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Bankruptcy Judge Sides With Owner on Home Surrender

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A Miami bankruptcy judge threw another wrench into the already convoluted and controversial “surrender” issue linking bankruptcy and foreclosure cases.

In a ruling that contradicted others by Chief Judge Paul Hyman Jr. in the Southern District of Florida and Judge Michael Williamson in the Middle District, U.S. Bankruptcy Judge A. Jay Cristol said it “would be unconstitutional, inequitable and unjust” to force homeowners to stop fighting foreclosure after they surrender property in bankruptcy court.

Some judges, like Hyman and Williamson, have been clamping down, threatening penalties and other sanctions against homeowners who surrender their property to get bankruptcy protection but keep fighting in state court to save the same homes from foreclosure. Their rulings created legal precedents that divided bankruptcy judges by finding that “surrender” means relinquishing property to “make it available to the secured creditor by refraining from taking any overt act that impedes” foreclosure.

But Cristol went in the opposite direction with an Aug. 12 ruling siding with homeowner Genny Marino Rodriguez against Bank of America N.A. in a case with a twist.

“Bank of America tried to go too far,” Rodriguez’s foreclosure attorney, Bruce Jacobs, said. “In fact, they got slapped by Judge Cristol and created a whole new way of looking at this brand-new area of law.”

Rodriguez was pitted against her lender after the bank reopened a discharged bankruptcy case to compel her to surrender the property and walk away from the related foreclosure fight. She filed for Chapter 7 bankruptcy protection in January

2012 and received a discharge four months later.

In September 2013, Bank of America sued in state court to foreclose on the four-bedroom house at 9980 Jamaica Drive in Cutler Bay. Rodriguez fought the foreclosure, leading the bank to file a motion in June 2015 to reopen the bankruptcy case and force her to surrender the home. If successful, the bank would then rely on Hyman's earlier ruling to bar Rodriguez from defending the foreclosure.

But unlike in preceding motions before Hyman and Williamson, Rodriguez claimed she never surrendered the property in bankruptcy.

Under federal bankruptcy law, debtors seeking personal bankruptcy protection must submit a statement of intention within 30 days of filing bankruptcy petitions or before the first meeting of creditors. The statement must clarify whether Chapter 7 debtors will reaffirm or restructure the debt under a new repayment agreement, redeem or pay it in full, or surrender secured property in the hope of retaining collateral.

When she filed for bankruptcy, Rodriguez selected the "reaffirm" option for the mortgage debt. Bank of America spokesman Richard Simon declined comment Friday, but court filings show the lender claimed Rodriguez repeatedly refused to sign a reaffirmation agreement.

The homeowner in turn claimed the lender never provided her with the document and failed to pursue its interests. Without executing a reaffirmation agreement, Rodriquez obtained a bankruptcy discharge in May 2012.

Without that document or a "surrender" in bankruptcy, Hyman's ruling couldn't save the lender's suit.

> "It's a very black-and-white reasoning to say if you're going to surrender the property, you have to put your hands in the air and give up; that you either pay up or give up," Meland Budwick, P.A. partner James Moon, Rodriguez's special counsel in the bankruptcy case, told the Daily Business Review. "Reaffirmation is literally a new agreement, and it's a far stretch to say that a reaffirmation agreement is the functional equivalent of surrender."

Cristol asked both sides to submit draft orders and signed Moon's version.

Laudy Luna Perez, a partner of Liebler Gonzalez & Portuondo in Miami, represented the lender.

"Bank of America complains that it has been vexed in the foreclosure action with a defense based 'primarily on standing grounds.' Bank of America can and must address its standing issues in the alternate forum it chose when it initiated the foreclosure action," according to the order denying the bank's motion to reopen the bankruptcy and compel Rodriguez to surrender the property. "Even in a case where the debtor indicates an intent to surrender the property in its petition and then fails to do so, the remedy would be stay relief and not a bar by injunction to defending a foreclosure action, which would be unconstitutional, inequitable and unjust."