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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT**

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

6	In re:)	BAP No.	WW-05-1494-KPaN
)		
7	JOSE A. GARVIDA and BETTY C.)	Bk. No.	04-17846
	GARVIDA,)		
8)		
	Debtors.)		
9	_____)		
)		
10	LITTON LOAN SERVICING, LP,)		
)		
11	Appellant,)		
)		
12	v.)	OPINION	
)		
13	JOSE A. GARVIDA; BETTY C.)		
	GARVIDA,)		
14)		
	Appellees.)		
15	_____)		

Argued and Submitted on June 23, 2006
at Seattle, Washington

Filed - July 31, 2006

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Karen A. Overstreet, Chief Bankruptcy Judge, Presiding.

Before: KLEIN, PAPPAS, and NIELSEN,¹ Bankruptcy Judges.

¹ Hon. George B. Nielsen, Jr., United States Bankruptcy
Judge for the District of Arizona, sitting by designation.

1 KLEIN, Bankruptcy Judge:
2

3 The underlying question turns on who bears the burden of
4 proof and the correlative risk of nonpersuasion regarding the
5 amount owed on a disputed claim in a bankruptcy case. The answer
6 is that the substantive burden of proof is the same as under
7 applicable nonbankruptcy law and is not affected by the
8 evidentiary presumption created by Federal Rule of Bankruptcy
9 Procedure 3001(f) that operates to shift the burden of
10 production, but not the burden of proof.

11 The appellant mortgage service company, which does not
12 contest that nonbankruptcy law allocates to it the burden of
13 proof on the question of the correct mortgage payoff amount,
14 declined to provide the accounting that the court required as
15 proof that it was entitled to \$18,286.42 more than what the
16 evidence suggested the correct payoff amount should be. We
17 AFFIRM the order that operated to sustain an objection to claim.
18

19 FACTS

20 The debtors filed a chapter 13 bankruptcy case in June 2004
21 to rescue their residence in Seattle, Washington, from default on
22 a mortgage loan serviced by Litton Loan Servicing, LP ("Litton")
23 on behalf of Chase Manhattan Mortgage Corporation.

24 Litton filed a proof of claim asserting that the total
25 amount of the debt at the time of filing was \$238,188.46 (unpaid
26 principal of \$223,960.91 and accrued arrearage of \$14,227.55) on
27 which interest was accruing at a contract rate of 8 percent and
28 objected to the debtors' initial plan on the basis that it did

1 not provide for payments sufficient to pay the Litton claim.

2 Accepting Litton's figures, the debtors amended their plan
3 to make mortgage payments through the plan. The plan proposed to
4 pay \$2,500.00 per month to the trustee, who would pay Litton the
5 contractual mortgage payments of \$1,882.02, and to pay \$395.21
6 per month to retire the \$14,227.55 arrearage. The 1st Amended
7 Plan, to which Litton did not object, was confirmed by order
8 entered October 15, 2004, and, inexplicably, by a second order
9 entered June 14, 2005.

10 The debtors made their regular plan payments that included
11 their mortgage payments. Litton received a total of \$26,348.28
12 (\$22,584.24 by June 30, 2005) from the chapter 13 trustee on
13 account of the mortgage loan through August 2005.

14 Meanwhile, in December 2004, the debtors negotiated a
15 refinance with another lender on terms more favorable than the
16 Litton mortgage (the residence appraised at \$350,000) and made a
17 motion for authority to refinance and pay Litton in full.

18 The court granted permission to refinance by order entered
19 December 22, 2004, which order (later amended twice to change the
20 lender) required the escrow company to pay off the plan in full.

21 The refinance escrow closed on June 30, 2005, on the
22 mistaken assumption (no fault of the debtors²) that Litton was
23 owed \$213,372.60. After the closing, Litton rejected the escrow
24 payoff check and demanded an additional \$30,004.22, which at the

25
26 ² Litton did not deny it made the mistake. The closing
27 agent: "Litton gave an incorrect payoff statement." Closing
28 Documents on Refinance at 2. Litton's Payoff Department
Supervisor wrote: "Your closing agent, [name], has used a payoff
statement reflecting payoff figures for another account and this
statement was used to close your transaction." Id. at 3.

1 time equated with a total debt of \$265,961.06 (= \$213,372.60 +
2 \$30,004.22 + \$22,584.24).

3 Assuming that the Litton demand was correct, the debtors
4 proposed a plan modification (2nd Amended Plan) on July 12, 2005,
5 that would allow them to pay their new mortgage outside the plan
6 and pay Litton through the plan \$1,000.00 per month without
7 interest until the debt was retired. Litton objected to the
8 omission of a provision for payment of interest on the balance.

9 At the initial confirmation hearing on the modification, on
10 October 5, 2005, the debtors' counsel represented that they would
11 adjust their plan to pay whatever an accounting showed was owed
12 to Litton. The court directed Litton to provide an accounting by
13 October 12 and thereupon continued the hearing to October 19.

14 At a second hearing, on October 19, the court was
15 dissatisfied with the sketchy information that Litton provided,
16 which the court regarded as unintelligible.³ It continued the
17 hearing to enable Litton to prove the correct amount. It also
18 persuaded Litton to accept the remaining escrow proceeds of
19 \$213,671.85 as partial payment. Thus, postpetition payments to
20 Litton totaled \$240,020.13 (= \$213,671.85 + \$26,348.28).

21 Acceding to Litton's demand for interest, the debtors
22

23 ³ The court told Litton's counsel:

24 THE COURT: . . . [W]hat I'm looking for is how does
25 [debtors' counsel] know what makes up the \$30,000? If it's
26 just a matter of inputting this stuff into a spreadsheet and
27 having the number be spit out, that's one thing. But it's
28 quite another if it's made up of this plus legal fees, plus
inspection fees plus a bunch of other stuff that's not
disclosed.

1 proposed a new modification (3rd Amended Plan) that was set for
2 hearing on November 16, 2005. Monthly plan payments of \$1,950.00
3 would be used to pay Litton under the contractual terms
4 (principal, interest, and escrow) of the mortgage to extinguish
5 the deficit, pegged at \$22,348.36 in the plan modification.

6 Litton filed an objection to the 3rd Amended Plan,
7 contending that the balance owed was \$33,435.46, which equates
8 with a total debt of \$273,455.59 (= \$240,020.13 + \$33,435.46),
9 and filed an amended proof of claim for \$33,435.46. It did not,
10 despite the court's request, support the proof of claim with an
11 accounting.

12 At the November 16 hearing, in effect objecting to the
13 claim, the debtors proffered materials received from Litton that
14 indicated the total owed was \$15,149.04, which equates with a
15 total of \$255,169.17 (= \$240,020.13 + \$15,149.04). When the
16 court again asked Litton for a breakdown of numbers so it could
17 analyze the debtors' version (\$255,169.17) against Litton's
18 version (\$273,455.59), Litton's counsel merely responded that
19 Litton was working from a "different" payoff quotation than
20 debtors' counsel.

21 Reasoning that Litton had not carried its burden of proof
22 after being given multiple opportunities to do so, the court
23 ruled that the remaining amount owed was \$15,149.04, in effect
24 sustaining the debtors' objection to any greater sum, and that it
25 would confirm a plan revised to provide for payment of that sum,
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1 instead of the \$22,348.36 stated in the plan modification.⁴

2 Litton did not object to the method of taking evidence or to
3 the manner in which the claim objection was resolved.

4 An order was entered fixing the balance of Litton's claim at
5 \$15,149.04 as of December 1, 2005, and confirming the modified
6 plan providing for plan payments sufficient to fund the unpaid
7 balance with monthly payments to Litton of \$1,648.95 at 8 percent
8 interest. This timely appeal ensued.

9
10 JURISDICTION

11 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334.
12 We have jurisdiction under 28 U.S.C. § 158(a)(1).

13
14 ISSUES

15 1. Whether an objection to claim could be accomplished
16 through a chapter 13 plan instead of a formal objection under
17 Federal Rule of Bankruptcy Procedure 3007.

18
19 ⁴ The court's ruling was:

20 THE COURT: Okay. Well, I don't get it. And so, [debtors],
21 I'm going to find in your favor. I asked for this principal
22 to be broken down so that I could see what it was, and yet
they filed an amended claim that just had the same number on
it that isn't broken down, \$33,435.46.

23 And I did look at the payoff. I have it right here
24 with me. I did look at the payoff with the higher number.
25 And it still doesn't explain to me – the difference here is
26 some escrow, late charges, corporate advances to get up to
244. And I don't have any idea what that's about. And
[creditor's counsel] has added them in, a bunch of that
stuff.

27 So I'm going to find that [debtors' counsel], your
28 number is the number. And I will confirm the plan if your
client agrees to pay that number.

Tr. 11/16/05 at 9.

1 U.S.C. § 502(a). The specific requirement of § 502(a) that there
2 be an objection in order to defeat a claim that is “deemed
3 allowed” controls the more general provision in Bankruptcy Code
4 § 1327(a) that the provisions of a confirmed plan bind the debtor
5 and all creditors. 11 U.S.C. § 1327(a); Green v. Bock Laundry
6 Mach. Co., 490 U.S. 504, 524 (1989); id. at 529 (Scalia, J.,
7 concurring); Fireman’s Fund Mortgage Corp. v. Hobdy (In re
8 Hobdy), 130 B.R. 318, 321 (9th Cir. BAP 1991) (“§ 502(a) is the
9 statutory provision which specifically governs questions of
10 claims allowance and, consequently, should control over the more
11 general policy considerations embodied in § 1327(a)”); 9 COLLIER
12 ON BANKRUPTCY ¶ 3007.01[3] (Alan N. Resnick & Henry J. Sommer eds.
13 15th ed. rev. 2006) (“COLLIER”).

14 In other words, § 1327(a) binds the parties as to the
15 amounts to be distributed under the chapter 13 plan but does not
16 alter the allowed amount of the claim, which is what the trustee
17 must pay. Compare Hobdy, 130 B.R. at 321, with id. at 322
18 (Perris, J., concurring). Hence, a proof of claim at variance
19 with the plan may trigger a claim objection or plan modification.
20 In re Kincaid, 316 B.R. 735, 741-42 (Bankr. E.D. Cal. 2004).

21 Federal Rule of Bankruptcy Procedure 3007 prescribes the
22 procedure for making an objection pursuant to § 502(a). FED. R.
23 BANKR. P. 3007; 9 COLLIER ¶ 3007.RH. An objection is to be in
24 writing and must be filed. FED. R. BANKR. P. 3007. An objection
25 is a “contested matter” governed by Federal Rule of Bankruptcy
26 Procedure 9014, unless a counterclaim is joined with the
27 objection, in which event it becomes an adversary proceeding.
28 Id. Advisory Comm. Note.

1 Although an objection to claim under Federal Rule of
2 Bankruptcy Procedure 3007 is required to contest a claim, it
3 nevertheless is possible to object to a creditor's claim through
4 a proposed plan, so long as proper notice is given. Varela v.
5 Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.), 293 B.R.
6 489, 497-500 (9th Cir. BAP 2003) (chapter 11); Shook v. CBIC (In
7 re Shook), 278 B.R. 815, 824 (9th Cir. BAP 2002) (allowed claim
8 amount can be fixed at confirmation if creditor receives clear
9 notice); Hobdy, 130 B.R. at 320-21 (same); Dresser Indus. Inc. v.
10 Rite Autotronics Corp. (In re Rite Autotronics Corp.), 27 B.R.
11 599, 602 (9th Cir. BAP 1982) (same); cf., Brady v. Andrew (In re
12 Commercial W. Fin. Corp.), 761 F.2d 1329, 1336 (9th Cir. 1985).

13 Considerations of due process mandate caution when ersatz
14 procedure is used and require that the creditor receive specific
15 notice and be afforded the same opportunity to litigate one-on-
16 one, as would occur in a straightforward claim objection under
17 Rule 3007. Dynamic Brokers, Inc., 293 B.R. at 497.

18 In this instance, it is unambiguous that the debtors and
19 Litton litigated the plan confirmation as if it was a claim
20 objection proceeding. Indeed, this plan confirmation was
21 strictly a two-party dispute. Beginning with the second amended
22 plan filed on July 12, 2005, the parties litigated one-on-one
23 regarding the correct payoff amount in the same manner as they
24 would have under Rule 3007. Litton had notice that the debtors
25 objected to its payoff amount of \$33,435.46 from the outset, and
26 the bankruptcy court requested, on multiple occasions, that
27 Litton provide a breakdown of its claim so that it could
28 determine the value of the claim. Litton actively participated

1 in the process by trying to persuade the court that it was
2 entitled to the amount in its amended proof of claim, but
3 refusing to proffer evidence to validate its claim.

4 Nor did Litton object to or question the procedure being
5 utilized in the bankruptcy court and only raises its procedural
6 challenge for the first time on appeal.

7 In view of the litigation choice by Litton not to insist on
8 a separate claim objection proceeding and in view of the close
9 resemblance of the two-party confirmation proceeding to a claim
10 objection proceeding, Litton has waived the issue. Since it is
11 purely a two-party dispute that was resolved without an effect on
12 other creditors, the expectations of other parties were not
13 affected by the incorrect procedure.

14 Moreover, we do not reverse for reasons that do not affect
15 the substantial rights of parties. 28 U.S.C. § 2111; FED. R.
16 BANKR. P. 9005, incorporating FED. R. CIV. P. 61; Donald v. Curry
17 (In re Donald), 328 B.R. 192, 203-04 (9th Cir. BAP 2005). Thus,
18 the procedural error in this instance was rendered harmless when
19 the parties litigated the dispute as if it was a claim objection.
20

21 II

22 The crucial question is whether the court correctly
23 concluded that Litton did not satisfy its burden of proof. The
24 analysis requires that one distinguish between burden of proof
25 and burden of going forward.
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1 A

2 The burden of proof is a substantive aspect of a claim that
3 comprises an essential element of the claim itself. Raleigh v.
4 Ill. Dep't of Revenue, 530 U.S. 15, 20-21 (2000).

6 1

7 Under the "basic federal rule in bankruptcy," nonbankruptcy
8 (usually state) law governs the substance of claims. Id. at 20;
9 Butner v. United States, 440 U.S. 48, 55 (1979); 9 COLLIER
10 ¶ 3001.09. Thus, the bankruptcy trustee in Raleigh had the
11 burden of proof on a claim objection because Illinois law placed
12 the burden on the taxpayer debtor. Raleigh, 530 U.S. at 20.

14 2

15 The general common law rule regarding payment and burdens of
16 proof subdivides into successive burdens. First, once there is a
17 prima facie showing of an indebtedness or obligation to pay, the
18 burden of proving the facts regarding payment is on the party who
19 alleges payment, ordinarily the obligor or debtor. 70 C.J.S.
20 Payment § 73 (collecting cases); 60 AM. JUR. 2D Payment § 116
21 (collecting cases).

22 Second, under the common law rule, once the facts regarding
23 payment have been demonstrated, the creditor (obligee) has the
24 burden of proving that the payment was not effective to
25 extinguish the debt or to satisfy the lien. 70 C.J.S. Payment
26 § 73 ("Once payment is shown, the burden shifts to the obligee
27 [creditor] to show why the payment was ineffective to cancel the
28 debt"); 60 AM. JUR. 2D Payment § 118 ("burden of proving payment

1 is on the party who pleads that defense, and once this is proven,
2 the burden of proof shifts to the obligee to show why the payment
3 was ineffective to cancel the debt"); id. § 116 ("creditor has
4 the burden of proving that . . . satisfaction of a lien on realty
5 did not result from a payment of the underlying debt"). In the
6 context of a mortgage, this means that the creditor has the
7 burden of proving the final mortgage payoff amount, especially
8 the validity of charges other than principal and interest.

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10 3

11 Washington law follows the general common law regarding
12 payment and burdens of proof. W. Coast Credit Corp. v. Pedersen,
13 390 P.2d 551, 553 (Wash. 1964) (approving general common law
14 rule); U.S. Bank Nat'l Ass'n v. Whitney, 81 P.3d 135, 140-42
15 (Wash. Ct. App. 2003), rev. denied, 101 P.3d 108 (Wash. 2004)
16 (applying common law).

17 The debtor demonstrated that payments to Litton made during
18 the bankruptcy case were \$240,020.13 and conceded, using numbers
19 obtained from Litton, that an additional \$15,149.04 was owed.
20 The \$255,169.17 total is facially consistent with the amount of
21 the note, plus interest at the contract rate. This plainly
22 satisfied the debtors' burden to demonstrate payment.

23 Hence, the question under Washington law is whether Litton
24 carried its burden of proof to demonstrate that the debtors'
25 payments that were consistent with the principal and interest
26 provisions of the note were ineffective to cancel the debt and
27 ineffective to satisfy the lien on realty. Specifically, Litton
28 must prove why \$255,169.17 was inadequate to extinguish the

1 principal debt of \$223,960.91, together with the \$14,227.55
2 prefiling arrearage and postpetition interest at 8 percent for
3 seventeen months. It is at this phase of proof that Litton must
4 specifically justify any application of funds other than to
5 principal and interest that would support an additional
6 obligation of \$18,286.42, i.e. a total debt of \$273,455.59.

7
8 B

9 Unlike the substantive burden of proof, the burden of going
10 forward is primarily a procedural matter pertaining to the order
11 of presenting evidence. The burden of proof is often outcome
12 determinative, the burden of going forward is not.

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14 1

15 Federal Rule of Bankruptcy Procedure 3001(f) prescribes that
16 the evidentiary effect of a proof of claim that is executed and
17 filed in accordance with the rules constitutes "prima facie
18 evidence of the validity and amount of the claim." Garner, 246
19 B.R. at 621.⁵ Litton contends that Rule 3001(f) operated to
20 place the burden of proof on the debtor. Not so.

21 The Supreme Court has clarified that the Rule 3001(f) "prima
22

23 ⁵ Rule 3001(f) provides:

24 (f) Evidentiary Effect. A proof of claim executed and filed
25 in accordance with these rules shall constitute prima facie
26 evidence of the validity and amount of the claim.

27 Fed. R. Bankr. P. 3001(f).

1 facie evidence" language does not address the burden of proof in
2 an objection to claim proceeding. Raleigh, 530 U.S. at 22 n.2.⁶

3 It follows that, after Raleigh, Rule 3001(f) cannot be
4 construed as allocating the burden of proof and, instead,
5 operates merely as an evidentiary presumption that is rebuttable.

6 The evidentiary presumption of a prima facie case operates
7 to shift the burden of going forward but not the burden of proof.
8 Garner, 246 B.R. at 622; Diamant v. Kasparian (In re So. Cal.
9 Plastics, Inc.), 165 F.3d 1243, 1248 (9th Cir. 1999) (although the
10 creditor bears the ultimate burden of persuasion, the debtor must
11 come forward with evidence to rebut the presumption of validity);
12 9 COLLIER ¶ 3007.01[1] ("once this burden of going forward to
13 overcome the presumption is met, the ultimate burden is on the
14 claimant"). Hence, at best, Litton's \$33,435.46 proof of claim
15 was entitled to the Rule 3001(f) evidentiary presumption, which
16 is capable of being rebutted.

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18 2

19 Assuming, without deciding, that the evidentiary presumption
20 did apply,⁷ the mechanics of what it takes to rebut the Rule

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22 ⁶ The Supreme Court explained:

23 The Bankruptcy Rules are silent on the burden of proof for
24 claims; while Federal Rule of Bankruptcy Procedure 3001(f)
25 provides that a proof of claim (the name for the proper form
26 for filing a claim against a debtor) is "prima facie
evidence of the validity and amount of the claim," this rule
does not address the burden of proof when a trustee disputes
a claim. The Rules thus provide no additional guidance.

27 Raleigh, 530 U.S. at 22 n.2.

28 ⁷ Arguably, the \$33,435.46 proof of claim did not comply
with the rules so as to qualify for the Rule 3001(f) evidentiary
(continued...)

1 3001(f) presumption are driven by the nature of the presumption
2 as "prima facie" evidence of the claim's validity and amount.
3 Garner, 246 B.R. at 621-22. The proof of claim is more than
4 "some" evidence; it is, unless rebutted, "prima facie" evidence.
5 Id. One rebuts evidence with counter-evidence. Id.

6 Again assuming that the evidentiary presumption applied, the
7 debtors satisfied the burden of going forward by proffering
8 counter-evidence proving payment of \$240,020.13 and by credibly
9 calling into question Litton's assertion that the outstanding
10 balance exceeded \$15,149.04. Specifically, the debtors submitted
11 a declaration that explained why the principal balance was
12 \$15,149.04, including a supporting table reflecting the payments
13 they had made that led to the \$15,149.04 balance.⁸ They also
14 supplied a loan modification statement received from Litton that
15 provided the principal balance on which they had based their
16 calculations.⁹ Moreover, pursuant to the court's request, the

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18 ⁷(...continued)
19 presumption. It was either a second proof of claim or amended
20 the initial \$238,188.46 proof of claim. On the claim form,
21 Litton ambiguously tried to have it both ways; it checked the box
22 designating the claim as replacing the earlier claim and checked
23 the box specifying that the claim amended the earlier claim.
24 Moreover, the claim asserted that the amount owed "at the time
25 the case" was filed was \$33,435.46, which does not square with
26 the uncontested facts. Nor is there an explanation demonstrating
27 how \$238,188.46 became \$33,435.46 (especially after \$240,020.13
28 was paid postpetition). A claim that is not regular on its face
does not qualify as having been "executed and filed in accordance
with these rules." FED. R. BANKR. P. 3001(f).

⁸ Although the debtors' declaration was hearsay, Litton did
not object to it as evidence or to the procedure employed. If it
had objected, then Rule 9014(d) would have required a trial-type
hearing. FED. R. BANKR. P. 9014(d).

⁹ A document prepared by one's adversary is not hearsay.
FED. R. EVID. 801(d)(2). Litton did not question the authenticity
(continued...)

1 debtors submitted the closing documents regarding the refinance
2 of their residence, which included, inter alia, checks from the
3 chapter 13 trustee to Litton totaling \$24,368.21 for postpetition
4 payments and conflicting payoff statements. Thus, the debtors
5 satisfied their burden of going forward.

6 Once the debtors, as the objecting party, produced counter-
7 evidence rebutting the claim, the burden of going forward would
8 have shifted to Litton in the sense that it could provide further
9 evidence to support its claim. The ultimate burden of proof as
10 to the claim's validity and amount in excess of the payments
11 proved by the debtors, however, always remained on Litton.

12 Garner, 246 B.R. at 622; Diamant, 165 F.3d at 1248; Sierra Steel,
13 Inc. v. Totten Tubes, Inc. (In re Sierra Steel, Inc.), 96 B.R.
14 275, 277 (9th Cir. BAP 1989).

15 Litton, in this instance, did not meet its burden of proof.
16 Although Litton's \$33,435.46 proof of claim operated to increase
17 its total claim to \$273,455.59, it provided no accounting to
18 establish how its initial claim of \$238,188.46 at the beginning
19 of the case grew by \$35,267.13 (= \$273,455.59 - \$238,188.46) when
20 interest on principal could not have accrued at a monthly rate
21 higher than \$1,493.07 (= \$223,960.91 principal x .08 ÷ 12). Nor
22 did Litton account for how it applied the \$240,020.13 that it
23 received during the case. Litton's evidence was merely a list of
24 payments and a principal balance that was neither itemized nor
25 explained and that the court regarded as unintelligible. We
26 agree with the trial court that what Litton provided was

27
28 ⁹(...continued)
of the document or otherwise object.

1 gibberish that fell short of its burden of proof.

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3 C

4 In the end, this appeal boils down to the classic "jury"
5 question of choosing between competing evidence. The evidentiary
6 presentation (to which Litton did not object) had been made.
7 After Litton had received multiple opportunities to prove its
8 case with more specific evidence, the court reached the point at
9 which the evidentiary record was closed. The evidence was in
10 conflict. The trier of fact chose to believe the debtors'
11 evidence, which we agree was more comprehensible than Litton's
12 evidence, and determined the correct mortgage payoff amount on
13 that basis. This was not clear error.

14 Since Litton, as claimant creditor, had the burden of proof
15 as to the correct mortgage payoff amount following proof of the
16 \$240,020.13 in payments made for the account of the debtor and
17 did not persuade the trier of fact by a preponderance of the
18 evidence, it follows that Litton did not satisfy its burden of
19 proof. It had its due process opportunity and lost.

20 On appeal, an appellant has the appellate burden of
21 persuading the appellate tribunal that the trial court's factual
22 conclusion regarding the outstanding balance of the mortgage loan
23 was infected by clear error. Gardner v. California, 393 U.S.
24 367, 370 (1969) ("a petitioner carries the burden of convincing
25 the appellate court that the hearing before the lower court was
26 either inadequate or that the legal conclusions from the facts
27 deduced were erroneous"); Khaligh v. Hadaegh (In re Khaligh), 338
28 B.R. 817, 832 (9th Cir. BAP 2006). After carefully reviewing the

1 record, we are not so persuaded. Hence, Litton has not carried
2 its appellate burden.

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CONCLUSION

For the foregoing reasons, we AFFIRM.