

*Bar News - July 15, 2015*

## ***Federal Practice & Bankruptcy: US Supreme Court Tackles Consumer Bankruptcy Issues***

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Despite the decrease in bankruptcy filings in most parts of the country, 2015 has been a very active year for bankruptcy cases at the United States Supreme Court.

This year's decisions focused primarily on consumer issues, but at least two of the recent decisions also have significant potential implications for Chapter 11 reorganizations.

This article will discuss three of this year's decisions: *Bullard v. Blue Hills Savings Bank* (May 4, 2015), *Harris v. Viegelahn* (May 18, 2015), and *Wellness International v. Sharif* (May 26, 2015).

### ***Bullard v. Blue Hills Savings Bank***

Debtor Louis Bullard filed a Chapter 13 proceeding in the US Bankruptcy Court for the District of Massachusetts, likely for the purpose of saving his multifamily residential property. Blue Hills Bank held a mortgage, which secured debt in excess of the property's value, and payments were in arrears.

The debtor's third amended Chapter 13 plan, and the one at issue for the Court, provided for the bifurcation of the bank's claim, such that \$250,000 (the approximate value of the property) was treated as secured, and the \$101,000 balance was treated as unsecured.

The secured portion was to be satisfied through regular monthly mortgage payments, and the unsecured portion satisfied through a dividend estimated at 5 percent, paid over the life of the plan. The bank objected to confirmation, and the bankruptcy court denied confirmation on the grounds that Chapter 13 did not permit the debtor to bifurcate the bank's claim, unless he paid the secured portion in full over the life of the plan.

This plan presented another possible issue, in that Section 1322(b)(2) prohibits the modification of mortgages secured only by a debtor's principal residence. The opinion does not state whether the debtor resided in the multifamily property.

Debtor appealed, and the BAP granted an interlocutory appeal, then affirmed. On further appeal, the First Circuit dismissed Bullard's appeal for lack of jurisdiction. The Supreme Court faced the question of whether or not an order denying confirmation of a Chapter 13 plan was a final and appealable order.

In Chapter 13, the debtor has the exclusive right to file a plan. Bullard argued that the Court's review of each plan was a proceeding, such that the denial order was appealable. The bank argued the entire Chapter 13 plan process was the proceeding, and only orders confirming the plan (or dismissing the case) would be appealable. The Supreme Court agreed with the bank and held that an order denying confirmation was not a final order, as long as the debtor was free to propose an alternative plan.

Although seemingly unfair to debtors, the Court's decision may make docket management easier in routine cases. In cases presenting significant or novel questions of law, debtors will remain free to seek interlocutory appeal, and the Bullard decision may increase the likelihood such requests will be granted.

Debtors might also allow their Chapter 13 cases to be dismissed, and then appeal the denial of confirmation, though this avenue presents collateral consequences associated with the removal of the automatic stay.

The impact of *Bullard* is likely to be felt more deeply, and the nuances developed more thoroughly, in Chapter 11 cases. The Chapter 11 plan process is more complex, and denial of confirmation more significant, particularly in cases in which the debtor has lost the exclusive right to file a plan, and the Court is reviewing competing plans.

### *Harris v. Viegelaahn*

Harris started as another Chapter 13 case. Debtor's plan provided for regular monthly mortgage payments to be made to mortgagee Chase Manhattan Bank directly by the debtor, and pre-petition arrearages to be cured through debtor's Chapter 13 plan payments over the life of the plan.

Debtor soon fell behind again on monthly mortgage payments; Chase obtained relief from stay and pursued foreclosure. Wage withholding and plan payments continued for a few months thereafter, however, until debtor finally converted his case to Chapter 7.

Upon conversion, the trustee held \$5,519.22 in accumulated but undistributed funds. She promptly paid those funds to creditors, including counsel. Debtor appealed and argued that, upon conversion, the undistributed plan payments should have been returned to him and that the trustee lacked authority to disburse once the case converted. Circuits were split on the point.

The Supreme Court held that post-petition wages were not property of the estate in Chapter 7 and that, pursuant to 11 U.S.C. Section 348(f), post-petition wages, including undisbursed funds held by a trustee, do not become part of the Chapter 7

estate. The Court also held that conversion terminated the Chapter 13 trustee's authority to make further disbursements.

As part of its opinion, the Court noted that Chapter 13 is wholly voluntary, such that absent bad faith, there was no reason to punish debtors for trying to reorganize. The Court also noted that trustees could minimize the issue through more frequent distributions to creditors.

In New Hampshire, Chapter 13 plan payments are typically distributed quarterly, and any undisbursed funds in the hands of the trustee upon conversion are returned to debtors, so the Harris decision will not alter local practice. The decision will add uniformity to the practice of Chapter 13 trustees around the country, however.

### *Wellness International Network Ltd. v. Sharif*

The *Wellness* opinion addressed the limits of bankruptcy court jurisdiction following *Stern v. Marshall* (131 S. Ct 2594), and whether and how parties could consent to the determination of Stern claims by a non-Article III court.

The opinion arose from an adversary proceeding (lawsuit) in a Chapter 7 case. The details of the dispute and the Court's reasoning exceed the scope of this article, but the Court held that Article III of the Constitution permitted bankruptcy judges to decide Stern issues with the parties' consent, and that such consent need not be express but must be knowing and voluntary.

Although *Wellness* remanded for further proceedings as to Sharif's consent, the holding comes as a great relief to bankruptcy courts as they try to manage the litigation which arises in many bankruptcy cases and obviates the need for duplicative proceedings in which a bankruptcy court enters recommended findings of fact and ruling of law, and a district court then enters judgment.