabus

Motion to vacate denied and case dismissed as moot. Reported below: 2 F. 3d 899.

SCALIA, J., delivered the opinion for a unanimous Court.