

FEB 28 2006

**HAROLD S. MARENUS, CLERK
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NOT FOR PUBLICATION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.	EC-05-1261-PanMa
)		
JAMES R. EATON and)	Bk. No.	01-13146-A13
JANICE L. EATON,)		
)		
Debtors,)		
_____)		
CALIFORNIA FIDELITY, INC.,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
JAMES R. EATON; JANICE L.)		
EATON; M. NELSON ENMARK,)		
Chapter 13 Trustee,)		
)		
Appellees.)		
_____)		

Argued and Submitted on January 19, 2006
at Sacramento, California

Filed - February 28, 2006

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

Honorable Whitney Rimel, Bankruptcy Judge, Presiding.

Before: PAPPAS, NAUGLE,² and MARLAR, Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

² Hon. David N. Naugle, United States Bankruptcy Judge for the Central District of California, sitting by designation.

1 A creditor appeals a final order of the bankruptcy court in a
2 chapter 13 case valuing the security for its claim under 11 U.S.C.
3 § 506(a)³ and determining that the claim was wholly unsecured and
4 had been discharged in a prior chapter 7 bankruptcy case. We
5 REVERSE and REMAND to the bankruptcy court with instructions to
6 enter an order consistent with this decision.

7 **Facts**

8 The material facts are undisputed.⁴

9 James and Janice Eaton ("Appellees") filed a voluntary
10 chapter 7 petition on October 6, 2000; the bankruptcy court issued
11 a discharge in that case on January 18, 2001.

12 On April 2, 2001, Appellees filed for relief under chapter
13 13. Appellees filed a chapter 13 plan on April 13, 2001, that
14 proposed to pay 100% of unsecured creditors' claims, which they
15 believed totaled \$1,780 (presumably all of which had been incurred
16 since their chapter 7 filing). Under the plan, Appellees
17 committed to make monthly payments to the trustee of \$105 for 36
18 months.

19 Two motions to value collateral were attached to the plan.
20 The motions were directed at Compulink (owed, according to the
21 motion, \$36,664.77) and The Money Store (owed \$22,113), the two
22 creditors holding claims secured by second and third priority

23
24 ³ Unless otherwise indicated, all references to chapter or
25 section are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
26 references to Rules are to the Federal Rules of Bankruptcy
Procedure.

27 ⁴ According to the transcript of the hearing conducted by
28 the bankruptcy court, the parties elected to forgo submission of
evidence and testimony and proceeded solely upon written
declarations.

1 deeds of trust on Appellees' residence. In the motions, Appellees
2 alleged that, as of March 2001, the residence had a value of
3 \$70,000, which was roughly equal to the amount they owed on Wells
4 Fargo Bank's first priority deed of trust on their home.⁵
5 Therefore, according to Appellees' motions, the claims of
6 Compulink and The Money Store were both completely unsecured.
7 Other than in the attached motions, Appellees' plan did not refer
8 to treatment of these claims.

9 On April 23, 2001, United National Bank⁶ filed a proof of
10 claim for \$39,864, asserting that its claim was secured by
11 Appellees' residence. On May 25, 2001, HomEq/The Money Store
12 filed its proof of claim for \$22,113, also asserting that
13 Appellees' residence secured its claim. Appellees never objected
14 to either proof of claim.

15 On May 16, 2001, Appellees filed two notices directed at
16 Creditors⁷ informing them that Appellees had filed a chapter 13
17 plan accompanied by motions that sought to value the collateral
18 securing their claims, and advising them if they objected to
19 Appellees' proposed \$70,000 value, Creditors should file a written
20 response within the time specified in the notice. Neither
21 Creditor filed a response. However, when Appellees sought
22

23 ⁵ Appellant does not dispute this value.

24 ⁶ The relationship between United National Bank and
25 Compulink is not entirely clear from the record. The parties seem
26 to agree, however, that United National Bank is the entity that
holds the claim secured by the second deed of trust on Appellees'
residence.

27 ⁷ For ease of reference, Compulink/United National Bank and
28 HomEq/The Money Store will be referred to collectively as
"Creditors."

1 confirmation of their plan and entry of an order granting their
2 motions, the bankruptcy court concluded that the notices of
3 Appellees' motion to value claims filed with the bankruptcy court
4 (and presumably served on Creditors) did not include a copy of the
5 plan, which was contrary to the bankruptcy court's local
6 procedural requirements, General Order 01-02 ¶2(b). Consequently,
7 the bankruptcy court entered a June 27, 2001, order that confirmed
8 Appellees' chapter 13 plan but struck the language of the order
9 purporting to value the residence. Apparently, neither Appellees
10 nor their attorney realized that the bankruptcy court's order
11 confirming the plan did not also value the secured creditors'
12 claims on the house.

13 Several years later, in 2004, Appellant California Fidelity,
14 Inc. acquired Creditors' interests under the second and third
15 deeds of trust. On February 9, 2004, Appellant filed a request in
16 the bankruptcy case that all notices be directed to its attorney,
17 David Leventhal. It also filed a proof of claim asserting a claim
18 secured by Appellees' residence in the total amount of
19 approximately \$54,000 secured by the deeds of trust on Appellee's
20 home.

21 Learning of these events, and now realizing that the
22 confirmation order did not value the secured claims on their
23 residence, on May 19, 2004, Appellees filed three new motions to
24 value collateral, this time directed to the two original Creditors
25 and to Appellant. The motion directed to Appellant was served
26 upon Mr. Leventhal, among others, at the address set forth in
27 Appellant's proof of claim and in the February 9, 2004, request
28

1 for notice.⁸

2 After receiving no response to the motions, at Appellees'
3 request, the bankruptcy court entered separate orders granting all
4 three motions on June 24, 2004, effectively deeming Appellant's
5 claim unsecured. Appellees completed all plan payments some time
6 prior to August 20, 2004.⁹ On September 24, 2004, Appellees
7 received a chapter 13 discharge, and on September 28, 2004, the
8 bankruptcy case was closed.

9 In the period since Appellees' bankruptcy case was filed, the
10 value of their residence dramatically increased. In connection
11 with a refinance application completed on November 9, 2004,
12 Countrywide Home Loans valued Appellees' residence at \$186,000 and
13 funded a loan to Appellees in the amount of \$153,000. The second
14 and third trust deeds, which remained of record at the time of the
15 refinancing, were not paid by Countrywide because it understood
16 those deeds of trust had been avoided in Appellees' chapter 13
17 case. The new loan closed on November 29 or 30, 2004,¹⁰ resulting
18 in a payout to Appellees of about \$74,000.

19 _____
20 ⁸ The bankruptcy court made detailed factual findings
21 concerning where Appellees sent notice of these motions to
22 Creditors and Appellant. The record does not include any of the
23 certificates of service attached to Appellees' motions. This is
24 of no moment, however, because Appellant is not contesting the
25 adequacy of Appellees' service of the May 2004, motion to value.

26 ⁹ We cannot be sure, based on this record, of the precise
27 date Appellees made their final plan payment to the trustee. But
28 in reviewing the bankruptcy court's docket, we find that the
trustee's Preliminary Final Report, filed the date indicated
above, reflects that all payments were complete and that the case
"concluded" on July 29, 2004. Trustee's Final Report was filed on
September 24, 2004.

¹⁰ The bankruptcy court found that the Countrywide escrow
closed November 29, 2004. However, the Settlement Statement and
the Closing Statement indicate the loan closed on November 30,
2004.

1 At about the same time, Appellant's attorney notified
2 Appellees' attorney that Appellant had acquired the notes secured
3 by the second and third deeds of trust, and that its position was
4 it had not been properly served with Appellees' May 19, 2004,
5 motion to value collateral. After further communication,
6 Appellees executed a stipulation with Appellant that provided the
7 chapter 13 bankruptcy case would be reopened, the bankruptcy
8 court's June 24 order granting Appellees' motion to value
9 Appellant's secured claim would be vacated and that a hearing
10 would be scheduled on Appellee's motion to value Appellant's
11 claim.¹¹

12 Consistent with the stipulation, the bankruptcy court entered
13 a November 30, 2004, order reopening the case and vacating its
14 earlier June 24 orders. However, rather than scheduling a hearing
15 on Appellees' May motions, the court's order required Appellees to
16 file a new motion to value Appellant's collateral in accordance
17 with local rules. On January 19, 2005, Appellees filed their
18 third Motion to Value Collateral directed to Appellant. After an
19 April 21, 2005, hearing, the bankruptcy court took the issues
20 under advisement and on June 6, 2005, entered a Memorandum
21 Decision granting Appellees' Motion to Value Collateral.

22 In its decision, the bankruptcy court rejected Appellant's
23 contention that Appellees' valuation motion sought to revoke the
24 order confirming their plan or to modify that plan. Instead, the
25 bankruptcy court characterized the motion as one to value
26 Appellant's collateral, and that under the parties' stipulation,
27

28 ¹¹ From the record, it appears that the stipulation sought to vacate the orders relating to Appellant and HomeEq/The Money Store, but not United National Bank.

1 Appellees were merely re-noticing and litigating the issues raised
2 in their May 2004 motions.

3 Moving to the merits, the bankruptcy court concluded that
4 Appellees' house should be valued in connection with the original
5 plan confirmation as of the petition date for several reasons.

6 First, the bankruptcy court read § 502(b) and § 506(a) to
7 require that all claims be determined as of the date the petition
8 is filed and that valuation of a secured creditor's claim should
9 occur in conjunction with consideration of a plan affecting that
10 creditor's interest. The only plan in this case, according to the
11 court, was Appellees' 2001 confirmed plan.

12 Second, the bankruptcy court reasoned that § 1325(a)(5)(B)
13 requires that a chapter 13 plan should pay the present value of a
14 secured claim calculated as of the "effective date of the plan."
15 The bankruptcy court noted that Appellees' plan, which conformed
16 to the standard plan adopted in the district, provided that its
17 effective date was the date of filing, and it observed that the
18 majority of courts to consider the timing of valuation have
19 concluded that collateral should be valued at the time of
20 confirmation or upon the effective date of the plan.

21 Based upon the evidence before it, the bankruptcy court found
22 that the value of Appellant's collateral at the time of Appellees'
23 chapter 13 filing was \$70,000. Consequently, because of the
24 amount owed on the first deed of trust at that time, the
25 bankruptcy court concluded there was no value to secure
26 Appellant's second and third deeds of trust on the residence.

27 The bankruptcy court also concluded that § 1322(b)(2) did not
28 apply to bar the modification of Appellant's claim secured by

1 Appellees' residence when there was no value to secure its claims
2 after deducting senior liens. Since Appellant's claim was not
3 secured, the bankruptcy court held it had been discharged in
4 Appellees' chapter 7 case. Therefore, the court concluded
5 Appellant held no enforceable unsecured claim in Appellees'
6 chapter 13 case.

7 An order granting Appellees' valuation motion was entered by
8 the bankruptcy court on June 21, 2005. Appellant timely filed
9 this appeal.

10 **Jurisdiction**

11 The bankruptcy court had jurisdiction pursuant to
12 28 U.S.C. §§ 1334 and 157(b). This Panel has jurisdiction over
13 the appeal pursuant to 28 U.S.C. § 158(a)(1) and (b).

14 **Issue Presented**

15 Did the bankruptcy court err in determining the allowed value
16 of Appellant's claim under § 506(a) as of the date Appellees filed
17 their bankruptcy petition in 2001?

18 **Standard of Review**

19 This issue involves a question of law concerning statutory
20 interpretation, and the bankruptcy court's conclusions are
21 therefore subject to de novo review. Chevron USA Inc. v.
22 Bronster, 363 F.3d 846, 855 (9th Cir. 2004).

23 **Discussion**

24 The bankruptcy court viewed Appellees' January 2005 motion to
25 value Appellant's claim as simply taking the place of Appellees'
26 earlier motions filed in May 2004. Since the May 2004 motions
27 were filed prior to closure of the case, the bankruptcy court
28 considered them timely filed. The bankruptcy court then concluded

1 that Appellant's collateral should be valued as of the 2001
2 petition date at \$70,000. When it did so, because there was no
3 value in the house over and above the amount owed on the first
4 deed of trust, the bankruptcy court concluded Appellant's claim
5 was unsecured and had been discharged in Appellees' chapter 7
6 case. We disagree with the bankruptcy court's analysis in several
7 respects.

8 In effect, § 506(a) provides that an allowed claim¹² secured
9 by a lien on property of the estate is a secured claim to the
10 extent of the amount owed to the creditor, or the value of the
11 collateral, whichever is less. If the value of the collateral is
12 less than the amount owed, the creditor's claim is unsecured for
13 that difference. In other words, § 506(a) operates to bifurcate a
14 secured creditor's claim into allowed secured and unsecured claims
15 based upon the court's valuation of the property securing the
16 claim. Gold Coast Asset Acquisition, L.P. v. 1441 Veteran St. Co.
17 (In re 1441 Veteran St. Co.), 144 F.3d 1288, 1292 (9th Cir. 1998).
18 And "[t]o the extent that a lien secures a claim against the
19 debtor that is not an allowed secured claim, such lien is
20 void" § 506(d).

21 In a chapter 13 case, normally, claims secured by a security
22 interest in a debtor's principal residence may not be modified.

24 ¹² A prerequisite to application of § 506(a) is that the
25 secured creditor's claim be "allowed." Section 502(a) provides
26 that if a creditor files a proof of claim, the claim is "deemed
27 allowed." In this case, Creditors and Appellant all filed proofs
28 of claim to which Appellees never objected. Thus, Creditors' and
Appellant's claims are "deemed allowed." Moreover, Rule 3001(f)
provides that a proof of claim filed and executed according to the
rules constitutes prima facie evidence of the claim's validity and
amount. Appellees do not challenge the validity or amount of
Appellant's claim.

1 § 1322(b)(2) (providing a plan may "modify the rights of holders
2 of secured claims, other than a claim secured only by a security
3 interest in real property that is the debtor's principal
4 residence") (emphasis added). However, despite
5 § 1322(b)(2), such a lien may be "stripped off" and avoided under
6 § 506(d) if the bankruptcy court determines under § 506(a) that
7 there is no value in the residence to secure the claim such that
8 the creditor's claim is rendered entirely unsecured. In re Lam,
9 211 B.R. 36, 40 (9th Cir. BAP 1997) appeal dismissed 192 F.3d 1309
10 (9th Cir. 1999).¹³

11 Procedurally, Rule 3012 allows a debtor to file a motion to
12 determine the allowed value of a secured creditor's claim.
13 However, it is § 506(a) that prescribes the context in which such
14 a valuation should occur, and requires that such value

15 be determined [by the bankruptcy court] in
16 light of the purpose of the valuation and of
17 the proposed disposition or use of such
18 property, and in conjunction with any hearing
on such disposition or use or on a plan
affecting such creditor's interest.

19 (Emphasis added.) Simply put, § 506(a) instructs that a secured
20 creditor's status be determined in a chapter 13 case in
21 conjunction with either the disposition of the property, or the
22 hearing on any plan affecting the creditor's interest. See In re
23 Wilkins, 71 B.R. 665, 669 (Bankr. N.D. Ohio 1987) (interpreting

24
25 ¹³ By contrast, the U.S. Supreme Court, in Dewsnup v. Timm,
26 502 U.S. 410 (1992), held that § 506(d) cannot be used to void a
27 creditor's lien in a chapter 7 liquidation case. Also, in a
28 recent decision, Concannon v. Imperial Capital Bank (In re
Concannon and Concannon), ___ B.R. ___ (9th Cir. BAP February 7,
2006), this Panel concluded that Dewsnup prohibits stripping off
of both consensual and nonconsensual liens. Thus, Appellees'
argument that the liens were discharged in the chapter 7 case is
without merit.

1 § 506(a) to require valuation hearings to be in conjunction with
2 plan confirmation).

3 In this case, Appellees proposed, and the bankruptcy court in
4 2001 confirmed, a plan that did not even mention the secured
5 claims in question other than in the attached valuation motions.
6 In its confirmation order, the bankruptcy court expressly declined
7 to value the creditors' claims secured by Appellees' house because
8 Appellees had not properly served the motions and plan. It was
9 not until May 2004 that Appellees finally took further steps to
10 value the claims secured by the liens on the house, including
11 Appellant's claim. While an order was entered by the bankruptcy
12 court on the May 2004 motions, Appellees later stipulated that
13 order could be vacated. Instead of adopting the parties' approach
14 of simply rescheduling the hearing on the May 2004 motion, the
15 bankruptcy court ordered that new valuation motions be filed.
16 That was not done until January, 2005, long after Appellees had
17 completed payments under their plan, they had received a
18 discharge, and the case was closed.

19 Even assuming under these odd facts that Appellees' motions
20 to value Appellant's collateral are timely for purposes of
21 § 506(a),¹⁴ when read fairly, we conclude that those motions
22 effectively sought to modify the terms of Appellees' confirmed
23 plan. Because the motion to value sought to modify Appellees'
24 original plan, for the reasons discussed below, we believe that

25

26
27 ¹⁴ We doubt, but need not decide under these facts, whether
28 the bankruptcy court can, consistent with § 506(a), value a
secured claim "in conjunction with any hearing on . . . a plan
affecting such [secured] creditor's interest" when that plan was
confirmed years before, and the debtors have completed their
performance of that plan and received a discharge.

1 any valuation of Appellant's claim should have been done as of the
2 effective date of the proposed modified plan.

3 Appellees are bound by the terms of their plan confirmed on
4 June 27, 2001. § 1327(a) ("The provisions of a confirmed plan
5 bind the debtor and each creditor, whether or not the claim of
6 such creditor is provided for by the plan"); Enewally v.
7 Washington Mut. Bank (In re Enewally), 368 F.3d 1165, 1172 (9th
8 Cir. 2004). To extinguish a creditor's lien, a chapter 13 plan
9 must "provide for" the creditor's claim secured by that lien.

10 § 1327(c) (providing that "Except as provided in the plan or in
11 the order confirming the plan, the property vesting in the debtor
12 under subsection (b) of [§ 1327] is free and clear of any claim or
13 interest of any creditor provided for by the plan.") (emphasis
14 added). To "provide for" a claim, the plan must make express
15 provision for, deal with, or refer to a claim. Shook v. CBIC (In
16 re Shook), 278 B.R. 815, 823 (citing Rake v. Wade, 508 U.S. 464,
17 474 (1993) and Lawrence Tractor Co. v. Gregory (In re Lawrence
18 Tractor Co.), 705 F.2d 1118, 1122 (9th Cir. 1983)). Absent a
19 clear provision in a plan dealing with a secured creditor's claim,
20 the debtor cannot extinguish the creditor's lien and that lien
21 passes through bankruptcy unaffected. Shook, 278 B.R. at 820, 824
22 (citing Long v. Bullard, 117 U.S. 617, 620-21 (1886)). If, as
23 here, a plan is silent about the fate of a secured claim and does
24 not provide clear notice to the secured creditor concerning its
25 treatment under the plan, that plan cannot effectively avoid a
26 lien or determine its value. Shook, 278 B.R. at 824 (citing Great
27 Lakes Higher Ed. Corp. v. Pardee (In re Pardee), 193 F.3d 1083,
28 1085-86 (9th Cir. 1999)).

1 Appellees' 2001 confirmed plan did not "provide for" the
2 claims secured by their residence. Recall, in the confirmation
3 order, the bankruptcy court struck the proposed language valuing
4 the house. Therefore, to determine Appellant's rights, Appellees
5 must rely solely upon the language contained in the plan. But
6 that plan made no mention of the claims Appellant eventually
7 acquired (or, for that matter, that of Wells Fargo, which held the
8 first deed of trust on their residence). By failing to "provide
9 for" the Creditors' claims, their liens were not affected by
10 Appellees' confirmed plan, and the Creditors' claims continued to
11 be secured by Appellees' residence. Because Appellees' 2004 and
12 2005 valuation motions sought to alter that result, and to
13 significantly affect Appellant's rights as a secured creditor, the
14 motions can only be seen as a proposal by Appellees to modify
15 their confirmed plan.¹⁵

17 ¹⁵ When viewed in this light, we question whether Appellees'
18 proposal can be allowed under the Bankruptcy Code. Under
19 § 1329(a), a confirmed plan may be modified to "increase or reduce
20 the amount of payments on claims of a particular class provided
21 for by the plan"; "extend or reduce the time for payments"; or
22 "alter the amount of the distribution to a creditor whose claim is
23 provided for by the plan." (emphasis added) This provision seems
24 to limit proper modifications to those aimed at changing the
25 treatment of claims expressly provided for by the confirmed plan.
26 As explained above, since Appellant's claim was not "provided for"
27 in the confirmed plan, it is difficult to see how § 1329(a) allows
28 the sort of drastic modification of rights occasioned by a
post-confirmation lien-stripping motion when the creditors' claims
had previously been allowed. See Ruskin v. DaimlerChrysler Servs.
N. Am. (In re Adkins), 425 F.3d 296, 302-03 (6th Cir. 2005), and
Chrysler Fin. Corp. v. Nolan (In re Nolan), 232 F.3d 528, 532 (6th
Cir. 2000) (both holding that § 1329(a) does not allow a debtor to
alter, reduce or reclassify a previously allowed secured claim
once a plan has been confirmed); but see In re Zieder, 263 B.R.
114, 117 (Bankr. D.Ariz. 2001) (considering Nolan, and holding
that § 502(j) would permit reconsideration of a previously allowed
secured claim, provided adequate cause was shown, in the context
of a request to modify a confirmed plan). Because we deem the
bankruptcy court to have otherwise erred in its application of the
Code, we need not resolve this question.

1 There is an additional reason why, contrary to the
2 bankruptcy court's decision, we think Appellees' 2004 and 2005
3 motions must be treated as motions to modify their confirmed plan.
4 If Appellant's liens were avoided, Appellant would presumably be
5 left with unsecured claims. However, it is clear that Appellees
6 do not intend to pay Appellant, despite the confirmed plan's
7 provision that 100% of unsecured creditors' claims would be paid.
8 This constitutes yet another feature of the confirmed plan which
9 Appellees seek to modify by way of their motions, and another
10 manner in which Appellees' rights would be affected by that
11 modification.

12 We disagree with the bankruptcy court's conclusion that
13 Appellant's potential unsecured claim had already been discharged
14 in Appellees' chapter 7 case. This reasoning contravenes § 506(a)
15 and the reach of Appellees' chapter 7 discharge. Because the
16 record contains nothing to indicate otherwise, presumably
17 Appellant's predecessors' claims, as secured claims, emerged
18 unscathed by the chapter 7 discharge, which only impacted
19 creditors' in personam rights against Appellees. See Dewsnap v.
20 Timm, 502 U.S. at 417 (holding that, in chapter 7, § 506(d) does
21 not allow a debtor to "strip down" a creditor's lien secured by
22 real property, and that the lien passes through bankruptcy
23 unaffected). Appellant's predecessors held secured, not
24 unsecured, claims in the chapter 7 case. It is only through their
25 chapter 13 filing that Appellees could conceivably use § 506(a) to
26 strip the deeds of trust on their residence securing Appellant's
27 claims. In re Lam, 211 B.R. at 41. And if the lien is stripped,
28 the "would-be secured creditor whose claim is allowed only as

1 unsecured gets paid as an unsecured creditor.” Shook, 278 B.R. at
2 823 (quoting Laskin v. First Nat’l Bank of Keysotone (In re
3 Laskin), 222 B.R. 872, 876 (9th Cir. BAP 1998)).

4 Appellant’s status as an unsecured creditor would therefore
5 be governed by the terms of Appellees’ plan. See In re Akram, 259
6 B.R. 371, 377 (Bankr. C.D. Cal. 2001) (holding that a stripped-off
7 claim under Lam in a chapter 13 case was not to be valued as a
8 general unsecured claim of zero by virtue of a previous chapter 7
9 discharge, but became a general unsecured claim entitled to
10 distribution under the confirmed plan). See also Shook, 278 B.R.
11 at 825-26 (explaining that the debtors’ failure to re-characterize
12 a deemed allowed secured claim as unsecured prevented them from
13 treating it as a general unsecured claim under its “zero payout”
14 plan); In re Rascon, 321 B.R. 48, 53 (Bankr. N.D. Cal. 2005)
15 (holding that, after its lien was stripped, the creditor’s general
16 unsecured claim was provided for in the debtor’s plan and would,
17 under the terms of the plan, go unpaid); In re Gounder, 266 B.R.
18 879, 881 (Bankr. E.D. Cal. 2001) (following Akram, and holding
19 that § 506(a) allows a general unsecured claimant stripped of its
20 lien to pursue its unsecured claim against the chapter 13 estate
21 despite a previous chapter 7 discharge).

22 We decline to elevate the form of Appellees’ 2004/2005
23 “valuation” motions over their substance of the relief sought.
24 Because those motions proposed not only to change Appellant’s
25 treatment as a secured creditor, but also to treat Appellant’s
26 resulting unsecured claim differently than other unsecured
27 creditors under the confirmed plan (*i.e.*, 100% payment vs. no
28 payment), clearly the motions sought to modify Appellees’

1 confirmed plan.

2 And because we conclude that Appellees' motions to value
3 Appellant's claim proposed to modify the confirmed plan, the
4 bankruptcy court incorrectly valued Appellant's collateral as of
5 the date of the filing of the petition. "A modified plan is
6 essentially a new plan." In re Profit, 283 B.R. 567, 574 (9th
7 Cir. BAP 2002). Section 1329(b)(1) requires that a modified plan
8 satisfy the confirmation standards of § 1325(a). Section
9 1325(a)(5)(B)(ii) dictates that, with respect to "each allowed
10 secured claim provided for by the plan," "the value, as of the
11 effective date of the plan, of property to be distributed under
12 the plan on account of such claim" must not be less than the
13 allowed amount of such claim. Since the plan as modified becomes
14 the new plan, its "effective date" is the date of the plan as
15 modified. In re Barbosa, 236 B.R. 540, 552 (Bankr. D.Mass. 1999)
16 (citing Keith M. Lundin, CHAPTER 13 BANKRUPTCY, § 6.44 at 6-133 (2nd
17 ed. 1994 & Supp. 1996)), aff'd, Barbosa v. Soloman, 253 F.3d 31,
18 41 (1st Cir. 2000). See also In re Jefferson, 299 B.R. 468, 471
19 (Bankr. D.Ohio 2003) (holding that the appropriate date for
20 performing liquidation analysis is the effective date of the
21 modified plan); In re Stinson, 302 B.R. 828, 832 (Bankr. D.Md.
22 2003) (holding that valuation analysis is done as of the effective
23 date of the modified plan); In re Walker, 153 B.R. 565, 568
24 (Bankr. D.Ore. 1993) (holding that liquidation value must be
25 redetermined at the time of confirmation of the modified plan).

26 In other words, Appellees could not simply ignore Appellant's
27 allowed secured claim under their original plan, then years later
28 modify the plan to strip Appellant's liens using 2001 values. The

1 bankruptcy court, assuming it concluded a modification was allowed
2 by the Code,¹⁶ should have required that Appellant's claim be
3 valued as of the proposed effective date of the modified plan.
4 Had it done so, presumably Appellees' house would have been valued
5 at \$186,000 and Appellant's claims would be fully secured. In
6 short, had the proper legal analysis been employed by the
7 bankruptcy court, Appellant's liens could not have been stripped.

8 **CONCLUSION**

9 In summary, Appellees' January 2005 motion to value
10 Appellant's claim, strip its liens, and to pay Appellant nothing
11 on its resulting unsecured claim, should have been treated by the
12 bankruptcy court as a motion to modify the terms of their 2001
13 confirmed plan. In disposing of the motion, the bankruptcy court
14 should have determined the amount of Appellant's allowed secured
15 claim "as of the effective date" of the proposed modified plan
16 using 2005 values. The only evidence submitted to the bankruptcy
17 court showed the value of Appellee's house was at least \$186,000.
18 The bankruptcy court instead valued Appellant's claim as of 2001.
19 The bankruptcy court's interpretation and application of the Code
20 was therefore erroneous.

21 The judgment of the bankruptcy court is REVERSED and this
22 case is REMANDED to the bankruptcy court with instructions to
23 enter an order consistent with this decision.

24

25 ¹⁶ Refer to our concerns expressed in note 15, supra. In
26 addition, as we observe in note 9, supra, the record does not show
27 when Appellees completed their plan payments. If they did so
28 prior to the filing of their May, 2004, motion, their proposed
modification to the plan may be time-barred under § 1329(a)
(requiring, subject to certain exceptions, that plan modifications
occur "before completion by the debtor of all payments under the
plan").