

**SO ORDERED.****SIGNED this 23rd day of March, 2022.**

The signature of Lena Mansori James is written in cursive above a horizontal line.

LENA MANSORI JAMES  
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION**

IN RE:

Lee Anderson Hepler and  
RaDonna Ruth Hepler,

Debtors.

Case No. 21-50495

Chapter 7

**ORDER**

**GRANTING MOTION TO DISTRIBUTE SALE PROCEEDS IN SATISFACTION OF THE  
SECURED CLAIM OF THE ESTATE OF BETTY PROCTOR**

THIS CASE comes before the Court on the Motion to Authorize Satisfaction of Secured Claim and Distribution to Secured Creditor (Docket No. 64, the “Motion”), filed by the chapter 7 trustee (the “Trustee”). The Trustee first asks the Court to find that the Estate of Betty S. Proctor (the “Proctor Estate”) has an allowed secured claim of \$144,723.00, the amount of its filed proof of claim (Claim # 5-1). The Trustee also seeks authority to pay the Proctor Estate its full claim amount of \$144,723.00 out of the proceeds generated from the sale of the Debtors’ real property. The Debtors filed an objection to the Motion, challenging the Court’s jurisdiction to grant the relief requested and asserting that any amount allegedly owed to the Proctor Estate was forgiven prior to Ms. Proctor’s death (Docket No. 69, the “Objection”). The Court held a hearing on the Motion on March 15, 2022, at which Daniel Bruton appeared in his capacity as Trustee, Stan Dick appeared on behalf of the Debtors, and Robert E. Price, Jr. appeared as Assistant United States Bankruptcy Administrator.

For the reasons stated below, the Court finds the “probate exception” does not preclude bankruptcy jurisdiction and will grant the relief sought in the Motion subject to the Debtors formally objecting to the claim of the Proctor Estate.

#### BACKGROUND

Debtor Lee Hepler is a surviving heir of Betty Jean Proctor, who died in September 2020 (Docket No. 69, ¶ 5). The Proctor Estate is currently being administered in Rowan County, North Carolina, with Mr. Hepler’s sister, Ellen Stone, serving as administrator. As the only heirs, Mr. Hepler and Ms. Stone each hold a 50 percent intestacy interest in the Proctor Estate.

The Debtors initiated this case on July 30, 2021, by filing a voluntary petition under chapter 7 of the Bankruptcy Code. In the Debtors’ bankruptcy schedules (Docket No. 1), the Debtors listed a tenancy by the entirety ownership interest in 405 Wake Drive, Salisbury, North Carolina (the “Property”), which they valued at \$270,900.00. The Debtors listed three liens on the Property: a first mortgage held by USAA Federal Savings Bank in the amount of \$101,426.64; a second mortgage held by Wells Fargo Bank, N.A., in the approximate amount of \$43,311.81; and a third priority deed of trust held by the Proctor Estate in the amount of \$72,361.50. The Proctor Estate, however, filed proof of claim # 5-1, asserting that the true amount necessary to satisfy its secured claim is \$144,723.00. While Debtors later amended their schedules to increase the value of the Property to \$330,000.00 and to reflect that the secured claim of the Proctor Estate is “disputed,” they did not amend the scheduled amount of the Proctor Estate’s claim (Docket No. 45).<sup>1</sup>

The Motion is the latest episode in the long-running disagreement between the Debtors and the Trustee over the amount required to satisfy the promissory

---

<sup>1</sup> In both their original and amended schedules, the Debtors valued the secured claim of the Proctor Estate in the amount of \$72,361.50 (Docket Nos. 1, 45), which is exactly one-half of the original principal balance of the promissory note (Claim # 5-1). As documented by the transcript of the § 341 meeting of creditors, the Debtors’ attorney stated that he scheduled half of the amount owed on the promissory note because he anticipated receiving the other half back as part of the male Debtor’s inheritance (Docket No. 64, Ex. B, p. 9) (“What I did was basically say okay, he takes half under the estate. Therefore, half of that second note, promissory note – it’s going to kind of wash in terms of his share of the estate – and listed the other half as what was owed on the second promissory note in terms of the schedules.”).

note and deed of trust held by the Proctor Estate. After initially opposing a motion for turnover, the Debtors later cooperated and consented to the Trustee's sale of the Property for \$330,000.00. Upon closing the sale on January 21, 2022, and after payment of the two senior liens, taxes, commissions, and closing costs, the Trustee now possesses \$156,501.45 in net sale proceeds (Docket No. 64, ¶ 6). The lien of the Proctor Estate was transferred to those net proceeds as part of the order approving the sale motion under 11 U.S.C. § 363(f) (Docket No. 61). The Trustee, by way of the Motion, seeks to satisfy the \$144,723.00 secured claim of the Proctor Estate from those net proceeds.

Initially, and in conjunction with his first motion to sell the Property, the Trustee separately filed a motion to compromise and settle claim (Docket No. 32, the "Settlement Motion."). Under the terms of that proposed settlement, the Trustee would have paid the Proctor Estate \$74,266.86 in full satisfaction of its promissory note and deed of trust, with the Trustee retaining the balance of \$70,456.14—the amount he asserted would otherwise be payable to the bankruptcy estate from the Proctor Estate. The proposed settlement also contained provisions governing distributions between the Proctor Estate and the bankruptcy estate if the net sale proceeds were insufficient to satisfy the Proctor Estate's claim in full (Docket No. 32, ¶¶ 10–11). The Debtors objected to the Settlement Motion and produced, for the first time, documents purportedly showing the debt owed on the promissory note was forgiven by Ms. Proctor prior to her death (Docket Nos. 39, 42). Before reaching the merits of the forgiveness issue, the Court questioned whether the probate exception barred bankruptcy court jurisdiction over the proposed settlement. After continuing the hearing to afford the Trustee an opportunity to research the question, the Trustee withdrew the Settlement Motion and proceeded to sell the Property and transfer the Proctor Estate's lien to the proceeds.<sup>2</sup>

---

<sup>2</sup> Following the closing of the sale, the Trustee and the United States Bankruptcy Administrator filed an adversary proceeding objecting to the Debtors' discharges, alleging that the Debtors purposefully did not list the Proctor Estate's claim as disputed or reveal the existence of the alleged forgiveness document "based on the assumption that the Trustee would accept the schedules at face value, close the case as a no-asset case, and thereby abandon the Property to the Debtors." The complaint also

Rather than seeking another settlement with the Proctor Estate, the Trustee instead filed the instant Motion seeking to satisfy the full amount of the Proctor Estate's \$144,723.00 secured claim. The Objection challenges the Motion on two grounds: first, the Debtors contend that the probate exception bars this Court from exercising jurisdiction over the matter; second, the Debtors assert that the Proctor Estate's claim should be "denied" because the promissory note was allegedly forgiven by Ms. Proctor through her written modification of the note before her death. The Trustee filed a reply, asserting that the probate exception is limited to certain categories of cases and matters, and, unlike the Settlement Motion, the relief requested in the Motion cannot be found to fall within those categories (Docket No. 70).

#### DISCUSSION

As articulated by the Supreme Court, "the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court." *Marshall v. Marshall*, 547 U.S. 293, 311–12 (2006). The probate exception is not limitless, however, and "does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction." *Id.* at 312. In deliberately narrowing what it regarded as some courts' "sweeping extension of the probate exception," *id.* at 300, *Marshall* "limited [the probate exception] to two categories of cases: (1) those that require the court to probate or annul a will or to administer a decedent's estate, and (2) those that require the court to dispose of property in the custody of a state probate court." *Lee Graham Shopping Ctr., LLC v. Estate of Kirsch*, 777 F.3d 678, 680–81 (4th Cir. 2015). Based on the Court's guidance, the probate exception applies "only if a case actually requires a federal court to perform one of the acts

---

alleges that the purported forgiveness document is fraudulent, executed under duress, or executed at a time when Ms. Proctor was not competent (AP # 22-06003, Docket No. 1, ¶¶ 16–17). The Debtors filed an answer on March 18, 2022 (AP # 22-06003, Docket No. 7), denying the allegations contained within the complaint.

specifically enumerated in *Marshall*” and would not apply if a case “merely impacts a state court’s performance of one of these tasks.” *Id.* at 681.

The Debtors assert that the Motion requires this Court to improperly assert *in rem* jurisdiction over an asset that is already subject to probate court jurisdiction. The Motion, however, does not fall into one of the specifically enumerated categories listed in *Marshall*. The Court is not being asked to probate or annul Ms. Proctor’s will or administer any portion of the Proctor Estate. The Court is not being asked to determine any distributions made from the Proctor Estate, whether to the bankruptcy court or to any other party.<sup>3</sup> The Motion also does not require this Court to dispose of property in the custody of a state probate court; the Trustee currently has possession of the sale proceeds he proposes to use to satisfy the Proctor Estate’s claim.

The Debtors’ challenge to the amount of the Proctor Estate’s claim only bolsters this finding. The Proctor Estate, by filing its proof of claim, voluntarily elected to participate as a creditor in the Debtors’ bankruptcy case and this Court has subject matter jurisdiction to determine the allowance and amount of the secured claim under 11 U.S.C. §§ 502 and 506. *See In re McKay*, 420 B.R. 871, 879 (Bankr. M.D. Fla. 2009). Although the Debtors’ Objection requires this Court to consider Ms. Proctor’s alleged forgiveness of the promissory note, which may in turn impact the Proctor Estate’s future assets and distributions, determining the value and secured status of the Proctor Estate’s claim are matters within this Court’s core jurisdiction. *In re Strathmore Group, LLC*, 522 B.R. 447, 452, 456 (Bankr. E.D.N.Y. 2014) (finding probate exception did not apply and that bankruptcy court was the

---

<sup>3</sup> While the Settlement Motion is not before it, the Court, by way of comparison, notes that the relief sought in that instance is distinguishable from that sought in the Motion. The Trustee currently seeks only to pay the Proctor Estate’s secured claim and to determine the allowance and amount of that claim under the Bankruptcy Code and Rules. In contrast, the Settlement Motion sought this Court’s approval and enforcement of a settlement that dictated specific distributions to be made from the Proctor Estate. While the Court here makes no final conclusions as to how it would rule on the specific relief sought in the Settlement Motion, the Court is cognizant that “divvying up an estate falls squarely within the probate exception.” *Jimenez v. Rodriguez-Pagan*, 597 F.3d 18, 24 (1st Cir. 2010).

proper forum to decide whether the property at issue was part of the bankruptcy estate and whether parties had claims against the debtors). Determining the amount of the Proctor Estate's secured claim "may affect future distributions" from the probate estate, but any such determination made by this Court "will not order a distribution of property out of the assets of [the probate estate]." *Lee Graham Shopping Ctr.*, 777 F.3d at 681. The probate exception, therefore, does not preclude bankruptcy court jurisdiction over the matters raised, or relief sought, within the Motion.

While the Debtors assert that the promissory note was forgiven by Ms. Proctor, this substantive challenge to the amount of the Proctor Estate's proof of claim suffers from procedural deficiencies. The Debtors have objected to the Trustee's Motion (Docket No. 69, ¶ 20) and amended their schedules to show the Proctor Estate's claim as disputed (Docket No. 45), but they have not filed an objection to claim. *See In re Gorman*, 495 B.R. 823, 835 (Bankr. E.D. Tenn. 2013). Therefore, the Court will grant the Trustee's Motion but allow the Debtors a reasonable period in which to file an objection to claim on proper notice to the Proctor Estate.

#### CONCLUSION

Accordingly, IT IS HEREBY ORDERED that the Trustee's Motion is GRANTED subject to the following conditions:

1. The Debtors have 15 days from entry of this Order to file an objection to Claim # 5-1 of the Estate of Betty S. Proctor.
2. If the Debtors fail to file an objection to Claim # 5-1 within the 15-day timeframe, the Trustee is authorized to pay Claim # 5-1 as filed without further hearing or order of the Court.
3. If the Debtors file an objection to the claim of the Estate of Betty S. Proctor, the Trustee is authorized to pay the claim in the amount, if any, determined through that contested matter 15 days after the entry of a final order.

**END OF DOCUMENT**

PARTIES TO BE SERVED

Lee & RaDonna Hepler (Ch.7)

21-50495

Stan H. Dick  
*via cm/ecf*

Daniel C. Bruton, Trustee  
*via cm/ecf*

William P. Miller, BA  
*via cm/ecf*

Lee and RaDonna Hepler  
400 Shelia Avenue  
Interlachen, FL 32148

Ellen H. Stone  
Administrator of Estate of  
Betty S. Proctor  
8006 Red Lantern Road  
Indian Trail, NC 28079