Bullard v. Blue Hills Bank, No. 14–116 (previously described in the December 15, 2014, Docket Report)

Under 28 U.S.C. § 158(d)(1), litigants in bankruptcy cases may appeal "final decisions, judgments, orders, and decrees" of district courts and bankruptcy appellate panels. Today, the Supreme Court decided in *Bullard v. Blue Hills Bank*, No. 14-116, that an order denying confirmation of a bankruptcy plan is not a final order appealable under § 158(d)(1).

Petitioner Louis Bullard filed a petition for Chapter 13 bankruptcy in 2010. Two years later, the bankruptcy court rejected Bullard's initial plan because he had proposed a "hybrid" repayment scheme. A hybrid plan reduces the balance owed on a secured loan to the underlying asset's fair market value. The debtor may then pay off the reduced balance over a period longer than the usual five-year term of a Chapter 13 plan. The additional balance of the secured loan—the portion above the asset's fair market value—is combined with the borrower's other unsecured debts, and the borrower makes payments on those debts only within the five years of a typical Chapter 13 plan. In rejecting Bullard's plan, the bankruptcy court noted that courts have disagreed on the legality of hybrid proposals.

Bullard appealed to the First Circuit's Bankruptcy Appellate Panel ("BAP"), asserting that he had a right to appeal under 28 U.S.C. § 158(a)(1), which governs appeals to the BAP of final orders. The Bank moved to dismiss for lack of jurisdiction, arguing that the bankruptcy court's denial of Bullard's plan was not final, and therefore was not appealable to the BAP, because Bullard still had the option of returning to bankruptcy court and proposing a different plan. The BAP agreed, but it proceeded to hear Bullard's appeal anyway under 28 U.S.C. § 158(a)(3), which allows appeals "with leave of the court, from other interlocutory orders and decrees." On the merits, the BAP ruled that Bullard's hybrid plan was not acceptable.

Bullard appealed that decision to the First Circuit, which dismissed the appeal for lack of jurisdiction. The court of appeals found that Bullard's case presented a significant and unsettled question of law regarding hybrid bankruptcy plans. But it agreed with the BAP that because Bullard had the right to return to bankruptcy court and propose a different plan, the decision to deny his initial proposal was not final under § 158(d)(1), the statute that governs appeals from the BAP to the Court of Appeals.

Today, the Supreme Court unanimously affirmed the First Circuit. In an opinion written by Chief Justice Roberts, the Court explained that Congress has made special rules that define a final decision more broadly in bankruptcy cases than in other cases. Under 28 U.S.C. § 158(a), a final ruling by a bankruptcy court includes not just the resolution of the entire case, but any "final judgments, orders, and decrees…in cases and proceedings." The Court explained that this case turns on whether each bankruptcy court decision to confirm or deny a particular plan is a "proceeding," or whether the term "proceeding" applies to the court's entire process of evaluating proposed plans.

The Court sided with the Bank, holding that the whole process of plan consideration makes up the "proceeding," with the result that the denial of an individual plan proposal is not a final decision. The Court reasoned that only the confirmation of a plan or dismissal of the case—and not the denial of a particular plan—would alter the parties' legal rights and obligations. Confirmation alters the parties' legal rights by preventing relitigation of the issues involved in the court's decision to confirm the plan, vesting the bankruptcy-estate property in the debtor, and placing a duty on the Chapter 13 trustee to distribute property to creditors. Dismissal of the case also alters the parties' rights by denying the debtor's request to discharge debt under Chapter 13, lifting the stay on creditors' collection efforts, and possibly limiting the debtor's ability to gain a stay against such efforts in later cases. But denial of a plan leaves the parties' rights and obligations undetermined, preserves the stay against collection efforts, and allows for submission of further plans. In the Court's view, such a decision is not final.

This decision is of significant interest to the business community because the rule regarding finality of plan denial may arise when a business is a debtor as well as when it is a creditor. In addition to governing appeals in individual persons' bankruptcy cases, § 158(d)(1) governs appeals of corporate-reorganization plans filed under Chapter 11. Although the Court did not definitively state that the rule in today's case would apply to corporate reorganizations, it did describe some of the implications of a similar rule of finality in Chapter 11 cases, and it noted that the parties had agreed that the decision in this case would apply to corporate reorganizations as well.

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