

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ANTONIO SALAZAR, JR. and) CASE NO. 08-22438 JPK
ANGELINA SALAZAR, JR.,) Chapter 13
)
Debtors.)

ORDER REGARDING OBJECTION TO CLAIM #4

On February 3, 2009, the debtors, by counsel, filed an Objection to Claim No. 4 of Rogers & Holland Jewelers. Service of the objection was proper, and no request for hearing with regard to the objection was filed. The objection seeks to reclassify the claim of Rogers & Holland Jewelers from a secured claim to an unsecured claim, based on the statement in paragraph 3 of the objection that the “Debtor is not in possession of the alleged secured items as they were lost or destroyed”.

11 U.S.C. § 502(a)/Fed.R.Bankr.P. 3001(f) provide a presumption of validity of a claim. The presumptive validity of a claim can be overcome by the debtor if the debtor establishes a *prima facie* case for disallowance of the claim. The manner in which a *prima facie* objection is established varies from case to case, but in the context of seeking to reclassify a secured claim to an unsecured claim more is necessary than a statement that the collateral which provided security for the claim has been “lost or destroyed”. First, the concept of property being “lost” is totally different from the concept of property being “destroyed”: either the property was lost, or it was destroyed – one or the other. Second, the circumstances in which the property was “lost” or “destroyed” appear nowhere in this objection: on its face, the objection merely states a conclusory allegation without any support necessary to overcome the *prima facie* validity of the claim. Third, even if it were to be assumed that the collateral was lost or destroyed, the date upon which the debtors ceased to have any interest in the property which would allow for its inclusion in property of the estate under 11 U.S.C. § 541 is not stated: if the property was lost

or destroyed subsequent to the date of the petition, the creditor still has an allowed secured claim.

The court determines that the objection designated above is insufficient to overcome the *prima facie* validity of the claim to which it is directed, and that the objection should be denied, without prejudice.

IT IS ORDERED that the foregoing objection to claim #4 is denied, without prejudice to the filing of an objection which establishes grounds upon which it may be granted.

Dated at Hammond, Indiana on March 19, 2009.

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

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee