

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.³ 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 ³Although 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.⁴ 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.

26
27 ⁴Section 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 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.