

This opinion is not intended for publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 02-11114
)
JUSTIN R. ANDRUSK, and) Chapter 7
CHRISTINA M. ANDRUSK,)
) Judge Arthur I. Harris
Debtors.)
) ORDER

This matter is before the Court on the Chapter 7 trustee's objection to the proof of claim filed by the Lake County Treasurer. The trustee seeks to have the claim allowed as a secured claim rather than as a priority claim. The Lake County Treasurer has not responded to the Chapter 7 trustee's objection. For the reasons that follow, the Chapter 7 trustee's objection is overruled without prejudice.

Under Bankruptcy Rule 3001(f), "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." On May 20, 2002, the Lake County Treasurer filed what appears to be a valid proof of claim in the amount of \$1,056.66 for one year of delinquent property taxes on the debtors' real property. Under 11 U.S.C. § 507(a)(8)(B) this appears to be a valid unsecured priority claim, even though it may also be fully secured. While the Chapter 7 trustee may prefer to have this claim paid out of proceeds from the likely foreclosure of the debtors' real property

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rather than from the debtors' estate, the Court cannot ignore the fact that the claim is also entitled to priority treatment under 11 U.S.C. § 507(a)(8)(B).

Accordingly, the Chapter 7 trustee's objection is overruled without prejudice. If the claim has in fact been paid as a result of foreclosure or other sale, or if the Lake County Treasurer consents to the claim being treated as secured instead of priority, then a renewed objection can be sustained.

IT IS SO ORDERED.

/s/ Arthur I. Harris 12/09/2002
Arthur I. Harris
United States Bankruptcy Judge