

**SECOND DIVISION
DOYLE, P. J.,
DAVIS and WHITAKER, JJ.**

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October 7, 2026

In the Court of Appeals of Georgia

A26A0857. MORROW GA INVESTORS, LLC et al v. 1590
ADAMSON, LLC et al.

WHITAKER, Judge.

Appellants Morrow GA Investors, LLC, Payam Katebian, and Morteza Katebian (collectively “Appellants”) filed the underlying lawsuit against Appellees 1590 Adamson, LLC; GreenLake Real Estate Finance, LLC; GreenLake Real Estate Fund, LLC; and GreenLake Asset Management, LLC (collectively “Appellees”), alleging contract and tort claims related to a bankruptcy settlement and property sale. The trial court dismissed Appellants’ lawsuit for lack of subject matter jurisdiction, finding that the bankruptcy court retained exclusive jurisdiction over the claims. Appellants appeal, contending that the trial court erred by failing to exercise jurisdiction over the post-bankruptcy dispute involving state law claims. We affirm.

The record shows that in July 2019, Morrow GA obtained a commercial loan in the amount of \$2.4 million from GreenLake Real Estate Fund, LLC (“GreenLake RE Fund”). Morrow GA owned an office building (“the Property”), which it pledged as collateral securing the loan. Payam and Morteza Katebian (“the Katebians”) executed guaranty agreements for the loan. Thereafter, the loan was assigned to 1590 Adamson, LLC (“1590 Adamson”).

Appellants attempted to extend or refinance the loan. They contend that Appellees provided an inflated payoff statement that included more than \$2 million in additional penalties, interest, and fees that made it impossible to refinance with another lender.

Faced with a loan default, Morrow GA filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of Georgia. As the loan creditor, 1590 Adamson filed proof of its secured claim in the amount of \$4,698,270.21. Appellants and the bankruptcy trustee filed objections to the claim. Thereafter, the trustee and 1590 Adamson reached a settlement agreement, providing that the amount of the allowed secured claim (“Total Secured Claim”) was \$3,999,000.00. The terms of the settlement agreement provided that the Total

Secured Claim was “absolutely and unconditionally due and payable, without defense, offset or counterclaim,” and that GA Morrow and the trustee “waive[d] and release[d] (i) any right to object to the allowance of, and any defense with respect to, [that] [indebtedness.]” Following a hearing, the bankruptcy court approved the settlement and authorized the trustee to proceed with a sale of the Property. Pursuant to the terms of the settlement, if no third party outbid a minimum credit bid at the sale, the Property would be conveyed to 1590 Adamson by credit bid. Because no minimum bid was received, the Property was sold to 1590 Adamson for its credit bid in the amount of \$3,999,000. The bankruptcy court approved the sale.¹

Appellants then filed two separate appeals in the federal district court, challenging the bankruptcy court’s settlement order and the amount of 1590 Adamson’s credit bid for the sale. See *Katebian v. Ogier*, 654 B.R. 402, 405 (N.D. Ga. 2023), *aff’d sub nom. In re Morrow GA Invs., LLC*, No. 23-13134, 2025 U.S. App. LEXIS 20729, 2025 WL 2364999 (11th Cir. Aug. 14, 2025). Although the Katebians were not parties to the underlying bankruptcy proceeding, the district court ruled that they had standing to pursue the appeals from the bankruptcy court’s orders. See

¹ The bankruptcy case was later dismissed and closed by an order entered by the bankruptcy court in February 2024.

Katebian, 654 B.R. at 408-12(III)(A). The district court consolidated the appeals and dismissed them as equitably moot. *Id.* at 412-17(III)(B). The district court held that Appellants' request to revise the settlement and credit bid amount after the sale had already occurred was "incongruent with fundamental notions of equity and fairness," would create a windfall for the bankruptcy estate, and would cause an unmanageable situation for the bankruptcy court. See *id.*

Appellants then appealed the district court's decision to the Eleventh Circuit Court of Appeals. See *Katebian v. Ogier (In re Morrow Ga. Invs., LLC)*, No. 23-13134, slip op. at 1 (11th Cir. Aug. 14, 2025) (per curiam) (2025 U.S. App. LEXIS 20729, 2025 WL 2364999). The Eleventh Circuit affirmed the district court's decision. See *id.* at *1-2.

In March 2024, while the appeal to the Eleventh Circuit was pending, Appellants filed the instant action in the state trial court, asserting claims for negligent misrepresentation, breach of contract, unjust enrichment, declaratory judgment, and attorney fees and interest. Appellants' claims, though presented as state law causes of action, again challenged the bankruptcy settlement and credit bid. They alleged that the settlement and credit bid amount exceeded the loan balance, resulting in an

overbid or surplus at the sale. They also claimed that they were entitled to a recovery of the alleged surplus. In addition, Appellants claimed that the alleged surplus precluded 1590 Adamson from asserting guarantor liability for any purported deficiency.

Appellees moved to dismiss the lawsuit, arguing, *inter alia*, that the claims constituted an improper attempt to collaterally attack the bankruptcy court's orders. Following a hearing,² the trial court granted the dismissal motion. In doing so, the trial court concluded that it lacked jurisdiction to adjudicate Appellants' claims since they arose out of a property sale made pursuant to the bankruptcy court's sale order, and the bankruptcy court "retained exclusive jurisdiction over any matters related to or arising from the implementation of [that order.]" This appeal followed.

A motion to dismiss for lack of subject-matter jurisdiction can allege either a facial challenge, in which the court accepts as true the allegations on the face of the complaint[,], or a factual challenge, which requires consideration of evidence beyond the face of the complaint. And we review *de novo* a trial court's grant of a motion to dismiss due to lack of subject-matter jurisdiction. We also construe the pleadings in the light

² Pursuant to the designated omission in Appellants' amended notice of appeal, a transcript of the hearing was not transmitted with the appellate record.

most favorable to the nonmoving party with any doubts resolved in that party's favor.

Stillwell v. Topa Ins. Co., 363 Ga. App. 126, 127-128 (871 SE2d 8) (2022) (citation modified). We will affirm the judgment when it is right for any reason.³ *Shadix v. Carroll County*, 274 Ga. 560, 565(3)(c) (554 SE2d 465) (2001); *Tsoglin v. Jackson*, 375 Ga. App. 367, 369(2) (916 SE2d 209) (2025).

³ The trial court's decision that it lacked jurisdiction relied upon the retention clause in the bankruptcy court's sale order, which provided that the bankruptcy court "shall retain exclusive jurisdiction over any matters related to or arising from the implementation of [its] Order and to enter any Orders in aid or furtherance of [its] Order, and to adjudicate any and all remaining issues concerning the Trustee's right and authority to assume, assign and/or sell the Property." But subject-matter jurisdiction is conferred upon this state's trial courts by constitution and statute, not by court order. See *Wilson v. Gouse*, 263 Ga. 887, 894(4) (441 SE2d 57) (1994) (concluding that foreign jurisdiction's court order purporting to retain exclusive and continuing jurisdiction over claims was ineffective to divest state trial court of subject matter jurisdiction to decide the parties' claims); *MSM Poly, LLC v. Textile Rubber & Chem. Co.*, 353 Ga. App. 538, 541(2) (839 SE2d 4) (2020) ("Subject matter jurisdiction is conferred to a court by state law[.]" (punctuation omitted)). See also Ga. Const. of 1983, art. VI, § IV, para. I (establishing jurisdiction of superior courts); OCGA § 15-6-8(1) (providing jurisdiction of superior courts). Nevertheless, as explained herein, the trial court correctly ruled that it was without jurisdiction to issue a decision that would revise the bankruptcy court's orders.

Here, the allegations of the complaint, as amended, demonstrate that Appellants' claims seek to challenge the amount of the credit bid that was part of the settlement reached and approved by the bankruptcy court.⁴ Appellants' allegations repeatedly raise and cite to the bankruptcy court's orders and proceedings as the underlying basis for their claims. Addressing Appellants' claims and granting the relief requested would in essence require modification of the bankruptcy court's order approving the settlement amount, which the trial court was without jurisdiction to do. See *Cloud v. Georgia Cent. Credit Union*, 214 Ga. App. 594, 597(3) (448 SE2d 913) (1994) (holding that state court is not the proper forum to challenge the decision of the U.S. bankruptcy court).

Appellants' state law claims alleging entitlement to surplus proceeds from the bankruptcy sale would have required a determination of distributions from the bankruptcy estate and are preempted by federal bankruptcy law. See *Roy v. Garden*

⁴ While arguing that its claims did not seek to modify or vacate the bankruptcy court's orders, Appellants concede that their claims are based upon the legal consequences of the credit bid in the bankruptcy court sale. Here, as in their federal appeals, Appellants claim that the amount of the credit bid exceeded the amount of the debt, which created a surplus to which they were entitled. In this regard, Appellants' claims take issue with the amounts agreed upon in the bankruptcy settlement, which was approved by the bankruptcy court.

Ridge, L.P., 283 Ga. App. 74, 75 (640 SE2d 665) (2006) (holding that appellants' state court attempt to modify or dissolve the bankruptcy court's discharge order was preempted by the federal bankruptcy code, and they were required to pursue their claims in the bankruptcy court); *Stivali v. Aquipoint Aylesbury*, 244 Ga. App. 389, 390-91(1) (535 SE2d 551) (2000) (directing trial court to dismiss claim without prejudice for lack of subject matter jurisdiction since claim was based upon bankruptcy court orders and was thus preempted by federal bankruptcy law). See also *Bank of Am. Corp. v. Kachkar (In re Kachkar)*, 769 Fed. Appx. 673, 679(III)(A), (B) (2019) (holding that bankruptcy court retained jurisdiction to decide claimant's post-confirmation claims based on and intertwined with several bankruptcy court orders regarding settlement of a creditor's claims and the sale of the debtor's property since the bankruptcy court plainly had jurisdiction to interpret and enforce its own prior orders); *Trauner v. State Bank & Trust Co. (In re Solid Rock Dev. Corp.)*, 481 B.R. 221, 228 (2012) (explaining that bankruptcy estate's interest in any potential surplus resulting from the foreclosure sale remained property of the estate and, therefore, was subject to being determined by the bankruptcy court). As such, Appellants were required to pursue their claims in the bankruptcy court. See *Celotex Corp. v. Edwards*,

514 US 300, 313(II) (115 SCt 1493, 131 LE2d 403) (1995) (explaining that if respondents believed the bankruptcy court's injunction order was improper, they should have challenged it in the bankruptcy court); *Roy*, 283 Ga. App. at 75 (same). And if dissatisfied with the bankruptcy court's ultimate decision, Appellants' remedy was to pursue an appeal to the district court for the judicial district in which the bankruptcy judge was serving under 28 U.S.C. § 158(a), and then to the Court of Appeals for the Eleventh Circuit under § 158(d). See *Celotex Corp.*, 514 U.S. at 313(II). Indeed, Appellants did appeal the bankruptcy court's orders in federal court. But their disagreement with the decisions reached by the federal court does not allow them to then collaterally attack those decisions in the state court.⁵ See *id.* (holding that litigants cannot collaterally attack bankruptcy court orders by filing separate actions in other courts).

Judgment affirmed. Doyle, P. J., and Davis, J., concur.

⁵ Appellees contend that Appellants' claims also are barred by the doctrines of res judicata and collateral estoppel, among other alternative grounds. But those alternative grounds were not decided by the trial court below. Nor do we address them in this appeal. Generally, "appellate courts do not rule on issues not ruled on by the trial courts[, which] preserves the appellate courts' jurisdiction and delineates the proper roles of the courts at the trial and appellate levels." *City of Gainesville v. Dodd*, 275 Ga. 834, 838 (573 SE2d 369) (2002).