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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	NV-14-1115-JuKuD
)		
7	CHARLES G. MAHAKIAN,)	Bk. No.	2:10-bk-17568-MKN
)		
8	Debtor.)	Adv. No.	2:11-ap-01207-MKN
)		
9	_____)		
)		
10	CHARLES G. MAHAKIAN,)		
)		
	Appellant,)		
11	v.)	O P I N I O N	
)		
12	WILLIAM MAXWELL INVESTMENTS,)		
	LLC,)		
13)		
	Appellee.)		
14	_____)		

Argued and Submitted on March 19, 2015
at Las Vegas, Nevada

Filed - April 13, 2015

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Mike K. Nakagawa, Chief Bankruptcy Judge, Presiding

Appearances: _____

Mark Bruce Segal argued for appellant Charles G. Mahakian; David V. Wadsworth, of Sender Wasserman Wadsworth, P.C., argued for appellee William Maxwell Investments, LLC.

Before: JURY, KURTZ, and DUNN, Bankruptcy Judges.

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1 JURY, Bankruptcy Judge:
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3 Chapter 7¹ debtor, Charles G. Mahakian (Debtor), omitted
4 appellee-creditor William Maxwell Investments, LLC (WMI) from
5 his schedules in what was originally noticed as a no asset case.
6 After Debtor received his § 727 discharge, the chapter 7 trustee
7 (Trustee) filed a notice of assets, a claims bar date was set,
8 and notice was sent to creditors. WMI did not receive notice of
9 the claims bar date and never filed a proof of claim (POC) in
10 this case. WMI foreclosed on the real property which secured
11 the debt guaranteed by Debtor and then filed a lawsuit against
12 Debtor in the state court to collect the deficiency.

13 In the bankruptcy case, Debtor amended his Schedule F to
14 include WMI as a creditor. Debtor also filed a POC on WMI's
15 behalf well past the claims bar date and the additional thirty
16 days allowed under Rule 3004. Debtor then commenced this
17 adversary proceeding requesting a determination that his
18 obligation to WMI had been discharged, and filed a motion
19 seeking to have the POC filed on WMI's behalf deemed as timely
20 filed under § 523(a) (3) (A) based on excusable neglect
21 (Retroactive POC Motion).

22 On the parties' cross-motions for summary judgment in the
23 adversary proceeding, the bankruptcy court entered a judgment in
24 favor of WMI and against Debtor, finding that the prepetition
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26
27 ¹ Unless otherwise indicated, all chapter and section
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,
and "Rule" references are to the Federal Rules of Bankruptcy
Procedure.

1 debt of WMI had not been discharged because it had never been
2 scheduled (MSJ Judgment). The bankruptcy court denied Debtor's
3 Retroactive POC Motion in a separate order (Retroactive POC
4 Order). Debtor appeals from the SMJ Judgment and Retroactive
5 POC Order. For the reasons stated, we AFFIRM.

6 **I. FACTS²**

7 Debtor and his brother were members in Fountain View
8 Center, LLC (FVC). In May 2006, Union Bank loaned \$1,735,000 to
9 FVC which was evidenced by a promissory note secured by a deed
10 of trust against real property located in Maricopa County,
11 Arizona. Debtor and his brother personally guaranteed the FVC
12 loan.

13 On April 27, 2010, Debtor filed a skeletal chapter 7.
14 Debtor did not include Union Bank in the creditor mailing matrix
15 attached to the petition.

16 The bankruptcy clerk sent out the standard § 341 notice
17 setting June 2, 2010, as the date for the first meeting of
18 creditors and August 2, 2010, as the last day for filing
19 complaints under §§ 523 or 727. The court noticed the case as a
20 no asset case, advising creditors not to file a POC. Union Bank
21 did not receive this notice.

22 In June 2010, Union Bank assigned the promissory note and
23 deed of trust to WMI.

24 In mid-July 2010, Debtor filed his schedules and statement
25

26 _____
27 ² As noted by the bankruptcy court, the historical and
28 procedural facts were either stipulated or not disputed by the
parties.

1 of financial affairs (SOFA).³ Debtor did not list the debt owed
2 to Union Bank, which had been assigned to WMI, in his schedules.

3 On October 19, 2010, Debtor was granted his § 727
4 discharge.

5 The next day, Trustee filed a notice that assets would be
6 administered for the payment of creditors claims. The clerk
7 then sent notice to all matrix-identified creditors which set a
8 deadline of January 24, 2011, for the filing of proofs of claim.
9 Neither Union Bank nor WMI received this notice.

10 The Internal Revenue Service (IRS) timely filed a POC in
11 the secured amount of \$109,205.90, priority unsecured amount of
12 \$38,002.40, and nonpriority unsecured amount of \$1,046.65.

13 In early December 2010, FVC had defaulted on the FVC loan.
14 A notice of sale under the deed of trust was recorded and on
15 April 2, 2011, WMI purchased the property for \$1,350,000 at a
16 non-judicial foreclosure sale. At some point, WMI's counsel
17 informed Debtor's counsel that WMI was owed a prepetition debt
18 based on a deficiency due to Debtor's personal guarantee.

19 On May 24, 2011, Debtor filed an amended Schedule F that
20 added Union Bank and WMI as unsecured creditors having a
21 disputed claim in an "unknown" amount based on the loan to FVC.
22 Two days later, Debtor served Union Bank and WMI with a copy of
23 the § 341 notice by mail.

24 On June 28, 2011, WMI commenced a lawsuit against Debtor,
25 his brother, and others in the Superior Court for Maricopa
26 County, Arizona (Case No. CV-2011-053051). Based upon their

27
28 ³ The bankruptcy court entered two orders extending the
time for Debtor to file his schedules and SOFA.

1 personal guarantees of the FVC loan, WMI sought to recover from
2 Debtor and his brother the balance of the FVC loan in the amount
3 of \$446,516.14. Debtor filed an answer to WMI's complaint, but
4 it is unclear whether he asserted his discharge as a defense.

5 On August 2, 2011, Debtor filed a POC on WMI's behalf in
6 his bankruptcy case in the nonpriority amount of \$446,516.14.
7 Since the claims bar date was January 24, 2011, Debtor had
8 thirty days under Rule 3004, or until February 23, 2011, to file
9 a POC on WMI's behalf.

10 Debtor then commenced this adversary proceeding against
11 WMI, seeking a determination that any debt owed to WMI was
12 discharged under § 727 and requesting injunctive relief to
13 prevent WMI from collecting the debt in the state court action.
14 Debtor amended the complaint to include a claim for attorney's
15 fees and costs allegedly based on a violation of the discharge
16 injunction arising under § 524.

17 On August 17, 2011, Debtor filed the Retroactive POC Motion
18 in the bankruptcy case asking the court to "retroactively"
19 approve his filing of a POC on WMI's behalf under Rule 3004
20 based on Rule 9006(b)(1) and the excusable neglect standard
21 applied in Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.
22 P'ship, 507 U.S. 380 (1993). The Pioneer court set forth four
23 factors for determining whether a party's neglect of a bar date
24 was excusable: "the danger of prejudice to the [non-moving
25 party], the length of the delay and its potential impact on
26 judicial proceedings, the reason for the delay, including
27 whether it was within the reasonable control of the movant, and
28 whether the movant acted in good faith." Id. at 395.

1 Debtor argued that all four factors weighed in favor of the
2 bankruptcy court finding excusable neglect. First, Debtor
3 asserted that he would be prejudiced if WMI's claim passed
4 through the bankruptcy without being discharged. Debtor argued
5 that he filed a POC on WMI's behalf in time to permit payment of
6 the claim under § 726(a)(2)(C)(ii). Second, Debtor maintained
7 that the length of delay in filing the POC was only thirty-five
8 days after WMI sued debtor in Arizona. According to Debtor, it
9 was not clear until that time that WMI would disagree with his
10 position that the debt had been discharged. Third, Debtor
11 contended that there was no sinister motive on his part and he
12 was under the mistaken impression that, based on an agreement
13 with his brother, he was no longer obligated under the personal
14 guaranty to Union Bank. Finally, Debtor argued that he acted in
15 good faith by filing the POC soon after WMI sued him in Arizona.

16 WMI opposed Debtor's motion, contending that under the
17 plain language of §§ 523(a)(3) and 727(b) the debt was excepted
18 from discharge because it was neither listed nor scheduled and
19 WMI had no notice or actual knowledge of the bankruptcy case in
20 time to timely file a POC. WMI also argued that the excusable
21 neglect standard under the Pioneer factors was not met in this
22 case.

23 At the initial hearing on the Retroactive POC Motion, the
24 bankruptcy court continued the matter to allow Debtor to file an
25 additional response to WMI's opposition. On October 5, 2011,
26 Debtor filed a supplemental reply. There, Debtor asserted that
27 § 726(a)(2)(C) makes timely an otherwise "tardy" claim for
28 purposes of deeming a claim to have been filed in time to permit

1 its payment. In other words, § 523(a)(3)(A)'s timely-filed
2 requirement includes "tardily" filed claims under
3 § 726(a)(2)(C). Debtor also stated that he was not seeking to
4 have the POC allowed nunc pro tunc as of February 23, 2011,
5 which was the deadline to file the POC under Rule 3004.

6 In November 2011, WMI filed a motion to dismiss the amended
7 complaint for lack of subject matter jurisdiction or,
8 alternatively, based on a request for abstention. The
9 bankruptcy court heard WMI's motion on January 17, 2012, and
10 took the matter under submission. Pending the outcome of the
11 dismissal and abstention motion, the Retroactive POC Motion,
12 which was scheduled to be heard on the same day, was vacated
13 from the court's calendar. In July 2012, the bankruptcy court
14 denied WMI's dismissal and abstention motion in a memorandum
15 decision and order. The Retroactive POC Motion was not re-
16 calendared.

17 On June 8, 2012, Trustee filed a notice of final report and
18 proposed distribution. The final report indicated that the IRS
19 would receive a payment on a portion of its secured claim, but
20 that no distribution would be made to nonpriority unsecured
21 claims in the case. No one filed an objection to Trustee's
22 proposed distribution.

23 On September 24, 2012, Trustee filed his final distribution
24 report setting forth the payments he had made to creditors in
25 the case.

26 In mid-November 2012, the bankruptcy court entered an order
27 setting a trial in this adversary proceeding. Thereafter, the
28 parties filed a joint stipulation of facts and cross motions for

1 summary judgment. After a hearing on January 16, 2013, the
2 bankruptcy court took the matter under submission.

3 On February 28, 2014, the bankruptcy court issued a
4 memorandum decision denying Debtor's motion for summary judgment
5 (MSJ) and granting WMI's MSJ. In its ruling, the court adopted
6 the reasoning in Purcell v. Khan (In re Purcell), 362 B.R. 465
7 (Bankr. E.D. Cal. 2007), a case factually similar to this case.
8 The court in In re Purcell cited to Laczko v. Gentran, Inc.
9 (In re Laczko), 37 B.R. 676, 678-79 (9th Cir. BAP 1984), aff'd
10 without opinion, 772 F.2d 912 (9th Cir. 1985) (table), which
11 stated that when a bar date is set and an unscheduled creditor
12 is deprived of the right to file a timely proof of claim, the
13 plain language of § 523(a)(3)(A) should be followed - courts had
14 no power to disregard the clear language of § 523(a)(3)(A). In
15 the end, the Purcell bankruptcy court concluded that there were
16 no equitable exceptions to § 523(a)(3)(A) and that its plain
17 language controlled. Following Purcell, the bankruptcy court
18 here applied the plain language of § 523(a)(3)(A) to the
19 undisputed facts and found that all elements for an exception to
20 discharge were met. On the same day, the bankruptcy court
21 entered the MSJ Judgment finding that WMI's debt was excepted
22 from Debtor's discharge.

23 Also on February 28, 2014, the bankruptcy court entered the
24 Retroactive POC Order denying the motion. The bankruptcy court
25 construed Debtor's motion to seek a determination that the
26 Retroactive POC Motion was filed on August 2, 2011, the same day
27 as the POC was filed. Indeed, the bankruptcy court found in its
28 memorandum decision that "it is not entirely clear why the

1 Debtor labels the Retroactive POC Motion as seeking relief 'nunc
2 pro tunc'." As a result, the court found that the "relief
3 requested in the Retroactive POC Motion was immaterial to the
4 dischargeability of the obligation owed by the Debtor to WMI."
5 Thus, the bankruptcy court did not consider the excusable
6 neglect standards under Pioneer.

7 Debtor filed a timely notice of appeal (NOA) from the
8 "judgment, order, or decree" of the bankruptcy court entered on
9 February 28, 2014. WMI contends that Debtor's NOA does not
10 include an appeal from the Retroactive POC Order. We discuss
11 the scope of the appeal below.

12 II. JURISDICTION

13 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
14 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.
15 § 158.

16 III. ISSUES

17 A. What is the scope of this appeal?

18 B. Did the bankruptcy court abuse its discretion by not
19 applying the excusable neglect standards to Debtor's untimely
20 filed POC?

21 C. Did the bankruptcy court err by finding that the plain
22 language of § 523(a)(3)(A) precluded Debtor's discharge of WMI's
23 unscheduled claim?

24 IV. STANDARDS OF REVIEW

25 We address the question of our jurisdiction de novo. Menk
26 v. LaPaglia (In re Menk), 241 B.R. 896, 903 (9th Cir. BAP 1999).

27 The bankruptcy court's denial of a request for an extension
28 of time under Rule 9006 is reviewed for abuse of discretion.

1 Foster v. Double R Ranch Ass'n (In re Foster), 435 B.R. 650, 655
2 (9th Cir. BAP 2010) (citing Nunez v. Nunez (In re Nunez), 196
3 B.R. 150, 155 (9th Cir. BAP 1996)). In applying the abuse of
4 discretion standard, we first "determine de novo whether the
5 [bankruptcy] court identified the correct legal rule to apply to
6 the relief requested." United States v. Hinkson, 585 F.3d 1247,
7 1261-62 (9th Cir. 2009) (en banc). If the correct legal rule
8 was applied, we then consider whether its application of the
9 correct legal standard "was illogical, implausible, or without
10 support in inferences that may be drawn from the facts in the
11 record." Id. at 1263. Only in the event that one of these
12 three apply are we then able to find that the lower court abused
13 its discretion. Id. at 1262.

14 We review the bankruptcy court's decision to grant or deny
15 a motion for summary judgment de novo. In re Foster, 435 B.R.
16 at 655. We also review issues of statutory construction and
17 conclusions of law de novo. Id.

18 V. DISCUSSION

19 A. The Scope of the Appeal

20 Before reaching the merits, we briefly address the scope of
21 the appeal. Debtor's main argument on appeal is that the
22 bankruptcy court erred by declining to address whether the
23 excusable neglect standards under Pioneer were met as applied to
24 Debtor's tardily filed POC. Debtor maintains that once it is
25 determined a tardy filing was due to excusable neglect, the
26 filing is deemed timely for discharge purposes under
27 § 523(a)(3)(A) so long as the claim was filed in time for the
28 creditor to receive payment from the chapter 7 trustee under

1 § 726(a)(2)(C).

2 WMI contends that Debtor did not raise Rule 9006 and
3 excusable neglect in his MSJ and his NOA only challenged the MSJ
4 Judgment. Relying on Shevchynski v. Christiansen, 122 F. App'x
5 359 (9th Cir. 2005), WMI maintains that we lack jurisdiction to
6 review an order not identified in the NOA. We disagree.

7 While it is true that Debtor did not list any specific
8 judgment or order in his NOA, at the time he filed his appeal,
9 Rule 8001(a) did not require him to do so. United States v.
10 Arkison (In re Cascade Roads, Inc.), 34 F.3d 756 (9th Cir.
11 1994). Since then, the Rules have been amended effective
12 December 1, 2014, and Rule 8003 now governs the content of a
13 NOA. In addition, Debtor fully briefed the Rule 9006 and
14 excusable neglect issue before the bankruptcy court and in his
15 opening brief before this Panel. WMI responded to those
16 arguments. The bankruptcy court also addressed the Retroactive
17 POC Motion in its memorandum decision on the parties' cross
18 motions for summary judgment. Finally, Debtor's submissions in
19 this appeal show that he also is challenging the Retroactive POC
20 Order entered on the same date as the MSJ Judgment. Because we
21 interpret notices of appeal liberally, and WMI has not been
22 prejudiced or misled by the contents of Debtor's NOA, we
23 construe the NOA as covering both the MSJ Judgment and the
24 Retroactive POC Order. See In re Cascade Roads, Inc., 34 F.3d
25 at 761-62.

26 **B. The Merits**

27 Our resolution of this case turns on the interpretation of
28 § 523(a)(3)(A). Questions of statutory interpretation begin

1 with the plain language of the statute. Lamie v. U.S. Tr., 540
2 U.S. 526, 534 (2004). Section 727 provides that a chapter 7
3 debtor is discharged from all debts, subject to the exception in
4 § 523(a)(3)(A). Section 523(a)(3)(A) states in relevant part:

5 A discharge under [§] 727 . . . of this title does not
6 discharge an individual debtor from any debt— . . .
7 (3) neither listed nor scheduled . . . with the name .
8 . . of the creditor to whom such debt is owed, in time
9 to permit— . . . timely filing of a proof of claim,
10 unless such creditor had notice or actual knowledge of
11 the case in time for such timely filing

12 The language contained in § 523(a)(3)(A) is clear and not
13 ambiguous: a debt is excepted from discharge if the creditor
14 was neither listed nor scheduled and did not otherwise know of
15 the bankruptcy case in time to file a timely POC. As there is
16 nothing for us to interpret, we must enforce the statute
17 according to its terms. United States v. Ron Pair Enters.,
18 Inc., 489 U.S. 235, 241 (1989). The undisputed facts show that
19 Debtor did not list or schedule the debt owed to WMI prior to
20 the claims bar date and that WMI did not have notice or actual
21 knowledge of the case in time to file a timely POC. Thus, the
22 bankruptcy court properly found that all the elements under
23 § 523(a)(3)(A) for an exception to Debtor's discharge were met.

24 Nonetheless, Debtor argues on appeal that our decision on
25 the dischargeability of WMI's debt lies somewhere outside the
26 plain language of § 523(a)(3)(A). Debtor maintains that he was
27 authorized under § 501(c) to file a POC on behalf of WMI and
28 although his filing of the POC was untimely, Rule 9006(b)(1) and
the excusable neglect standards under Pioneer apply and are met
in this case. Without citation to any binding authority, Debtor
asserts that once the excusable neglect standards are met, his

1 tardily filed POC under Rule 3004 is deemed to be "timely" for
2 discharge purposes so long as it was made at a time when the
3 creditor would have been able to receive payment from the
4 chapter 7 trustee under § 726(a)(2)(C).⁴ We are not persuaded.

5 Debtor is correct that in chapter 7 cases, some untimely
6 filed proofs of claim are "allowed." Section 502(b)(9) provides
7 that an untimely claim should be disallowed "except to the
8 extent tardily filed as permitted under paragraph (1), (2), or
9 (3) of [§] 726(a)." Section 726(a)(2)(C) allows payments to
10 unsecured creditors who submit "tardily filed" proofs of claim
11 if the creditor had no notice or actual knowledge of the
12 bankruptcy case to permit a timely filing. The tardy claim must
13 be filed in time to permit payment, i.e., before the
14 distribution of the bankruptcy estate. § 726(a)(2)(C)(ii).
15 These payments are allowed the same priority as timely filed
16 claims.

17 These statutes do not support Debtor's position. Section
18 502(b)(9) addresses the circumstances under which an untimely
19 claim is allowed and § 726(a)(2)(C) addresses the priority of
20 distributions to unsecured creditors who submit tardily filed
21 proofs of claim. The scope and aim of §§ 502(b)(9) and
22 726(a)(2)(C) is thus distinct from and not connected to the
23 dischargeability of a debt. Here, Debtor's conduct falls within

24
25 ⁴ Some courts have approached § 523(a)(3)(A) by focusing on
26 whether a party has an opportunity to participate in
27 distributions rather than by focusing on the plain language of
28 the statute. See Lott Furniture, Inc. v. Ricks (In re Ricks),
253 B.R. 734 (Bankr. M.D. La. 2000); Eglin Fed. Credit Union v.
Horlacher (In re Horlacher), 2009 WL 903620 (N.D. Fla. Mar. 31,
2009).

1 the particular circumstances addressed in § 523(a)(3)(A) and not
2 the other statutes relied upon. Section 726(a)(2)(C) is also
3 inapplicable to this case by its plain terms. This section
4 applies only to "tardily filed" claims filed under § 501(a).
5 Section 501(a) refers to claims filed by creditors and indenture
6 trustees. WMI did not submit a "tardily filed" POC in this
7 case.

8 Debtor's reliance on the excusable neglect standards to
9 override the plain language of § 523(a)(3)(A) is also misplaced.
10 While excusable neglect might be relevant to determine whether a
11 late-filed POC under Rule 3004 should be deemed timely filed,
12 such a finding does not translate into a timely filed claim for
13 purposes of § 523(a)(3)(A).⁵ As Debtor would have it, if he can
14 establish excusable neglect for filing an untimely POC on the
15 creditor's behalf prior to distributions in the case, we should
16 simply ignore the language in § 523(a)(3)(A) pertaining to
17 unscheduled debts and notice and find the debt discharged.
18 Adopting Debtor's argument would make a nullity of
19 § 523(a)(3)(A) concerning the consequence of not properly
20 listing or scheduling such a debt. It would also be inequitable
21 to allow Debtor the benefit of dischargeability and treat the
22 debt as if it had been listed when WMI, who was not at fault, is

24 ⁵ Debtor's reliance on In re Sprague, 2013 WL 6670576
25 (Bankr. D. Idaho Dec. 18, 2013), is misplaced. Sprague is a
26 chapter 13 case where the bankruptcy court deemed a late-filed
27 POC under Rule 3004 as timely filed after finding the standards
28 for excusable neglect had been met. The bankruptcy court
briefly discussed § 523(a)(3)(A) in a footnote which was mostly
dicta. The court concluded by noting that the discharge issue
was not before it. Id. at *4 n.7.

1 deprived of valuable rights in the bankruptcy.

2 A strict construction of § 523(a)(3)(A) is supported by
3 Judge O'Scannlain's concurring opinion in Beezley v. Cal. Land
4 Title Co. (In re Beezley), 994 F.2d 1433 (9th Cir. 1993),⁶
5 which was later adopted by the Ninth Circuit in White v. Nielsen
6 (In re Nielsen), 383 F.3d 922, 926 (9th Cir. 2004). While the
7 actual holding of Beezley is irrelevant to an asset case such as
8 this, Judge O'Scannlain's reasoning lends support to the plain
9 language approach we apply today.

10 In examining the legislative history of § 523(a)(3), Judge
11 O'Scannlain observed that "Congress has expressly disapproved
12 the importation of equitable notions of a debtor's good faith or
13 a creditor's fair opportunity to participate in the bankruptcy
14 process into the interpretation and analysis of section
15 523(a)(3)." In re Beezley, 954 F.2d at 1439 n.4. At another
16 point, Judge O'Scannlain emphasized that "[n]owhere in section
17 523(a)(3) is the **reason** why a debt was omitted from the
18 bankruptcy schedules made relevant to the discharge of that
19 debt. Courts are not free to condition the relief Congress has
20 made available in the Bankruptcy Code on factors Congress has
21 deliberately excluded from consideration." Id. at 1439

22
23 ⁶ There, the debtor Beezley sought to reopen his bankruptcy
24 case for the purpose of amending his schedules to include an
25 omitted creditor so that the debt could be discharged. The
26 bankruptcy court denied the motion and the Ninth Circuit
27 affirmed. The court observed that after a case has been closed,
28 dischargeability is unaffected by scheduling. Therefore,
amendment of Beezley's schedules would have been a pointless
exercise. In a concurring opinion, Judge O'Scannlain noted that
§ 523(a)(3)(A) is not triggered in a no asset, no bar date
bankruptcy case because there is no time limit for "timely
filing of a proof of claim," so none are untimely.

1 (footnotes omitted). Finally, Judge O'Scannlain stated that "we
2 have only to apply the law as Congress has written it. What
3 Congress deemed a proper balancing of the equities as between
4 debtor and creditor with respect to unlisted debts it has
5 enacted in section 523(a)(3) of the Bankruptcy Code. It is not
6 for the courts to restrike that balance according to their own
7 lights." Id. at 1440.

8 Taken together, Judge O'Scannlain's observations support a
9 plain reading of § 523(a)(3)(A) which does not contain any
10 equitable exceptions. Therefore, the bankruptcy court had no
11 need to examine Debtor's professed good faith which he
12 characterized as a Pioneer factor. That Debtor may have filed a
13 POC on WMI's behalf before Trustee made the distributions in the
14 case is also irrelevant for purposes of § 523(a)(3)(A). Again,
15 discussed as a Pioneer factor for excusable neglect, Debtor
16 stated that the reason he omitted WMI from his schedules was
17 some agreement with his brother. However, in the § 523(a)(3)(A)
18 plain language analysis, the reason for the omission is
19 irrelevant.

20 We have previously stated that the court has no power to
21 disregard the clear language of § 523(a)(3)(A). See In re
22 Laczko, 37 B.R. 676. Although application of the plain text of
23 § 523(a)(3)(A) may lead to harsh results, courts may not "soften
24 the import of Congress' chosen words." Lamie v. U.S. Tr., 540
25 U.S. at 538.

26 VI. CONCLUSION

27 For the reasons stated, we AFFIRM.