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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NOT FOR PUBLICATION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-05-1099-KJB  
 )  
 CECIL F. MOTLEY and ) Bk. No. LA 98-53444-SB  
 ETHELYN MOTLEY, )  
 )  
 Debtors. )  
 )  
 \_\_\_\_\_ )  
 )  
 SELECT PORTFOLIO SERVICING, )  
 INC., )  
 )  
 Appellant, )  
 )  
 v. ) **MEMORANDUM\***  
 )  
 CECIL F. MOTLEY and )  
 ETHELYN MOTLEY, )  
 )  
 Appellees. )  
 \_\_\_\_\_ )

Argued and Submitted on January 18, 2006  
at Pasadena, California

Filed - February 28, 2006

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

Honorable Samuel L. Bufford, Bankruptcy Judge, Presiding.

\_\_\_\_\_  
Before: KLEIN, JAROSLOVSKY,\*\* BRANDT, Bankruptcy Judges.

\_\_\_\_\_  
\*This disposition is not appropriate for publication and may not be cited except when pertinent under the doctrine of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

\*\*Hon. Alan Jaroslovsky, United States Bankruptcy Judge for the Northern District of California, sitting by designation.

1 This appeal presents a new twist to the problem of the  
2 informal proof of claim in a manner that arguably contorts the  
3 doctrine to a degree that will not support the action that the  
4 court took when it sustained the debtors' "objection" to Select  
5 Portfolio Services, Inc.'s ("SPS") purported informal proof of  
6 claim and reduced the amount of the associated lien. For  
7 procedural reasons, however, including the absence of findings of  
8 fact and conclusions of law, we conclude that the record has not  
9 been sufficiently developed to enable review and VACATE and  
10 REMAND.

#### 11 12 FACTS

13 On October 29, 1998, Cecil Motley and Ethelyn Motley,  
14 debtors and appellees, filed a voluntary chapter 11 petition.  
15 The debtors listed real property commonly known as 17 Hillscres  
16 Manor, Rolling Estate, California ("residence"), which they  
17 valued at \$1,200,000 subject to two deeds of trust.

18 This appeal relates to the Adjustable Mortgage Loan Note  
19 ("Note"), secured by a deed of trust, in the original principal  
20 amount of \$704,000 in favor of Coast Federal Bank (which Note was  
21 later acquired by Washington Mutual and is now in the hands of  
22 SPS, which was formerly known as Fairbanks Capital Corporation).  
23 The Note defined principal as the sum of two parts. One part was  
24 the amount of \$704,000 advanced by the Note holder on the date of  
25 the loan funds (the "Initial Principal Balance"), and the other  
26 part consisted of capitalized interest, which would be added to  
27 the "Initial Principal Balance" as further explained in the Note.  
28 In other words, the outstanding principal consisted of the

1 impound portion of funds actually borrowed, plus capitalized  
2 interest.

3       Additionally, the Note provided that the monthly payment  
4 would be adjusted annually on March 1, and that "each of these  
5 dates" would be called a "Monthly Payment Adjustment Date."  
6 Additionally, "[i]n adjusting the monthly payment on each Monthly  
7 Payment Adjustment Date, the Note Holder" would determine the  
8 amount of monthly payments on the basis of the following factors:  
9 (1) the then outstanding principal balance (assuming all monthly  
10 payments have been made on schedule); (2) the interest rate in  
11 effect as of a date 45 calendar days before the Monthly Payment  
12 Adjustment Date (the "Payment Rate"); and (3) the then-remaining  
13 amortization term of the loan.

14       In resolution of a motion by Washington Mutual for relief  
15 from the automatic stay, the court entered on April 17, 2000, an  
16 Adequate Protection Order ("APO") requiring, as a condition of  
17 the stay remaining in effect, that the debtors make monthly  
18 payments to Washington Mutual of \$5,117.49 "subject to change due  
19 to impound requirements and/or interest adjustments per the  
20 Promissory Note and Deed of Trust."

21       Later, Washington Mutual "sold its position" to Fairbanks  
22 Capital Corporation, which purportedly changed its name to Select  
23 Portfolio Servicing, Inc.

24       On May 4, 2004, the court authorized the debtors to obtain a  
25 loan to refinance the property, which was designed to "cure all  
26 delinquencies on the outstanding encumbrances and provide funds  
27 for the debtors to fund a plan or allow them to dismiss [the]  
28 case so that a compromise may be worked out [with] the IRS."

1 Pursuant to this authorization, the debtors attempted to get  
2 a correct payoff amount from SPS so they could pay off the loan.  
3 The debtors' request, however, began an "on-going battle" between  
4 the parties regarding the correct payoff amount. Specifically,  
5 the debtors contend that SPS refuses to acknowledge the changes  
6 in the loan interest rates on the adjustable rate note over the  
7 course of the past four years.

8 SPS filed a motion for relief from stay on January 10, 2005,  
9 alleging that the debtors had defaulted upon their obligations  
10 under the April 17, 2000, APO.

11 The debtors' countered SPS's relief from stay motion in two  
12 ways. First, on January 13, 2005, the debtors filed an  
13 opposition to the relief from stay motion, and, second, filed an  
14 "objection to the secured claim of SPS" supported by the  
15 declaration of the debtors' counsel. The court's ruling on the  
16 debtors' objection is the order that is the subject of the  
17 instant appeal.

18 With respect to the debtors' opposition to the SPS relief  
19 from stay motion, the declaration of the debtors' counsel  
20 asserted that the SPS declaration in support of the relief from  
21 stay motion did not accurately represent the debtors' payments in  
22 excess of \$206,477.00.

23 Without a hearing and apparently without knowledge of the  
24 debtors' opposition, the court entered an order on January 28,  
25 2005, granting SPS relief from the automatic stay. Thereafter,  
26 on February 4, 2005, the debtors filed an ex parte application  
27 for an order vacating the order granting SPS relief from stay.

28 As to the debtors' "objection" to SPS's secured claim, the

1 objection asserted that the debtors would ask the "Court to  
2 sustain their objection to the secured claim of SPS in the  
3 approximate amount of \$985,672.03." However, neither Washington  
4 Mutual nor SPS had filed a proof of claim. In reality, the  
5 "objection" was to a payoff statement that had been directed to  
6 the debtor and that was attached as Exhibit A to the declaration  
7 of the debtors' counsel. The payoff statement, dated December  
8 10, 2004 and expiring on December 30, 2004, listed an amount owed  
9 of \$985,672.03.

10 The grounds for the objection to the sum stated in the  
11 payoff statement were that the amount demanded by SPS was  
12 "overstated, false, included unwarranted additional and illegal  
13 charges" and did not conform with the terms and conditions of the  
14 underlying Note and trust deed that created the obligation. The  
15 debtors' objection further contended that SPS's demand was the  
16 "product of nefarious, illegal and unacceptable accounting  
17 practices of SPS subject to proof at the trial on this matter."

18 In the prayer, the debtors' objection requested the court  
19 to: (1) sustain the debtor's objection to the secured claim of  
20 SPS in the approximate amount of \$985,672.03 in its entirety; (2)  
21 cancel the associated deed of trust; and (3) award of damages to  
22 the estate incurred due to SPS's conduct according to proof at  
23 trial.

24 In response to the debtors' objection to claim, SPS filed  
25 the declaration of Diane Mitchell, wherein she explained that SPS  
26 prepared a payoff statement dated December 10, 2004 that expired  
27 December 30, 2004 which reflected an amount owed of \$985,672.03.  
28 The declaration further asserted that the interest amount of

1 \$177,110.98 was a fair and accurate recitation of the amount  
2 owed.

3       Thereafter, on February 5, 2005, debtor Cecil Motley filed a  
4 declaration in reply to SPS's opposition to the debtors'  
5 objection to claim, wherein he explained that they were members  
6 of a class of claimants in a class action in the United States  
7 District Court of the District of Massachusetts in which it was  
8 alleged that Fairbanks/SPS defrauded claimants by means of  
9 improper accounting practices and other actions. The debtors  
10 requested the court take judicial notice of the Notice and Notice  
11 of Proposed Settlement they received from the court.

12       Mr. Motley's declaration further stated that on January 22,  
13 2005, he received from SPS a notice of rate adjustment and  
14 principal and interest adjustment that reflected a "projected  
15 principal balance for calculation" of \$695,423.34. The SPS  
16 notice was attached as Exhibit A.

17       The court held a hearing on February 8, 2005, on the  
18 debtor's objection to SPS's proof of claim and on the ex parte  
19 application to vacate the order granting SPS relief from stay.  
20 At the hearing, SPS made an oral motion to strike the debtors'  
21 reply because it was not received until the day before the  
22 hearing and then only by facsimile. The court denied the motion.  
23 No testimony was taken and no opportunity for cross-examination  
24 was provided.

25       The discussion at the hearing centered around the accounting  
26 of the loan (or lack thereof) and who had the burden of proof on  
27 the issue of what was owed. While SPS contended the debtors had  
28 the burden of proof, the court ruled that the bank had the burden

1 of proof and that insufficient evidence by the debtors had no  
2 consequence, unless there was a prima facie case made by the  
3 bank.

4       Ultimately, the court determined that it was necessary for  
5 SPS to provide an accounting of all the payments under the loan.  
6 Because the court was going to consider the late-filed reply and  
7 request for judicial notice, SPS requested appropriate time to  
8 respond to the reply and provide an accounting. The court  
9 proposed to give SPS "48 hours to do that." Counsel for SPS  
10 responded, "Okay. That's fine."

11       The court continued the matter until February 22, 2005, and  
12 ruled that "for the interim between now and then, I'm suspending  
13 the order for relief from the automatic stay."

14       Before the continued hearing, several documents were filed  
15 regarding debtor's objection. On February 10, 2005, SPS filed  
16 evidentiary objections to the debtors' declarations. The next  
17 day, SPS filed the declaration of Diane Mitchell in support of  
18 its response to the debtors' reply. Six days later the debtors  
19 filed declarations in "reply to response of SPS to debtor's reply  
20 of SPS response of objection to secured claim."

21       The continued hearing was held on February 22, 2005. No  
22 testimony was taken. At the outset of the hearing, SPS objected  
23 on procedural grounds, arguing that not only had it not filed a  
24 proof of claim, that the debtors had not attached a claim to  
25 their objection as required by the local rules, and that the  
26 debtors had merely objected to a letter they believed to be a  
27 payoff amount. The court noted that the Ninth Circuit has held  
28 that there can be objections to informal proofs of claim.

1 Counsel for SPS responded that that had never been before the  
2 court and that the debtors had not theretofore alleged that the  
3 letter containing the payoff demand constituted an informal proof  
4 of claim.

5 Next, SPS objected on "substantive grounds" contending that  
6 the debtors' assertion that they made over \$206,000 in payments  
7 was not supported by the evidence. SPS argued that the burden  
8 was on the debtor to show that she made \$206,000 in payments,  
9 while the court explained that the burden fell on the creditors  
10 to show that the demand was correct. Within this discussion, SPS  
11 clarified that it began servicing the loan in October 2003 and  
12 that it had no competent evidence of any payments received before  
13 that date from Washington Mutual.

14 The court did not make findings of fact and conclusions of  
15 law. However, it granted judgment in favor of the debtor as to  
16 the payoff amount, ruling as follows:

17 I've not heard anything to change the tentative ruling.  
18 So judgment is granted to the debtor. The pay-off is  
19 \$695,423.34 as of March 1, 2005, and that the debtor  
20 can pay that amount plus any interest that may accrue  
21 thereafter, if the closing is after March 1, at  
22 whatever is the appropriate interest rate as determined  
23 by the latest application of the provisions of the  
24 variable - calculation of the variable interest rate.

25 The "tentative ruling" to which the court referred does not  
26 appear to have been made part of the record by the court.

27 Although the ruling squares with the \$695,423.34 balance stated  
28 in the SPS notice of rate adjustment and principal and interest  
adjustment that the debtor had received on January 22, 2005,  
there was no analysis of whether and how the document squared  
with the terms of the Note and Deed of Trust that also were in



1 evidence. Nor was there any analysis of the effect of the APO  
2 and the objection.

3 The court entered an order "sustaining objection to secured  
4 claim of Select Portfolio Services, Inc." that provided: (1) the  
5 payoff principal balance was \$695,423.34; (2) the debtors shall  
6 have 60 days to refinance the property; (3) the debtors are  
7 entitled to recover costs of suit and shall file a memorandum of  
8 costs; and (4) the debtors may file a separate motion or  
9 complaint for damages incurred by the actions and delay of SPS;  
10 and (5) the order granting relief from the stay is suspended for  
11 an additional sixty days.

12 This timely appeal ensued.

13 On appeal, SPS argued (as it had also argued before the  
14 bankruptcy court) that "no [proof of] claim of any kind was  
15 properly before the Bankruptcy Court for determination" and that  
16 the debtors' objection, coupled with a demand for relief of the  
17 kind specified in Bankruptcy Rule of Procedure 7001, required an  
18 adversary proceeding. In addition, SPS argued that, assuming  
19 there was an informal proof of claim, the bankruptcy court erred  
20 by not giving the informal proof of claim a presumption of  
21 validity which then purportedly shifted the burden to the debtor  
22 to establish that the "alleged informal claim was wrong." The  
23 final SPS argument was that the bankruptcy court's decision that  
24 the amount owed was \$695,423.34 was clear error.

25 At oral argument of this appeal, SPS changed its theory of  
26 the case and abandoned its argument that there was no informal  
27 proof of claim and that an adversary proceeding was required. To  
28 the contrary, it contended for the first time that the payoff

1 demand letter was an informal proof of claim and then attempted  
2 to argue the underlying merits of the dispute on the premise that  
3 the informal proof of claim was entitled to the same presumption  
4 of validity as a formal proof of claim.

#### 6 JURISDICTION

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

#### 10 ISSUE

11 1. Whether adequate appellate review is possible on the  
12 present record.

13 2. Whether the court erred by regarding the purported  
14 informal proof of claim as sufficiently formal to permit the  
15 debtors' objection to the substantive merits to go forward in a  
16 contested matter.

#### 18 STANDARD OF REVIEW

19 The application of the rules of procedure is a question of  
20 law reviewed de novo. Gonzalez v. Munoz (In re Munoz), 287 B.R.  
21 546, 550 (9th Cir. BAP 2002). The existence of an informal proof  
22 of claim involves a question of law reviewed de novo. Hi-Tech  
23 Commc'ns Corp. v. Poughkeepsie Bus. Park, LLC (In re Wheatfield  
24 Bus. Park, LLC), 308 B.R. 463, 465 (9th Cir. BAP 2004)  
25 ("Wheatfield").

26 Whether a proof of claim is executed and filed in accordance  
27 with the Federal Rules of Bankruptcy Procedure is a question of  
28 fact that is reviewed for clear error. Garner v. Shier (In re

1 Garner), 246 B.R. 616, 619 (9th Cir. BAP 2000). Whether evidence  
2 is sufficient to rebut an evidentiary presumption is a question  
3 of fact reviewed for clear error. Garner, 246 B.R. at 616.

4 We review the bankruptcy court's findings of fact for clear  
5 error and its conclusions of law de novo. Hardin v. Gianni (In  
6 re King St. Invs., Inc.), 219 B.R. 848, 852 (9th Cir. BAP 1998).

#### 8 DISCUSSION

9 As noted at the outset, this appeal appears to contort the  
10 informal proof of claim doctrine beyond recognition. Although  
11 SPS abandoned its contention that there was no proof of claim to  
12 which to object at oral argument of this appeal, the problem  
13 remains that there was never enough formality associated with the  
14 purportedly informal proof of claim to permit the debtors'  
15 objection on the substantive merits to go forward. Indeed, for  
16 the reasons we shall proceed to explain, the procedure that was  
17 followed has left a record that is too vague to permit effective  
18 review of the novel and complex issues of the underlying merits.

19 Accordingly, we vacate and remand for the prosecution of  
20 either a proper claim and objection thereto or an adversary  
21 proceeding.

#### 23 I

24 The treatment of the payoff statement submitted by SPS to  
25 the debtors as an informal proof of claim creates several  
26 conceptual and procedural problems that, in part, stem from using  
27 the informal proof of claim doctrine in a context outside of its  
28 usual framework. Simply put, the informal proof of claim

1 doctrine is a judge-made doctrine that ordinarily rescues  
2 creditors from an otherwise untimely proof of claim. It has not  
3 been applied as a platform for dealing with an objection focused  
4 on the underlying merits of the claim. Moreover, an informal  
5 proof of claim has never been sufficient to permit a trustee to  
6 make payment from a bankruptcy estate without the actual filing  
7 of a formal proof of claim.

8  
9 A

10 "An informal proof of claim is something which is not, and  
11 was not intended to be, a proof of claim." 9 COLLIER ON BANKRUPTCY  
12 ¶ 3001.05 [1] (Alan N. Resnick & Henry J. Sommer eds. 15th ed.  
13 rev. 2005) ("COLLIER"). We recently summarized the informal proof  
14 of claim doctrine in the Ninth Circuit. Wheatfield, 308 B.R. at  
15 467.

16 The Ninth Circuit has held that even though no document is  
17 filed with the bankruptcy court, an informal proof of claim may  
18 arise out of demands against the estate or out of correspondence  
19 between a creditor and the trustee or debtor-in-possession which  
20 demonstrate an intent on the part of the creditor to assert a  
21 claim against the bankruptcy estate. Sullivan v. Town & Country  
22 Home Nursing Servs., Inc. (In re Town & Country Home Nursing  
23 Servs., Inc.), 963 F.2d 1146, 1153-54 (9th Cir. 1991); Anderson-  
24 Walker Indus. v. Lafayette Metals, Inc. (In re Anderson-Walker  
25 Indus., Inc.), 798 F.2d 1285, 1287-88 (9th Cir. 1986).

26 In the usual context, as noted, the informal proof of claim  
27 doctrine rescues creditors from untimeliness. Generally, a  
28 creditor uses the informal proof of claim doctrine to its

1 advantage so that it can then amend the informal proof of claim  
2 with a formal proof of claim that is filed after the bar date has  
3 passed and to which there can be an objection to claim addressed  
4 to the merits. Wheatfield, 308 B.R. at 469 (copy of proof of  
5 claim sent by creditor's attorney to debtor's counsel before the  
6 deadline to file a claim expired fulfilled the requirements of  
7 presenting an informal proof of claim that is subject to  
8 amendment by filing of a formal proof of claim); Pizza of Hawaii  
9 v. Shakey's Inc. (In re Pizza of Hawaii, Inc.), 761 F.2d 1374,  
10 1380 (9th Cir. 1985) (creditors' actions and documents filed in  
11 the bankruptcy court constituted informal proof of claim that  
12 could be amended by formal proof of claim); Anderson-Walker  
13 Indus., 798 F.2d at 1288 (creditor's letter sent to trustee's  
14 attorney constituted an amendable informal proof of claim);  
15 Sambo's Rest., Inc. v. Wheeler (In re Sambo's Rest., Inc.), 754  
16 F.2d 811, 816 (9th Cir. 1985) (creditor's complaint, together with  
17 correspondence and joint motion with debtor to transfer case to  
18 bankruptcy court, constituted amendable informal proof of claim);  
19 County of Napa v. Franciscan Vineyards, Inc. (In re Franciscan  
20 Vineyards, Inc.), 597 F.2d 181, 183 (9th Cir. 1979) (creditor's  
21 letter to trustee enclosing two tax bills was sufficient to  
22 supply "the substance of a proof of claim, and to warrant  
23 amendment to supply the absent items of proof").

24 In this instance, the debtor, instead of the creditor,  
25 invoked the informal proof of claim doctrine as the basis for a  
26 contested matter addressed to the merits of the underlying claim.  
27 The use of an informal proof of claim that is now urged upon us  
28

1 is largely unprecedented.<sup>3</sup> The ultimate difficulty is that a  
2 court's action on an informal proof of claim might not suffice to  
3 enable trustees to make payment, there being no authority  
4 permitting trustees to make payment on informal proofs of claim  
5 that have never been amended by formal proofs of claim.

6  
7 B

8 Another complication in using the informal proof of claim  
9 doctrine in this context is that the court has not set a bar date  
10 and, thus, it is premature for the debtors to file a proof of  
11 claim on the creditor's behalf and then object to it. 11 U.S.C.  
12 § 501(c); Fed. R. Bankr. P. 3004.

13 Pursuant to Rule 3003, the court shall fix the time within  
14 which proofs of claims or interest may be filed. Fed. R. Bankr.  
15 P. 3003(c). When a creditor has not filed a proof of claim  
16 within the time period set by the court, a creditor invokes the  
17 informal proof of claim doctrine. If the creditor can point to  
18 an informal document that sufficiently meets the requirements for  
19 an informal proof of claim, the court will deem the informal  
20 document an informal proof of claim, which the creditor can then  
21 amend, and, thereafter participate in the estate. Wheatfield,  
22 308 B.R. at 469; Pizza of Hawaii, 761 F.2d at 1380; Anderson-  
23 Walker Indus., 798 F.2d at 1288; Sambo's, 754 F.2d at 816; County  
24 of Napa, 597 F.2d at 183.

25  
26  
27 <sup>3</sup>Although there is an example of an informal proof of claim  
28 being used as a weapon against a governmental creditor in order  
to establish that sovereign immunity was waived, that situation  
involved an adversary proceeding. Sullivan, 963 F.2d at 1153-54.

1 As such, courts ordinarily have deemed something other than  
2 a proof of claim to be an informal proof of claim in an effort to  
3 ameliorate the harsh result of strict enforcement of a bar date.  
4 9 COLLIER ¶ 3001.05 [1]; Pizza of Hawaii, 761 F.2d at 1381;  
5 Sambo's Rest., Inc., 754 F.2d at 816; County of Napa, 597 F.2d at  
6 183 (citations omitted); Wheatfield, 308 B.R. at 468. Here, the  
7 court has not yet set a bar date and, thus, the usual purpose for  
8 using the informal proof of claim doctrine is not in play.

9 Nor could the debtors have filed (and objected to) a formal  
10 proof of claim on behalf of the creditor at this stage of the  
11 case because the bar date had not passed. Although § 501(c)  
12 permits a debtor to file a proof of claim if the creditor does  
13 not timely file a proof claim, the court has not yet in this case  
14 set a bar date for the filing of claims pursuant to Federal Rule  
15 of Bankruptcy Procedure 3003(c)(3). Hence, the debtors did not  
16 have standing to file a proof of claim on behalf of SPS pursuant  
17 to § 501(c) because there was no proof of claim that the debtors  
18 could have filed on behalf of SPS, and because SPS had not filed  
19 a proof of claim, there was no proof of claim on file to which  
20 the debtors could have objected.

21  
22 C

23 Assuming that the payoff statement constituted an informal  
24 proof of claim, the next procedural step is that a creditor  
25 ordinarily must amend the informal proof of claim to conform to  
26 the requirements of Rule 3001(a), so that there is eventually a  
27 formal proof of claim on the table. 9 COLLIER ¶ 3001.05[4]. In  
28 other words, an informal proof of claim primarily serves as a

1 platform for a formal amended proof of claim. Pizza of Hawaii,  
2 761 F.2d at 1379 (9th Cir. 1985); Sambo's, 754 F.2d at 816 (9th  
3 Cir. 1985); County of Napa, 597 F.2d at 183, citing, In re  
4 Patterson-MacDonald Shipbldg. Co. v. McLean, 293 F. 190, 191 (9th  
5 Cir. 1923) and Sun Basin Lumber Co., Inc. v. United States, 432  
6 F.2d 48, 49 (9th Cir. 1970). Once there is a proper proof of  
7 claim, an objection addressed to the merits would be in order.

8 Here, there was never an amendment to the purportedly  
9 informal proof of claim. Thus, there was no formal document that  
10 the debtors could have objected to. To regard an informal proof  
11 of claim as sufficient to permit the debtors' objection to go  
12 forward, correlatively requires the conclusion that if there had  
13 been no objection, the trustee would have been required to pay an  
14 informal proof of claim. It does not even appear that the  
15 trustee must seek out informal proofs of claim for review and  
16 potential objection. 9 COLLIER ¶ 3001.05[4].

17 Because a creditor must amend an informal claim to  
18 participate in the estate, and, thus, may not complain about a  
19 failure to receive a distribution from the estate if no claim  
20 complying in form with Rule 3001 was filed in the time required  
21 by Rule 3002 and 3003, 9 COLLIER ¶ 3001.05[4], it appears that  
22 there cannot be an objection to an informal proof of claim under  
23 these circumstances.<sup>4</sup> As such, we conclude that the informal  
24 proof of claim was not sufficiently formal to permit the debtors'  
25 objection to go forward in a contested matter.

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26  
27 <sup>4</sup>Section 1111(a) does not change the analysis because the  
28 debtors did not designate the claim in the schedules as  
"disputed, contingent, or unliquidated." 11 U.S.C. § 1111(a).  
Nevertheless, that is not enough on which to premise a claim  
objection.



1           Although the underlying questions are interesting and  
2 complex, the informality of the proceedings in the trial court  
3 has produced a record that is too incomplete to permit  
4 intelligent review.

5  
6   II

7           Since objection to claim procedure was not available under  
8 the circumstances, the alternative would have been an adversary  
9 proceeding.

10          Here, the debtors demanded relief that requires an adversary  
11 proceeding under Rule 7001. They sought a declaratory judgment  
12 reducing SPS's lien from an alleged \$985,672.03 to \$695,423.34,  
13 cancellation of the second deed of trust, and damages according  
14 to proof at trial. While (assuming there was a proper proof of  
15 claim on file) a mere objection would have been sufficient to  
16 establish what was owed for purposes of bankruptcy distribution,  
17 the focus here was mainly for the nonbankruptcy purpose of  
18 determining the proper payoff amount on the underlying Note for  
19 purposes of nonbankruptcy refinancing. Rule 7001(2) provides  
20 that "a proceeding to determine the validity, priority, or extent  
21 of a lien or other interest in property" is an adversary  
22 proceeding. Fed. R. Bankr. P. 7001(2).

23          Under any view of the situation, the debtors' objection was  
24 joined with a demand for relief of the kind specified in Rule  
25 7001, that (assuming there was a proof of claim to which there  
26 would be objection) is required by Rule 3007 to "become" an  
27 adversary proceeding. When this situation arises in the context  
28 of a procedurally correct objection to claim, the court needs to

1 assign an adversary proceeding number and to clarify the status  
2 of the pleadings and either require an amended complaint or deem  
3 the objection filed in the parent case to constitute the  
4 complaint in the adversary proceeding. The omission of such  
5 steps produces the type of procedural chaos that we now confront.

6  
7 III

8 To complicate matters further, to the extent that the court  
9 could have treated the "objection" as a mere objection to claim,  
10 it would nevertheless have been subject to Federal Rule of  
11 Bankruptcy Procedure 9014.

12 As amended in 2002, unless waived by the parties, Rule 9014  
13 requires testimony with respect to disputed material factual  
14 issues to be taken in the same manner as in the trial of an  
15 adversary proceeding. Fed. R. Bankr. P. 9014(d); Khachikyan v.  
16 Hahn (In re Khachikyan), 335 B.R. 121, 126 (9th Cir. BAP 2005).  
17 The court must also provide procedures to enable parties to  
18 ascertain whether a scheduled hearing will be an evidentiary  
19 hearing at which witnesses may testify. Fed. R. Bankr. P.  
20 9014(e); Khachikyan, 335 B.R. at 126-27.

21 Moreover, findings of fact and conclusions of law are  
22 required to be rendered in contested matters and in adversary  
23 proceedings. Specifically, Federal Rule of Civil Procedure 52  
24 applies to both categories of bankruptcy litigation. Fed. R.  
25 Civ. P. 52, incorporated by Fed. R. Bankr. P. 7052 and 9014.  
26 Examples of potentially material questions that ordinarily would  
27 be resolved in findings would be whether the document on which  
28 the court ruled squares with the Adjustable Rate Note, whether

1 the payments pursuant to the APO had an effect upon the  
2 situation, and whether any of the additional sums claimed by SPS  
3 were permissible in light of the terms of the Note or otherwise.

4 The purposes for requiring findings of fact and conclusions  
5 of law are, primarily, that the exercise promotes care by  
6 assuring that the trier of fact focuses on all pertinent elements  
7 in a disciplined manner and, secondarily, to enable more  
8 thoughtful appellate review. Yadidi v. Herzlich (In re Yadidi),  
9 274 B.R. 843, 853 (9th Cir. BAP 2002).

10 Judge Frank's classic statement of the value of formal  
11 findings can hardly be improved upon:

12 For, as every judge knows, to set down in precise words  
13 the facts as he finds them is the best way to avoid  
14 carelessness in the discharge of that duty: Often a  
15 strong impression that, on the basis of the evidence,  
16 the facts are thus-and-so gives away when it comes to  
17 expressing that impression on paper.

18 United States v. Forness, 125 F.2d 928, 942 (2nd Cir. 1942).

19 In short, the multiple procedural omissions, especially the  
20 absence of findings of fact and conclusions of law, convinces us  
21 that we lack a record sufficient to permit effective review of  
22 the many "interesting" questions that might repose in this  
23 appeal.

#### 24 CONCLUSION

25 For the foregoing reasons, we cannot in good conscience  
26 reach the question urged upon us by SPS. Accordingly, we VACATE  
27 and REMAND for further proceedings.  
28

1 JAROSLOVSKY, Bankruptcy Judge, concurring:

2  
3 I concur completely with the analysis and conclusions of my  
4 brethren. However, I would go one step further and hold that in  
5 situations like the one before us the sine qua non of an informal  
6 proof of claim is a desire by the creditor to file a formal proof  
7 of claim. Since SPS never expressed such a desire, it was  
8 entitled to the procedural protections of an adversary  
9 proceeding.

10 The filing of a proof of claim has both positive and  
11 negative consequences for a creditor. One positive consequence  
12 is that a creditor can participate in the distribution of estate  
13 assets. One negative consequence is being subject to lesser  
14 procedural protections. Because the bankruptcy court erroneously  
15 deemed its payoff statement to be an informal proof of claim, SPS  
16 was suddenly swept into serious bankruptcy litigation on the  
17 basis of a simple motion. It had every right to demand a more  
18 formal proceeding and the failure to afford that right renders  
19 the bankruptcy court's judgment subject to reversal on appeal.  
20 In re Lyons, 995 F.2d 923, 924 (9th Cir. 1993).

21 SPS never sought a distribution from the general assets of  
22 the estate. Pursuant to § 506(d)(2) of the Bankruptcy Code, it  
23 did not need to file a proof of claim in order to protect its  
24 lien. Because it never desired to file a formal proof of claim,  
25 its payoff statement was not an informal proof of claim. For  
26 this reason alone, I concur that absent a formal proof of claim  
27 the extent of the SPS lien can be properly decided by the  
28 bankruptcy court only in the context of an adversary proceeding.