

July 14, 2015

The Supreme Court Holds That a Bankruptcy Court's Order Denying Confirmation of a Debtor's Proposed Chapter 13 Plan Is Not a "Final Order" Subject to Immediate Appeal

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In a May 4, 2015 opinion¹, the United States Supreme Court held that a bankruptcy court order denying confirmation of a chapter 13 repayment plan is not a final order subject to immediate appeal. The Supreme Court found that, in contrast to an order confirming a plan or dismissing a case, an order denying confirmation of a plan neither alters the status quo nor fixes the rights and obligations of the parties. Although the decision arose in the context of a chapter 13 plan, it should apply with equal force to chapter 11 cases.

Background

Louis Bullard filed for relief under chapter 13 of the United States Bankruptcy Code (a chapter which only applies to individual debtors) and proposed a repayment plan which included a hybrid treatment of his debt to Blue Hills Bank (the "Bank"), bifurcating the debt into a secured claim and an unsecured claim. The plan provided that Bullard eventually would repay the secured claim in full, but would treat the unsecured claim the same as any other unsecured debt. The Bank objected. The Bankruptcy Court declined to confirm the plan, concluding that chapter 13 did not allow Bullard to bifurcate the Bank's claim as proposed, and ordered Bullard to submit a new plan within 30 days.

Bullard appealed to the First Circuit Bankruptcy Appellate Panel ("BAP"), which exercised its discretion to hear the appeal, despite concluding that the order denying plan confirmation was not final, as Bullard could propose an alternate plan. The BAP agreed that the proposed treatment of the Bank's claim was not permissible. Bullard sought review in

¹ *Bullard v. Blue Hills Bank*, No. 14-116, slip op. (U.S. May 4, 2015).

the United States Court of Appeals for the First Circuit. The First Circuit dismissed the appeal for lack of jurisdiction, concluding that an order denying confirmation is not final so long as the debtor remains free to propose another plan.² The Supreme Court granted certiorari and affirmed the First Circuit's decision.

The Denial of Confirmation of a Plan is Not a Final, Appealable Order

The Supreme Court unanimously held that the bankruptcy court's order denying confirmation of Bullard's plan was not a final order subject to immediate appeal. In reaching its decision, the Court relied heavily on the proposition that a party's right to appeal only from a final judgment reflects the belief that permitting piecemeal pre-judgment appeals would interfere with efficient judicial administration.

The Court observed that, although a bankruptcy case is different than civil litigation because it is composed of multiple controversies which might exist as stand-alone lawsuits but for the bankruptcy proceeding, a bankruptcy order may be immediately appealed only if it finally disposes of discrete issues within the larger case. Bullard argued that a separate proceeding ensues each time the bankruptcy court reviews a proposed plan, and an order either denying or granting confirmation results in the conclusion of that particular proceeding, rendering the order final and appealable. The Bank, on the other hand, argued that the relevant proceeding for determining whether an order is final and appealable is the entire process of considering a plan, which terminates either on confirmation of a plan or, if no confirmable plan is presented, upon dismissal of the case.

The Supreme Court agreed with the Bank, stating: "The relevant proceeding is the process of attempting to arrive at an approved plan that would allow the bankruptcy to move forward. This is so, first and foremost, because only plan confirmation—or case dismissal—alters the status quo and fixes the rights and obligations of the parties." The Court noted that confirmation of a plan binds the debtor as well as creditors, foreclosing litigation on any issue determined by the confirmation order. Similarly, dismissal of a case forecloses the possibility of discharge and results in the loss of the benefits chapter 13 affords a debtor, including the Bankruptcy Code's automatic stay. On the other hand, if confirmation is denied and the case is not dismissed, the rights and obligations of the parties remain unaltered for appellate purposes. Another plan can be confirmed, or the case can be dismissed, in either case triggering the ability of the aggrieved party to appeal as of right. As the Supreme Court succinctly stated, "It ain't over till it's over."

The Court pointed to additional factors supporting its conclusion. First, the list of "core proceedings" in bankruptcy includes confirmation of plans, but makes no reference to denials, which suggested to the Court that Congress viewed the entire confirmation process—as opposed to the ruling on each individual plan—as the "proceeding." In addition, the Court observed that if every plan denial could be appealed, it would create significant delays and inefficiencies; avoiding such a result "is precisely the reason for a rule of finality." The Court was not persuaded by Bullard's argument that debtors would be expected to appeal the denial of confirmation of a plan only in limited instances. In part, the Court indicated that the threat of an appeal constitutes important leverage in dealing with creditors, and these concerns are heightened in chapter 11, as chapter 11 debtors are more likely to have the resources to appeal decisions on narrow issues.

The Court also rejected Bullard's argument that resolution of any contested matter is final and immediately appealable, noting that the concept of finality cannot cover the endless list of contested matters. Moreover, while acknowledging that

² Because the BAP had not certified the appeal under 28 U.S.C. § 158(d)(2), the only possible source of Court of Appeals jurisdiction was 28 U.S.C. § 158(d)(1), which only allows appeal of final orders of the BAP.

its ruling means there is no effective means of obtaining appellate review of a plan for which confirmation has been denied, the Court was confident that bankruptcy courts rule correctly most of the time, and that many incorrect rulings would not be of a sort that would justify the cost of a system of universal immediate appeals. Finally, the Court noted that when a question is so important that it should be addressed immediately—which might include the confirmability of Bullard’s hybrid plan—there are various mechanisms for interlocutory review and pointed out that Bullard obtained one round of interlocutory review from the BAP.³

Conclusion

The lack of an appeal as of right for an order denying plan confirmation should encourage the plan proponent (which in most cases is the debtor) to work with parties in interest to expeditiously develop a plan that is confirmable. This decision should reduce the leverage the plan proponent might believe it otherwise has to push for confirmation of a plan that is not confirmable, which could substantially delay the progress of a bankruptcy case by permitting multiple cycles of appeals. In turn, the plan proponent will more likely be motivated to seek a consensual plan, furthering the bankruptcy policies of settlement and expediency. Although the decision arose in the context of an individual’s chapter 13 plan, it should apply with equal force in chapter 11 cases to plans of reorganization and liquidation for corporate debtors.

³ For example, a district court or BAP can grant leave to hear the appeal, or a bankruptcy court, district court, BAP or the parties acting jointly can certify a bankruptcy court’s order to the court of appeals pursuant to § 158(d)(2).

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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