

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
DAVID W. PRIMM) CASE NO. 01-13824
)
Debtor)

DECISION AND ORDER

At Fort Wayne, Indiana, on August 22, 2005.

The trustee in this Chapter 7 case has objected to claims filed on behalf of Bank One and VISA which have been designated by clerk as claim nos. 36 and 5, respectively. There have been no responses to these objections 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 claims be denied because they duplicate claim numbers 40 and 14 which are being allowed. Admittedly the creditor is entitled to only one claim against the estate, but claims 40 and 14 are not duplicate claims – the same claims filed twice. Instead, they amend and replace claim the earlier filed claims. As a result, the original claims filed by Bank One and VISA – claim nos. 36 and 5 – have been superceded by claims 40 and 14. They are 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 The prior pleading is in effect withdrawn.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, Bank One and VISA are asserting only one claim against the estate, not two, and the fundamental premise of the trustee’s objections is incorrect.

IT IS THEREFORE ORDERED that the trustee’s objections to claim nos. 36 and 5 filed by Bank One and VISA are overruled.

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