

United States Supreme Court Holds that Order Denying Plan Confirmation Is Not Immediately Appealable

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On May 4, 2015, the Supreme Court for the United States unanimously held that an order denying confirmation of a plan is not a “final” order subject to immediate appeal as a matter of right.¹ Although the Bullard decision involved a plan proposed under chapter 13 to title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), the holding is equally applicable to bankruptcy cases filed under chapter 11 of the Bankruptcy Code. The Supreme Court’s decision divests plan proponents of the ability to immediately appeal denial of plan confirmation gives additional leverage to creditors in the plan process as plan proponents are more likely to settle contested plan issues rather than risk denial of the plan.

Case Background

Louis Bullard filed a petition under chapter 13 of the Bankruptcy Code.² Bankruptcy Code chapter 13 generally allows individuals with regular income to develop a plan to repay all or a portion of their debts while retaining their property. Unless the bankruptcy court grants an extension, the debtor must file a plan for repayment within 14 days of when the bankruptcy petition is filed.³ In Bullard’s case, his primary debt was the \$346,000 he owed to Blue Hills Bank (the “Bank”), which held a mortgage on a multifamily house Bullard owed. Bullard’s proposed repayment plan was to split the debt to the Bank into a secured claim totaling the house’s current value (estimated at \$245,000) and an unsecured claim for the remainder (\$101,000).⁴ Under the proposed plan, Bullard would continue making regular mortgage payments towards the secured portion of the claim, and the unsecured portion would be treated the same as his other unsecured debt (estimated recovery to the Bank on the unsecured portion of its claim was approximately \$5,000).⁵

The Bank objected to the proposed plan.⁶ After a hearing, the Bankruptcy Court for the District of Massachusetts (the “Bankruptcy Court”) denied confirmation, holding that the Bankruptcy Code did not permit Bullard to split the Bank’s claim as proposed unless Bullard paid the entirety of the secured portion of the claim within the plan period.⁷ In making its ruling, the Bankruptcy Court recognized that there was a split of authority on this issue in the First Circuit.⁸ The Bankruptcy Court ordered Bullard to propose a new plan within 30 days.⁹

¹ Bullard v. Blue Hills Bank, 575 U.S. ____ (2015), 135 S.Ct. 1686, 1690 (2015).

² Id.

³ Fed. R. Bankr. P. 3015.

⁴ Bullard, 135 S.Ct. at 1690.

⁵ Id. at 1691.

⁶ Id.

⁷ Id. (citing In re Bullard, 475 B.R. 304, 314 (Bankr. D. Mass. 2012)).

⁸ Id. (citing In re Bullard, 475 B.R. at 309).

⁹ Id. (citing In re Bullard, 475 B.R. at 314).

Bullard appealed to the Bankruptcy Appellate Panel of the First Circuit (the “BAP”).¹⁰ The BAP found that denial of the confirmation order was not a final order because Bullard was “free to propose an alternate plan.”¹¹ Nonetheless, the BAP exercised its discretion under 28 U.S.C. § 158(a)(3) to hear the appeal “with leave of the court.” The BAP affirmed the Bankruptcy Court’s decision,¹² and Bullard appealed to the Court of Appeals for the First Circuit (the “Court of Appeals”).¹³ The Court of Appeals dismissed the appeal for lack of jurisdiction, adopting the majority view that an order denying confirmation is not final, provided that the debtor remains free to propose another plan.¹⁴ Bullard again appealed, and the United States Supreme Court granted certiorari.¹⁵

The Supreme Court’s Decision

In a unanimous decision, the United States Supreme Court settled a circuit split and held that a bankruptcy court’s denial of confirmation of a plan is not a “final” order, and, therefore, that such denial does not trigger an automatic right of appeal.¹⁶ Chief Justice John Roberts, who authored the opinion, recognized that bankruptcy is different than most other civil litigation.¹⁷ A bankruptcy case is comprised of “an aggregation of individual controversies” that, absent the bankruptcy, could exist as stand-alone lawsuits.¹⁸ Accordingly, 28 U.S.C. § 158(a) permits appeals of bankruptcy court orders if such orders “‘finally dispose of discrete disputes within the larger case.’”¹⁹ The issue in this case is whether the pending dispute is confirmability of each proposed plan, as argued by Bullard, or the plan process as a whole, as argued by the Bank. The Court agreed with the Bank, finding that the “relevant proceeding is the process of attempting to arrive at an approved plan that would allow the bankruptcy to move forward.”²⁰

In reaching this conclusion, the Court determined that denial of plan confirmation, when there is the right to propose a new plan, does nothing to establish or fix the rights and obligations of the parties.²¹ Confirmation has a preclusive effect and is binding on the debtor and the creditor.²² If confirmation is denied and the bankruptcy case is dismissed, there is likewise a significant effect as dismissal eliminates the possibility of a discharge, lifts the automatic stay, and may limit the availability of such stay in a subsequent case.²³ Denial of confirmation with

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Id.

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Id. (citing In re Bullard, 494 B.R. 92, 95 (B.A.P. 1st Cir. 2013)).

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Id. (citing In re Bullard, 494 B.R. at 96-101).

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Id.

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Id. (citing In re Bullard, 752 F.3d 483, 486-490 (2014)).

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574 U.S. ___ (2014), 135 S.Ct. 781 (2014).

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Bullard, 135 S.Ct. at 1690.

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Id. at 1692.

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Id. (citing 1 Collier on Bankruptcy ¶ 5.08[1][b], p. 5-42 (16th ed. 2014)).

¹⁹

Id. (internal citations omitted).

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Id. In reaching this conclusion, the Court also dismissed the Solicitor General’s argument that an objection to the plan initiates a contested matter and denial of the plan resolves the matter such that the order denying the plan should be a final order. The Court observed that the list of contested matters in bankruptcy is “endless” and covers even minor disputes, and that the concept of finality cannot extend to disputes as minor as a motion to extend time. Case (internal citations omitted). See Id. at 1694.

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Bullard, 135 S.Ct. at 1692.

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Id.

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Id. at 1692-93.

the opportunity to amend the plan, on the other hand, while it does eliminate the specific distributions contemplated under the denied plan, it does little ultimately to change the rights of the debtor or creditors.²⁴

The Court also relied on a textual analysis to support its conclusion that the relevant proceeding is the entire plan confirmation process. Section 157 of title 28 of the United States Code provides that among the list of “core proceedings” entrusted to bankruptcy judges are “confirmations of plans.”²⁵ “The presence of the phrase ‘confirmation of plans,’ combined with the absence of any reference to denials, suggests that Congress viewed the larger confirmation process as the ‘proceeding,’ not the ruling on each specific plan.”²⁶

The Court also expressed concern that if Bullard’s interpretation were accepted, then each time a proposed plan was denied, he would be able to appeal, file a revised plan, and if that plan were denied, again file an appeal.²⁷ Each appeal could take more than one year, creating inefficiencies and delays in the process that the requirement of finality for appealability was designed to limit.²⁸ The Court dismissed Bullard’s argument that debtors seldom have sufficient funds to pursue serial appeals, observing instead that debtors may use the prospect of appeals as leverage against their creditors.²⁹ The appeal process extends the automatic stay, which can cost creditors money if the chapter 13 proceeding proves not to be viable.³⁰ The court noted that these same concerns apply in the chapter 11 context.³¹

A plan proponent is not without recourse if its proposed plan is denied. If the issue is important enough to require appellate review, then there are several mechanisms for permissive interlocutory review to address such instances. The plan proponent can seek certification to the appellate court under the general interlocutory appeals statute, 28 U.S.C. § 1292(b), or through the interlocutory mechanism in 28 U.S.C. 158(d)(2).³²

Potential Impacts of the Bullard Decision

The Bullard decision divests plan proponents of the ability to immediately appeal denial of plan confirmation and gives additional leverage to creditors in the plan process as plan proponents are more likely to settle contested plan issues rather than risk denial of the plan. However the decision is more likely to impact chapter 13 cases than larger chapter 11 cases because the reality of most chapter 11 bankruptcy case plan processes is that it is a flexible one in which debtors or other plan proponents are motivated to limit litigation costs and expenses and can seldom afford the time required to wade through the appellate process. Accordingly, at least in the chapter 11 context, plan proponents are already in the habit of modifying the plan to accommodate legitimate creditor objections in order to proceed promptly with confirmation.

²⁴ Id. at 1693.

²⁵ Id. (citing 28 U.S.C. § 157(b)(2)(L)).

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id. at 1695-96.

The Bullard decision encourages negotiations and furthers the overarching bankruptcy policies of promoting settlement and expediency. Thus, while the Bullard decision does provide some additional leverage to creditors, is unlikely to change significantly a chapter 11 plan proponent's approach to confirmation. If a significant legal question is at issue, the plan proponent is still likely to move forward without accommodating objections. If the plan is not approved, then the plan proponent will then determine whether to modify the unapproved portion of the plan at the confirmation hearing in order to obtain plan approval. If the matter warrants the expense and delay, a plan proponent may choose to use the "safety valves" of permissive interlocutory appeal to promptly correct any perceived serious errors or important legal questions.