

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
SIM W. RILEY, JR. and) CASE NO. 08-20411 JPK
MARGARET RILEY,) Chapter 13
)
Debtors.)

ORDER ON OBJECTION TO CLAIM #7

On June 12, 2008, the debtors, by counsel, filed an objection to claim #7 of The LaPorte Savings Bank. The record establishes that proper notice of the objection was provided to the claimant, and that no response to the objection or request for hearing was filed by the claimant.

The objection contends that the claim's assertion that the debt subject to the claim is secured by real estate is erroneous. The objection acknowledges that the debt is secured by a security interest in a specifically designated item of personal property.

11 U.S.C. § 502(a) provides that a claim is deemed allowed upon the filing of a proof of claim unless a party-in-interest objects. Fed.R.Bankr.P. 3001(f) provides that a proof of claim "executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim". There is thus a *prima facie* validity to claim #7 which the debtors must overcome.

Review of the claim establishes that the debt asserted in the claim is secured by the property described in the objection; however, the claim has no evidence of its being secured by real property. Accompanying the debtors' objection is an affidavit signed by both of the debtors which states that they have no recollection of securing the debt by means of an interest in real estate.

The court finds that the debtors have sustained their burden of proof to overcome the *prima facie* validity of the nature of the security asserted in claim #7.

IT IS ORDERED that claim #7 is allowed as a secured claim, secured by a 1999

International, Paystar F5070, VIN #1HSTGAET7XJ003877.

IT IS FURTHER ORDERED that the indebtedness asserted in claim #7 is not secured by an interest in the debtor's real property.

Dated at Hammond, Indiana on July 31, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee