RELIEF FOR DEBTORS: ELEVENTH CIRCUIT HOLDS THAT CHANGE OF CIRCUMSTANCES NOT REQUIRED TO MODIFY A CHAPTER 13 PLAN IN *IN RE GUILLEN*

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In *In re Guillen*,[1] the United States Court of Appeals for the Eleventh Circuit addressed whether a party is required to demonstrate that they experienced some change in circumstances in order to modify a confirmed Chapter 13 bankruptcy plan under 11 U.S.C. § 1329.[2] The ruling answered a question of first impression for the Eleventh Circuit that has divided some of its sister circuits.[3] The First, Fifth, and Seventh Circuit Courts of Appeals do not require a threshold showing of any change in circumstances in order to modify a confirmed bankruptcy plan, while the Fourth Circuit does require such a showing.[4] The Eleventh Circuit ultimately determined that a change in circumstances is not required to modify a plan, and thereby concurred with the First, Fifth, and Seventh Circuits.[5]

Rachel Guillen filed a voluntary petition under Chapter 13 of the Bankruptcy Code in August 2015.[6] Wells Fargo was one of two secured creditors named in the petition.[7] The bank held a second-priority mortgage on Guillen's home in the amount of $50,000.[8] Alongside her petition, Guillen filed a Chapter 13 plan in order to dispute the validity of Wells Fargo's lien, alleging that Wells Fargo had failed to properly perfect its security interest.[9] In her plan, Guillen disputed the validity of Wells Fargo's lien, alleging that Wells Fargo had failed to properly perfect its security interest.[10] As a result, Guillen commenced an adversary proceeding against the bank in October 2015 in an attempt to avoid the lien.[11] In July 2016, Wells Fargo and Guillen entered into a consent judgment in which the two parties agreed that Wells Fargo "had not perfected its security interest and held only an unsecured claim."[12]

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[1] *In re* Guillen, 972 F.3d 1221 (11th Cir. 2020).

[2] *Id.* at 1223.

[3] *Id.*

[4] *Id.* at 1223–24.

[5] *Id.* at 1224.

[6] *Id.*; *see* 11 U.S.C. § 101 *et seq.*

[7] *Guillen*, 972 F.3d at 1224.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

Following this agreement, the bankruptcy court confirmed Guillen's Chapter 13 plan, which required her to pay her unsecured creditors a total of $20,172.[13] In the confirmation order, the court held that the plan was in accordance with 11 U.S.C. § 1325, which imposes a number of requirements on Chapter 13 debtors.[14] One of these requirements is known as the "best interests of creditors" test, which "measures unsecured creditors' recovery under a Chapter 13 plan against what those creditors would have received in a hypothetical Chapter 7 liquidation."[15] In order for the court to approve the plan, the amount of recovery must be at least as much as what the creditors would have received in a Chapter 7 liquidation.[16]

The plan also provided for the payment of $4,900 in attorney's fees as well as other fees related to the adversary proceeding.[17] Four months after confirmation of the plan, Guillen's attorney sought $8,295 "for post-petition legal services rendered in connection with Guillen's adversary proceeding against Wells Fargo."[18] Guillen subsequently filed a modified Chapter 13 plan, pursuant to 11 U.S.C. § 1329, in order to accommodate the additional legal fees.[19] § 1329 outlines four methods of modifying a confirmed plan.[20] One such way to modify a plan is to "increase or reduce the amount of payments on claims of a particular class under the plan."[21] Guillen sought to modify her plan under this category.[22] Her request "sought to reduce the total pool available to unsecured creditors . . . [by] $8,295," which "would allow her to pay her attorney's fees incurred in the adversary proceeding."[23]

The Standing Chapter 13 Trustee for the Northern District of Georgia objected to the modification, claiming that it violated the best interests of creditors test and that the doctrine of res judicata barred Guillen's

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[13] *Guillen*, 972 F.3d at 1224.
[14] *Id.*; 11 U.S.C. § 1325.
[15] *Guillen*, 972 F.3d at 1224 (citing 11 U.S.C. § 1325(a)(4)).
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.* at 1225.
[20] *Id.* The plans can be modified to:

> (1) increase or reduce the amount of payments on claims of a particular class under the plan; (2) extend or reduce the time for making payments; (3) alter the distribution to a creditor to account for payments made other than under the plan; or (4) reduce amounts to be paid under the plan to account for the debtor's purchase of health insurance.

Guillen, 972 F.3d at 1225 (citing 11 U.S.C. § 1329(a)(1)–(4)).
[21] *Id.* (citing § 1329(a)(1)).
[22] *Id.*
[23] *Id.*

modification.[24] In essence, the Trustee asserted that § 1329 requires debtors to show some change in circumstances before being allowed to modify their confirmed plan.[25] The bankruptcy court disagreed with these arguments and confirmed the modified plan, finding that it satisfied the requirements of § 1329.[26] Following this determination, the Trustee appealed directly to the United States Court of Appeals for the Eleventh Circuit.[27]

The Eleventh Circuit reviewed the bankruptcy court's conclusions of law de novo.[28] The court began its opinion by explaining that the United States Bankruptcy Code states that the provisions of a confirmed Chapter 13 plan are binding on the debtor and the creditor regardless of whether the "creditor has objected to, has accepted, or has rejected the plan."[29] Once the plan is confirmed, "any issue actually litigated by the parties and any issue necessarily determined by the confirmation order" cannot be relitigated.[30] With this in mind, however, § 1329 creates "a limited exception to this general rule" and allows "debtors, trustees, and holders of allowed unsecured claims to modify confirmed plans, so long as they satisfy certain statutory requirements."[31]

The bankruptcy court found that Guillen was permitted to modify her plan because she satisfied the required criteria for modification under § 1329.[32] The Trustee argued that the bankruptcy court should not have confirmed Guillen's modified plan because § 1329 requires debtors to show some change in circumstances before modifying a confirmed plan.[33] The rationale behind this requirement, the Trustee argued, was to prevent debtors from disregarding the finality of bankruptcy plan confirmation orders.[34] The task before the Eleventh Circuit in this case was to determine whether § 1329 imposed a change in circumstances requirement for parties who wish to modify their Chapter 13 plans.[35]

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[24] *Id.* The doctrine of res judicata, also known as claim preclusion, states that "a final judgment on the merits bars the parties to a prior action from re-litigating a cause of action that was or could have been raised in that action." *In re* Piper Aircraft Corp., 244 F.3d 1289, 1296 (11th Cir. 2001).
[25] *Guillen*, 972 F.3d at 1225.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.* (quoting 11 U.S.C. § 1327).
[30] *Id.* at 1225–26 (quoting Bullard v. Blue Hills Bank, 575 U.S. 496 (2015)).
[31] *Guillen*, 972 F.3d at 1226 (citing 11 U.S.C. § 1329).
[32] *Id.* (citing 11 U.S.C. § 1329).
[33] *Id.*
[34] *Id.*
[35] *Id.*

The court began its analysis of § 1329 by examining the plain meaning of the text of the statute.[36] The court explained that the statute does not expressly require the bankruptcy court to find a change in circumstance prior to modifying a confirmed plan.[37] Such an omission is intentional, the court said, because "when 'Congress knows how to say something but chooses not to, its silence is controlling.'"[38] Further, in other sections of the Bankruptcy Code, when Congress wanted to impose a "circumstances" requirement, they explicitly stated so.[39] For example, § 1127(b) states that a modified Chapter 11 plan goes into effect "'only if circumstances warrant such modification.'"[40]

To further support the conclusion that a change in circumstances requirement should not be imposed where the statute does not mention one, the court noted that the First, Fifth, and Seventh Circuit Courts of Appeals all refuse to impose such a requirement in applying the statute.[41] This rule is not supported by all circuits, however.[42] The Fourth Circuit has held that the doctrine of res judicata bars modification of a Chapter 13 plan "unless there has been an unanticipated, substantial change in the debtor's financial condition."[43] As a matter of policy, the Fourth Circuit imposed the change in circumstances requirement to prevent an "onslaught of modification motions."[44] The Fourth Circuit believes that this requirement will give confirmation orders a higher degree of finality and prevent creditors and debtors from making modifications "'simply hoping to produce a more favorable plan . . . .'"[45]

The Eleventh Circuit declined to agree with the rationale of the Fourth Circuit, stating that "general policy concerns cannot overcome the plain language of the statute."[46] The court explained that Congress has already implemented "ample safeguards" against frivolous plan modifications.[47] For example, only certain parties may seek modification of confirmed Chapter 13 plans, and they may only do so for limited purposes.[48] There are also a number of requirements imposed by other areas of the Bankruptcy Code that

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[36] *Id.*
[37] *Guillen*, 972 F.3d at 1226.
[38] *Id.* (quoting Myers v. TooJay's Mgmt. Corp., 640 F.3d 1278 (11th Cir. 2011)).
[39] *Id.* at 1227.
[40] *Id.* (quoting 11 U.S.C. § 1127(b)).
[41] *Id.* at 1227–28.
[42] *Id.* at 1228.
[43] *Guillen*, 972 F.3d at 1228 (citing *In re* Arnold, 869 F.2d 240, 243 (4th Cir. 1989)).
[44] *Id.* (quoting *In re* Murphy, 474 F.3d 143, 149 (4th Cir. 2007)).
[45] *Id.* (quoting *Murphy*, 474 F.3d at 149).
[46] *Id.*
[47] *Id.*
[48] *Id.* at 1228–29.

a modified plan must adhere to, such as a requirement that the modified plan still satisfy the best interests of creditors test and be proposed in good faith.[49] Further, even when a modified plan meets all express requirements under the Bankruptcy Code, the bankruptcy court has the discretion to confirm or deny a modified plan.[50] A bankruptcy court may freely refuse to confirm a modified plan to "prevent successive or abusive attempted modifications."[51]

The court also disagreed with the Trustee's argument that the Eleventh Circuit imposed a change in circumstances requirement in a prior case.[52] In *In re Hoggle*,[53] the Eleventh Circuit did note that "'Congress designed § 1329 to permit modification of a plan due to changed circumstances of the debtor unforeseen at the time of confirmation.'"[54] However, the court never indicated that this was an absolute requirement for modification.[55] As the court explained in *Guillen*, an unforeseen change in circumstances is a good reason to permit a modification, but it is not the only reason.[56] When a modified plan satisfies the requirements of § 1329, the bankruptcy court can consider a change in circumstances if necessary when deciding whether to confirm the modified plan.[57] At the same time, while it is certainly a factor to be considered, the bankruptcy court ultimately has the authority to confirm the modified plan even in the absence of any change in circumstances.[58]

Thus, the Eleventh Circuit concluded that the bankruptcy court rightfully allowed Guillen to modify her plan.[59] Guillen did not modify her plan "to enrich herself at the expense of her creditors"; rather, she modified her plan to pay her attorney's fees that were incurred as a result of the adversary proceeding against Wells Fargo.[60] The bankruptcy court reached the determination that it was preferable for Guillen to be allowed to modify her plan to prevent her from paying an additional $8,295 over the life of her plan and to allow her attorney to receive the fees that he earned while

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[49] *Guillen*, 972 F.3d at 1229 (citing 11 U.S.C. § 1325(a)(3)–(4)).
[50] *Id.*
[51] *Id.* (quoting *In re* Hoggle, 12 F.3d 1008, 1011–12 (11th Cir. 1994)).
[52] *Id.*
[53] *Hoggle*, 12 F.3d 1008 (11th Cir. 1994).
[54] *Guillen*, 972 F.3d at 1229 (quoting *Hoggle*, 12 F.3d at 1011).
[55] *Id.*
[56] *Id.*
[57] *Id.* at 1229–30.
[58] *Id.* at 1230.
[59] *Id.*
[60] *Guillen*, 972 F.3d at 1230.

pursuing the adversary proceeding.[61] Thus, the Eleventh Circuit affirmed the ruling of the bankruptcy court.[62]

This ruling cements the Eleventh Circuit's position that a change in circumstances requirement should not be read into the text of 11 U.S.C. § 1329.[63] In examining the stance of their sister circuits, the Eleventh Circuit ultimately found the Fourth Circuit's policy-based rationale for imposing the requirement to be unpersuasive.[64] By not requiring a party to prove that they suffered a change in circumstances before being able to modify their confirmed bankruptcy plan, the court decided not to increase the burden that parties face when they attempt to make a modification.

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[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.* at 1228.