

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 ON CROSS MOTIONS FOR SUMMARY JUDGMENT

At Fort Wayne, Indiana, on June 19, 2006.

This matter is before the court on the parties' cross motions for summary judgment with regard to the Trustee's objections to claims numbered 65, 84, and 216. Those claims were originally filed by The Trane Company but have since been transferred to and are now held by Enodis Corporation. The trustee has objected to them because their current owner, Enodis, was the recipient avoidable transfers which have not yet been returned to the bankruptcy estate; thus the trustee argues that the claims should be disallowed pursuant to § 502(d) of the Bankruptcy Code. In response, Enodis argues that the judgments based upon the avoidable transfers it received are not yet final and that an irrevocable letter has been given in order to stay their execution, so that § 502(d) should not apply.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Bankr. P. Rule 7056(c); Fed. R. Civ. P. Rule 56(c). Here, there are no genuine issues of material fact. Both this court and the District Court have determined that Enodis was the recipient of avoidable transfers. Those judgments have not been satisfied, although they are subject to pending appeals and, based upon an

irrevocable letter, execution has been stayed pending the outcome of those appeals. Based upon these facts, the trustee is entitled to judgment as a matter of law.

This is at least the fourth time the court has been required to address the application of § 502(d) with regard to Enodis in this proceeding. In a decision issued on July 2, 2003, we held that § 502(d) does not require the presence of a final judgment in order to deny a claim. Consolidated Industries Corp., Case No. 98-40533, Decision dated July 2, 2003, p.4. On July 28, 2004, we held that posting a bond in order to secure and stay enforcement of a judgment avoiding transfers will not allow a creditor to avoid having its claim denied through § 502(d). Freeland v Enodis, Adv Pro. 99-4022, Decision dated July 28, 2004, p.38. Then, on September 17, 2004, we reiterated that conclusion. Consolidated Industries Corp., Case No. 98-40533, Decision and Order on Motion to Strike dated September 17, 2004, pp.2-3. Everything the court previously said on the subject remains equally true today.

There are only two differences between situations the court previously addressed and the one before it at the present time. First, the court's earlier decisions all involved claims where Enodis was the original creditor asserting them. Here, by contrast, the claims in question were originally held by Trane and were later transferred to Enodis, who is now their rightful owner. Secondly, rather than a bond to secure the judgment against Enodis, there is now an irrevocable letter of credit. Nonetheless, these differences do not matter at all.

Section 502(d) is not ambiguous. It requires the court to disallow "any claim of any entity from which property is recoverable . . . unless such entity or transferee has paid the amount [for which it is liable]." 11 U.S.C. § 502(d). The statute asks only whether the claim in question is associated with property or a transfer that is recoverable for the estate; if so the claim is denied. It

does not require the presence of a judgment, much less a final judgment, before becoming operable – only the presence of recoverable property or transfers – and it can even be used when the estate could not obtain a judgment because the avoidance claim was barred. See, 4 Collier on Bankruptcy ¶ 502.05[2][a] (15th ed. rev.). Similarly, because the statute involves “any claim of any entity from which property is recoverable” it does not require that the recipient of the avoidable transfer and the original claimant be one and the same. Regardless of the identity of the original creditor, if, as here, a claim is presently held by the recipient of an avoidable transfer § 502(d) says that it shall be disallowed. In a like manner, a claim that originates with the recipient of an avoidable transfer will not become allowable simply by transferring it to someone else. See, In re Enron Corp., 340 B.R. 180 (Bankr. S.D. N.Y. 2006). Thus, whether a claim comes from or is currently held by the recipient of an avoidable transfer § 502(d) works to deny it.

The only way to avoid the operation of § 502(d) is to pay the amount due and nothing short of payment will do. The court previously held that posting a bond to secure payment was not sufficient and the same is true of a letter of credit. A letter of credit represents nothing more than a promise to pay and the prospect that payment will be made sometime in the future; it is not payment itself. See, American Coleman v. Intrawest Bank of Southglenn, 887 F.2d 1382, 1383 (10th Cir. 1989); Pringle-Assoc. Mortg. Corp. v. Southern Nat. Bank, 571 F.2d 871, 874 (5th Cir. 1978). Just as a bond does not satisfy a judgment, Sheldon v. Munford, Inc., 902 F.2d 7, 8-9 (7th Cir. 1990); In re Great Eastern Express, 37 B.R. 579, 582 (Bankr.M.D.Pa. 1984), a letter of credit does not do so either. Section 502(d) is clear. It requires payment. Posting a bond to secure payment, arranging for a letter of credit, offering up a highly solvent guarantor, providing a substantial likelihood that payment will be forthcoming, representing that the check is in the mail, all fall short of what the

statute requires. At best, these things suggest that complete satisfaction will take place some time in the future. Section 502(d) requires more; it requires that satisfaction to be an accomplished reality – not a future event. The trustee has not yet been paid and until that has been done, so long as the judgments against it stand, any claim which Enodis has in this case, regardless of its source, cannot be allowed.

Where the language of a statute is plain, ‘the sole function of the courts is to enforce it according to its terms.’” United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241, 109 S.Ct. 1026, 1030 (1989)(quoting Caminette v. United States, 242 U.S. 470, 485, 37 S.Ct 192, 194 (1917)); Ioffe v. Skokie Motor Sales, Inc., 414 F.3d 708, 711 (7th Cir. 2005). Pursuant to § 502(d), the trustee is entitled to the entry of judgment in his favor denying claims 65, 84 and 216 held by Enodis Corporation. An order doing so will be entered.

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