

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:)
)
CONSOLIDATED INDUSTRIES CORP.) CASE NO. 98-40533
)
Debtor)

DECISION AND ORDER ON OBJECTION TO CLAIMS

At Fort Wayne, Indiana, on May 24, 2007.

The trustee has objected to two claims, filed on behalf of the Madison County Treasurer, designated by the clerk as claim number 89 and claim number 193. There has been no response to this objection within the time required by the local rules of this court, N.D. Ind. L.B.R. B-3007-1(b), and the matter is now before the court.

As to claim number 89, the trustee asks that it be denied because it has been “superseded, amended, and/or duplicated” by claim number 193. Unfortunately, he does not specify which shortcoming he is complaining about, and it matters. If claim number 89 has been duplicated by claim number 193 – so that the creditor has literally filed the same claim twice – the objection is well-taken. The creditor is entitled to only one claim against the estate. If, however, claim number 89 has been superseded or amended by claim number 193, the trustee does not even need to address it. It is no longer pending before the court and of no further force or effect. Cf. 188 LLC v. Trinity Industries, Inc., 300 F. 3d 730,736 (7th Cir. 2002) (“An amended pleading ordinarily supersedes the prior pleading. The prior pleading is in effect withdrawn . . . and becomes functus officio.”); Kelley v. Crosfield Catalysts, 135 F. 3d 1202,1204-1205 (7th Cir. 1998) (same). The objection to claim number 89 is therefore OVERRULED, without prejudice.

As for claim number 193, which represents a claim for property taxes from the years 1997

and 1998, the trustee has asked that the penalties assessed for both years be disallowed; and that the taxes assessed for 1998 should not be given priority status, because the tax was “not last due without penalty after one year before the petition date,” Trustee’s Amended Objection, ¶ 2(d)(2), and, as a result, it should be allowed as a general, unsecured claim. Given what the trustee has submitted, the court has some question whether the stated basis for the objection to the penalty portion of the taxes is a sufficient reason to completely deny that portion of the creditor’s claim. See, 11 U.S.C. §§ 502(b)(9), 507(a)(8)(G) (priority for certain tax penalties), 726(a)(4) (distribution priority for certain fines, penalties, etc.). The court also has questions regarding the trustee’s stated reason for demoting the 1998 tax claim from priority to general unsecured status. The trustee’s objection indicates that the tax was last due without penalty on May 1, 1999, and this case was filed on May 28, 1998. One year before that would be May 29, 1997. Since the taxes were due by May 1, 1999, it certainly seems that they were “last payable without penalty after one year before the date” the petition was filed. See, 11 U.S.C. § 507(a)(8)(B).

In light of these concerns, the trustee shall have fourteen (14) days within which to file a brief in support of his objection to claim number 193. In particular, this brief should address whether claims for tax penalties should be disallowed in their entirety or receive some other treatment, see, 11 U.S.C. §§ 507(a)(8)(G), 726(a)(4), and why, given the due date of May 1, 1999, the 1998 taxes were not last payable without penalty after one year before the date of filing are not entitled to priority status. See, 11 U.S.C. § 507(a)(8)(B). The failure to do so will result in the objection to claim number 193 being overruled without further notice or hearing.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court