


ORDERED.

Dated: June 25, 2019



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)	
)	
EARL BRAXTON, JR. and)	Case No. 6:10-bk-03756-KSJ
VALERIE A. BRAXTON aka)	Chapter 7
VALERIE PERKINS-BRAXTON,)	
)	
)	
Debtors.)	
_____)	

ORDER OVERRULING DEBTORS’ OBJECTION TO CLAIM 3 OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION

This case came before the Court on the Debtors’ Objection to Claim No. 3 of the Federal National Mortgage Association (“Creditor”).¹ Finding no factual dispute, the Objection is overruled, and Claim 3 is allowed as a late filed, subordinated unsecured claim of \$90,067.63.

Debtors filed this Chapter 7 bankruptcy on March 9, 2010.² On May 3, 2010, the Trustee filed a notice of recovery of assets, and the Court issued a Notice of Deadline to File Proof of Claim with a deadline of August 9, 2010.³ Creditor’s predecessor in interest held a mortgage lien

¹ Doc. No. 71. Creditor filed a response. Doc. No. 72. After the hearing held on April 16, 2019, both parties filed supporting memorandum of law. Doc. Nos. 75, 76 and 77.

² Doc. No. 1.

³ Doc. No. 28.

on real property owned by the Debtors and listed on their bankruptcy schedules.⁴ Creditor's predecessor had notice of the bankruptcy case and an opportunity to file a claim but filed no claim believing any claim was adequately secured by the value of the real property collateral.⁵

The Chapter 7 Trustee administered the case in the normal course eventually distributing about \$12,000 to unsecured creditors with claims totaling around \$16,000.⁶ Debtors received a Discharge on Jun 16, 2010.⁷ The case was closed on October 21, 2011.⁸

After the bankruptcy concluded, two significant events occurred. First, the Creditor successfully foreclosed its mortgage lien on the real property. And, for the first time, the Creditor determined the value of the real estate could not pay the full debt, resulting in its claim for a deficiency balance against the Debtors for \$90,067.63.

Second, the Debtor realized that she had a product liability claim arising from a defective medical device surgically implanted *before* the bankruptcy was filed.⁹ The claim is a pre-petition claim, but the Debtor was unaware of the claim until years after the bankruptcy was closed. When the Chapter 7 Trustee was informed of the product liability lawsuit and the Debtor's recovery, she requested to reopen this bankruptcy case, which the Court granted on March 9, 2018.¹⁰ A generous settlement of \$101,500 was reached for the Debtor and against the medical device manufacturer, which was approved by the Court.¹¹ After attorney fees and expenses, the bankruptcy estate received \$47,144.68.¹²

⁴ See Doc. No. 1.

⁵ Doc. Nos. 76 and 77. Both parties agree that no claim was filed.

⁶ Doc. No. 52.

⁷ Doc. No. 35.

⁸ Doc. No. 53.

⁹ Doc. No. 76, p. 2.

¹⁰ Doc. Nos. 55 and 56.

¹¹ Doc. Nos. 63 and 68.

¹² *Id.*

On December 11, 2018, Creditor filed Claim 3 as a very late general unsecured claim of \$90,067.63 based on a mortgage deficiency. Debtors filed their Objection¹³ arguing the claim is untimely because it was not filed by the claim deadline of August 9, 2010. The parties agree that Creditor's predecessor received proper notice of the bankruptcy, and the issue before the Court is whether Creditor's claim should be allowed in its entirety as a late-filed claim.

Creditor's Claim is Allowed

Section 726(a)(3) of the Bankruptcy Code¹⁴ allows creditors to file late claims in Chapter 7 bankruptcy cases, even if they had notice of an earlier claim bar date, but subordinates the payment of late claims behind all *timely* filed claims:

- (a) Except as provided in section 510 of this title, property of the estate shall be distributed—
 - (3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection.

The statute is clear—late filed claims participate in Chapter 7 distributions after timely filed claims are paid.¹⁵ That the claim here was filed years late is irrelevant. The Chapter 7 Trustee has monies to distribute; Creditor has a valid but tardily filed unsecured claim for \$90,067.63; Creditor may participate in any monies remaining on hand after the Chapter 7 Trustee pays her administrative expenses and the balance of timely filed claims under §726(a)(3) of the Bankruptcy Code.

Creditor's notice of the original claim bar date and the prior opportunity to file a timely claim is only relevant were the Creditor asking the Court to deem Claim 3 timely filed under § 726(a)(2)(C). Creditor does not make this argument, although the parties' legal briefs focused on

¹³ Doc. No. 71.

¹⁴ All references to the Bankruptcy Code refer to 11 U.S.C. §§101, *et. seq.*

¹⁵ *In re Chemtura Corp.*, 436 B.R. 286, 299-300 (Bankr. S.D.N.Y. 2010); *In re Piatt*, No. BPA NV-07-1310-JUKPA, 2008 WL 8444827 at *8 (B.A.P. 9th Cir. May 29, 2008).

this inapplicable section.¹⁶ Notice is irrelevant given that the Court will treat Claim 3 as a late filed, subordinated unsecured claim.

Accordingly, it is

ORDERED:

1. Debtors' Objection to Claim No. 3 of the Federal National Mortgage Association (Doc. No. 71) is **OVERRULED**.
2. Claim 3 is allowed as a late filed, subordinated claim for \$90,067.63.

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The Clerk is directed to serve a copy of this order on all interested parties.

¹⁶ For example, Debtors cite this Court prior decision of *In re Gedda*, Case No. 6:13-bk-2238-KSJ, Doc. No. 114, decided on March 6, 2015, in support of its position. The issue in *Gedda*, however, was whether the late claim could be deemed timely filed under §726(a)(2)(C) because of the creditor's lack of notice of the bankruptcy. The relevant provision in this case, §726(a)(3) of the Bankruptcy Code, addressing subordinated payment for late claims was not involved.