

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 TRUSTEE’S MOTION TO STRIKE

At Fort Wayne, Indiana, on September 17, 2004.

This matter is before the court on the trustee’s motion to strike Enodis Corporation’s (“Enodis”) objection to the trustee’s motion to compromise the Vansant controversy. At issue is whether Enodis has standing to object to the proposed settlement because it received avoidable transfers which it has failed to return to the estate. See, 11 U.S.C. § 502(d). This court previously concluded that, given the District Court’s decision in Freeland v Enodis, 292 B.R. 354 (N.D. Ind. 2002), Enodis no longer had standing to participate in this bankruptcy case. Consolidated Industries Corp., Case No. 98-40533, Decision dated July 2, 2003. Enodis’ lack of standing is even more certain now than it was when the court first considered the issue. Then, the court was merely certain that Enodis’ claim would be denied. Now, that has actually been done. See, Freeland v Enodis, Adv Pro. No. 99-4022, Judgment, July 28, 2004.

“[L]imits on standing are vital in bankruptcy cases Matter of Deist Forest Products, Inc., 850 F.2d 340, 341 (7th Cir. 1988). See also, Matter of Richman, 104 F.3d 654, 657 (4th Cir. 1997). As a result, “[b]ankruptcy standing is narrower than Article III standing. In re Cult Awareness Network, 151 F.3d 605, 607 (7th Cir. 1998). “To have standing to object to a bankruptcy

order, a person must have a pecuniary interest in the outcome of the bankruptcy proceedings. Id. See also, Matter of Andreuccetti, 975 F.2d 413, 416-17 (7th Cir. 1992). This principal limits participation to those who stand to receive a share of the estate's assets when it comes time to distribute them. In re Cult Awareness, 151 F.3d at 607-08; In re Drost, 228 B.R. 208, 209-10 (Bankr. N.D. Ind. 1998). In other words, standing is generally limited to the debtor's creditors. Even then, however, creditor status is not always enough to give one standing to object to a proposed course of action. Matter of James Wilson Associates, 965 F.2d 160, 168 (7th Cir. 1992); In re Southwest Equipment Rental, 152 B.R. 207, 209 (Bankr. E.D. Tenn. 1992). If being a creditor of the debtor is not sufficient to automatically confer standing, it will come as no surprise that one whose claim has been denied has no standing to participate in the administration of the bankruptcy estate. In re Kieffer-Mickes, 226 B.R. 204, 208 (8th Cir. BAP 1998); In re Giordano, 212 B.R. 617, 623 (9th Cir. BAP 1997); In re Coral Petroleum, 60 B.R. 377, 382-83 (Bankr. S.D. Tex. 1986).

Enodis' claim has been denied. As a result, it does not have a pecuniary interest in the distribution of the bankruptcy estate and, therefore, no standing to participate in its administration. Its arguments in favor of standing are based upon a broad interpretation of the concept, which is contrary to the narrow and limited view adopted by the Seventh Circuit.

Enodis also argues that it should not be treated as though its claim has been denied because it has posted a bond in order to secure payment of the District Court's judgment. This, it contends, should be sufficient to satisfy §502(d)'s requirement that a creditor disgorge the benefits of avoidable transfers in order to have its claim allowed. In its decision denying Enodis' claim, the court considered and rejected this argument.

A bond . . . does not satisfy the 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), and the language of the statute is clear. It requires payment. Posting a bond to secure payment, providing a high 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. The statute requires satisfaction to be an accomplished reality – not a future event. Freeland v Enodis, Adv Pro 99-4022, Decision, July 28, 2004, p.36.

“Congress has clearly provided in section 502(d) that . . . claims may not be allowed unless and until [avoidable transfers] have been returned to the estate. In re Coral Petroleum, Inc., 60 B.R. at 383.

This has not yet happened and, until it does, Enodis has no stake in the outcome of this bankruptcy.¹

Enodis lacks standing to object to the proposed compromise. The trustee’s motion to strike is granted and Enodis’ objection to the trustee’s motion to compromise the Vansant controversy is stricken.

SO ORDERED.

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

¹Even if the court were inclined to treat a bond as the equivalent of payment in order to allow Enodis to avoid the operation of § 502(d), its argument does not address the \$30 million in avoidable transfers this court determined the trustee was entitled to recover. Those transfers are in addition to the ones found by the District Court and they have neither been repaid nor the subject of any bond.