

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 AMENDED OBJECTION TO CLAIMS**

At Fort Wayne, Indiana, on October 30, 2008.

The trustee has objected to three claims, filed on behalf of the Tippecanoe County Treasurer, designated by the clerk as claim number 32, claim number 109 and claim number 224.<sup>1</sup> 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As to claim numbers 32 and 109, the trustee asks that they be denied because they have been “superseded, amended, and/or duplicated” by claim number 224. Unfortunately, he does not specify which shortcoming he is complaining about, and it matters. If claims 32 and 109 have been duplicated by claim 224 – 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 If, however, claims 32 and 109 have been superseded or amended by claim 224, the trustee does not even need to address them. They are no longer pending before the court and of no further force or effect. Cf., Johnson v. Dossey, 515 F.3d 778, 780 (7th Cir. 2008)(“When an amended complaint is filed, the prior pleading is withdrawn and the amended pleading is controlling.”); 188 LLC v. Trinity Industries,

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<sup>1</sup>The court notes that the objection fails to comply with the local rules of this court which requires that “all papers presented for filing shall be . . . double spaced, except for quoted material.” N.D. Ind. L.B.R. B-5005-2(a). By double-spacing motions, objections, various responses, and other matters presented, those documents become much easier for the court to read and decipher.

Inc., 300 F.3d 730, 736 (7th Cir. 2002); Kelley v. Crosfield Catalysts, 135 F.3d 1202,1204-05 (7th Cir. 1998). The objections to claims 32 and 109 are therefore OVERRULED, without prejudice.

As for claim number 224, which represents, in part, a claim for property taxes from the years 1997 and 1998, the trustee's objection is divided in portions A, B, and C. As to portion A, the trustee has asked that it be disallowed as a secured claim. But, a challenge to the validity, priority, or extent of a lien must be filed as an adversary proceeding, not as an objection to a claim. Fed. R. Bankr. P. Rule 7001(2). An objection to a claim addresses only the validity of the debt, the amount due, or its priority. Issues concerning liens or their value must be raised in other proceedings. See, Fed. R. Bankr. P. Rule 7001(2) (adversary proceeding to determine validity, priority or extent of a lien); Fed. R. Bankr. P. Rule 3012 (motion to value security).

As to the remainder of the objection to portion A, as well as a part of the trustee' objection to portion B, of claim number 224, the trustee asks that those claims not be allowed as an administrative expense, but allowed as priority claims. The court does not really understand this objection or why the trustee contends the creditor is seeking an administrative expense. To begin with, administrative expenses are themselves priority claims – they are simply the first of nine different types of priority claims identified in § 507 as it applies to this case. But, unless this is a post-petition, pre-conversion claim – and nothing in the trustee's objection suggests that it was – claims for an administrative expense are not made through the claims process, but by motion on notice to all creditors. No such motion has been filed. Consequently, the court does not understand why the trustee is trying to characterize the claim as such. In order to properly address this portion of the trustee's objection, the court needs more information about what the creditor has done.

As to the remainder of portion B of the trustee's objection to claim number 224, the trustee

asks that the penalties assessed for 1998 be disallowed as priority claims and allowed as a general unsecured claim subordinated to other general unsecured claims pursuant to § 726(a)(4). Trustee's Amended Objection, ¶ 4(b). To that extent, the trustee is correct and that portion of the trustee's objection is SUSTAINED.

As to portion C of the trustee's objection which asks that the portions of the objection designated as part C be allowed as an administrative claim. This portion of the trustee's objection appears to raise no issue as to either the validity of the debt or the amount due the creditor as of the date of the petition, see, 11 U.S.C. § 502(b); In re Taylor, 289 B.R. 379 (Bankr. N.D. Ind. 2003), or the claimed priority, and is dismissed as MOOT.

The trustee also attempts to raise a counterclaim in his objection. Counterclaims cannot be raised in an objection to a claim, but require an adversary proceeding. In re Consolidated Industries Corp., 1999 Bankr. LEXIS 556, 1999 WL 297492 (Bankr. N.D. Ind. 1999).

So, for all of these reasons, the trustee's amended objection is sustained, in part, insofar, as the trustee asks that the penalty portions of part B be disallowed as priority claims and allowed as a general unsecured claim subordinated to other general unsecured claims. In all other respects, the trustee's objection is either overruled or moot.

SO ORDERED.

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