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No. 08-538

IN THE
Supreme Court of the United States

WILLIAM G. SCHWAB, ESQUIRE
Trustee for Nadejda Reilly,
Petitioner,

v.

NADEJDA REILLY,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

REPLY BRIEF FOR PETITIONER

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The Bankruptcy Code and Rules establish a straightforward mechanism for determining which property of the debtor is exempt from the bankruptcy estate. The debtor files a schedule claiming certain property as exempt. A trustee and other parties in interest then have the opportunity to object to the claim of exemption. Absent an objection filed by the deadline, the property claimed as exempt is deemed to be exempt.

Here, respondent Nadejda Reilly claimed an exempt interest, up to $10,718, in her kitchen equipment. Petitioner William Schwab, the bankruptcy trustee,

agreed that Reilly is entitled to an exemption in that amount, and therefore did not object to the claimed exemption. But Reilly now asserts a right to keep the equipment itself even if it turns out to be worth substantially more than the $10,718 that she claimed as exempt. She offers two basic arguments to justify this demand, each related to the fact that, on her exemption schedule, she also estimated the value of the equipment to be $10,718. First, Reilly contends that when Schwab did not object to her claimed exemption, her estimate of the equipment's value became unchallengeable. Second, she contends that simply by writing the same amount for the claimed exemption and the estimated value, she put Schwab and her creditors on notice that she was claiming all of her kitchen equipment as exempt, regardless of what its value turned out to be.

Each of these arguments is fundamentally flawed. As to the first, the plain language of the Code and of Rule 4003 limits their reach to objections to exemptions, thereby foreclosing Reilly's argument that they also apply to objections to a debtor's estimate of value. Neither this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992)—which did not address this issue—nor the history of bankruptcy law provides any basis to depart from this plain meaning.

Reilly's second argument is equally untenable. There is no theory under which the Code authorized Reilly to claim an "in kind" exemption in her kitchen equipment, rather than one limited to a particular dollar value. Nor is there any reason to read Reilly's claim of exemption, which by its terms is limited to a $10,718 interest in that property, as claiming such an in kind exemption. While Reilly's brief repeatedly asserts that she unambiguously indicated her intent to exempt the entire value of her equipment, mere repetition of the

point does not make it so. The parties agree that Reilly is entitled to precisely the exemption she claimed: a $10,718 interest in her kitchen equipment. *See* JA 58a. Nothing in the Bankruptcy Code or Rules entitles her to more.

ARGUMENT

I. THE BANKRUPTCY CODE AND RULES SET A DEADLINE FOR OBJECTIONS TO A DEBTOR'S CLAIM OF EXEMPTIONS, NOT TO HER ESTIMATE OF MARKET VALUE

As explained in Schwab's opening brief (at 20-26), both § 522(*l*) of the Code and Federal Rule of Bankruptcy Procedure 4003(b) address objections only to a debtor's claims of exemptions. Neither the statute nor the rule addresses objections to a debtor's estimate of the market value of property in which he or she claims an exempt interest. Reilly asserts that the statute and the rule do cover objections to estimates of value, and specifically that together they require that such objections be made in the same 30-day window that applies to objections to claims of exemption. That assertion is without merit.

A. The Plain Text Of The Statute And Rule Supports Schwab's Interpretation

Reilly begins with a plain-text argument, contending (Br. 25) that neither § 522(*l*) nor Rule 4003(b) "distinguish[es] between different types of objections." But that is demonstrably wrong: By its terms the rule is limited to objections to exemptions. Indeed, the very title of the rule is "[e]xemptions," and the title of paragraph (b) is "[o]bjecting to a *claim of exemptions*." Fed. R. Bankr. P. 4003(b) (emphasis added). The rule's plain language, moreover, imposes its 30-day deadline only on "an objection to the list of property claimed as

exempt." *Id.* By thus restricting the rule's reach, the plain text does "distinguish" between objections to exemption claims, which the rule covers, and all other objections—including objections to estimates of market value—which it does not cover. Likewise, § 522(*l*) requires debtors to list property "claim[ed] as exempt" and provides that "[u]nless a party in interest objects, the property claimed as exempt" is in fact exempt. Nowhere, by contrast, does Rule 4003 or § 522(*l*) even mention estimates of market value, let alone require that objections to such estimates be made within the short window that the rule establishes. The plain terms of both the statute and the rule thus support Schwab's position, not Reilly's.[1]

Reilly notes, however (Br. 22-23), that under § 522(*l*), when no objection is raised, "the property claimed as exempt on [Schedule C] is exempt." According to Reilly, this language means that absent a timely objection, "the 'property' claimed as exempt is … exempt in its entirety." Resp. Br. 25; *see also id.* at 28, 39. But that is more word trick than legal argument. Insofar as the "property claimed as exempt" is Reilly's $10,718 exempt interest in her kitchen equipment, the

[1] Straining to draw some connection between Rule 4003 and estimates of market value, Reilly asserts (Br. 40) that a different portion of the rule, 4003(a), "requires that the debtor supply a valuation of claimed equipment." That is incorrect. Rule 4003(a) requires only that debtors "list the property claimed as exempt … on the schedule of assets required to be filed by Rule 1007." Thus, a debtor who lists her exemptions on the required schedule has fully complied with Rule 4003(a) even if she fails to include estimates of market value. In any event, Reilly's convoluted, multi-step argument—one that, again, does not even involve Rule 4003(b), but rather 4003(a)—simply underscores the absence in the rule of any reference to estimates of market value.

point is true, but unhelpful to her argument. But insofar as Reilly is contending that the "property claimed as exempt" is the kitchen equipment in its entirety, the argument—for which Reilly offers no supporting authority—is meritless.

Contrary to Reilly's suggestion, the "property" that becomes exempt absent an objection is not the assets in which the debtor has claimed an exemption, but only "the property *claimed as exempt* on [Schedule C]." § 522(*l*) (emphasis added). Hence, as courts have recognized, under the plain text of § 522(*l*) all that becomes exempt when no timely objection is filed is the amount actually claimed on the debtor's schedule—in this case, $10,718 for the kitchen equipment. *See, e.g.*, *In re Soost*, 262 B.R. 68, 72 (B.A.P. 8th Cir. 2001) ("[W]hen a debtor takes an exemption in a particular asset …, the 'property claimed as exempt' within the meaning of section 522(*l*) is merely an interest in property not to exceed a specified value. Accordingly, where the value of an asset exceeds the amount of the claimed exemption, the asset as a whole does not become exempt. Instead, only a partial interest representing a certain amount of the asset's value is exempted." (citations omitted)).

Reilly's related suggestion (Br. 24-25) that the word "property" must be given a broad meaning is likewise baseless, because § 522 makes the word's meaning clear. Under § 522(*l*), the "property" that becomes exempt in the absence of a timely objection is the "property that the debtor claims as exempt under subsection (b)." That "property," according to subsection (b), "is property that is specified under subsection (d)." § 522(b)(2). And subsection (d), in turn, specifies twelve categories of "property [that] may be exempted," § 522(d)—most of which, as this Court has

recognized, "are explicitly restricted to the 'debtor's aggregate interest' or the 'debtor's interest' up to a maximum amount," *Owen* v. *Owen*, 500 U.S. 305, 310 (1991). Thus, the "property" that becomes exempt absent objection is not assets in their entirety or some other broader conception of "property," but merely (setting aside in kind exemptions) the "interests" enumerated in § 522(d) and claimed by the debtor on her schedule. In other words, while Reilly is correct that the law often regards property as a bundle of sticks, she is wrong in assuming that debtors are entitled to retain the entire bundle when they claim an exempt interest in an asset. The Code makes clear that such an entitlement exists *only* with property that is subject to an in kind exemption, which can be fully exempted irrespective of value. *See* Pet. Br. 2, 8. As to all other property the debtor is entitled to retain only the single stick representing the value up to the monetary limit of the exemption.

In short, the "plain text" of the Code and of Rule 4003 provides no support for Reilly's argument. By their express terms, both the statute and rule address only objections to exemptions. And that should be the end of the matter, because as Reilly herself acknowledges (Br. 21), this Court has made clear that "when the statute's language is plain, the sole function of the courts … is to enforce it according to its terms," *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (internal quotation marks omitted).[2]

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[2] Contrary to Reilly's assertion (Br. 26), giving effect to the plain terms of the statute and rule would not mean that "there is no sanction for [the] failure to timely interpose an objection."

B. *Taylor* v. *Freeland & Kronz* Did Not Address The Question Presented Here

Reilly also contends that this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), supports her position. Specifically, Reilly cites the court of appeals' assertion here that the Court in *Taylor* was "'unpersuaded'" by the argument that Rule 4003 does not encompass objections to claims of estimated market value. *See* Resp. Br. 15 (quoting Pet. App. 9a). The court of appeals did make that assertion, but the assertion is incorrect. As explained below (and in Schwab's opening brief), Schwab's argument regarding the scope of Rule 4003 was not even made in *Taylor*, let alone addressed. The Court's decision in that case thus provides no support for Reilly's position.

According to the court of appeals, "[t]he trustee in *Taylor* argued … that Rule 4003 governs inquiries into the 'validity of an exemption' only and does not 'preclude judicial inquiry' into valuation." Pet. App. 9a (quoting *Taylor*, 503 U.S. at 643). That is simply wrong. The trustee in *Taylor* made *no* argument about whether the rule covers objections to estimates of value—hence the court of appeals' need to end its quotation from *Taylor* just before the word "valuation." The trustee instead argued that objection to an exemp-

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Failure to object promptly to an exemption claim—meaning a description of property, a citation to one or more statutory bases for exemption, and an exemption amount—bars a later objection to any of those three aspects of the claim. Similarly, there is no merit to Reilly's claim (Br. 41) that Schwab seeks to avoid the burden of proof that Rule 4003(c) places on objectors. If an objection is one actually covered by the plain language of the rule, i.e., is an objection to a claim of exemption, the burden is indeed on the objecting party.

tion was not required when the debtor lacked a good-faith basis for the exemption. A fuller excerpt from *Taylor* makes this clear:

> In Taylor's view, § 522(*l*) and Rule 4003(b) serve only to narrow judicial inquiry into the validity of an exemption after 30 days, not to preclude judicial inquiry altogether. In particular, he maintains that courts may invalidate a claimed exemption after expiration of the 30-day period if the debtor did not have a good-faith or reasonably disputable basis for claiming it.

503 U.S. at 643; *see also id.* at 639 (stating in the opening paragraph that "[w]e must decide in this case whether the trustee may contest the validity of an exemption after the 30-day period if the debtor had no colorable basis for claiming the exemption"). It was this argument, and not an argument about objections to estimates of market value, that left the Court in *Taylor* "unpersuaded." Pet. App. 9a. But the Court's rejection of that argument has no bearing on Schwab's very different contention, namely that Rule 4003(b) simply does not cover objections to estimates of value.

Reilly is thus wrong in asserting (Br. 36) that the import of *Taylor* was that "the trustee could have challenged [the debtor's] valuation." Reilly's basis for this assertion is the Court's observation in *Taylor* that because the debtor "in fact claimed the full amount [of the asset] as exempt," the trustee "apparently could have made a valid objection under § 522(*l*) and Rule 4003." 503 U.S. at 642, *quoted in* Resp. Br. 36. As this language shows, however, the Court was referring to an objection to the amount of the *exemption*, not to the debtor's estimated value of the asset. More generally,

there is nothing whatsoever in *Taylor* suggesting that the Court's decision had anything to do with the debtor's estimate of the value of the relevant property (proceeds of a pending lawsuit). Indeed, as Schwab noted (Br. 28-29), the Court in *Taylor* never even mentioned the fact that the debtor, in addition to listing the amount of the exemption as "unknown," had assigned a value of "unknown" to the lawsuit proceeds.

To be sure, the Court in *Taylor* observed that "[i]f Taylor did not know the value of … the lawsuit, he could have sought a hearing on the issue, or he could have asked the Bankruptcy Court for an extension of time to object." 503 U.S. at 644 (citation omitted). But this was a response to the trustee's explanation that he had not objected because he thought the lawsuit proceeds would be minimal or non-existent. It was certainly not an endorsement of the notion that Rule 4003 encompasses objections to valuation. As explained, whether the rule does so is an issue that was not—contrary to the court of appeals' claim here—raised or decided in *Taylor*. *Taylor* thus provides no support for Reilly's argument.

C. The History Of Bankruptcy Law Reveals No Custom Of Requiring (Or Making) Objections To Estimates Of Value

Reilly also asserts (Br. 42) that "the history of exemptions in bankruptcy" shows that the 30-day deadline in Rule 4003(b) applies to objections both to estimates of market value and to claims of exemption. But nothing in Reilly's prolix historical survey supports that assertion. Reilly relies principally on two general orders of this Court and on Federal Rule of Bankruptcy

Procedure 403, the immediate predecessor to Rule 4003. *See* Resp. Br. 45, 47-48, 50.[3] Reilly cites no authority, however, stating or even hinting that either of the general orders or Rule 403 was ever interpreted to cover objections to estimates of market value, rather than simply objections to exemptions. Nor does she cite anything establishing that creditors or trustees historically objected to valuation as a matter of practice, irrespective of a legal obligation to do so.[4] The absence of evidence on these points eviscerates Reilly's argument that, as a matter of history and tradition, her interpretation of Rule 4003 is warranted.

Moreover, even were there evidence that the general orders or Rule 403 were ever deemed to cover objections to estimates of market value, it would do little to support Reilly's argument, because both the general orders and Rule 403 used language broader than what appears in § 522(*l*) and Rule 4003(b). Indeed, if these

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[3] Reilly's discussion of the actual bankruptcy statutes does nothing to advance her position that objections to valuation are (or have long been) required. Indeed, the discussion establishes little more than the uncontroversial point that exemptions, in some form, have always been part of federal bankruptcy law.

[4] Reilly cites (Br. 54) forms from a treatise addressing possible objections to exemptions. But even putting aside that these forms are too recent to demonstrate anything about historical practice, the forms, contrary to Reilly's assertion, do not concern objections to value. Indeed, nothing in the form objections states that there is a dispute over asset values. Rather, the forms address objections to debtors' attempts to exempt more than permitted under the Code. Hence the relief sought by the objecting party in each form is a ruling that the "debtor is not entitled to all of the exemptions claimed by him." 6 *Collier on Bankruptcy*, II-76.4 (Form No. 2-202) (15th ed. 1996); 13A *Collier on Bankruptcy*, Pt. CS17-22 (Form No. CS17.14-1) (15th rev. ed. 2007).

earlier authorities demonstrate anything pertinent, it is that when their drafters intended to impose an objection requirement that encompassed more than just exemption claims, they used a term broader than "exemption." Hence, both of this Court's general orders required objection not merely to exemption claims but to the trustee's "determination," which included determinations of value. Sup. Ct. Gen. Ord. XIX (1867); Sup. Ct. Gen. Ord. 17(2) (1958). Similarly, Rule 403 required objection to the trustee's "report." *See* Fed. R. Bankr. P. 403 (1975). The contrast between the broader terms in these earlier authorities and the narrower terms—"exempt" and "exemption"—that appear in § 522(*l*) and Rule 4003 only reinforces the conclusion that the narrower terms should be given their plain meaning. *Cf.*, *e.g.*, *United States* v. *Bean*, 537 U.S. 71, 76 n.4 (2002) ("'The use of different terms within related statutes generally implies that different meanings were intended.'" (quoting 2A Singer, *Sutherland on Statutes and Statutory Construction* § 46.06, at 194 (6th ed. 2000))).

D. An Objection To An Estimate Of Market Value Is Not An Objection To A Claim Of Exemption

Reilly's effort to read the deadline for objecting to a claim of exemption as applying to the debtor's valuation even goes so far as to assert that an objection to valuation *is* an objection to a claim of exemption. *See* Resp. Br. 24 ("The Trustee clearly 'opposes' Reilly's claim of exemption. Specifically, he opposes Reilly's valuation of her equipment[.]"); *accord id.* at 23. That is incorrect.

In order to claim an exemption, a debtor must provide only three pieces of information: a description of

the property, the statutory basis for the claimed exemption, and the amount of the claimed exemption. An objection to any one of those three pieces of information is an objection to a claim of exemption, and thus is covered by Rule 4003.[5] By contrast, a debtor's estimate of the market value of property is not required to claim an exemption—as is clear from the fact that even if a debtor provided no such estimate for certain property, he or she could still claim a valid exemption by describing that property, listing one or more proper statutory bases for exempting some or all of it, and claiming an exemption amount that did not exceed the applicable statutory maximums, if any. The value of property claimed as exempt is simply a separate matter from whether and to what extent the property is being (and can be) claimed as exempt. An objection to the former is thus not an objection to the latter. The United States explained all this clearly in its brief (at 14-17). Reilly notably offers no answer.

Schwab and the United States also explained the related point (*see* Pet. Br. 28-29; U.S. Br. 16-17) that prior to 1991 the form on which debtors claim exemptions did not even require estimates of value. This fur-

[5] Reilly's amici are therefore wrong in suggesting (Br. 13) that under Schwab's view a trustee need not object promptly to a debtor's miscategorization of property claimed as exempt. Such a miscategorization involves an improper use of one or more statutory exemption bases (*e.g.*, an attempt to apply the tools-of-the-trade exemption (§ 522(d)(6)) to items that are not in fact such tools). Because those statutory bases are part of an exemption claim (unlike an estimated market value), a trustee's failure to object within the time provided by Rule 4003(b) would bar the trustee from later asserting an interest in the property based on the miscategorization.

ther underscores the dichotomy between claims of exemption and claims of market value. And here again, Reilly simply ignores the point.

In sum, the clear language of § 522(*l*) and Rule 4003(b) encompass only objections to exemptions, not objections to estimates of market value. Neither *Taylor* nor the history of bankruptcy supports a contrary reading. Schwab was therefore not required to object under Rule 4003 to Reilly's estimate of the value of her kitchen equipment in order to recoup for Reilly's creditors any equity in the equipment in excess of Reilly's claimed exemption amount.

II. REILLY DID NOT CLAIM AN EXEMPTION FOR THE FULL VALUE OF HER KITCHEN EQUIPMENT

Echoing the court of appeals, Reilly advances the alternative argument that by listing the same figure for both the amount of the claimed exemption and the estimated value of the property, she "unequivocally indicat[ed]" (Br. 1) her intent to claim the entire property as exempt no matter what its actual value—just as if she had written "100% of value," "the entire property," or a similar phrase for the amount of the exemption. Reilly's argument, in other words, is that Schwab was required to object even if Rule 4003 does not encompass objections to estimates of market value, because his objection is actually to her claim that her kitchen equipment is fully exempt. That argument fails because Reilly made no such claim.

A. The Plain Meaning Of Reilly's Schedule C Is A Claim To Exempt The Fixed Amount That She Wrote On The Schedule

Although she repeatedly asserts that her schedule should be read as a claim to exempt the full value of her

kitchen equipment, Reilly—like the court of appeals—offers little actual reasoning to support that assertion. That is not surprising: Reilly's argument, after all, is that her claim to exempt $10,718 should be interpreted to mean not precisely what it says but something quite different, namely "100% of value" or "whatever the property is worth." But there is no basis for such adopting such an anomalous reading rather than giving the amounts that Reilly wrote down ($1,850 and $8,868) their ordinary, common-sense meaning. *Cf., e.g.*, *Norfolk S. Rwy. Co.* v. *Kirby*, 543 U.S. 14, 32 (2004) ("'[W]here the words of a law, treaty, or contract, have a plain and obvious meaning, all construction, in hostility with such meaning, is excluded.'" (alteration in original) (quoting *Green* v. *Biddle*, 21 U.S. (8 Wheat.) 1, 89-90 (1823))). This is particularly true given that had Reilly intended to exempt her property in full, she could easily have done so by using one of the above phrases (or one of many others). In any event, regardless of Reilly's *subjective* intent, her decision not to use any of those phrases, but instead to list a specific dollar amount, is best understood, *objectively*, to claim an exemption only in the amount written down. Put simply, although Reilly repeatedly contends that she "claimed the full value [of the property] as exempt" (Br. 3; *accord id.* at i, 8, 9, 14, 18, 36), she in fact claimed an exemption for only $10,718. *See* JA 58a.

The fact that Reilly supplied the same $10,718 amount for the estimated value of the property does not justify a departure from the plain meaning of her claimed exemption amount. As the United States explained (Br. 20), the most natural reading of Reilly's schedule is that Reilly claimed an exemption for the amount written and that that amount was her best estimate of the property's market value. Again, had

Reilly intended something else, she would have filled out her schedule differently. Moreover, reading her schedule as evincing an intent to exempt the kitchen equipment in full ignores the fact that, as Schwab's amici explained (Br. 13 n.15), most bankruptcy petitions are now prepared using software that, as a default, equalizes the exemption amount and the estimated value of the property. The fact that the two values are the same thus says nothing about the debtor's intent to claim an (improper) in kind exemption in the property.

B. *Taylor* Does Not Support Reilly's Argument

In nonetheless urging the Court to ignore the plain meaning of what she wrote in her schedule, Reilly cites this Court's decision in *Taylor*. There, Reilly notes (Br. 2-4, 36-37), this Court concluded that the debtor, by writing "unknown" for the exemption amount of the proceeds of her lawsuit, had in fact claimed an exemption for the full amount of those proceeds, triggering the trustee's obligation to object. Contrary to Reilly's suggestion, however, *Taylor* does not support her argument. In *Taylor*, the debtor's claim for an "unknown" exemption was facially improper, because under the Code the debtor was not entitled to an in kind exemption for the lawsuit's proceeds. *See* 503 U.S. at 642 ("Davis did not have a right to exempt more than a small portion of the[] proceeds[.]"). By contrast, Reilly's claim to exempt a fixed sum, one that was within the applicable limits under the statutory sections she cited, was entirely proper, as it left no possibility that the claimed amount would turn out to exceed the applicable maximum. There was therefore—in contrast to *Taylor*—no basis for Schwab to conclude that Reilly intended to exempt her property fully, and hence

no basis to object. *See* Pet. Br. 21, 29-30; U.S. Br. 15, 21-23.[6]

Reilly responds with the startling assertion (Br. 37) that her exemption claim was indeed just as improper as the one in *Taylor*, because in both cases the amounts claimed as exempt had the potential to be higher than the applicable statutory limits. To begin with, Reilly's plea that the Court ascribe to her an intent to claim an improper exemption rather than a proper one is inconsistent with the presumption—noted by Schwab (Br. 23) and the United States (Br. 25-26) but ignored by Reilly—that people act in accordance with the law. Moreover, Reilly's assertion renders her argument circular, because it depends on concluding what the argument seeks to prove, namely that Reilly's schedule communicated an intent to exempt the kitchen equipment fully. If instead Reilly's claim to exempt $10,718 is given its plain meaning, then the exemption could not exceed the statutory limits, rendering that exemption proper, unlike the one in *Taylor*. Here again, then, *Taylor* does not support Reilly's position.

[6] Reilly thus goes astray in asserting (Br. 4) that "the Trustee's explanation for failing to object in this case is far less plausible than the trustee's explanation in *Taylor*." Contrary to Reilly's suggestion, Schwab's explanation for not objecting is not that he doubted Reilly's $10,718 estimate of the property's value. Rather, the explanation is that Reilly's exemption of $10,718 for the property (pursuant to the statutory sections she identified) was proper, and hence objection was not only unnecessary but also unwarranted.

C. Reilly's "Fresh Start" Argument Provides No Basis To Ignore The Plain Meaning Of Her Exemption Claim, Or To Resolve Any Ambiguity About Her Intent In Her Favor

As explained above, Reilly's claim to exempt $10,718 worth of her kitchen equipment was unambiguously a claim for precisely that amount, no more and no less. But reversal of the court of appeals' judgment would be warranted even if this Court concluded that Reilly's schedule is ambiguous as to her intent, *i.e.*, ambiguous as to whether she intended to claim the amount she actually wrote down or instead intended to claim a different amount (one that does not appear anywhere on the schedule) if it turned out that the property was worth more than she estimated. As Schwab explained (Br. 23-24 & n.9), several circuits and other courts have reasoned that just as ambiguities in contracts are typically construed against the drafting party, any doubt as to what a debtor intended in filling out her schedules should be resolved in favor of the trustee and the creditors. Such an approach encourages debtors to be as clear as possible about their intent when filling out their schedules, thereby facilitating the prompt and efficient conclusion of their bankruptcy cases. Reilly does not even acknowledge this point, let alone offer a direct response to it.

Reilly does contend, however (Br. 17, 21-22, 32-33), that any doubt about her intent should be resolved in *her* favor because to do otherwise would be inconsistent with the "fresh start" policy that underlies bankruptcy law. That argument is meritless. To be sure, giving debtors a fresh start is an important bankruptcy policy. But there are other important policies as well, such as maximizing creditor recovery. And Congress has made clear how those competing policies (and others) are to

be balanced, by spelling out in the Code the exemption amounts that are in its view sufficient to give debtors a fresh start. Under Reilly's approach, those statutory exemption amounts would frequently be exceeded, undermining Congress's determination of how to reconcile the legitimate needs of honest debtors with the legitimate needs of (equally honest) creditors. The Court should decline to adopt an interpretation that produces such a result.

This is particularly true given that Reilly offers no authority stating that limits on exemptions should in fact be narrowly construed. Reilly cites *Kawaauhau* v. *Geiger*, 523 U.S. 57 (1998), for the proposition that "procedures that burden the debtor's exemption entitlement, like those that impair a debtor's discharge generally, are to be construed narrowly." Resp. Br. 33. To begin with, under Schwab's view Reilly and other debtors could receive the maximum exemption amounts permitted by Congress; the only "burdens" imposed by Schwab's position are therefore those that the legislature has prescribed. That aside, *Geiger* was a case about nondischargeability under Section 523 of the Code, and has nothing to do with exemptions (which are set forth in Section 522). Unsurprisingly, nothing in the Court's decision indicates that burdens on exemptions must be construed narrowly. (The cases Reilly cites along with *Geiger* (*see* Br. 22) likewise concerned the need to narrowly construe something other than exemptions.) Moreover, the principle the *Geiger* Court pointed to regarding exceptions to discharge was that such exceptions "'should be confined to those plainly expressed.'" 523 U.S. at 62 (quoting *Gleason* v. *Thaw*, 236 U.S. 558, 562 (1915)). If anything, this principle supports Schwab, because as noted above it is Reilly's position that would routinely allow debtors to exceed

the exemption limits that Congress has "plainly expressed." *Id.*

Reilly further asserts (Br. 34) that because the kitchen equipment has "great sentimental value" for her, she can "achieve her 'fresh start' in the manner Congress intended" only if she keeps the equipment itself, no matter its value. But Reilly offers no basis to conclude that in enacting the Code, Congress placed weight on the sentimental value of debtors' property (save, perhaps, by adopting the "wildcard" exemption, § 522(d)(6), which can be applied to any property—and which Reilly employed to exempt portions of her kitchen equipment). Indeed, the legislative history that Reilly herself quotes (Br. 32-33) shows that Congress's purpose in adopting exemptions was not to allow debtors to exempt items of sentimental value but simply to ensure that debtors retain "the basic necessities of life" and are not "left destitute and a public charge." H.R. Rep. No. 95-595, at 126 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087.

In short, Reilly's "fresh start" argument lacks merit. As explained above, therefore, even if the Court deems Reilly's schedule to be ambiguous as to her intent (which it should not), that ambiguity should be resolved in favor of Schwab and the creditors.

III. Reilly's Various Remaining Arguments For Affirmance Are Without Merit

Reilly offers several other defenses of the court of appeals' judgment. None is meritorious.

A. Schwab's Interpretation Does Not Undermine Finality

In a variation on her "fresh start" argument, Reilly asserts (Br. 55-59) that Schwab's view is inconsistent

with notions of finality, in that under Schwab's view debtors would retain property with a "cloud" over its title for months or even years (thereby hindering their ability to "start fresh"). This argument is baseless for several reasons.

First, debtors can prevent the formation of any "cloud" over specific property simply by claiming an exemption not for a fixed amount, as Reilly did, but for "the entire property," or "100% of value," or (as in *Taylor*) an "unknown" amount. As discussed above, such phrases unambiguously communicate an intent to exempt property in full, and if a debtor uses such a phrase and no objection is filed within the time prescribed by Rule 4003(b), then the relevant property is indeed fully exempt and the debtor will retain it without any cloud over its title. This alone completely defeats Reilly's (and her amici's) finality argument.[7]

Second, the premise of Reilly's "cloud" argument is that a claim of exemption gives a debtor a legitimate interest in the entire relevant asset. But that premise

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[7] Reilly and her amici attack the United States' suggestion (Br. 27) that debtors who wish to exempt property fully can claim an exemption amount of "unknown," asserting that this would allow debtors "to withhold information" about the value of their property "even though a major point of the schedules is to extract information." Resp. Br. 63; *see also id.* at 64; NACBA Br. 36-37. But that assertion wrongly assumes that what the United States suggested is that debtors could write "unknown" as the estimated value of their property. In fact, as is clear from the language that Reilly quotes (*see* Resp. Br. 63), what the United States argued (Br. 27) is that debtors could list the amount of the *exemption* as "unknown" (or, as the government also suggested (*see id.* at 10-11, 19-20), as "100% of its value"). Reilly and her amici are thus attacking a strawman.

holds true only as to in kind exemptions. As to all other exemptions Reilly's premise is false; debtors are permitted to claim—and hence have a legitimate interest in—only a monetary amount. *See Owen*, 500 U.S. at 310 ("Most of the federally listed exemptions … are explicitly restricted to the 'debtor's aggregate interest' or the 'debtor's interest' up to a maximum amount."). To be sure, that amount may be large enough that a debtor retains one or more entire pieces of property. But the fact that this *may* occur does not give the debtor any legitimate reason to expect that it will occur, and certainly not any legitimate entitlement to know immediately whether it will occur. What a debtor is entitled to know once the objection deadline of Rule 4003 passes—and what he or she does know under Schwab's view—is how much value he or she will retain from pre-petition property that is not subject to an in kind exemption.

Third, the specter that Reilly and her amici raise of debtors struggling for years with "clouded" property (*e.g.*, Resp. Br. 57; NACBA Br. 2, 4) is inconsistent with the reality of individual bankruptcy cases. As amici themselves point out (Br. 14 & n.11), in 2007, chapter 7 cases were closed an average of 124 days after filing. Given that the initial creditors' meeting (which starts the 30-day objection period) must be called between 20 and 40 days after the filing of the petition, *see* Fed. R. Bankr. P. 2003(a), this means that on average, trustees would have between 54 and 74 more days to challenge valuation claims under Schwab's view than they would under Reilly's view. Debtors' ability to "start fresh" would thus not be hampered for any significant length of time—and again, debtors have complete power to avoid any such hampering simply by claiming "100% of value" for property they wish to exempt fully.

Likewise inconsistent with the reality of bankruptcy cases is the assertion by Reilly and her amici that a trustee might be "content" (NACBA Br. 4) to wait months or even years before asserting that a debtor's estimated value of property was too low and hence that the property should be sold. Contrary to amici's view, trustees do not have an incentive to delay the progress of their cases. Delay pushes back the time when the creditors whom the trustee represents are paid, thereby costing them the time value of money. Although appreciation of assets could theoretically compensate for that loss, most assets only depreciate over time, and even assets that can appreciate do not always do so. Trustees' incentive is thus to move their cases along so that creditors can be paid promptly—and so that the trustees themselves can keep their already overburdened dockets from becoming even more so.

Finally, Schwab notes that it is not his view but Reilly's that is in tension with notions of finality (and the related desirability of moving bankruptcy cases to conclusion quickly). As Schwab explained (Br. 33-34), under Reilly's approach trustees would need to file Rule 4003 objections in many more cases than under Schwab's approach—likely resulting in large numbers of both requests for extensions of time to object and hearings on the objections themselves. Reilly appears to acknowledge (Br. 64-65) that this would be the result of her approach. But the inevitable (and perhaps substantial) delay that the additional objections and hearings would cause in the progress of many bankruptcy cases undermines both finality generally and the

debtor's ability to start fresh in particular. For this reason as well, Reilly's position should be rejected.[8]

B. Reilly's Approach Is Unworkable In Practice

Reilly next addresses Schwab's explanation (Br. 31-35) of why the court of appeals' approach is wholly impractical and would encourage gamesmanship by debtors. Reilly first responds by noting (Br. 60-61) that there are other remedies available for such gamesmanship. But none of the remedies Reilly cites would likely apply in a situation like this, in which a debtor does not actually know the value of her property and simply "guesses" on the low side in hopes of receiving (in effect) an in kind exemption. Proving bad faith in most such cases would be exceedingly difficult. Moreover, the fact that there are remedies for misconduct does not mean that the Court should adopt an interpretation that encourages such conduct.[9]

Reilly also disputes Schwab's argument (Br. 32-33) that bankruptcy trustees' heavy caseload and minimal remuneration makes it utterly impractical for them to

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[8] Reilly's repeated claim (Br. 11, 29, 67) that if this Court ruled against her she could belatedly amend her schedules so as to exempt more of her kitchen equipment likewise seems inconsistent with notions of finality (and also belies her assertion that such a ruling would cause her a "devastating loss," *id.* at 34).

[9] Reilly's contention (Br. 64 n.10) that Schwab's position would actually create perverse incentives and result in lower recoveries for creditors is baseless. Reilly's argument depends entirely on the assumption that trustees would not object promptly when debtors improperly listed exemption amounts as "unknown." In light of *Taylor*, that assumption is unwarranted. *See* U.S. Br. 19-20 (quoting *In re Barroso-Herrans*, 524 F.3d 341, 345 (1st Cir. 2008)).

ascertain the value of large numbers of asserts in the short time window allowed by Rule 4003. Reilly responds by asserting (Br. 65) that "the burden on trustees in administrating a debtor's exemptions entails far less work than it has historically on a per case basis." But Reilly provides no support for that statement. She does note earlier (*id.* at 53) that prior bankruptcy laws required the trustees to report some of the information that debtors are now required to supply. But she offers nothing to suggest that overall, trustees today have "far less work" (*id.* at 65) than in the past—certainly not "on a per case basis" (*id.*). Nor does she address trustees' limited compensation, or respond to the explanation by Schwab's amici (Br. 7-9) of the numerous additional burdens that have been placed on trustees in recent years. Her breezy conclusion that trustees would not be measurably burdened by the court of appeals' rule is therefore wholly unpersuasive.[10]

C. "Fairness" Considerations Provide No Support For Reilly's Position

Reilly concludes with a case-specific appeal to fairness, asserting (Br. 67-68) that it would simply be ineq-

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[10] Reilly also notes in this portion of her brief (at 61-62) that Rule 4003(b) has recently been amended to create an exception to the 30-day deadline for exemptions that were claimed fraudulently (and other exemptions covered by § 522(q)). These amendments do not, however, support Reilly's reading of the rule as covering objections to estimates of market value. To be sure, the creation of certain exceptions suggests that all other objections *to claims of exemptions* must be made within the 30-day deadline. But that has no bearing on the separate question whether objections that are not to claims of exemptions must also be made so promptly. As explained earlier, under the plain language of the statute and rule they need not be.

uitable to allow Schwab to sell her kitchen equipment. As an initial matter, it should go without saying that none of this can override the plain meaning of the Code and Rule 4003, or of what Reilly chose to write on her schedule. As explained above, analysis of those authorities, and of Reilly's schedule, demonstrates that the judgment of the court of appeals should be reversed.

That aside, Reilly's fairness claim falls short. The basis of Reilly's claim (Br. 68) is her assertion that "there would likely be no benefit to creditors" from allowing Schwab to sell the kitchen equipment. That statement sounds a recurring theme in Reilly's brief (*e.g.*, at 2, 4, 10, 29, 34, 63), namely that Schwab cannot prove or guarantee that if the equipment were sold it would generate value in excess of Reilly's $10,718 exemption claim. But a bankruptcy trustee stands in a fiduciary relationship to the creditors, and would therefore be interested in selling estate property only if (after paying fees and turning over the exempt interest to the debtor) such an action were likely to generate a meaningful recovery for creditors. Reilly's suggestion notwithstanding, trustees have no incentive to spend time and money—both of which are typically in short supply for Chapter 7 trustees—selling assets that will yield little or no benefit for creditors. The fact that Schwab seeks to sell Reilly's kitchen equipment, following receipt of an estimate by an appraiser that the equipment would likely sell for an amount in excess of $17,000, is thus a complete answer to Reilly's argument.[11]

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[11] Reilly belittles the appraiser's estimate as unsubstantiated (Br. 2, 10, 63). But she provides no basis to conclude that "sub-

Furthermore, if a trustee did seek to sell property even though doing so would yield no value to creditors—and neither Reilly nor her amici cite any example of that occurring—a debtor could ask the bankruptcy court to hold a valuation hearing and determine the property's value. If the court determined the value to be at or below the amount the debtor properly claimed as exempt, the estate would have no interest in the property and hence the trustee would not be permitted to sell the asset. *Cf.* 11 U.S.C. § 554(b) ("[A]fter notice and a hearing, the court may order the trustee to abandon any property of the estate that … is of inconsequential value and benefit to the estate.").[12]

More generally, Reilly's appeal to "fairness" ignores the legitimate claims of the creditors to whom Schwab's duty runs, and who (as a result of Reilly's bankruptcy) will not be paid in full. These creditors could no doubt make their own appeal regarding the "fairness" of allowing Reilly to retain value that, under the scheme devised by Congress, properly belongs to

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stantiation" is required, nor (again) any reason why Schwab would sell the kitchen equipment if it were not going to yield significant equity for the creditors. She does note her own estimate of $10,718, but she offers no valid reason to discount the expert appraiser's valuation in favor of her lay opinion.

[12] Reilly's amici also suggest (Br. 5) that Schwab's approach is unfair because "*pro se* filers will not understand that exempt property isn't really exempt, and that property they thought they could keep or sell, they can't." The possibility that some debtors will misunderstand the nature of the exemption process provides no basis to ignore either the plain language of § 522(*l*) and Rule 4003, or Congress's explicit determination that most pre-petition property cannot be exempted in kind, but only up to specified monetary limits.

them. Put simply, as is typically true in bankruptcy there are legitimate interests on both sides. And in terms of exemptions, Congress has make clear how to reconcile those interests, specifying the maximum amounts that it is "fair" for a debtor to receive. Reilly's demand to receive even more—and thus for her creditors to receive even less—finds no support in principles of fairness.

CONCLUSION

For the foregoing reasons, and those stated in petitioner's opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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