Library of Congress (1920)

f Massachusetts, center, formed by President Woodrow Wilson.

hubris, now

en a potent political tool. As Sen. dge explained his position, "I am cer- in that we can do it best by not ... sub- cting our policies and our sovereignty other nations."

Such political rhetoric sounds remark- ly similar to the arguments presented the senators who opposed the U.N. sability treaty. (Only eight Republi- ns joined all Democrats in supporting which has been signed by 155 nations l by 126. The final vote was 61-38. With rs present, ratification would have 6 votes.)

Sen. Rick Santorum explained the this way: "Our nation has been the leader when it comes to protecting d. We should be telling the U.N., not ay around, how to ensure dignity and the disabled."

the U.N. disability treaty does just that. ks the rest of the world to develop pol- otect the rights of the disabled, to set qual to those established by the United he Americans With Disabilities Act. infringe upon the sovereignty of the es or any other nation for that matter. hese facts, it appears that many modern- licans oppose the United Nations for the n their colleagues in post-World War I

Homing in on truths of bankruptcy court

More and more frequently, bankruptcy court judges see cases in which the debtors misapprehend the ability of the bankruptcy court to undo the effect of state court judgments of foreclosure. These debtors believe, erroneously, that the bankruptcy court can vacate those judgments, revisit unsuccessful defenses and counterclaims, and sit as a quasi-appellate court in review of the propriety of the judgment.

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It is true that the Bankruptcy Code provides means to save a home when a mortgage loan is delinquent, such as in a Chapter 11 (reorganization for a debtor with a large amount of debt), Chapter 12 (family farmer or fisherman) or Chapter 13 case (debt adjustments for a person with regular income and debts within certain limits).

And the bankruptcy court for the Middle District of Florida, Tampa Division, has two special programs that provide debtors an opportunity to see if they qualify for a mortgage loan modification with their lender: One is a residential mortgage modification mediation program, and the other is a loss mitigation conference (which occurs without the assistance of a mediator). Many debtors are able to save their homes through one of these chapters or programs.

However, if a lender has obtained a final judgment of foreclosure, certain issues resolved by the judgment cannot be revisited in bankruptcy. Those issues include the standing of the lender to foreclose the mortgage and the amount due on the note secured by the mortgage. (Of course, the amount due can be negotiated, but only with the lender's consent.)

Bankruptcy judges cannot revisit the rulings incorporated in a state court final judgment for two reasons:

First, bankruptcy judges are bound by the Full Faith and Credit Act, which requires federal courts to do just what the act's title says — give full faith and credit to valid state court judgments.

Second, bankruptcy judges do not have the jurisdiction, meaning power, to act as a court of appeals for state court decisions under case law of the U.S. Supreme Court known as the Rooker-Feldman Doctrine. Under the Rooker-Feldman Doctrine, a party to a state court judgment must seek a remedy within the state court or within the appellate jurisdiction of the Supreme Court. In short, bankruptcy courts have to respect the judgments of their sister state courts.

If a debtor thinks the state court's ruling is erroneous, he can take the judgment to the state District Court of Appeal in a timely manner. Alternatively, if the debtor thinks the lender has committed fraud on the state court, the debtor may seek relief from the state court but not the bankruptcy court.

By coming into bankruptcy court and not in a timely fashion availing themselves of the remedies available in state court, some debtors are surprised and disheartened to learn that what they had hoped to do cannot be accomplished in bankruptcy court because of the Full Faith and Credit Act and the Rooker-Feldman Doctrine.

While not all debtors can afford an attorney to discuss strategies for saving a home, these issues are something they should at least think carefully about and read up on so that they will not have unrealistic expectations about what they can do to overcome a state court judgment they disagree with.

The Tampa Bay Bankruptcy Bar Association is initiating a pro bono program in 2013 whereby lawyers will be in the Attorney Resource Room at the Sam M. Gibbons U.S. Courthouse during certain hours for free brief consultations.

If you are thinking about filing bankruptcy and want advice concerning just what kind of challenge you can make to a state court judgment of foreclosure, you may visit tbbba.com, the Tampa Bay Bankruptcy Bar Association website, to find out when these volunteer attorneys will be at the courthouse.

Also, the public will find a wealth of information about bankruptcy on the bankruptcy court's website, www.flmb.uscourts.gov, particularly by going into the portal titled "Filing without an Attorney." For example, the bankruptcy court has posted videos that demonstrate what goes on in a bankruptcy case, and they are available in English, Spanish and Creole.

The mission statement for the bankruptcy court for the Middle District of Florida is: "Our Court serves the public by processing and deciding bankruptcy cases with fairness, impartiality, and excellence, while treating everyone with dignity, integrity, and respect."

Sometimes fairness under the law requires us to disappoint debtors who do not know the limits of what a bankruptcy court can do. Perhaps the information in this column will help debtors shed unrealistic expectations and use the Bankruptcy Code for what can be accomplished.

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