No. _____

IN THE

Supreme Court of the United States

JASPER STEVENS
AND BRENDA LOUISE MURRAY STEVENS,

Petitioners,

v.

ROBERT S. WHITMORE,

Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

APPENDIX

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United States Court of Appeals
for the Ninth Circuit.

IN RE JASPER STEVENS and BRENDA LOUISE MURRAY STEVENS,
Debtors-Appellants

v.

ROBERT S. WHITMORE,
Chapter 7 Trustee – Appellee

No. 20-60044

Appeal from the Ninth Circuit Bankruptcy
Appellate Panel, Taylor, Faris, and Lafferty III,
Bankruptcy Judges, Presiding, BAP No. 19-1325,
Argued and Submitted
September 2, 2021, Pasadena, California

Filed October 19, 2021

Before: Sandra S. Ikuta, Mark J. Bennett, and Ryan D. Nelson, Circuit Judges

Opinion by Judge R. Nelson

SUMMARY*

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Bankruptcy

The panel affirmed the Bankruptcy Appellate Panel's decision affirming the bankruptcy court's approval of a settlement of a state court lawsuit filed by debtors against their mortgage servicing company.

While the state suit was pending, debtors filed for bankruptcy. On a schedule that asked about claims against third parties, they stated they had none. They listed the mortgage servicing company as a non-priority creditor, and they disclosed the state lawsuit in their Statement of Financial Affairs. They also discussed the state lawsuit with the bankruptcy trustee. The trustee determined there were no scheduled assets that would benefit the estate, and the bankruptcy court discharged the trustee and closed the case. Later, the mortgage servicing company contacted the bankruptcy trustee and offered to settle debtors' claims in the state lawsuit. The trustee was reappointed by the bankruptcy court, took over the state lawsuit, settled it, and got the settlement approved by both the state court and the bankruptcy court. The settlement proceeds went to the bankruptcy estate, not the debtors.

The panel held that, under 11 U.S.C. § 554(c), at the end of bankruptcy proceedings, property that has not been otherwise administered can generally be abandoned to the debtor only if it has been "scheduled." The panel held that § 554(c) requires property to be disclosed on a literal schedule under 11 U.S.C. § 521(a). Thus, absent trustee or court action, property disclosed only on a statement, such as a Statement of Financial Affairs, cannot be abandoned under § 554(c). Because the debtors listed the state lawsuit only on the Statement of Financial Affairs, and not on a schedule pursuant to § 521(a), they did not meet the requirements of § 544(c), and thus their interest was not abandoned. Accordingly, the bankruptcy court properly reappointed the trustee and approved the settlement.

COUNSEL

Kellam M. Conover (argued), Mark A. Perry, and Suria M. Bahadue, Gibson Dunn & Crutcher LLP, Washington, D.C., for Debtors-Appellants.

Douglas A. Plazak (argued), Reid & Hellyer, Riverside, California, for Appellee.

Tara Twomey, National Consumer Bankruptcy Rights Center, San Jose, California, for Amici Curiae National Consumer Bankruptcy Rights Center and National Association of Consumer Bankruptcy Attorneys.

OPINION

At the end of bankruptcy proceedings, property that has not been otherwise administered can generally be abandoned to the debtor only if it has been "scheduled." 11 U.S.C. § 554(c). A neighboring provision, § 521(a), requires debtors to file several schedules, as well as other statements. In this case, we must decide whether "scheduled" requires that property be listed on one of the literal schedules, or if listing it on one of the other statements can suffice. We hold that § 554(c) requires property to be disclosed on a literal schedule, and thus that, absent Trustee or court action, property disclosed only on a statement (e.g., the Statement of Financial Affairs) cannot be abandoned under § 554(c).

I.

The property in question is the Debtors' interest in a state lawsuit that they filed against their mortgage servicing company. The lawsuit arose out of a conflict over the Debtors' mortgage and their efforts to refinance it. While their case was ongoing, the Debtors voluntarily filed for bankruptcy.

The issue here arose because the Debtors identified the state lawsuit in some of their filings but not in others. On a schedule that asked about claims against third parties, they stated that they had none, even though the lawsuit was still pending. *See* 11 U.S.C. § 521(a)(1)(B)(i); Official Form 106A/B, Schedule A/B: Property. And elsewhere on the same schedule, they also said that they had no other contingent or unliquidated claims.

On the other hand, the Debtors disclosed their mortgage itself: they listed the mortgage servicing company as a non- priority creditor. And they even disclosed the state lawsuit, although, importantly, only in the Statement of Financial Affairs ("SOFA," the filing under § 521(a)(1)(B)(iii)), and not in any of the schedules (separate filings under § 521(a)(1)(B)(i) and (ii)).

The Debtors also discussed the state lawsuit with the bankruptcy Trustee. He requested the litigation documents, which the Debtors sent him. After reviewing these documents, the Trustee certified that the estate "ha[d] been fully administered" and contained "no property available for distribution." The Trustee also determined "that there were no scheduled assets which would benefit [the] estate" and confirmed that he "made a diligent inquiry into the financial affairs of the debtor(s)." The bankruptcy court then discharged the Trustee and closed the case.

A couple of years later, after the Debtors had continued actively litigating their state lawsuit, the opposing party in that suit—the mortgage servicing company—contacted the bankruptcy Trustee directly. The company offered to settle the Debtors' claims for about ten times less money than the Debtors sought. The company asked

the Trustee to reopen the bankruptcy case so that he could be reappointed, take over the state lawsuit, and settle it quickly. The Trustee was reappointed by the bankruptcy court, took over the state lawsuit, settled it, and got the settlement approved by both the state court and the bankruptcy court. Because the state lawsuit had not been abandoned (according to the bankruptcy court), the bankruptcy estate got the proceeds from the settlement, not the Debtors.

The Debtors appealed the bankruptcy court's approval of the settlement to the Bankruptcy Appellate Panel ("BAP"). It affirmed. *In re Stevens*, 617 B.R. 328 (B.A.P. 9th Cir. 2020). The BAP held that the word "scheduled" in § 554(c) "refers only to assets listed in a debtor's Schedules" (defined as "the schedule of assets and liabilities" under 11 U.S.C. § 521(a)(1)(B)(i)), that the state lawsuit had not been listed on a schedule, and thus that the Debtors' interest in the state lawsuit had not been abandoned under § 554(c). *Id.* at 332–34. The BAP observed that "the majority of courts considering the issue have taken the strict approach," and it followed "the majority's plain language reading of § 554(c)." *Id.* at 331–32. It also reasoned that its "narrow reading of § 554(c) is consistent with sound bankruptcy policies and reasonable expectations for a debtor's performance of statutory duties." *Id.* at 333.

II.

We have jurisdiction to consider appeals from final decisions of the BAP under 28 U.S.C. § 158(d)(1). We review the BAP's statutory interpretation de novo. *In re Boyajian*, 564 F.3d 1088, 1090 (9th Cir. 2009).

III.

In bankruptcy, "[a]bandonment is a term of art with special meaning." *Catalano v. C.I.R.*, 279 F.3d 682, 685 (9th Cir. 2002) (quotation marks omitted). Abandonment "is the formal relinquishment of the property at issue from the bankruptcy estate." *Id.* Unless property is abandoned, it "continues to belong to the bankruptcy estate and [does] not revert to" the Debtors. *Cusano v. Klein*, 264 F.3d 936, 945– 46 (9th Cir. 2001); *see also* 11 U.S.C. § 554(d).

Absent circumstances not relevant here,[1] before it can be abandoned under § 554(c), property must be "scheduled under section 521(a)(1)." So the issue here is whether the state lawsuit was scheduled under that section.

Section 521(a)(1) mandates that debtors file several documents. As relevant here, it requires multiple schedules (in § 521(a)(1)(B)(i)–(ii)), as well as several other kinds of statements (in § 521(a)(1)(B)(iii), (v)–(vi)).

Courts have interpreted "scheduled" in two ways. Several bankruptcy courts and a district court have held that to be scheduled, property needs to be included on the "schedule of assets and liabilities."[2] 11 U.S.C. § 521(a)(1)(B)(i).[3] Others have held that to be scheduled, property just needs to be included on any one of the statutory filings from § 521(a), whether that filing is called a schedule or something

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[1] Property can also be abandoned if the Trustee or the court acts directly. 11 U.S.C. § 554(a), (b). But the Debtors did not argue that the property was abandoned under § 554(a) or (b).

[2] See, e.g., *In re Winburn*, 167 B.R. 673, 676 (Bankr. N.D. Fla. 1993); *In re McCoy*, 139 B.R. 430, 432 (Bankr. S.D. Ohio 1991); *In re Fossey*, 119 B.R. 268, 272 (D. Utah 1990).

[3] Income would be scheduled on a different schedule, under § 521(a)(1)(B)(ii), but this case concerns property, not income.

else.[4] But, so far, no federal court of appeals has taken a side in a published opinion. *See, e.g., Ashmore v. CGI Grp., Inc.*, 923 F.3d 260, 282 (2d Cir. 2019) ("We therefore leave for another day the question of whether an asset disclosed to the bankruptcy court orally and on a SOFA, but not on a Schedule B, is abandoned to the debtor."); *but see id.* at 282 n.16 (noting that the Second Circuit, in an unpublished summary order, found that disclosure orally and on a SOFA "would *not* lead to abandonment by operation of law" under § 554(c)).

We reject the Debtors' "any filing" reading. Instead, we hold that, absent Trustee or court action, to be abandoned under § 554(c), property must be scheduled on a schedule, not just listed on the SOFA.

A.

Because "our inquiry begins with the statutory text, and ends there as well if the text is unambiguous," we start with the text of the Bankruptcy Code. *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (plurality opinion). And we read its words in context. *See City of Chicago, Illinois v. Fulton*, 141 S. Ct. 585, 590 (2021). Applying these interpretive rules to the statutory text, property listed only on the SOFA is not "scheduled" and thus, absent Trustee or court action, cannot be abandoned under § 554(c).

The Bankruptcy Code does not define "scheduled." *See* 11 U.S.C. § 101 (definitions). "When terms used in a statute are undefined, we give them their

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[4] See *Bird v. Hart*, 616 B.R. 826, 829 (D. Utah 2020); *United States ex rel. Fortenberry v. Holloway Grp., Inc.*, 515 B.R. 827, 829 (W.D. Okla. 2014); *West v. Jeppesen (In re Krachun)*, No. 15-2016, 2015 WL 4910241, at *6 (Bankr. D. Utah Aug. 14, 2015).

ordinary meaning." *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995). And we look to the ordinary meaning of the term when Congress enacted the statute. *See Perrin v. United States*, 444 U.S. 37, 42 (1979).

Congress enacted § 554(c) in 1978, Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 554, 92 Stat. 2549, 2603 (1978), and dictionaries from that time offered consistent definitions of "scheduled." Webster's defined "scheduled" as "to place or include in a schedule" or "to make a schedule of." Webster's New World Dictionary 1272 (1972). And the Oxford Compact defined the verb "schedule" to mean "[t]o enter in a schedule or list." Oxford Compact Dictionary 203 (1971). These dictionary definitions show that the ordinary meaning of "scheduled" was to include something on a literal schedule. That ordinary meaning, taken with § 554(c)'s explicit cross-reference to § 521(a)(1), which itself also uses the noun "schedule," compels us to construe "scheduled" narrowly.

Our interpretation is bolstered by the "established canon of construction that similar language contained within the same section of a statute must be accorded a consistent meaning." *Nat'l Credit Union Admin. v. First Nat'l Bank & Tr. Co.*, 522 U.S. 479, 501 (1998). Section 554(c) refers to § 521(a)(1), which itself uses the nearly identical term "schedule." Because the one section refers to the other, for purposes of statutory interpretation, we read them together. See *United States v. Morton*, 467 U.S. 822, 828 (1984).

When we read a statute as a whole and see that it uses nearly identical terms in different places, we give those terms similar meanings. "Scheduled" is a verb, and

"schedule" is a noun (as used in § 521(a)(1), anyway), but they share the same root. And the Supreme Court has noted that different grammatical forms of the same word "typically reflect the meaning of" one another. *Cf. FCC v. AT&T Inc.*, 562 U.S. 397, 402 (2011) (construing "person" and "personal"). "Where . . . Congress uses similar statutory language . . . in two adjoining provisions, it normally intends similar interpretations." *Nijhawan v. Holder*, 557 U.S. 29, 39 (2009). There's simply nothing about these words or the surrounding context to imply that Congress wanted them to mean different things.

Thus, given the ordinary meaning of "scheduled" and the statutory context, we must give "schedule" and "scheduled" similar meanings: scheduled means included on a schedule.

A neighboring provision further bolsters our reading. Section 523(a)(3) also uses the word "scheduled" and, just like § 554(c), cross-references § 521(a)(1). And, usefully for our purposes, § 523(a)(3) distinguishes between "list[ing]" and "schedul[ing]." "Undoubtedly, there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning." *Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932). If we adopted the Debtors' reading, then "scheduled" would either mean something different in § 554(c) than it does in § 523(a)(3), violating the canon that identical words are presumed to have the same meaning, *see Atl. Cleaners & Dyers*, Inc., 286 U.S. at 433, or "scheduled" in § 523(a)(3) would mean the same thing as "listed," violating the canon against surplusage, *see Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 106 (2011). Our

reading avoids these interpretive difficulties.

Our reading also finds support in the broader Bankruptcy Code scheme. The Federal Rules of Bankruptcy Procedure routinely distinguish between the bankruptcy petition itself, bankruptcy schedules, the SOFA, and other documents. See, e.g., Fed. R. Bankr. P. 1007. The Debtors' reading fails to account for the Rules' use of these different terms.

B.

The Debtors argue that we should rely on the common law understanding of abandonment to conclude that property is not abandoned when the Trustee knows about it. *See, e.g., In re Webb*, 54 F.2d 1065, 1067 (4th Cir. 1932). But Congress enacted the Bankruptcy Code, and we cannot disregard its plain language. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). We hold that abandonment under § 554(c) requires listing on a schedule, as we have defined it here, and that anything else (e.g., actual knowledge of the trustee, ad hoc oral disclosures, discussion at the § 341 meeting of creditors) is not enough. "The law is abundantly clear that the burden is on the debtors to list the asset and/or amend their schedules, and that in order for property to be abandoned . . . the debtor must formally schedule" it. *Jeffrey v. Desmond*, 70 F.3d 183, 186 (1st Cir. 1995). No matter what the common law said before § 554(c) was enacted, "[i]t is not enough that the trustee learns of the property through other means; the property must be scheduled." *Vreugdenhill v. Navistar Int'l Transp. Corp.*, 950 F.2d 524, 526 (8th Cir. 1991).

IV.

We conclude that property listed only on the SOFA, § 521(a)(1)(B)(iii), is not "scheduled," and thus without Trustee or court action, cannot be abandoned under § 554(c). We acknowledge that the Debtors' failure to list the state lawsuit on a schedule may have been an inadvertent oversight, but given the statute's plain text, we cannot consider equitable arguments. The Debtors could have amended their schedules "as a matter of course at any time before the case . . . closed." Fed. R. Bankr. P. 1009(a). But they didn't. Our task is to interpret the Bankruptcy Code, "not to balance the equities." *Zachary v. California Bank & Tr.*, 811 F.3d 1191, 1199 (9th Cir. 2016). Any "equitable powers remain in the bankruptcy courts . . . and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). The Supreme Court has made this abundantly clear. *See Law v. Siegel*, 571 U.S. 415, 421 (2014) ("[I]n exercising. . . statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions.").

Because the Debtors listed the state lawsuit only on the SOFA, and not on a schedule, pursuant to 11 U.S.C. § 521(a)(1)(B)(i) and (ii), they did not meet the requirements of § 554(c), and thus their interest was not abandoned.

AFFIRMED.

APPENDIX B

United States Court of Appeals
for the Ninth Circuit.

IN RE JASPER STEVENS and BRENDA LOUISE MURRAY STEVENS,
Debtors – Appellants

v.

ROBERT S. WHITMORE,
Chapter 7 Trustee – Appellee

BAP No.
CC-19-1325-TaFL

Appeal from the United States Bankruptcy
Court for the Central District of California
Mark D. Houle, Bankruptcy Judge, Presiding
Bk. No. 6:17-bk-15301-MH

Filed July 2, 2020

APPEARANCES

Appellants Jasper Stevens and Brenda Louise Murray Stevens, pro se, on brief;

Douglas A. Plazak of Reid & Hellyer, APC on brief for appellee.

Before: TAYLOR, FARIS, and LAFFERTY,

OPINION

by: TAYLOR, Bankruptcy Judge

INTRODUCTION

Chapter 7[1] debtors Jasper Stevens and Brenda Louise Murray Stevens

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[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and all "Rule" references are to the Federal Rules of Bankruptcy Procedure.

disclosed a civil suit in their statement of financial affairs but not in their schedule of assets and liabilities. And while they provided the chapter 7 trustee with information relevant to the lawsuit, they never amended their schedules. The lawsuit and its claims (collectively, the "Claims") were not administered before their chapter 7 case closed. Later, however, the bankruptcy court reopened the case and, at the request of the Trustee, approved a settlement that resolved them. Debtors appeal. They argue that the Trustee could not compromise the Claims because he technically abandoned them under § 554(c). We disagree, and we AFFIRM.

FACTS

When Debtors filed their chapter 7 case, their lawsuit against Ocwen Loan Servicing, LLC[2] was pending. But, Debtors failed to disclose and value the Claims in their schedule of assets and liabilities. Instead, they listed the lawsuit as a pending action in their statement of financial affairs, discussed it with the Trustee, and provided copies of the pleadings to the Trustee. Despite this disclosure, the Trustee did not administer it through sale or compromise. Instead, he issued a no asset report, which certified that the estate had been fully administered and reported $0.00 of abandoned assets. The bankruptcy court then discharged the Trustee and closed the case.

Debtors continued to prosecute the lawsuit. But as a summary judgment hearing approached, Ocwen proposed a settlement to the Trustee, who then withdrew the no asset report, obtained case reopening, and filed a settlement approval motion

[2] Ocwen Loan Servicing, LLC and its successor by merger, PHH Mortgage Corporation, are collectively referred to herein as "Ocwen."

("Motion"). Debtors opposed, arguing that the Trustee lacked settlement authority because, under § 554(c), he had abandoned the Claims on case closure.[3]

After hearing the arguments of the parties, the bankruptcy court determined that the Claims had not been abandoned and approved the settlement. Debtors timely appealed.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A) and (O). We have jurisdiction under 28 U.S.C. § 158.

ISSUE[4]

Did the bankruptcy court err in determining that the Claims had not been abandoned under § 554(c)?

STANDARD OF REVIEW

We review de novo the bankruptcy court's interpretation of the Bankruptcy Code and its determination that an estate asset was abandoned. *Mwangi v. Wells Fargo Bank, N.A.* (*In re Mwangi*), 764 F.3d 1168, 1173 (9th Cir. 2014); *Killebrew v. Brewer* (*In re Killebrew*), 888 F.2d 1516, 1519 (5th Cir. 1989).

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[3] Debtors also argued that approval of the settlement was not warranted under the factors set forth in *Martin v. Kane* (*In re A & C Properties*), 784 F.2d 1377, 1381 (9th Cir. 1986), and used to determine the propriety of trustee compromises. Because they did not raise this issue on appeal, we need not, and do not, address it.

[4] Debtors also contend that the bankruptcy court abused its discretion in approving an application to employ bankruptcy counsel filed by the Trustee. We do not address their contention because they failed to: (1) oppose the application, (2) file a notice of appeal of the employment order, and (3) argue, with citations to applicable authorities and portions of the record, why the bankruptcy court abused its discretion. Rules 8003(a)(1) and 8014(a)(8); *Mano–Y & M, Ltd. v. Field* (*In re Mortg. Store, Inc.*), 773 F.3d 990, 998 (9th Cir. 2014).

DISCUSSION

Debtors do not dispute that the Claims became property of their bankruptcy estate when they filed their chapter 7 petition or that the Trustee became the sole party with standing to prosecute the lawsuit, unless and until he abandoned the Claims under § 554. *See Turner v. Cook*, 362 F.3d 1219, 1225-26 (9th Cir. 2004); *CBS, Inc. v. Folks* (*In re Folks*), 211 B.R. 378, 388 (9th Cir. BAP 1997). They contend, however, that the bankruptcy court abused its discretion in approving the compromise because the Claims were technically abandoned before the Trustee filed the Motion. We disagree.

Abandonment of an asset can occur in two ways. First, under § 554(a) and (b), after notice and a hearing, a trustee may voluntarily abandon or may be compelled to abandon specific property of the estate that is "burdensome" or "of inconsequential value and benefit to the estate." And second, as relevant to this appeal, under § 554(c), "any property scheduled under section 521(a)(1) of this title [and] not otherwise administered at the time of the closing of a case is abandoned to the debtor " This type of abandonment is commonly referred to as a "technical abandonment." *Vasquez v. Adair* (*In re Adair*), 253 B.R. 85, 88 (9th Cir. BAP 2000). Here, the sole issue is whether Debtors properly scheduled the Claims within the meaning of "scheduled" in § 554(c).

Section 521(a)(1)(B) requires, in pertinent part, that the debtor file "a schedule of assets and liabilities" and "a statement of the debtor's financial affairs." Debtors

submit that the term "property scheduled under section 521(a)(1)," as used in § 554(c), refers to property disclosed in the schedule of assets and liabilities ("Schedules") *or the statement of financial affairs ("SOFA").* The Trustee disagrees and argues that the phrase means *only* property disclosed in the Schedules.

The Ninth Circuit has yet to rule on this issue, but the majority of courts considering the issue have taken the strict approach advanced by the Trustee. *See, e.g., Ashmore v. CGI Grp. Inc.*, No. 11 Civ. 8611 (AT), 2016 WL 2865153, at *4 (S.D.N.Y. May 9, 2016), vacated and remanded on other grounds, 923 F.3d 260 (2d Cir. 2019); *Swindle v. Fossey* (In re Fossey), 119 B.R. 268, 272 (D. Utah 1990); *In re Winburn*, 167 B.R. 673, 676 (Bankr. N.D. Fla. 1993); *In re McCoy*, 139 B.R. 430, 431-32 (Bankr. S.D. Ohio 1991); Tavormina v. Harris (*In re Harris*), 32 B.R. 125, 127 (Bankr. S.D. Fla. 1983); *In re Medley*, 29 B.R. 84, 86-87 (Bankr. M.D. Tenn. 1983).

And while we have not decided the issue under facts that precisely align with those in this appeal, we have also espoused the majority view. In *Orton v. Hoffman* (*In re Kayne*), 453 B.R. 372 (9th Cir. BAP 2011), we held, in a case involving sanctions under Rule 9011 and § 707(b)(4)(D), that listing an action on promissory note in the SOFA did not result in its abandonment because "[m]entioning an asset in the statement of affairs is not the same as scheduling it." *Id.* at 384 (quoting *In re Kayne*, No. 09-12470, 2010 WL 2757346, at *2 n.2 (Bankr. N.D. Cal. July 11, 2010), *aff'd*, 453 B.R. 372 (9th Cir. BAP 2011)). And relying on *Kayne*, in *Pretscher-Johnson v. Aurora Bank, FSB* (*In re Pretscher-Johnson*), BAP No. NC-16-1180-BTaF, 2017 WL 2779977, *5 (9th Cir. BAP May 31, 2017), we noted a lack of sufficient notice to the trustee or

creditors of unscheduled claims and held that listing a quiet title action without a value in the SOFA was insufficient to effect an abandonment on case closure.

Further, we determined in *Pace v. Battley* (*In re Pace*), 146 B.R. 562, 566 (9th Cir. BAP 1992), *aff'd*, 17 F.3d 395 (9th Cir. 1994), a case discussing express abandonment under § 554(a), that technical abandonment requires proper scheduling of an asset, and "it is not sufficient that the trustee knew of the property's existence at the time that the case was closed." *Id.* at 566.

But a minority view exists; some courts have held that assets listed in the SOFA are scheduled. See, e.g., *United States ex. rel. Fortenberry v. Holloway Grp., Inc.*, 515 B.R. 827, 829 (W.D. Okla. 2014); *West v. Jeppesen* (*In re Krachun*), No. 15-2016, 2015 WL 4910241, at *6 (Bankr. D. Utah Aug. 14, 2015); *In re Hill*, 195 B.R. 147, 150-51 (Bankr. D.N.M. 1996).

And under the unique facts of one case, we questioned a rigid technical abandonment prerequisite that assets be included in the Schedules. *See Nasseri v. Tadayon* (*In re Tadayon*), BAP No. NV- 18-1119-BKuTa, 2019 WL 1923044, at *6 (9th Cir. BAP Apr. 29, 2019). In *Tadayon*, however, the trustee, among things, provided a notice of abandonment that included a detailed description of the unscheduled asset as well as a more general no asset report but, for unknown reasons, failed to present a proposed order approving his abandonment motion. Id. at *6. Thus, it is best read as a case involving express abandonment under § 554(a). Accordingly, we do not find it persuasive in a case not involving its highly unusual factual circumstances.[5]

[5] In Tadayon, we relied heavily on *In re Hill*. In that case, the notice of abandonment abandoned "any and all assets listed *on the statements* and schedules filed in this case" 195 B.R. at 148 (emphasis

Rather, we follow the majority's plain language reading of § 554(c). That is, the word "scheduled" in § 554(c) refers only to assets listed in a debtor's Schedules.

On its face, § 554(c) provides that an asset must be "scheduled under section 521(a)(1)" to be technically abandoned. If Congress intended the "scheduled" assets referenced in § 554(c) to include assets listed only obliquely in the SOFA, then it could have, and should have, drafted § 554(c) to refer to assets "listed or scheduled under section 52l(a)(1)." This view is supported by a review of another Code provision where Congress referred to a debt "neither listed nor scheduled under section 521(a)(1)." *See* § 523(a)(3). If we read "scheduled" in § 554(c) as synonymous with "listed," as Debtors urge, then "listed" in § 523(a)(3) becomes impermissibly superfluous. *See Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992) ("[C]ourts should disfavor interpretations of statutes that render language superfluous."). And if we adopt the minority interpretation, we also run afoul of the canon of statutory interpretation providing that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *United States v. Wahid*, 614 F.3d 1009, 1014 (9th Cir. 2010) (quoting *APL Co. Pte., Ltd. v. UK Aerosols Ltd.*, 582 F.3d 947, 952 (9th Cir. 2009).

Moreover, this narrow reading of § 554(c) is consistent with sound bankruptcy policies and reasonable expectations for a debtor's performance of statutory duties.

First, it encourages debtors to fulfill the critical § 521(a)(1) duty to carefully,

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added). Again, that case, in essence, involved an express abandonment of assets listed in the SOFA.

completely, and accurately disclose all their property in their Schedule A/B under penalty of perjury. See *Cusano v. Klein*, 264 F.3d 936, 946 (9th Cir. 2001). Accurate Schedules apprise all parties to the case of the debtor's financial situation, including the value of the debtor's assets. The SOFA does not similarly require valuation of assets. The bankruptcy system cannot function fairly, effectively, and efficiently unless creditors and trustees can count on debtors to scrupulously comply with their duty to disclose and value assets in the Schedules. *See In re Medley*, 29 B.R. at 87 (Sections 521 and 554 "act in concert to relieve the trustee from the burden of conducting a rigorous search of the debtor's records to discover assets of the estate by providing him with a ready schedule of the debtor's property interests.").

Second, requiring debtors to properly disclose assets in the Schedules is not an undue burden. A debtor has a continuing opportunity to get the Schedules right before case closure; Rule 1009(a) permits a debtor to amend the Schedules "as a matter of course at any time before the case is closed." Thus, a mere mistake or omission can be corrected; our statutory interpretation does not bar technical abandonment in a procrustean fashion.

Third, this requirement advances the goal of a fully transparent bankruptcy process. As mentioned, it assists a trustee in the performance of critical statutory duties. But, the bankruptcy court and all creditors also have a right to full knowledge of a debtor's assets and a complete understanding of technical abandonment risk in a case. Thus, a trustee's acquisition of asset information is not a sufficient substitute for inclusion in the Schedules because the bankruptcy court and creditors remain in

the dark. Appropriately, the Code does not require the trustee to make disclosures where the debtor fails in his statutory duty to schedule his assets.

Moreover, a rule that a trustee's knowledge of an asset or its casual inclusion in the SOFA or both could suffice as the basis for technical abandonment would foster litigation. In the place of a bright line rule that assets must be scheduled before technical abandonment occurs, bankruptcy courts would be required to determine whether the unique facts of a case justify technical abandonment. The inefficiency of this result is clear.

For all these reasons, we hold that technical abandonment requires inclusion of an asset in the Schedules. Thus, the bankruptcy court did not err in concluding that the Claims were not technically abandoned. And, accordingly, it did not abuse its discretion in approving the compromise.

CONCLUSION

Based on the foregoing, we AFFIRM.

APPENDIX C

United States Court of Appeals
for the Ninth Circuit.

IN RE JASPER STEVENS and BRENDA LOUISE MURRAY STEVENS,
Debtors – Appellants

v.

ROBERT S. WHITMORE,
Chapter 7 Trustee – Appellee

No. 20-60044

Appeal from the Ninth Circuit Bankruptcy
Appellate Panel, Taylor, Faris, and Lafferty III,
Bankruptcy Judges, Presiding, BAP No. 19-1325,

Filed December 1, 2021

ORDER

Before: IKUTA, BENNETT, and R. NELSON, Circuit Judges.

The panel has unanimously voted to deny Appellant's petition for panel rehearing and rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P.35. The petition for rehearing en banc is DENIED.

APPENDIX D

United States Court of Appeals
for the Ninth Circuit.

IN RE JASPER STEVENS and BRENDA LOUISE MURRAY STEVENS,
Debtors – Appellants

v.

ROBERT S. WHITMORE,
Chapter 7 Trustee – Appellee

BAP No.
CC-19-1325-TaFL

Appeal from the United States Bankruptcy
Court for the Central District of California
Mark D. Houle, Bankruptcy Judge, Presiding
Bk. No. 6:17-bk-15301-MH

Filed August 4, 2020

ORDER DENYING MOTION FOR REHEARING

Before: TAYLOR, FARIS, and LAFFERTY, Bankruptcy Judges.

TAYLOR, Bankruptcy Judge:

On July 17, 2020, Appellants Jasper Stevens and Brenda Louise Murray Stevens filed a Motion for Rehearing (Amended). *See* Dkt. No. 42. The Panel carefully considered the document and concludes as follows:

1. Several of Appellants' arguments are a rehash of the arguments already provided to the Panel. As a result they are not appropriate bases for rehearing. *Kosmala v. Imhof* (*In re Hessco Indust., Inc.*), 295 B.R. 372, 375 (9th Cir. BAP 2003) ("Petitions for rehearing are designed to ensure that the appellate court properly

considered all relevant information in rendering its decision," and are not "a means by which to reargue a party's case."). More specifically:

a. They argue that Ocwen Loan Servicing, LLC, the defendant in the state court case, is listed as a creditor in their bankruptcy case. They allege that this observation is significant because Ocwen knew about the litigation and did not approach the Trustee until nearly two years post-petition. This fact, allegedly, bears on the point mentioned in the Opinion that creditors are harmed when assets are not scheduled. These facts are in the appellate briefing and were already considered by the Panel. Moreover, as explained in the Opinion, it is a debtor's burden to file complete and accurate schedules, and a trustee's possible knowledge of an asset and sources of information outside the schedules are irrelevant. Similarly, the fact that a single creditor and the trustee have knowledge is inapposite. All creditors and the bankruptcy court must have this information.

b. Appellants merely rehash the argument that this settlement is a strategic tactic by Ocwen, is prejudicial to the Appellants, and robs Appellants of their day in court. These arguments were considered and rejected. They are not a basis for rehearing.

c. Appellants argue "the Trustee was aware of the State Court Case, but never required that the Schedule of Assets and Liabilities be amended before Appellants' bankruptcy case closed, nor did he inform Appellants of such a requirement. (e.g., ARB, pg. 8)." Debtors raised below and in their opening brief that the Trustee was aware of the state court case; the Panel already considered this point.

Further, this fact is irrelevant under the Opinion's bright-line interpretation of § 554(c).[1] Moreover, Appellants did not raise this entire argument in their opening brief on appeal (i.e., that the Trustee never required them to amend the schedules and did not inform them of their obligation to do so.). As a result, it is waived. *Kim v. Kang*, 154 F.3d 996, 1000 (9th Cir. 1998). And finally, the Trustee had no such obligation.

d. Appellants argue they "used Mr. Saunders to complete and file their bankruptcy. Appellants were never informed by Mr. Saunders that the State Court Case needed to be included in the Schedule of Assets and Liabilities." Appellants argued in their opening brief as follows: "The Debtors [sic] only fault is not knowing that their prior bankruptcy attorney failed to list their State Court Case in Schedule B." Besides making the this argument before the bankruptcy court, Appellants also argued the following during oral argument:

> THE COURT: Well, okay, but that cuts both ways. Let's focus on the conduct of the debtors in not scheduling the asset.
>
> MR. RUGGIER: Okay. The debtors are represented by incompetent counsel, plainly.
>
> . . .
>
> MR. RUGGIER: The bankruptcy wasn't a poor decision. Choosing Mr. Saunders and Mr. Saunders' failing to list it in Schedule B as opposed to SOFA, the Statement of Financial Affairs, is really the crux here because if it was listed in Schedule B we wouldn't be here. It's all about –

While the record in that regard includes Appellants' assertion that Mr. Saunders prepared their schedules, Appellants fail to point to anywhere in the record or briefing in which they claim Mr. Saunders never informed them that the state

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and all "Rule" references are to the Federal Rules of Bankruptcy Procedure.

court case needed to be included in the schedules. The argument is waived. *Mano-Y & M, Ltd. v. Field* (*In re Mortg. Store, Inc.*), 773 F.3d 990, 998 (9th Cir. 2014); Kim, 154 F.3d at 1000.

e. Appellants' reliance on the unpublished Panel decision involving an express abandonment that specifically identified the asset at issue, *Nasseri v. Tadayon* (*In re Tadayon*), BAP No. NV-18-1119- BKuTa, 2019 WL 1923044 (9th Cir. BAP Apr. 29, 2019), is, again, merely reargument. The Panel is not compelled to follow its own unpublished decisions or the decisions of other bankruptcy courts. Here, it has determined to follow the majority rule among courts considering this issue. It does so for the reasons set forth in its Opinion.

f. They also argue that the language in the Trustee's Report of No Distribution in the instant case was enough to effect a technical abandonment and that it was materially similar to the language found in Trustee's Report of No Distribution for *Tadayon* and *In re Hill,* 195 B.R. (Bankr.D.N.M. 1996).

But they did not draw a comparison between the language in the Trustee's Report of No Distribution in the case at bar with those filed in *Tadayon* and *Hill* either on appeal or before the bankruptcy court. The argument is therefore waived. *In re Mortg. Store, Inc.*, 773 F.3d at 998; *Kim*, 154 F.3d at 1000. In any event, the facts of *Tadayon* and *Hill* are distinguishable as explained in the Opinion.

Having said this, however, we reiterate two points. First, the parties with the statutory obligation to provide accurate schedules listing and valuing all assets are the debtors. See § 521(a)(1)(B)(i). It is a bedrock requirement in bankruptcy cases.

And the Appellants signed these schedules under penalty of perjury. Once it became clear that they failed to adequately schedule all assets, they had the ability to rectify the mistake. They failed to do so.

We take no position regarding the relative culpability of Appellants or their counsel in this regard. To the extent they relied on erroneous advice of counsel they may seek appropriate relief, if any, under the laws of the State of California. Those issues are for another court.

2. Appellants' new declaration concerns facts known to them at all times during the course of this appeal and the underlying bankruptcy case. To the extent these facts were not raised in the bankruptcy court they are waived for purposes of appeal, *In re Mortg. Store, Inc.*, 773 F.3d at 998; to the extent they were not raised on the appeal, they cannot be raised on rehearing, *Kim*, 154 F.3d at 1000. Finally to the extent the factual information was raised below or on appeal, it has been considered and cannot now be reargued. *In re Hessco Indust., Inc.*, 295 B.R. at 375.

3. Appellants claim the Panel neglected to address two out of the three of the issues presented. They are incorrect.

a. With respect to their challenge of the Turoci Firm's employment, the Opinion provides: "Debtors also contend that the bankruptcy court abused its discretion in approving an application to employ bankruptcy counsel filed by the Trustee. We do not address their contention because they failed to: (1) oppose the application, (2) file a notice of appeal of the employment order, and (3) argue, with citations to applicable authorities and portions of the record, why the bankruptcy

court abused its discretion. Rules 8003(a)(1) and 8014(a)(8); *Mano-Y & M, Ltd. v. Field* (In re Mortg. Store, Inc.),773 F.3d 990, 998 (9th Cir. 2014)."

b. And with respect to their challenge to the reasonableness of the settlement, they failed to address the factors set forth in *Martin v. Kane* (In re *A & C Properties*), 784 F.2d 1377, 1381 (9th Cir. 1986) and used to determine the propriety of trustee compromises. Because they did not address or even cite to these factors, neither did the Panel.

4. Appellants argue that "[e]ven if Appellants were aware that their schedules needed to be amended (and they were not), there was insufficient time to amend them between the 341(a) Meeting and when the Trustee filed his Report of No Distribution."

This argument is waived, as it was not made in Appellant's appellate briefing or before the bankruptcy court. *Kim*, 154 F.3d at 1000; *Mano-Y & M, Ltd.*, 773 F.3d at 998. Further, the fact is irrelevant under our interpretation of § 554(c). Again, Appellants were under a duty to review and sign accurate schedules under penalty of perjury and the consequence of failing to do so was the technical abandonment did not occur.

5. Appellants advance new arguments about the Trustee's statutory duties to investigate the financial affairs of the debtor, to review the statement of financial affairs, and to ensure that the debtor files all required schedules and statements, referencing the Trustee's Handbook, §§ 521 and 704(a), and Rule 1007.

These argument were waived; they were neither made in Appellants' appellate

briefing nor before the bankruptcy court. *Kim*, 154 F.3d at 1000; *Mano-Y & M, Ltd.*, 773 F.3d at 998.

6. Appellants argue that the Panel lacks jurisdiction to rule as it did:

> Can the BAP assert such a position, indicating what Congress "should have" done, and decide the instant matter based on this? Congress wrote what it wrote. The BAP's decision in this matter establishes, in effect, a"'bright-line" rule. Is this within the jurisdiction of the BAP, since it is "not a court[] established by Act of Congress"? *Ozenne v Chase Manhattan Bank*, No. 11-60039 (9th Cir. 2016).

This is a completely new argument not raised before. It is also inapposite.

7. Finally, Appellants request that the Panel vacate its decision to allow a "direct appeal" to the Ninth Circuit. This request is procedurally improper and unsupported by any authority. Appellants had the right to request direct appeal in an appropriate fashion after issuance of the bankruptcy court's order. They failed to do so. Having participated in the appellate process they are not free to request that the decision against them be vacated. To the extent they desire an appeal to the Ninth Circuit, they have that right.

Therefore, based on the foregoing, the Motion for Rehearing is DENIED.

Additional material from this filing is available in the Clerk's Office.