

The Countian

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**Sadness
at the sunset
of newspapers**

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High court refuses free speech case

St. Peters bar owner loses case

By Donna Walter
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Brian Hodak's fight against city hall is finished.

On Monday, the U.S. Supreme Court

said it would not review the appeal sought by Hodak, whose wife is the former owner of C. Blake's Bar & Grill in St. Peters, in a lawsuit claiming the city of St. Peters revoked the bar's liquor license in 2004 in retaliation for Hodak's criticism of city government.

That means Hodak will not be able to collect a nearly \$1.4 million judgment entered against the city and its former mayor two years ago.

"I am very pleased with the decision by the U.S. Supreme Court today and I truly appreciate Judge Webber's decision to allow us to recover court costs for defending our City in this case," St. Peters Mayor Len Pagano said in an e-mailed statement. "The U.S. Court of Appeals for the Eighth Circuit made its decision last summer after a thorough review of all the information and evidence from years of litigation in this

case. We continue to strive to do what is right, we enforce the laws and we follow the same laws we are sworn to uphold."

Hodak, an outspoken critic of former Mayor Tom Brown and his administration, and his wife, Karla Hodak, were forced to close their bar after the city revoked its liquor license. So Hodak sued the city, Brown and three St. Peters police officers for retaliating against the bar in violation of his First

Amendment right to free speech. Karla Hodak and H & N Planning and Control Inc., which was solely owned by Karla Hodak, were also plaintiffs in the lawsuit. Brown was the mayor of St. Peters from 1982 until he was defeated in the April 2004 election.

The case was originally tried in March 2006 and then retried the

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Attorneys mixed over mortgage modification

By Angela Riley
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As part of his plan aimed at preventing home foreclosures, President Barack Obama last week announced his support for legislation that would allow for bankruptcy judges to modify home mortgages, hopefully allowing Americans to stay in their homes.

But the proposal has been met with mixed feelings from local attorneys, who aren't sure how many people will use the process or if all would be helped.

The legislation allows for bankruptcy judges to reduce the mortgages and adjust the interest rate on highly depreciated primary residence-

es to the fair-market value. Currently, bankruptcy judges can modify the debt owed on essentially every other asset other than first lien home mortgages — second mortgages, commercial loans, car loans and boat loans. In the 1980s, Congress changed the law to exclude first lien home mortgages.

The process would be similar to an adversarial complaint, but it would arise out of a bankruptcy case and not be separate. The judge would have to determine the actual value of the home by looking at the separate appraisals of the property conducted by the lender and borrower and then determine what

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Two unidentified men leave the Sam B. Hall Jr. federal courthouse in Marshall, Texas, in May 2008. Plaintiff lawyers loved the Eastern District of Texas, but the U.S. Supreme Court on Monday let stand a decision that makes it easier for corporations to have cases transferred from eastern Texas to more "convenient locations."

Photo by Mario Villafuerte, Bloomberg News

No review of venue case

HOMES: Plan won't help 'those that really stretched themselves'

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interest rate to assign to the mortgage.

"[This process] was hard to use, and it's not automatic that their home value will be reduced," said attorney Debra Lumpkins, of Gateway Legal Services. "It's also not clear if this will cause an enormous, sweeping result in preventing foreclosures, but it can be a very positive thing for people trying to keep their homes."

Given the added cost to the bankruptcy proceeding, Clayton bankruptcy attorney T.J. Mullin said he does not believe that homeowners will use the option to stave off foreclosure.

"In these instances, you'd have to hire an appraiser to assess the value of the property; the lenders will as well," he said. "Then you're going to have to take a deposition of both the appraisers and later ask them to come in and testify at trial. Couple that with attorneys' fees to prepare for trial and the actual time spent at court and hiring economists to help assess the interest that should be paid on the loan, you're looking at \$6,000 to \$7,000 in legal fees. People filing for bankruptcy aren't going to be able to afford that unless they borrow the money from a family member. It's just not going to be that effective."

Mullin also expressed concern that attorneys for the lenders and borrowers won't be able to come to agreements for the value of the home as easily as for other assets, such as cars, because mortgages are sold off so many times that there are too many parties involved to reach an agreement.

But Tracey Robinson, a Kansas City bankruptcy lawyer, said the process may be long and costly at first but it would eventually settle down.

"Valuation is always going to be an

issue in these cases," he said. "Once judges start issuing opinions, attorneys are going to know where a judge is likely to go. The worst [valuation] problems are going to occur on high-end homes where the value of depreciation of the home is significantly less than the mortgage."

Chief Bankruptcy Judge. Dennis Dow, for the U.S. Bankruptcy Court for Western District of Missouri, said the court is already preparing for the increase of bankruptcy filings if the legislation is passed.

"I'm sure that the legislation will lead to increase in filings, but by how much is yet to be seen," he said. "The courts are also going to face an additional burden for the [valuation and interest rate] hearings. But after a while attorneys are going to get used to the protocol and will resolve those issues consensually and cut deals once they see what approaches the court had taken."

Dow said the court is watching the legislation and determining whether it should consider creating a special docket for those cases.

The legislation is part of the president's larger plan to give dollar incentives to lenders to modify mortgages. He pledged \$275 billion to the stability fund. As it is right now, lenders are not working with homeowners to modify mortgages, and using the bankruptcy system might be a better solution for homeowners, said Diane Thompson, a Godfrey, Ill., lawyer who works of counsel with the Boston-based National Consumer Law Center.

"This is an option that homeowners need to have," she said. "It gives them a tool to reduce their debt and is an option that levels the playing field. The homeowners in this situation are stuck. They can't sell, can't refinance, can't hold onto the loan, they can only keep paying down on

the debt that they owe. It's not a good situation to be in. [This solution] comes, though, with a high stigma and cost."

However, there is a concern the mortgage modification is only a short-term solution.

"This will induce people to file [for bankruptcy]," said Nick Franke, a partner with Spencer Fane Britt & Browne. "It's not going to work long-term because in the end, [the homeowner] is still going to have to make the payments, and at some point the lender has to service the mortgage. There's no relief. You're going to see foreclosures in three years instead of right now."

Attorney Thomas DeWoskin, principal at Danna McKittrick, put it this way: "If before filing for bankruptcy you're underwater \$1,000 a month to pay your bills, and then after [completing the bankruptcy proceedings] you're underwater by \$200, you still can't pay your bills."

Many see hopeful that the mortgage modifications will help those that need it — honest and unfortunate borrowers that due to unforeseen circumstances got behind in payments or those who were victims of predatory lenders.

"This will especially help those who were making payments but then after an illness or getting laid off, started getting behind," DeWoskin said. "It won't help those that really stretched themselves and got a home that they couldn't afford in the first place."

The legislation, titled Helping Families Save Their Homes in Bankruptcy Act, is S. 61 and H.R. 200. The bills were reintroduced in January after the measure failed to pass last year. The House bill has already been approved by the House Judiciary Committee, but the other bill has not moved in the Senate.

Ginsburg after ca

By Greg Stohr
Bloomberg News

U.S. Supreme Court Justice Bader Ginsburg made her public appearance since her



Ginsburg

cancer surgery returning to the court's most questioned long argument Monday.

Ginsburg climbed the steps to the without assistance took her c

ary seat and then aimed more dozen questions at lawyers in cases on American Indian co es and juror challenges.

U.S. SUPR

Former Daley aides convictions left int

The U.S. Supreme Court refused to overturn the convictions of Chicago Mayor Richard Daley's former page chief and two other men their roles in an illegal scheme.

The justices, with Justice Antonin Scalia dissenting, rejected an appeal by Richard Sorich, who coordinated hiring from 1993 to 2005 former city employees Tim McCarthy and Patrick Slat

Prosecutors said the men worked together to circumvent a city requirement that non-political making positions be filled on qualifications rather than political connections. Prosecutors alleged widespread use of interviews and falsified records to ensure jobs for people had worked in support of mayor.

The three men were all convicted of mail fraud, with Sorich getting the longest sentence of three years and 10 months in prison. A Chicago-based federal appeals court upheld the convictions.

The appeal argued that

CRANCER: Division to handle voting

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trusted by the labor community throughout the state and has passion for these issues."

Koster, who was elected in November, pledged in his campaign that he would create a civil disability

things most of us take for granted," Koster said in a statement. "For the first time, the Attorney General's Office will have a separate legal enforcement division set up to focus solely on these fundamental rights, and I am honored to have Judge Crancer pioneer this effort."

Missouri Commission on Human Rights, the Department of Labor and Department of Revenue.

Crancer will start work on Monday. The division will be based out of the attorney general's St. Louis office, located in the Old Post Office. Four or five attorneys will