

Insights

Recent Supreme Court Decision May Shift Balance Of Power In Bankruptcy Cases

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In *Bullard v. Blue Hills Bank*, ___ U.S. ___, 135 S. Ct. 1686, 191 L.Ed.2d 6221, 83 USLW 4288, 2015 WL 1959040 (May 5, 2015), the Supreme Court of the United States unanimously held that a bankruptcy court's order denying confirmation of a debtor's proposed chapter 13 plan is not a final order that the debtor immediately can appeal under 28 U.S.C. §§158(a)(1) and (d)(1).

While *Bullard* involved a chapter 13 plan, the Court's reasoning should apply equally to the denial of confirmation of a chapter 11 plan.

By denying chapter 11 debtors the automatic ability to appeal orders denying plan confirmation, *Bullard* potentially shifts the balance of power in favor of creditors in the bankruptcy plan confirmation process. Specifically, if a creditor loses the plan confirmation battle - i.e., the debtor's plan of reorganization or liquidation is confirmed - the creditor immediately can appeal the confirmation order, but if the debtor loses the plan confirmation battle - i.e., the bankruptcy court denies confirmation of the debtor's plan - the debtor cannot appeal (except with leave of court, which is not certain to be granted). Thus, if the debtor cannot appeal denial of its plan, its choices are to try to confirm an alternate plan (which, presumably, would be more favorable to creditors), or to "throw in the towel" and agree to the conversion or dismissal of its bankruptcy case.

Shutting-off a debtor's potential avenue of appeal (for plans that are denied confirmation) potentially gives considerable leverage to creditors in bankruptcy cases, especially as regards plan negotiations.