

AUG 03 2012

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-11-1692-MkDKi
)
 6 CAROLYN L. DAVIS,) Bk. No. ND 11-10994-RR
)
 7 Debtor.)
)
 8)
 9 CAROLYN L. DAVIS,)
)
 10 Appellant,)
)
 11 v.) **MEMORANDUM***
)
 12 BANK OF AMERICA, N.A.; ONEWEST)
 13 BANK; ELIZABETH F. ROJAS,)
 Chapter 12 Trustee,)
)
 14 Appellees.)
)

Argued and Submitted on July 19, 2012
at Pasadena, California

Filed - August 3, 2012

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Robin L. Riblet, Bankruptcy Judge, Presiding

Appearances: Jerry Namba of the Law Office of Jerry Namba
 argued on behalf of Appellant Carolyn L. Davis;
 Ellen Cha of Pite Duncan, LLP argued on behalf of
 Appellee Bank of America, N.A.; Mark D. Estle of
 the Estle Law Firm argued on behalf of Appellee
 OneWest Bank.

Before: MARKELL, DUNN and KIRSCHER, Bankruptcy Judges.

*This disposition is not appropriate for publication.
 Although it may be cited for whatever persuasive value it may
 have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

1 Robles, California ("Triplex"). According to Davis, at the time
2 of her chapter 12 filing, the Ranch was worth \$614,000 and was
3 encumbered by a first trust deed in the amount of \$2,663,190 and
4 an equity line of credit in the amount of \$254,911. Meanwhile,
5 Davis valued the Residence at \$670,000, and stated that it was
6 encumbered by a first trust deed in the amount of \$784,793 and
7 an equity line of credit of \$90,086. As for the Triplex, Davis
8 valued it at \$350,000 and listed a first trust deed encumbering
9 it in the amount of \$369,630. In addition to these secured
10 debts, Davis listed property tax liens in the aggregate amount of
11 roughly \$9,500.

12 On its face, the total amount of debt Davis scheduled -
13 \$4,172,116 - exceeds the aggregate debt limit for chapter 12
14 cases set forth in § 101(18). That section provides in relevant
15 part that the term "family farmer" means an "individual . . .
16 whose aggregate debts do not exceed \$3,792,650" ⁵ In
17 turn, only "family farmers" and "family fisherman" (as those
18 terms are defined in § 101(18) and 101(19A)) are eligible to be
19 debtors under chapter 12. See § 109(f).

20 In June 2011, Davis filed her chapter 12 plan, in which she
21 proposed to pay the allowed amount of her secured debt over a
22 period of 30 years. Each creditor holding an allowed secured
23 claim would be paid interest only for the first three years at a
24 rate of 3.35%, with both interest and principal payments
25 thereafter, amortized over the next 27 years. All undersecured

26
27 ⁵This debt limit is periodically adjusted pursuant to § 104.
28 It was last adjusted, from \$3,544,525 to \$3,792,650, effective
April 1, 2010.

1 portions of these encumbrances were to be paid nothing.⁶
2 Shortly thereafter, Davis amended her plan to provide for
3 interest only payments for seven years, with the full amount of
4 each allowed secured claim due immediately thereafter. Davis's
5 amended plan also increased the interest rate to be paid on the
6 claims secured by the Ranch and the Residence to 5.25% and the
7 claim secured by the Triplex to 4.75%.

8 The Trustee and some of Davis's secured creditors filed
9 objections to Davis's chapter 12 plan. Bank of America, one of
10 the objecting secured creditors,⁷ argued among other things that
11 Davis was ineligible to be a debtor under chapter 12 because the
12 aggregate amount of her debt exceeded the debt limit set forth in
13 § 101(18).⁸

14 In response to Bank of America's ineligibility argument,
15 Davis asserted that the undersecured portion of each secured
16 creditor's claim should not be counted in determining her
17 eligibility for chapter 12 because her personal liability had

18
19 ⁶In conjunction with her plan, Davis commenced an adversary
20 proceeding (1) seeking to strip down each undersecured lien to
21 the value of the collateral securing it, (2) seeking to strip off
22 each wholly unsecured lien and (3) seeking to determine the
allowed amount of each secured claim as equal to the value of the
collateral securing it.

23 ⁷Bank of America, National Association as successor by
24 merger to LaSalle Bank NA as trustee for WaMu Mortgage
25 Pass-Through Certificate Series 2006-AR13 Trust ("Bank of
26 America") claims to hold all right, title and interest to the
loans secured by the first trust deed on the Ranch and the first
trust deed on the Residence.

27 ⁸The Trustee also questioned Davis's eligibility, but the
28 Trustee did not elaborate on this point beyond raising the
concern in her objection.

1 been discharged in her prior chapter 7 case. Based on this
2 argument, Davis calculated the aggregate amount of her debt for
3 eligibility purposes as \$1,835,000 - equal to the value of the
4 collateral securing all of the secured creditors' claims.

5 Ultimately, the bankruptcy court agreed that Davis was
6 ineligible to be a chapter 12 debtor. It relied upon Quintana v.
7 IRS (In re Quintana) ("Quintana I"), 107 B.R. 234, 239 (9th Cir.
8 BAP 1989), aff'd ("Quintana II"), 915 F.2d 513 (9th Cir. 1990),
9 which held that the undersecured portion of an essentially
10 nonrecourse secured debt should be counted for purposes of
11 determining chapter 12 eligibility.

12 On November 23, 2011, the bankruptcy court entered its order
13 dismissing the chapter 12 bankruptcy case, stating that the
14 \$4.1 million in debt listed in Davis's schedules exceeded the
15 debt limit set forth in § 101(18) and hence Davis was ineligible
16 under § 109(f) to file a chapter 12 case. Davis timely filed her
17 notice of appeal on December 7, 2011.

18 JURISDICTION

19 The bankruptcy court had jurisdiction under 28 U.S.C.
20 § 157(b)(2)(A) and (L), and we have jurisdiction under 28 U.S.C.
21 § 158.

22 DISCUSSION

23 The sole issue presented in this appeal is whether, in light
24 of Davis's prior chapter 7 discharge, chapter 12 eligibility as
25 set forth in § 101(18) counts only the portion of her secured
26 debt up to the value of the collateral. This question of the
27 scope of obligations included within debt limits for eligibility
28 purposes is a question of statutory interpretation subject to de

1 novo review. Quintana I, 107 B.R. at 236 (addressing chapter 12
2 eligibility); see also Ho v. Dowell (In re Ho), 274 B.R. 867, 870
3 (9th Cir. BAP 2002) (addressing chapter 13 eligibility).

4 There is a split of authority regarding whether the
5 "aggregate debts" referred to in § 101(18) includes the
6 discharged unsecured deficiency claims of secured creditors. If
7 it does, Davis is ineligible; if it does not, she is. Two
8 reported cases - one of which was reversed - have answered this
9 question in the affirmative. In re Scotto-DiClemente, 463 B.R.
10 308, 311-14 (Bankr. D.N.J. 2012); In re Cavaliere, 194 B.R. 7, 13
11 (Bankr. D. Conn. 1996), rev'd, Cavaliere v. Sapir, 208 B.R. 784,
12 785-86 (D. Conn. 1997). And three reported cases have answered
13 this question in the negative. In re Osborne, 323 B.R. 489, 493
14 (Bankr. D. Or. 2005); Cavaliere v. Sapir, 208 B.R. at 785-86; In
15 re Winder, 171 B.R. 728, 731 n.5 (Bankr. D. Conn. 1994) (in
16 dicta).⁹

17 But before we address any of these decisions, we first must
18 look at Quintana I and Quintana II. As prior precedent of this
19 Panel and the Ninth Circuit, they control the outcome of this
20 appeal unless they are inapposite. In these cases, prior to the
21 debtors' chapter 12 bankruptcy filing, the debtors were in
22 default on secured debt in the original principal amount of
23 \$1 million. The secured creditor, Connecticut General Life
24 Insurance Company ("CGLIC"), obtained prepetition a state court
25 judgment on the debt in the amount of \$1,527,861.89, plus a
26

27 ⁹The above-cited cases arise under both chapter 12 and
28 chapter 13.

1 decree entitling it to conduct a foreclosure sale of the real
2 property collateral. But before CGLIC could conduct the
3 foreclosure sale, the Quintanas filed their chapter 12 petition.
4 In addition to the judgment in favor of CGLIC, the Quintanas
5 listed debts in their bankruptcy schedules in the approximate
6 amount of \$60,000.

7 Asserting a claim in the amount of \$1,527,861.89, CGLIC
8 filed a motion to dismiss the bankruptcy case because the
9 aggregate amount of the Quintanas' debt exceeded the debt
10 limitation for chapter 12 eligibility.¹⁰

11 The Quintanas disputed that the entire \$1,527,861.89 should
12 be counted for eligibility purposes. They pointed out that, in
13 the process of obtaining its state court judgment, CGLIC had
14 agreed to waive "any right to seek a deficiency judgment . . .
15 if, after any foreclosure sale of the mortgaged property, the
16 debt was not fully satisfied." *Id.* at 515. They further
17 asserted that, because this waiver had effectively transformed
18 their debt into a nonrecourse obligation, the amount of the debt
19 for eligibility purposes should be limited to the value of the
20 collateral.

21 In Quintana I, we rejected the Quintanas' argument. We held
22 that, for eligibility purposes, CGLIC's deficiency waiver did not
23 limit the amount of the debt to the value of the collateral. We
24 reasoned that, unless and until the collateral was sold, the full

25
26 ¹⁰At the time of the Quintanas' bankruptcy filing, the debt
27 limitation was set forth in § 101(17)(A), and was set at \$1.5
28 million. Since that time, § 101(17) has been re-designated as
§ 101(18), and the amount of the debt limitation has been
adjusted upward from time to time, pursuant to § 104.

1 \$1,527,861.89 was still a "claim" or "right to payment" held by
2 CGLIC, and hence still a "debt" of the Quintanas, as those terms
3 are defined in the Bankruptcy Code. Quintana I, 107 B.R. at 237-
4 39. We explained that the statutory definitions of "claim" and
5 "debt" were coextensive and quite broad. As set forth in
6 § 101(5), a "claim" includes any "right to payment" and any
7 "right to an equitable remedy for breach of performance if such
8 breach gives rise to a right to payment." And under § 101(12),
9 the term "debt" means "liability on a claim."

10 We further reasoned that § 102(2) directly resolved the
11 issue because, for Bankruptcy Code purposes, § 102(2) specified
12 that a "claim against the debtor" means and includes a "claim
13 against property of the debtor." Id. at 238.¹¹ We summed up our
14 reasoning in Quintana I as follows:

15 The obligation at issue in this appeal was personally
16 created by the Quintanas. Even though Connecticut
17 General has waived its right to pursue the remedy of a
18 deficiency judgment, under section 102(2) the claim
19 against the property is a claim against the debtors.
20 Because the term claim is coextensive with the term
debt, this obligation is a debt of the debtors which is
defined by the amount of the claim against the
property. Connecticut General's claim against the
property is approximately \$1.528 million because it has

21 ¹¹We further pointed out that the accompanying legislative
22 history confirmed our interpretation of § 102(2):

23 This paragraph [Section 102(2)] is intended to cover
24 nonrecourse loan agreements where the creditor's only
25 rights are against property of the debtor, and not
26 against the debtor personally. Thus, such an agreement
27 would give rise to a claim that would be treated as a
claim against the debtor personally, for the purposes
of the Bankruptcy Code.

28 Id. (quoting H.R.Rep. No. 95-595 at 315; S.Rep. No. 95-989 at 28,
U.S. Code Cong. & Admin. News 1978, pp. 5814, 6272).

1 the right to payment of that amount from the property
2 or from the proceeds of the sale of the property.
3 Although, as a practical matter, Connecticut General
4 will only be able to collect the value of the property,
5 it has the right to payment of the entire obligation if
6 under some circumstance, the property is sold for more
7 than its present value. Therefore, although the
8 collectability may be limited to the value, the right
9 to payment is not so limited and consequently neither
10 is the claim, nor the debt. Accordingly,
11 notwithstanding the non-recourse nature of the
12 obligation, the entire debt is to be considered in
13 computing aggregate debts.

14 Id. (footnote omitted).

15 The Ninth Circuit affirmed Quintana I in Quintana II.
16 Quintana II, 915 F.2d at 518. Whereas we focused on the relevant
17 Bankruptcy Code provisions, the Ninth Circuit focused on the key
18 provisions under Idaho law establishing that, unless and until
19 the collateral actually was sold, CGLIC continued to hold a claim
20 for \$1,527,861.89, and hence the Quintanas continued to owe a
21 debt in that amount at the time of their bankruptcy filing.¹²

22 Notwithstanding the difference in emphasis, the reasoning of
23 both Quintana I and Quintana II is essentially the same.
24 Quintana II necessarily decided that CGLIC's continuing right to
25 recover the full amount owed against the collateral or the
26 proceeds of the collateral meant that, for purposes of chapter 12
27 eligibility, the Quintanas continued to be indebted to CGLIC for

28 ¹²Davis has not argued that there was any basis under state
law for counting only the secured debt up to the value of the
collateral. Instead, Davis entirely has relied on its claim
regarding the effect of the prior chapter 7 discharge. To the
extent Davis could have made any argument under state law, she
has waived it by not raising it either in the bankruptcy court or
on appeal. See Golden v. Chicago Title Ins. Co. (In re Choo),
273 B.R. 608, 613 (9th Cir. BAP 2002); Branam v. Crowder (In re
Branam), 226 B.R. 45, 55 (9th Cir. BAP 1998), aff'd, 205 F.3d
1350 (9th Cir. 1999).

1 the full amount owed. See Quintana II, 915 F.2d at 516-17.

2 Both Quintana I and Quintana II dovetail with the Supreme
3 Court's subsequent decision in Johnson v. Home State Bank,
4 501 U.S. 78, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991). Johnson held
5 that mortgage obligations may be restructured in a chapter 13
6 case even when the debtor previously has obtained a chapter 7
7 discharge extinguishing his or her personal liability for that
8 debt. Id. at 80, 111 S.Ct. at 2152. Johnson reasoned that, even
9 though the debtor no longer was personally liable for such
10 mortgage obligations, the mortgagor's surviving rights against
11 the collateral fell within the Bankruptcy Code's broad
12 definitions of "debt" and "claim" and hence could be restructured
13 in a chapter 13 case. Id. at 80-85, 111 S.Ct. at 2152-55.

14 Johnson emphasized that the prior chapter 7 discharge did
15 not wholly terminate the creditor's claim but rather merely
16 extinguished "one mode of enforcing [the] claim - namely, an
17 action against the debtor in personam - while leaving intact
18 another - namely, an action against the debtor in rem." Id. at
19 84, 111 S.Ct. at 2154.

20 Johnson further emphasized that Congress intended to include
21 obligations enforceable only against the debtor's property within
22 the Bankruptcy Code's definition of claim (and hence within the
23 coextensive definition of debt.) Id. at 85-87, 111 S.Ct. at
24 2154-55. In discerning the congressional intent, Johnson in
25 relevant part pointed to the text of and legislative history
26 accompanying § 102(2) - the very same text and legislative
27 history that we relied upon in Quintana I.

28 Particularly instructive for our purposes, Johnson opined

1 that the mortgagor rights surviving after the debtor's receipt of
2 his chapter 7 discharge were the functional equivalent of a
3 nonrecourse loan for purposes of applying § 102(2):

4 . . . we must infer that Congress fully expected that
5 an obligation enforceable only against a debtor's
property would be a "claim" under § 101(5) of the Code.

6 The legislative history surrounding § 102(2)
7 directly corroborates this inference. The Committee
8 Reports accompanying § 102(2) explain that this rule of
9 construction contemplates, inter alia, "nonrecourse
10 loan agreements where the creditor's only rights are
11 against property of the debtor, and not against the
12 debtor personally." Insofar as the mortgage interest
13 that passes through a Chapter 7 liquidation is
14 enforceable only against the debtor's property, this
15 interest has the same properties as a nonrecourse loan.
16 It is true, as the Court of Appeals noted, that the
debtor and creditor in such a case did not conceive of
their credit agreement as a nonrecourse loan when they
entered it. However, insofar as Congress did not
expressly limit § 102(2) to nonrecourse loans but
rather chose general language broad enough to encompass
such obligations, we understand Congress' intent to be
that § 102(2) extend to all interests having the
relevant attributes of nonrecourse obligations
regardless of how these interests come into existence.

17 Id. at 86-87, 111 S.Ct. at 2155 (emphasis added and citations
18 omitted).

19 In sum, while Quintana I, Quintana II and Johnson emphasize
20 different points, each holds that obligations enforceable against
21 the debtor's property but for which the debtor has no personal
22 liability are nonetheless "claims" and "debts" within the meaning
23 of the Bankruptcy Code. These decisions control the outcome of
24 this appeal. Their reasoning simply cannot be reconciled with
25 Davis's contention that the undersecured portion of the amount
26 owed to her secured creditors does not count as a debt for
27 eligibility purposes. As we explained in Quintana I, the full
28 amount owed continues to be a claim against the collateral, and

1 hence a "debt" under the Bankruptcy Code, unless and until the
2 collateral is sold. Furthermore, as stated in Johnson, a prior
3 chapter 7 discharge only extinguishes one "mode of enforcing" the
4 claim but does not extinguish the claim itself (or any portion
5 thereof).¹³

6 We acknowledge the three reported decisions holding that,
7 after a chapter 7 discharge, only the amount of debt owed up to
8 value of the collateral is counted as debt for eligibility
9 purposes. In re Osborne, 323 B.R. 489, Cavaliere v. Sapir,
10 208 B.R. 784, and In re Winder, 171 B.R. 728. But we don't find
11 any of these three decisions persuasive. None of them
12 effectively distinguished Quintana I, Quintana II or Johnson.
13 Indeed, Cavaliere and Winder - as Connecticut cases out of the
14 Second Circuit - don't even mention the Ninth Circuit precedent
15 of Quintana I or Quintana II.

16 As for Osborne, its reasoning and efforts to distinguish
17 both Quintana cases do not bear close analysis. In Osborne,
18 after receiving a chapter 7 discharge, the Osbornes filed a
19 chapter 12 petition. Id. at 490-91. The secured creditor, Farm
20

21 ¹³The discharge also did not extinguish the secured
22 creditors' rights to assert the discharged debt as a setoff
23 against any prepetition claim that Davis ultimately might have
24 attempted to assert against the secured creditors. See
25 Davidovich v. Welton (In re Welton), 901 F.2d 1533, 1538-39 (10th
26 Cir. 1990); Camelback Hosp., Inc. v. Buckenmaier (In re
27 Buckenmaier), 127 B.R. 233, 236-37 (9th Cir. BAP 1991); see also
28 Carolco Television Inc. v. Nat'l Broad. Co. (In re De Laurentiis
Entm't Group Inc.), 963 F.2d 1269, 1276-77 (9th Cir. 1992)
(chapter 11 discharge did not prohibit creditor from asserting
setoff in defense to claims asserted by reorganized debtor). In
that sense as well, the secured creditors' deficiency claims
would have survived Davis's chapter 7 discharge.

1 Credit, moved to dismiss the chapter 12 case on eligibility
2 grounds. According to Farm Credit, it was owed over \$1.4
3 million, and that amount when combined with other debts the
4 Osbornes owed exceeded the \$1.5 million family farmer eligibility
5 limit set forth in § 101(18) at the time. Id. at 492. But
6 Osborne held that, in light of the effectively nonrecourse nature
7 of the debt owed to Farm Credit as a result of the prior
8 chapter 7 discharge, the amount of debt to be counted for
9 eligibility purposes should be limited to the value of Farm
10 Credit's collateral - \$480,500. Id. at 492-93.

11 In reaching this holding, Osborne imported into its
12 eligibility analysis both § 506(a)(1)¹⁴ and § 502(b)(1).¹⁵
13 Osborne pointed out that, under § 506(a), Farm Credit's secured
14 claim in the chapter 12 case would be limited to the value of the
15

16 ¹⁴Section 506(a)(1) provides in relevant part:

17 An allowed claim of a creditor secured by a lien on
18 property in which the estate has an interest . . . is a
19 secured claim to the extent of the value of such
20 creditor's interest in the estate's interest in such
21 property, . . . and is an unsecured claim to the extent
22 that the value of such creditor's interest . . . is
23 less than the amount of such allowed claim.

24 ¹⁵Section 502(b)(1) provides in relevant part that, if an
25 objection to claim is filed:

26 the court, after notice and a hearing, shall determine
27 the amount of such claim . . . , and shall allow such
28 claim in such amount, except to the extent that -

(1) such claim is unenforceable against the
debtor and property of the debtor, under any
agreement or applicable law for a reason
other than because such claim is contingent
or unmatured;

1 collateral. As for any unsecured claim Farm Credit otherwise
2 would have been entitled to under § 506(a)(1) for the remaining,
3 undersecured balance it was owed, Osborne reasoned that, pursuant
4 to § 502(b)(1), the unsecured claim was subject to disallowance
5 because it was unenforceable as a result of the Osbornes' prior
6 chapter 7 discharge. Id. at 493. Thus, according to Osborne,
7 the fact that Farm Credit's unsecured claim was unenforceable and
8 subject to disallowance (as a result of the prior chapter 7
9 discharge) meant that it had no claim at all for eligibility
10 purposes.

11 Osborne further opined that Quintana II was distinguishable.
12 According to Osborne, Quintana II's holding hinged on the fact
13 that the collateral had not yet been sold, so the full amount of
14 the debt still was collectible against the collateral (unless and
15 until the sale of the collateral actually occurred), whereas the
16 Osbornes' prior chapter 7 discharge already had rendered
17 uncollectible the undersecured portion of the debt owed to Farm
18 Credit. Id.

19 But Osborne's reasoning and its grounds for distinguishing
20 Quintana II cannot be reconciled with Johnson, which stated that
21 nonrecourse secured debt and undersecured debt subject to a
22 chapter 7 discharge are functional equivalents under the
23 Bankruptcy Code for purposes of the meaning of the terms "claim"
24 and "debt." See Johnson, 501 U.S. at 86-87, 111 S.Ct. at 2155.
25 Osborne also cannot be reconciled with Johnson's statement that
26 the prior chapter 7 discharge only extinguished one mode of
27 collecting the claim and not the claim itself. Id. at 84, 111
28 S.Ct. at 2154.

1 In any event, Osborne simply fails to offer any legitimate
2 justification for using § 506(a) and § 502(b)(1) to diminish the
3 amount of the Osbornes' debt for eligibility purposes.¹⁶ Osborne
4 claims that Scovis v. Henrichsen (In re Scovis), 249 F.3d 975
5 (9th Cir. 2001) supports its usage of § 506(a) and § 502(b)(1),
6 but Osborne's reliance on Scovis is misplaced. Scovis held
7 that the entire amount of debt owed to a wholly-undersecured
8 secured creditor should be counted as unsecured for purposes of
9 determining chapter 13 eligibility. Id. at 983-84.¹⁷ In so
10 holding, Scovis relied upon the "readily ascertainable" effect
11 § 506(a) and § 522(f) would have on the secured creditor's claim
12 in the chapter 13 bankruptcy case. Id. In short, Scovis stands
13 for the relatively unremarkable proposition that, when
14 determining a debtor's chapter 13 eligibility, the undersecured
15 portion of a secured creditor's claim should be counted as
16 unsecured debt.

17 Importantly, Scovis did not hold that undersecured
18 nonrecourse claims should not be counted at all for eligibility
19 purposes. Extending Scovis in this manner would bring it into
20

21 ¹⁶Cavaliere similarly relies on § 506(a) and § 502(b)(1) to
22 reach the same result as Osborne. Accordingly, we reject
23 Cavaliere as well. As for Winder's dictum, it is unclear how
24 Winder reached its conclusion. Ironically, Winder cites to
25 Johnson, but Winder does not explain how Johnson supports
26 Winder's dictum. As we have explained above, Johnson supports
27 the opposite conclusion.

28 ¹⁷Section 109(e), which governs eligibility for chapter 13,
sets separate limits for secured debt and unsecured debt. In
contrast, § 109(f), which governs eligibility for chapter 12,
refers to the definition of "family farmer" in § 101(18) for its
aggregate debt limits.

1 conflict with Quintana I, Quintana II and Johnson. Thus, we
2 decline to so extend Scovis.

3 Most importantly, there is a fundamental flaw in Osborne's
4 reasoning: it conflates bifurcation of claims into secured and
5 unsecured portions (as addressed in § 506(a)), and the
6 allowability of claims after objection (as addressed in
7 § 502(b)(1)) with whether there is any claim in the first
8 instance to be counted for eligibility purposes. Congress
9 clearly knew how to limit the type and nature of claims counted
10 for eligibility purposes. See § 109(e) (specifying that only
11 noncontingent and liquidated claims should be counted for
12 eligibility purposes). But Congress chose to narrow neither the
13 term "claim" nor the term "debt" in the manner Osborne suggests
14 they should be narrowed - to only cover allowed or allowable
15 claims. Put another way, the statutes Osborne invokes concern
16 the bifurcation and allowance of claims - issues which generally
17 are beyond the scope of the inquiry into the existence of claims
18 for eligibility purposes.¹⁸

19 _____
20 ¹⁸We also note that giving the chapter 7 discharge the
21 effect Osborne urges would be the functional equivalent of
22 enabling chapter 7 debtors to strip the liens of partially and
23 wholly undersecured creditors. But the Supreme Court has held
24 that, notwithstanding § 506(d), chapter 7 debtors are not
25 permitted under the Bankruptcy Code to engage in lien stripping.
26 See Dewsnap v. Timm, 502 U.S. 410, 417, 112 S.Ct. 773, 116
27 L.Ed.2d 903 (1992) (holding that chapter 7 debtor is not
28 permitted to "strip down" an undersecured lien); see also Laskin
v. First Nat'l Bank of Keystone (In re Laskin), 222 B.R. 872, 876
(9th Cir. BAP 1998) (extending Dewsnap to hold that chapter 7
debtor not permitted to "strip off" wholly unsecured lien).
Indeed, if Davis's chapter 7 discharge effectively had stripped
down the secured creditors' liens to the value of their

(continued...)

1 We will not substitute Osborne's judgment of how eligibility
2 should work in place of Congress's apparent intent. When
3 Congress's intent is clear based on the plain and unambiguous
4 language of the statute, our task of construing the statute is at
5 an end, so long as the statutory scheme appears coherent and
6 consistent. United States v. Ron Pair Enters., Inc., 489 U.S.
7 235, 240-41, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989). Here, there
8 is no ambiguity or incoherence in the broad definition of
9 "claims" and "debts" used in the Bankruptcy Code. Nor did
10 Osborne (or Davis) identify any inconsistency in the statutory
11 scheme.

12 Consequently, we will assume that Congress has said what it
13 meant and meant what it has said. See Conn. Nat'l Bank v.
14 Germain, 503 U.S. 249, 253-54, 112 S.Ct. 1146, 117 L.Ed.2d 391
15 (1992). If Congress believes that the scope of debts counted for
16 eligibility purposes should be narrower, it will need to amend
17 the statute. See Lamie v. U.S. Trustee, 540 U.S. 526, 542, 124
18 S.Ct. 1023, 157 L.Ed.2d 1024 (2004).

19 CONCLUSION

20 For all of the reasons set forth above, we AFFIRM the
21 bankruptcy court's order dismissing Davis's chapter 12 case.
22
23
24
25

26 _____
27 ¹⁸(...continued)
28 collateral, it would have been unnecessary for her to file, as
she did, a lien-stripping complaint in her chapter 12 case.