No. 20-60044

IN THE
# UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re JASPER STEVENS, BRENDA LOUISE MURRAY STEVENS,
*Debtors*.

JASPER STEVENS and BRENDA LOUISE MURRAY STEVENS,
*Appellants*,

– v. –

ROBERT S. WHITMORE, Chapter 7 Trustee
*Appellee*.

On Appeal from the United States Bankruptcy Appellate Panel for the Ninth Circuit, No. 19-1325

**BRIEF OF AMICI CURIAE NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER AND NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF APPELLANTS AND SEEKING REVERSAL OF THE BANKRUPTCY APPELLATE PANEL'S DECISION**

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# RULE 26.1 CORPORATE DISCLOSURE STATEMENT

*Stevens v. Whitmore (In re Stevens),* No. 20-60044.

Pursuant to Fed. R. App. P. 26.1, Amici Curiae, the National Association of Consumer Bankruptcy Attorneys and the National Consumer Bankruptcy Rights Center, make the following disclosure:

1) Is party/amicus a publicly held corporation or other publicly held entity? **NO**

2) Does party/amicus have any parent corporations? **NO**

3) Is 10% or more of the stock of party/amicus owned by a publicly held corporation or other publicly held entity? **NO**

4) Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? **NO**

5) Does this case arise out of a bankruptcy proceeding? **YES**. If yes, identify any trustee and the members of any creditors' committee. **Robert S. Whitmore, Chapter 7 Trustee**

This day of February 26, 2021.

*/s/ Tara Twomey*
Tara Twomey
Attorney for Amici Curiae

# TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT ........ i

TABLE OF AUTHORITIES ........ iii

STATEMENT OF INTEREST OF *AMICUS CURIAE* ........ 1

CERTIFICATION OF AUTHORSHIP ........ 2

SUMMARY OF ARGUMENT ........ 3

STATEMENT OF FACTS AND PROCEDURAL POSTURE ........ 6

ARGUMENT ........ 8

I. Recent Reported Cases on Technical Abandonment Trend Away from the Majority View ........ 8

II. The BAP's *Tadayon* Panel Focused on Duty to Disclose, Not a Narrow Reading of § 554(c) ........ 11

III. The BAP's Bright Line Rule Gives No Credence to a Trustee Doing His Statutory Duties ........ 12

IV. The BAP's Test Punishes the Debtors Despite Their Fully Disclosing the Claim and Rewards the Trustee for not Fully Doing His Duty of Investigation ........ 14

V. Determination That the SOFA Disclosure is Sufficient Does not Open the Door to Abuse of Abandonment ........ 17

VI. In the Alternative to the Debtors' Suggested Bright Line Test for SOFA Disclosure, a Flexible, Discretionary Standard Would Prevent Abuse ........ 18

CONCLUSION ........ 19

STATEMENT OF RELATED CASES ........ 21

CERTIFICATE OF COMPLIANCE ........ 22

# TABLE OF AUTHORITIES

## Cases

*Am.'s Servicing Co. v. Schwartz-Tallard*,
803 F.3d 1095 (9th Cir. 2015) ........................................ 1

*Aspen Skiing Co. v Cherrett*,
873 F 3d 1060 (9th Cir. 2017) ........................................ 18

*Ayazi v N.Y.C. Bd. of Educ.*,
315 F. App'x 313 (2d Cir. 2009) ........................................ 8

*Bird v. Hart (In re Hart)*,
616 B.R. 826 (D. Utah 2020) ........................................ 8, 9, 10

*Egebjerb v Anderson (In re Egebjerb)*,
574 F. 3d 1015 (9th Cir. 2009) ........................................ 18

*Fjeldsted v. Lien (In re Fjeldsted),*
293 B.R. 12 (B.A.P. 9th Cir. 2003) ........................................ 18

*U.S. ex. Rel. Fortenberry v. The Holloway Grp., Inc.*,
515 B.R. 827 (W.D. Okla. 2014) ........................................ 9

*In re Furlong*,
660 F. 3d 81 (1st Cir. 2011) ........................................ 9, 10, 15

*In re Harris*,
32 B.R. 125 (Bankr. S.D. Fla. 1983) ........................................ 8

*In re Hill*,
195 B.R. 147 (Bankr. N.M. 1996) ........................................ 9, 10, 11

*In re Kayne*,
453 B.R. 372 (B.A.P. 9th Cir. 2011) ........................................ 16

*In re Krachun*,
2015 WL 4910241 (Bankr. D. Utah 2015) ........................................ 9

*In re McCoy*,
139 B.R. 430 (Bankr. S.D. Ohio 1991) ........................................................ 8

*Nasseri v. Tadayon (In re Tadayon)*,
2019 WL 1923044 (B.A.P. 9th Cir. 2019) ...............................2, 8, 10, 11, 12

*In re Pace*,
146 B.R. 562 (B.A.P. 9th Cir. 1992), *aff'd* 17 F. 3d 395 (9th Cir. 1994) 17

*In re Pretscher-Johnson*,
2017 WL 2779977 (B.A.P. 9th Cir. 2017) .................................................. 16

*In re Schmid*,
54 B.R. 78 (Bankr. D. Or. 1985)..................................................................... 8

*Swindle v. Fossey (In re Fossey)*,
119 B.R. 268 (D. Utah 1990).......................................................................... 8

*In re Tucker*,
989 F. 2d 328 (9th Cir. 1973)........................................................................ 18

*In re Winburn*,
167 B.R. 673 (Bankr. N.D. Fla. 1993)............................................................ 8

**Statutes**

11 U.S.C. § 341(a)........................................................................... 3, 7

11 U.S.C. § 350 ................................................................................. 7

11 U.S.C. § 521(a)............................................................................. 7

11 U.S.C. § 521(a)(1) ................................................................... 3, 10

11 U.S.C. § 521(a)(1)(B)(i) ............................................................... 8

11 U.S.C. § 521(a)(1)(B)(ii)-(vi)........................................................ 8

11 U.S.C. § 554(a) ............................................................................ 12

11 U.S.C. § 554(c) ........................................................................ passim

11 U.S.C. § 704 ................................................................................ 16

11 U.S.C. § 704(a) ............................................................................ 12

11 U.S.C. § 704(a)(1) .......................................................................... 4

11 U.S.C. § 704(a)(4) .......................................................................... 4

11 U.S.C. § 704(a)(9) ........................................................................ 13

**Rules**

Fed. R. Bankr. P. 9019 ......................................................................... 7

**Other Authorities**

Handbook for Chapter 7 Trustees ................................................ 13, 14

## STATEMENT OF INTEREST OF *AMICI CURIAE*

NCBRC is a nonprofit organization dedicated to preserving the bankruptcy rights of consumer debtors and protecting the bankruptcy system's integrity. The Bankruptcy Code grants financially distressed debtors rights that are critical to the bankruptcy system's operation. Yet consumer debtors with limited financial resources and minimal exposure to that system often are ill-equipped to protect their rights in the appellate process. NCBRC files *amicus curiae* briefs in systemically-important cases to ensure courts have a full understanding of applicable bankruptcy law, the case, and its implications for consumer debtors.

The National Association of Consumer Bankruptcy Attorneys ("NACBA") is a nonprofit organization consisting of consumer bankruptcy attorneys throughout the United States. NACBA strives to educate the legal community about the uses and abuses of the consumer bankruptcy process and advocates on behalf of consumer debtors. NACBA and its members are frequently called to testify before Congress, and the organization has filed numerous amicus briefs in this Court and courts across the country in cases implicating the rights of consumer debtors. *See, e.g., Am.'s Servicing Co. v. Schwartz-Tallard*, 803 F.3d 1095 (9th Cir. 2015) (en banc).

NCBRC, NACBA and its membership have a vital interest in the outcome of this case. One of the fundamental purposes of bankruptcy is to allow the honest but

unfortunate debtor to address his debts in the manner most beneficial to himself and his creditors and move on from bankruptcy free from the crushing burden of financial distress. In furtherance of that goal, the Bankruptcy Code places a burden on the trustee to abandon assets he believes will not benefit the estate. This provision allows the debtor to proceed with the confidence that once his bankruptcy has been fully administered and closed, his assets will not be subject to the trustee's renewed efforts to liquidate them for the benefit of the estate. The Bankruptcy Appellate Panel's decision in this case to allow the trustee to settle the debtor's claim against a third party after declining to pursue the claim while the bankruptcy case was open elevated form over substance and deprived the debtor of bankruptcy's promised fresh start. For these reasons, Amici urge this Court to reverse the decision of the Bankruptcy Appellate Panel.

## AUTHORSHIP AND FUNDING OF AMICI BRIEF

Pursuant to Fed. R. App. P. 29(c)(5), no counsel for a party authored this brief wholly or partially, and no person/entity other than NACBA, its members, NCBRC, and their counsel made any monetary contribution toward the preparation/submission of this brief.

## SUMMARY OF ARGUMENT

The bankruptcy court and the Bankruptcy Appellate Panel (BAP) issued decisions joining the majority view that a strict, or narrow, reading of 11 U.S.C. § 554(c) regarding technical abandonment of assets is compelled by both statutory analysis and policy concerns. They essentially adopted a bright line rule that unless an asset of the estate is listed and valued in Schedule A/B by the debtors, it can never be deemed abandoned, even if the existence of the asset (in this case a lawsuit) is fully disclosed in the Statement of Financial Affairs (SOFA) and specifically discussed with the chapter 7 trustee at the § 341(a)[1] meeting of creditors. Appellants' Opening Brief focuses on, among other things, the relevant statutory analysis and argues persuasively that the broad view is a proper interpretation of the statute since not only the Schedules, but also the SOFA is itemized in § 521(a)(1). This brief will not repeat the well-crafted arguments of the Opening Brief on statutory construction and will focus instead on the negative policy implications flowing from the BAP's bright line test.

The test imposes an injustice on the debtors here, the Stevens, who honestly and forthrightly disclosed the existence of their litigation against Ocwen in the SOFA. At the meeting of creditors, they discussed the details of their claims with

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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.

the trustee, even providing him with a copy of the complaint. They provided ample details about their claim for the trustee to investigate its value for the estate. Armed with that information, the trustee deemed the claim too speculative to pursue in a case without funds and closed the case as a no asset case, stating that the estate was fully administered. Yet he was allowed by the BAP test to wait in the wings, playing a "gotcha game" with the unwitting debtors. Only after they tenaciously litigated with Ocwen for two years, causing the claim to have monetary value, did he step forward again, reopening the case so that he could settle with Ocwen for a relatively nominal sum.

We submit that the test adopted by the BAP encourages a case trustee to ignore his statutory duties to investigate assets of the estate, § 704(a)(4), and collect and reduce to money estate assets, § 704(a)(1). Such outcome is contrary to the policies behind the Bankruptcy Code. The honest but unfortunate debtor is penalized for not complying in a technical sense with an ambiguous statute, yet a nondiligent trustee is rewarded with a commission for administering an asset which he chose not to investigate further and therefore pursue, despite having ample information to do so.

The BAP test also allows a third-party defendant, such as Ocwen here, to employ an untoward litigation strategy. Despite having notice of the Stevens' bankruptcy, it never challenged their standing to pursue the litigation postpetition

against it, considering it meritless as shown by their numerous demurrers. Once the lawsuit survived the pleading challenges and the possibility of a jury verdict for emotional distress and punitive damages loomed on the horizon, Ocwen then looked to the trustee as an easy mark to accept a settlement far below the value the debtors had created with their diligent efforts. The ruling that the claim was not technically abandoned despite the "fully administered estate" no asset report encouraged Ocwen to seek settlement through the back door on a claim it could not defeat head on in the litigation. At a minimum this is a bad faith tactic, certainly contrary to the quick and efficient administration of estates encouraged by the bankruptcy system.

Amici submit the bright line test of the narrow view does not allow the bankruptcy court to consider all relevant factors in determining whether an asset was sufficiently disclosed to be technically abandoned. If the facts reveal debtors were not proceeding in good faith by attempting to obscure the existence and value of a claim which they wished to pursue solely for their own benefit, then a finding of no technical abandonment would be a proper exercise of the bankruptcy court's discretion. Case law is replete with examples of cases where the courts have found a disclosure — whether in the Schedules or the SOFA — was insufficient to allow the trustee to conduct a thorough investigation and therefore did not lead to abandonment. To the contrary, if the debtors were in good faith, cooperating with

the trustee to give him all available information about an asset and its value, then a proper exercise of discretion would not reward the trustee for sitting back and letting others do his job; a finding or technical abandonment would be warranted.

The Opening Brief urges this court to adopt a different bright line rule: disclosure in the SOFA is sufficient for abandonment. That would solve the issue in this, and many other cases. However, if the court is not persuaded to go that far, we encourage it to adopt a discretionary test which would allow the bankruptcy court to consider all relevant means by which the debtors have disclosed an asset to determine whether such disclosure is sufficient to allow the trustee to perform his statutory duty to investigate assets. Such a flexible test will ensure justice is done. It would allow the bankruptcy court to consider whether the system should support trustees that abandon property only to later capitalize on debtors' litigation efforts and whether it should support tactics such as employed by Ocwen in seeking out a lowball settlement with a trustee when faced with costly and risky litigation which it could not cut off at the pass.

## STATEMENT OF FACTS AND PROCEDURAL POSTURE[2]

Prior to filing their chapter 7 case, the debtors had commenced litigation against Ocwen Loan Servicing, LLC, which was pending on the petition date. Although they disclosed the litigation in their SOFA, they failed to list it in

[2] These facts are taken from the BAP opinion.

Schedule A/B. Despite this shortcoming, they provided the chapter 7 trustee with relevant information about the litigation at their 341(a) meeting of creditors, including giving him a copy of the pleadings. The trustee chose to not investigate the litigation further, did not try to sell or settle the claim, and closed the case after issuing a no asset report which certified that the case had been fully administered.

Debtors continued to prosecute the lawsuit without any involvement by the trustee. However, when a summary judgment hearing approached, Ocwen contacted the trustee to settle the case. The parties reached an agreement, which was noticed as a Rule 9019 compromise by the trustee after he withdrew his no asset report. The debtors opposed the compromise, asserting that the trustee did not have standing to settle the case because the asset had been abandoned when the case was closed. The bankruptcy court ruled the claim had not been abandoned and approved the compromise.

Debtors appealed to the BAP, which affirmed the bankruptcy court. Following what it denominated as the majority view by which § 554(c) technical abandonment is narrowly construed,[3] the BAP applied a statutory analysis that construed the words "any property scheduled under section 521(a) to be restricted

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[3] Section 544(c) provides "Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor ad administered for purposes of section 350 of this title."

to the description contained in § 521(a)(1)(B)(i) only, to the exclusion of subparts (B)(ii) through (vi). Since the lawsuit was only disclosed in the SOFA, subpart (B)(iii), not the schedules, the BAP ruled that no matter what else the debtors might have done to tell the trustee about the asset, it could never be technically abandoned under § 554(c). This appeal followed.

## ARGUMENT

### I. Recent Reported Cases on Technical Abandonment Trend Away from the Majority View.

Two recent, non-precedential appellate cases which interpret § 554(c) more broadly favor the debtors, *Nasseri v. Tadayon (In re Tadayon)*, 2019 WL 1923044 (B.A.P. 9th Cir. 2019) and *Bird v. Hart (In re Hart)*, 616 B.R. 826 (D. Utah 2020). In making their analyses, these decisions reference the cases which support the narrow/strict interpretation adopted by the BAP and referred to as the majority view — *Tadayon*, 2019 WL 1923044, at *5-6 and *Hart*, 818 B.R. at 828-29 — and then they also list the cases with a counter, broad view. Looking at the lists of cases — all at the bankruptcy or district court levels — what stands out is that the majority rule cases were largely decided in the 1990's or earlier[4] whereas the broad

[4] Examples of narrow view cases are as follows: *Ayazi v N.Y.C. Bd. of Educ.*, 315 F. App'x 313 (2d Cir. 2009); *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 (Bankr. S.D. Ohio 1991); *In re Schmid*, 54 B.R. 78, 80 (Bankr. D. Or. 1985); *In re Harris*, 32 B.R. 125, 127 (Bankr. S.D. Fla. 1983).

interpretation cases were decided in the last 10-15 years.[5] The trend, therefore, is away from the narrow reading, bolstered by the policy reasons set forth in *Hart*.

The "failure to schedule" issue in *Hart* was distinct from the case at bar. There, the debtors had scheduled a 49% interest in an entity referred to as PMI and valued it at zero. *Hart*, 816 B.R. at 828. The trustee inquired into the debtors' financial affairs, then closed the case as a no asset case. Later, acting on a tip, the trustee reopened the case, arguing that the debtors had misrepresented the asset which they owned, that it was really KCK Holdings which had value and should be administered. As it turned out, what the debtors owned was 100% of KCK Holdings, which in turn owned the 49% interest in PMI. The trustee asserted that since KCK by name was never scheduled, it was not abandoned, and that he had the right to administer it, despite the earlier case closing. The debtors argued to the contrary that because they had scheduled their ownership of PMI, they had effectively scheduled the asset the trustee wished to administer and therefore it had indeed been abandoned by the earlier case closing. The bankruptcy court concluded that the debtors had scheduled their interest in KCK as was required under § 554(c), and it was abandoned.

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[5] Examples of broad view cases are as follows: *In re Furlong*, 660 F.3d 81 (1st Cir. 2011); *U.S. ex. Rel. Fortenberry v. The Holloway Grp., Inc*., 515 B.R. 827, 829 (W.D. Okla. 2014); *In re Hill*, 195 B.R. 147, 150-51 (Bankr. N.M. 1996); *In re Krachun*, 2015 WL 4910241 (Bankr. D. Utah 2015).

The district court affirmed, relying in part on the Ninth Circuit BAP's reasoning in *Tadayon*, discussed below. In reviewing the narrow and the broad view cases, the district court noted that both emphasized the purpose of the § 521(a)(1) disclosures was to assure that the trustee had "all reasonably available information" so that he could make an intelligent decision whether to administer or abandon an asset. *In re Hill*, 195 B.R. 147, 150 (Bankr. D. N.M. 1996). In complying with § 521(a)(1), a debtor has a duty to disclose fully and in good faith his assets because the bankruptcy system depends on honest reporting. *Hart*, 616 B.R. at 830. The court's inquiry therefore turned on whether the debtors "had disclosed their assets in a manner that allowed the Trustee to fulfill his duty to investigate the assets of the estate." *Hart*, 616 B.R. at 831, citing with approval *In re Furlong*, 660 F. 3d 81 (1st Cir. 2011) and *Tadayon*. The court in *Hart* reviewed the record and concluded the debtors fulfilled their obligations over the course of the bankruptcy proceedings, repeatedly disclosing their interest in KCK Holdings despite putting PMI in Schedule A/B.

The takeaway is the debtors' disclosures, whether in the schedules or other documents described in § 521(a)(1), must give the trustee sufficient information to investigate the assets of the estate. The *Hart* court found its debtors had done so, as have the debtors in this case.

## II. The BAP's *Tadayon* Panel Focused on Duty to Disclose, Not a Narrow Reading of § 554(c).

The BAP in its recent analytical but unpublished disposition in *Tadayon* refused to follow the strict, bright line test imposed in this case, instead weighing the relevant circumstances before it to arrive at the just result. 2019 WL 1923044 (B.A.P. 9th Cir. 2019). Like the Stevens, the debtor in *Tadayon* failed to list his State Court Action against Dr. Nasseri in the schedules but did list it in the SOFA, identifying the court, case name and number, and describing the nature of the suit. Similar to here, the trustee chose to not get involve in the pending litigation, instead inconclusively attempting to abandon the claim. Since no order was ever entered, the closing of the case effectuated a technical abandonment of the litigation asset. Unlike the BAP ruling here, the *Tadayon* panel focused on what type of disclosure was made by the debtor and whether it gave the trustee enough information about whether to pursue the litigation. It considered the statutory language and the facts and circumstances of the case before it, including whether the trustee had demonstrated an intent to abandon the lawsuit.

The *Tadayon* panel noted the split of cases between the narrow and the broad view. It then followed the reasoning of *Hill*, which

> "observed [that] the cases which conclude that only those assets properly listed in the Schedules of Assets and Liabilities can be abandoned under § 554(c) involve 'a compelling fact situation, which, in equity, presses for a decision against allowance of an implied abandonment.' 195 B.R. at 150 (emphasis in original). In many of

> these cases, the debtor was not acting in good faith or the trustee had completely shirked his or her duties."

*Tadayon,* 2019 WL 1923044, at *6. It concluded that absent a finding that the debtors were not proceeding in good faith, the narrow view had limited value. In particular, the *Tadayon* trustee had sufficient information to conduct an investigation and had demonstrated an intent to abandon the asset under § 554(a).

The BAP in its published opinion brushes off the *Tadayon* approach which, focused on sufficient disclosure, by remarking that it was really a voluntary abandonment case, not a technical abandonment case. But that is incorrect. The BAP's very own header — 1. The State Court Action was technically abandoned under § 554(c) — says otherwise. The true difference between the appellate outcome in *Tadayon* and the appellate outcome here was in what the case trustee did with the information provided to him by the debtors. And that is the crux of our argument.

## III. The BAP's Bright Line Rule Gives No Credence to a Trustee Doing His Statutory Duties

The duties of a Chapter 7 Trustee are defined in § 704(a). There are twelve of them, including "[c]ollect and reduce to money the property of the estate and close the estate as expeditiously as is compatible with the best interests of parties in interest" (a)(1), " [i]nvestigate the financial affairs of the debtor" (a)(4), and "[m]ake a final report and file a final account of the administration of the estate

with the United States Trustee and the court" (a)(9). These duties are to be taken seriously by the trustees and, indeed, they usually are. To reinforce the importance of performance of these duties, the United States Trustee has issued a Handbook for Chapter 7 Trustees (the "Handbook").[6] Chapter 4 of the Handbook, which is entitled "Duties of a Trustee in the Administration of a Case," goes over in detail what each duty entails. Chapter 4, Part C, subpart (1) compels " [t]he trustee [to] conduct an independent investigation to make a determination" whether the case is an asset case. The Handbook also describes what it means to file a no asset report, Chapter 4. Part C. subpart (2), and the factors which a trustee should consider in determining whether to administer assets, Chapter 4, Part C, subpart (3), which are pertinent to this discussion.

Subpart (2) is explicit in stating the purpose of a report of no distribution ("NDR"), established by statute at § 704(a)(9): "the purpose of the NDR is to close administration of the case. The NDR certifies that the trustee has reviewed the schedules, investigated the facts, and determined that there are no assets to liquidate for the benefit of creditors." We assert that when the trustee here filed the NDR, he had in fact done exactly what it certified. The BAP's bright line rule makes a mockery of the certification when the trustee has full information about an asset and knowingly closes the estate without administering it.

[6] Available on the U.S. Trustee's website.

The factors for a trustee to consider when he chooses to not administer an asset are set forth in painstaking detail in subpart (3) of the Handbook. Among the considerations are the outcome of an inventory of estate property, the effect of the automatic stay, the validity of claimed exemptions, and valuation of property. The trustee is tasked to do all these things in considering whether to administer an asset. The facts of this case suggest that the trustee did in fact perform these duties before he chose to not administer the Stevens' claim against Ocwen. A factor that he was able to consider was whether the claim could be pursued with a net economic value to the estate. Presumably the trustee made that determination. But the BAP's bright line test makes all this meaningless, even when the trustee has done what he was required to do and had full information to do so. Nothing here prevented the trustee from doing his duties, yet the abandonment of the unadministered assets is undermined by the narrow view holding in this case. Such outcome does not encourage a trustee to do the mandated duties, which is contrary to good policy.

## IV. The BAP's Test Punishes the Debtors Despite Their Fully Disclosing the Claim and Rewards the Trustee for not Fully Doing His Duty of Investigation

The minority view cases, which favor a broad reading of § 554(c) to include adequate disclosure of the asset in question anywhere in the sworn statements made by the debtors in the bankruptcy proceeding, focus on whether the trustee

was given adequate information to do his investigatory job. Several of these cases rely on the language and reasoning of the First Circuit in *In re Furlong*, 660 F. 3d 81 (1st Cir. 2011). Prepetition, the debtors purchased a plumbing and heating company. Disgruntled with the value they received, they had claims against the seller which they identified by the name of the company they had bought and listed with an unknown value. At the creditors' meeting Mr. Furlong discussed the claims against the seller with the trustee and after the meeting exchanged letter and emails describing the litigation. They even sent him a draft complaint with sixteen counts. Using the draft complaint, the trustee tried to find counsel to represent the estate, unsuccessfully. With the statute of limitations on the claims running, the trustee filed a no asset report and closed the estate. Subsequently the question arose as to whether the claims were sufficiently scheduled to be technically abandoned by the estate closing.

The First Circuit ruled on appeal that the claims were sufficiently described in the schedules to be abandoned. In so ruling, it opined on the duties of the debtors to disclose and those of the trustees to investigate. In sum, the court said the debtor need give only reasonable particularization under the circumstances since "investigation is part of the trustee's duties under § 704." A debtor is required only to give sufficient detail to enable the trustee to determine whether to investigate further. *Id*. at 87. The court ruled that so long as the trustee had enough

information to conduct his investigation. the debtors' disclosure was sufficient for abandonment. *Id*.

The take away from this case and the many bankruptcy courts which follow it is that the important duty of the debtors is to provide sufficient details about an asset to allow the trustee to do his duty of investigation. The Stevens performed this duty more than adequately. There are no facts to the contrary. The record is not as explicit about how the trustee went about doing his duty, even though he had sufficient information to do so. Yet the outcome is that the debtors are penalized for their efforts, while the trustee walks away with the benefits.

We submit this outcome is contrary to a policy which encourages debtors to disclose and trustees to investigate. In fact, the result is the exact opposite.

## V. Determination That the SOFA Disclosure is Sufficient Does not Open the Door to Abuse of Abandonment.

The BAP suggests the bright line rule of requiring a claim to be described in Schedule A/B is necessary to prevent debtors from obscuring the value of assets in order to entice trustees to unwisely abandon them. Such fear is unfounded because there are already remedies where the disclosure is insufficient to allow the trustee to investigate. Bankruptcy courts have ruled against debtors who in bad faith hid the true value or existence of assets and then tried to claim them abandoned. *See*, *e.g.*, *In re Kayne*, 453 B.R. 372, 384 (B.A.P. 9th Cir. 2011) (debtor sanctioned for

intentionally misleading schedules); *In re Pretscher-Johnson*, 2017 WL 2779977 (B.A.P. 9th Cir. 2017) (claims not abandoned when nothing in the record showed that trustee knew of the claims); *In re Pace*, 146 B.R. 562, 565-66 (B.A.P. 9th Cir. 1992), *aff'd* 17 F. 3d 395 (9th Cir. 1994) (disclosure of related asset was not sufficient for trustee to investigate asset in question.).

In these cases, the asset in question was "scheduled" in Schedule A/B, but the same inquiry would apply if the description was in the SOFA. The court could easily find an asset was inadequately disclosed for the purpose of abandonment if the trustee did not have enough information to investigate. The court can be the gatekeeper, something not alien to bankruptcy courts.

VI. In the Alternative to the Debtors' Suggested Bright Line Test for SOFA Disclosure, a Flexible, Discretionary Standard Would Prevent Abuse.

The outcome of this case — and similar cases where debtors have more than adequately disclosed assets in their SOFAs, during discussions at the creditors' meetings or through separate correspondence with trustees to allow the trustees to do their investigatory duties, is unfair to the debtors and contrary to policy. It encourages trustees to sit back, not investigate, and reap the benefits if someone else's (usually the debtors') hard work makes a dubious asset valuable after a case is closed. It makes available to state court defendants an often hidden litigation strategy — seek out a quick settlement with a trustee in an otherwise no-asset case

— once the tide of litigation has turned against it. Such action is an undesirable tactic from anyone's perspective other than that defendant who buys off liability cheaply. And it punishes debtors that have otherwise disclosed an asset in good faith.

These unfavorable outcomes could be avoided if the bankruptcy courts were given the discretion to employ a "totality of circumstances test" which would allow them to weigh all the relevant factors in determining whether an asset, disclosed in some fashion under the requirements of § 554(c) read as broadly as statutory interpretation will allow, has been deemed abandoned. Totality tests are common in bankruptcy courts. For example, in the Ninth Circuit the totality of circumstances test has been adopted to determine whether a chapter 11 or 13 case has been filed in good faith, *In re Tucker*, 989 F. 2d 328, 331 (9th Cir. 1973); whether a stay should be annulled, *Fjeldsted v. Lien (In re Fjeldsted),* 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003); whether a debt is consumer debt, *Aspen Skiing Co. v Cherrett*, 873 F 3d 1060, 1067 (9th Cir. 2017); and whether a chapter 7 case should be dismissed, *Egebjerb v Anderson (In re Egebjerb)*, 574 F. 3d 1015,1018 (9th Cir. 2009). Such a test allows the court to weigh the evidentiary facts presented to it in order to determine whether bankruptcy policies have been met, the purpose of a statute or act has been satisfied, and the system of justice carried out. They allow

the courts to weed out bad faith tactics and actors and reward those making every effort to perform their duties within the system.

If a totality test was used for the Stevens, they win because it would recognize their proper behavior and disclosures and would not reward a reluctant trustee and a state court defendant who grabbed a cheap way out of risky litigation. Moreover, it would be fair.

## CONCLUSION

For all the reasons state, Amici supports the debtors' argument that disclosure of an asset in the SOFA should be sufficient to trigger abandonment under § 554(c). In the alternative only, Amici submits that a totality of the circumstances test would lead to fair results and require reversal of the bankruptcy court in this case.

Respectfully submitted,

*/s/ Tara Twomey*
Tara Twomey
Attorney for Amici Curiae

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

**Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6**

**9th Cir. Case Number(s)**
20-60044

The undersigned attorney or self-represented party states the following:

[ x ] I am unaware of any related cases currently pending in this court.

[ ] I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.

[ ] I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

**Signature** s/Tara Twomey **Date:** Feb. 26, 2021
*(use "*s/[typed name]*" to sign electronically-filed documents)*

## UNITED STATES COURT OF APPEALS
## FOR THE NINTH CIRCUIT

### Form 8. Certificate of Compliance for Briefs

*Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf*

**9th Cir. Case Number(s)**
20-60044___________________________________________

I am the attorney or self-represented party.

**This brief contains 4656 words,** excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[ x ] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

[x ] is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

[ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

[ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
- [ ] it is a joint brief submitted by separately represented parties;
- [ ] a party or parties are filing a single brief in response to multiple briefs; or
- [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____________.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

**Signature** _s/Tara Twomey **Date:** Feb. 26, 2021
*(use "*s/[typed name]*" to sign electronically-filed documents)*

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

**Form 15. Certificate of Service for Electronic Filing**

**9th Cir. Case Number(s)**
20-60044________________________________________

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

**Service on Case Participants Who Are Registered for Electronic Filing:**
[ x ] I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

**Service on Case Participants Who Are NOT Registered for Electronic Filing:**
[ ] I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants *(list each name and mailing/email address)*:

**Description of Document(s)** *(required for all documents)*:

**BRIEF OF AMICI CURIAE NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER AND NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF APPELLANTS AND SEEKING REVERSAL OF THE BANKRUPTCY APPELLATE PANEL'S DECISION**

**Signature** _s/Tara Twomey **Date:** Feb. 26, 2021
*(use "*s/[typed name]*" to sign electronically-filed documents)*