

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

|                         |   |          |          |
|-------------------------|---|----------|----------|
| IN THE MATTER OF:       | ) | CASE NO. | 05-40309 |
|                         | ) | CHAPTER  | 13       |
| KENNETH CHARLES LABERTA | ) |          |          |
| BONNIE LOUISE LABERTA   | ) |          |          |
|                         | ) |          |          |
| Debtors                 | ) |          |          |

DECISION AND ORDER DENYING OBJECTION TO CLAIM

At Fort Wayne, Indiana, on September 26, 2008.

The trustee in this Chapter 13 case has objected to a claim filed on behalf of Mortgage Electronic Registration Systems, Inc., as nominee for Netbank which has been designated by clerk as claim no. 18. 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 before the court for a decision.

The trustee asks that the claim be denied because it duplicates claim number 6 which is being allowed. Admittedly the creditor is entitled to only one claim against the estate, but claim 18 is not a duplicate claim – the same claim filed twice. Instead, it amends and replaces a claim filed on May 12, 2005. As a result, original claim filed by Mortgage Electronic Registration Systems, Inc., as nominee for Netbank – claim no. 6 – has been superceded by claim no. 18. It is no longer pending before the court and of no further force or effect. See Cf., 188 LLC v. Trinity Industries, Inc., 300 F.3d 730, 736 (7th Cir. 2002)(“An amended pleading ordinarily supercedes the prior pleading. The prior pleading is in effect withdrawn. . .and becomes functus officio.”); Kelley v. Crosfield Catalysts, 135 F.3d 1202,1204-05 (7th Cir. 1998)(same). Thus, Mortgage Electronic Registration Systems, Inc., as nominee for Netbank is asserting only one claim against the estate, not two, and the fundamental premise of the trustee’s objection is incorrect.

IT IS THEREFORE ORDERED that the trustee’s objection to claim no. 18 filed by

Mortgage Electronic Registration Systems, Inc., as nominee for Netbank is overruled.

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