

BANKRUPTCY BLOG

Mortgage Attorneys Beware! A Bankruptcy Court May Enforce a Lower Interest Rate on a Mortgage Adopted by a Judgement of Foreclosure.

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Specifically, where a mortgage creditor did not assert the default rate provided in an action taken to judgment on foreclosure, the bankruptcy court enforced the mortgage interest rate from a state court foreclosure order and determined the total debt to creditor based on the contract rate of 3.25% per annum “through the date to which such interest [was] computed,” versus the higher 18% default rate to which the creditor was contractually entitled had it properly asserted its claim. See *In re Kennedy*, No. 17-03101-5-JNC, 2019 WL 2366419, at *10 (Bankr. E.D.N.C. May 3, 2019).

While this may be a boon for the debtor, the end result also could mean a claim against mortgage creditor's counsel for malpractice, as the near 15% difference in collectable interest could be significant over the life of a loan default cured through a Chapter 13 plan.

Moreover, the bankruptcy court concluded it did not have jurisdiction to set aside a state court's foreclosure order. While the Bankruptcy Court did not mention specifically the *Rooker-Feldman* doctrine in its opinion, the doctrine's implications are important to remember: bankruptcy courts generally cannot sit as appellate courts on state court judgments.

Practice tip: ALWAYS read the documents over which you are litigating before asserting claims.

If you have questions about foreclosure or enforcing your rights in bankruptcy, please contact Larry A. Pittman, II at 816.210.9680 or Sharon Stolte at 816.627.5543.