

Client Alert

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Supreme Court Holds that Denial of Plan Confirmation is not Appealable as a Matter of Right

On May 4, 2015, the Supreme Court of the United States issued an opinion regarding a Chapter 13 bankruptcy case from the United States Court of Appeals for the First Circuit (the "First Circuit").¹ The question on appeal was whether debtor Louis Bullard ("Bullard") could immediately appeal the bankruptcy court's order denying confirmation of his proposed Chapter 13 payment plan (the "Plan").² The Court held that denial of confirmation of a debtor's plan is not a final, appealable order.³

Case Background

In 2010, Bullard filed a petition for Chapter 13 bankruptcy in the United States Bankruptcy Court for the District of Massachusetts. Subsequently Bullard filed the Plan detailing the claims he expected creditors to file and the monthly payments he would make on each.⁴

Among his debts, Bullard owed Blue Hills Bank (the "Bank") approximately \$346,000 secured by a mortgage on his house.⁵ After Bullard submitted the Plan, the Bank objected to confirmation of the Plan based on Bullard's treatment of its mortgage.⁶ The Bankruptcy Court denied confirmation of the Plan.⁷

Bullard appealed to the Bankruptcy Appellate Panel of the First Circuit ("BAP").⁸ In addressing its jurisdiction over the matter, the BAP reasoned that under 28 U.S.C. § 158(a)(1), only final orders of a bankruptcy court are immediately appealable.⁹ In applying that statute, the BAP concluded that the denial of plan confirmation was not final because Bullard was still "free to propose an alternate plan."¹⁰

Despite its conclusion, the BAP granted Bullard's motion for leave to consider an interlocutory appeal of the order denying confirmation of the Plan using its discretion under § 158(a)(3) and affirmed the Bankruptcy Court's order on the merits.¹¹ Bullard then appealed to the First Circuit, which dismissed the appeal for lack of jurisdiction, echoing the BAP's determination that an order denying confirmation of a plan is not a final, appealable order.¹²

¹ *Bullard v. Blue Hills Bank*, 575 U.S. ____, 1 (2015).

² *Id.*

³ *Id.*

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Bullard*, 575 U.S. at 5.

⁷ *Id.* at 6.

⁸ *Id.*

⁹ *In re Bullard*, 494 B.R. 92, 95 (2013) (citing 28 U.S.C. § 158(a)(1)).

¹⁰ *Id.*

¹¹ *Id.* at 96-101.

¹² *In re Bullard*, 752 F.3d 483, 486-90 (2014).

Legal Analysis

Conceding that only a final order in a proceeding is immediately appealable,¹³ Bullard proposed a definition of “proceeding” that differed from the lower courts. He argued that each time a bankruptcy court reviews a Chapter 13 payment plan, it conducts a separate proceeding; from that stance, each proceeding terminates on orders of confirmation and denial alike.¹⁴ Because granting or denying confirmation terminates the proceeding, either order is final and appealable.¹⁵

For its part, the Bank stressed that the relevant “proceeding” is “the entire process of considering plans.” That process terminates only when a plan is confirmed or the case is dismissed. In the case of a denial of confirmation, the debtor is free to propose another plan – leaving the matter at hand open and the proceeding unresolved.¹⁶

The Supreme Court adopted the Bank’s view, explaining that the relevant proceeding must be the one that allows the bankruptcy to move forward. Plan confirmation accomplishes this goal (as case dismissal would), while denial of confirmation affects little to no change.¹⁷

The Court explained that when a plan is confirmed or a case is dismissed, it “alters the status quo and fixes the rights and obligations of the parties.”¹⁸ In other words, both actions have a preclusive effect, foreclosing further litigation of any issues actually litigated at the proceedings. The decision becomes binding on all parties.¹⁹

In contrast, an order denying confirmation of a plan leaves the parties’ rights and obligations undisturbed.²⁰ The Court likened the process to purchasing a car: when a buyer declines to pay the seller’s sticker price, it does not constitute a completed purchase. Negotiations continue until the buyer agrees to a price or walks away altogether.²¹

Addressing policy concerns, the Court noted that to adopt Bullard’s argument (and thereby allow appeal of every order denying confirmation of a plan) would result in exactly the kind of delays and inefficiencies that § 158(a)(1) intended to prevent.²² In addition, the inability to immediately appeal denials of confirmation of plans should encourage debtors to work quickly and efficiently with creditors and trustees.²³

The Supreme Court acknowledged Bullard’s concern that if a bankruptcy court unjustly denies confirmation of a payment plan, the debtor is forced to either accept dismissal of the case or propose an unfavorable plan and try to appeal when the plan is granted.²⁴ Although the Court recognized that this rare circumstance could put a debtor in an untenable situation, it explained that bad rulings are an inherent risk of litigation; the court system can only provide so much protection.²⁵ However, as a last resort, the Court reminded parties of their right to seek leave of court to consider an interlocutory appeal, should a bankruptcy court ever act truly unjustly in its denial of confirmation.²⁶

¹³ See § 158(a).

¹⁴ See *Bullard*, 575 U.S. ____ at 8.

¹⁵ See *id.*

¹⁶ *Id.* at 8.

¹⁷ *Id.*

¹⁸ *Id.* at 5.

¹⁹ *Bullard*, 575 U.S. ____ at 5.

²⁰ *Id.* at 6.

²¹ See *id.*

²² *Id.* at 10.

²³ *Id.* at 8.

²⁴ *Id.* at 10-12.

²⁵ *Id.*

²⁶ *Bullard*, 575 U.S. ____ at 11.

Implications

Parties in interest in bankruptcy cases should note how the Supreme Court has defined “proceedings” in the context of § 158(a). The Court’s ruling that the entire confirmation process is the relevant proceeding, rather than breaking the process down into individual rulings, is intended to efficiently resolve Chapter 13 bankruptcy cases. A more efficient confirmation process means less time to wait before payment plans are confirmed and creditors get paid. Additionally, the ruling will encourage productive conversation between debtors and creditors when negotiating a payment plan under Chapter 13. Debtors will be less likely to waste the court’s time on payment plan proposals that do not satisfy as many creditors as possible.

Although the ruling seems to primarily benefit creditors, creditors should also be aware that the inability to immediately appeal can also be detrimental in particular situations. When Creditor A benefits from a debtor’s proposed plan but Creditor B objects, the bankruptcy court may deny confirmation of the plan – leaving Creditor A with no remedy and the possibility that a less favorable plan will be later.

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