No. 18-0918

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

IN RE BACKSTEETS PLOWING, INC., DEBTOR

STEVEN VIN SANT, CHAPTER 7 TRUSTEE, PETITIONER

v.

MILTON WEINBERG, RESPONDENT

On Writ of Certiorari to the
United States Court of Appeals for the Thirteenth Circuit

Brief for Respondent

Team R22
Counsel for Respondent

QUESTIONS PRESENTED

I. Is 11 U.S.C. §362(a)(3) violated when a secured creditor passively retains possession of collateral that it lawfully repossessed from the debtor prior to the petition date?

II. Does 11 U.S.C. § 503(b) permit an administrative expense for a substantial contribution in a chapter 7 petition?

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OPINIONS BELOW

The United States Bankruptcy Court for the District of Moot held in favor of the Creditor, Mr. Weinberg, on both questions. The Bankruptcy Appellate Panel for the Thirteenth Circuit affirmed.

STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived pursuant to Competition Rule VII.

STATUTORY PROVISIONS

The relevant statutory provisions are listed below. The provisions are reproduced in Appendix A.

11 U.S.C.A. §102(3)

11 U.S.C.A. §362(a)(3)

11 U.S.C.A.§363(e)

11 U.S.CA. §503(b)

11 U.S.C.A. §503(b)(3)(D)

11 U.S.C.A. §541(a)

11 U.S.C.A. §542(a)

Fed. R. Bankr. P. 7001(1)

STATEMENT OF THE CASE

Backstreets Plowing, Inc., Debtor-Appellant, is a seasonal snowplow business in the state of Moot. (R. at 3-4.) Mr. Christopher Clemons is Backstreets Plowing's sole shareholder. (R. at 3.)

In spring 2015, Mr. Clemons determined that he would need to purchase new snow plow trucks with better fuel efficiency in order for his company to remain competitive and to reduce his own maintenance costs. (R. at 3.) Mr. Clemons approached his acquaintance, Creditor-Respondent Mr. Weinberg, to inquire about borrowing $450,000 to purchase the new snow plows. (R. at 4.) Mr. Weinberg agreed to loan Mr. Clemons the money. (R. at 4.) In exchange for the $450,000, Mr. Weinberg received a security interest in the snow plows and Mr. Clemons personally guaranteed the loan. (R. at 4.) With the money loaned by Mr. Weinberg, Mr. Clemons purchased the snow plow trucks in August 2015. (R. at 4.) Under the terms of their agreement, contained in a promissory note, Mr. Clemons gave his word that he would make monthly payments on the loan. (R. at 4.) Mr. Clemons' responsibility to make the payments would begin in December 2015, once Backstreets Plowing began generating revenue for the snow season. (R. at 4.)

With new snow plow trucks, Mr. Clemons was able to compete against two other local competitors for a plowing contract with the City of Badlands. (R. at 4.) Mr. Clemons' submitted the best bid by far and was awarded the contract with the City, despite public concern regarding Mr. Clemons' ability to perform under the contract with such small profit margins. (R. at 4.)

Before winter 2015 arrived in Badlands, the relationship between Mr. Clemons and Mr. Weinberg soured following an argument concerning whose college football team was better. (R. at 5.) The two ceased communications for a time. (R. at 5.)

Backstreets Plowing's winter 2015-2016 season proved highly profitable for Mr. Clemons under the contract with the City of Badlands. The Debtor was paid by the City regardless of whether it snowed, and the winter weather remained unusually mild. (R. at 5.) Because of the lack of snow, the Debtor expended significantly less income than planned on labor, maintenance, and fuel costs. (R. at 5.) Despite his profitable start under the contract, Mr. Clemons chose to ignore the terms of the agreement reached with Mr. Weinberg and did not make monthly payments on the loan beginning in December 2015. (R. at 5.)

After missing three monthly payments, in February 2016, Mr. Weinberg attempted to contact Mr. Clemons multiple times to discuss the Debtor's obligations under the promissory note. (R. at 5.) Mr. Clemons, avoiding Mr. Weinberg, did not answer Mr. Weinberg's phone calls. (R. at 5.) Concerned with the complete silence, Mr. Weinberg drove to the Debtor's facility in late February 2016. (R. at 5.) Mr. Clemons directed a group of his employees to forcibly remove Mr. Weinberg from the premises of the Debtor's facility following another argument. (R. at 5.)

Mr. Weinberg realized that Mr. Clemons had absolutely no plans to make good on his word to begin paying back the $450,000 loan. Mr. Weinberg saw no other option but to file suit on the promissory note and on Mr. Clemons' personal guarantee in April 2016 in the State of Moot Circuit Court. (R. at 5.) In October 2016, Mr. Weinberg obtained a default judgment against the Debtor, Backstreets Plowing, and against Mr. Clemons, jointly and severally, for the amount of the loan plus interest and fees. (R. at 5.)

Unlike the previous winter, winter 2016-2017 brought significantly worse weather to the City of Badlands. (R. at 5.) The heavy amount of snow forced the Debtor to operate at a loss. (R. at 5-6). The payments from the City under the contract terms were not enough to cover the Debtor's high labor, maintenance, and fuel costs. (R. at 6.) During January 2017, Mr. Weinberg

started collection efforts to recuperate the value of the default judgment against the Debtor. (R. at 6.) Mr. Weinberg, through a repossession company, successfully repossessed the snow plows from Backstreets Plowing's parking lot at the end of January 2017. (R. at 6.) The snow plows currently remain at warehouse owned by Mr. Weinberg. (R. at 6.)

Following repossession of the snow plows, Backstreets Plowing did not perform under the contract with the City of Badlands (R. at 6.) On February 4, 2017, Backstreets Plowing filed a chapter 11 bankruptcy petition. (R. at 6.) Following the petition, the Debtor's attorneys sent Mr. Weinberg a demand letter for immediate return of the snow plows. (R. at 6.) Mr. Weinberg refused to do so, understanding that the Debtor had the responsibility of first bringing a turnover action before Mr. Weinberg could be required to return the snowplows. (R. at 6.)

Mr. Weinberg maintained possession of the vehicles he funded for Debtor, after the Debtor continuously missed payments and failed to suffice his personal guarantee. (R. at 6.) Debtor filed a motion asking the bankruptcy court to qualify Mr. Weinberg's possession as an automatic stay, which is a violation under section 362(a)(3). (R. at 6.) The court found that Mr. Weinberg's possession was not a violation and that his repossession of the vehicles was not within the scope of section 362(a)(3). (R. at 6.) The Debtor appealed the decision in March of 2017. (R. at 6.)

After Debtor's poor performance in January 2017, the City of Badlands ended the contract with Debtor Backstreet's Plowing upon expiration of the contract. (R. at 6 - 7.) Debtor was out of cash and grew "desperate" for money, driving him to change his chapter 11 case to a chapter 7 case under the Bankruptcy Code. (R. at 7.) On April 13, 2017 the court approved the conversion to a chapter 7 case and appointed a Trustee to liquidate Debtor's assets. (R. at 7.) After the change to a chapter 7 case, the Bankruptcy Appellate Panel stayed Debtor's appeal to allow the Trustee to get up-to-date on the Debtor's financial situation. (R. at 7.)

In May 2017, Mr. Weinberg hired a collection law firm to pursue the $450,000 he loaned Debtor. (R. at 7.) The collection law firm performed a creditor's examination of Debtor, costing Mr. Weinberg a hefty $25,000 in legal fees. (R. at 7.) The investigation revealed a conceivably fraudulent situation in which Debtor made cash transfers of nearly $100,000 to his daughter in May 2016, immediately after Mr. Weinberg filed the initial lawsuit against Debtor. (R. at 7.) Mr. Weinberg offered adequate documentation and testimony to show that Debtor's transfer to his daughter was a fraudulent transaction. (R. at 7.) After the Trustee filed a complaint against Debtor's daughter under section 548 and 550, the Debtor's daughter hurriedly agreed to settlement and paid $75,000 to the estate. (R. at 7.)

After the bankruptcy confirmed the $75,000 settlement, Mr. Weinberg sought the allowance of an administrative expense for a substantial contribution under 503(b) to refund his $25,000 expenditure for the investigation. (R. at 7 - 8.) The Trustee even admitted that Mr. Weinberg provided a substantial contribution to Debtor's estate but denied the request. (R. at 8.) The Trustee asserts that 503(b)(3)(D), limits substantial contributions refunds to chapter 9 and chapter 11 cases exclusively and not chapter 7 cases. (R. at 8.) The bankruptcy court found in Mr. Weinberg's favor and included chapter 7 in 503(b)(3)(D), thus awarding Mr. Weinberg $25,000. (R. at 8.) The Trustee appealed. (R. at 8.)

In September 2017, Tenth Avenue, a snow plow competitor, offered to buy all of Debtor's assets including the trucks that Mr. Weinberg funded with $450,000. (R. at 8.) Tenth Avenue had multiple snow plowing contracts and maintained that the offer to purchase the Debtor's assets was contingent on receiving the snow plows immediately. (R. at 8.) The snowplows were in Mr. Weinberg's possession, and because he was still lacking payment from Debtor, would not release the plows to the Trustee. (R. at 8.) After the Trustee failed to negotiate successfully with Mr. Weinberg, the Trustee resumed prosecution in furtherance of Debtor's

appeal, hoping that it would pressure Mr. Weinberg to give the snow plows to Tenth Avenue. (R. at 8.) Mr. Weinberg adamantly held the plows, because he had not received any of the judgement from Debtor. (R. at 8.) In November 2017, Tenth Avenue revoked the offer after the snow plows were not provided. (R. at 8.)

In January 2018 another competitor, Stone Pony, made an offer for Debtor's assets, not including the snow plows in Mr. Weinberg's possession. (R. at 8.) The Trustee knew that the Debtor's assets would continuously lose value if the assets were not sold by the end of the winter season and decided to make a deal with Stone Pony. (R. at 8 - 9.) Trustee declined to dismiss the appeals against Mr. Weinberg, even after all of the Debtor's assets were sold. (R. at 9.)

The Trustee is continuing with both appeals in hopes that he can achieve more money for Debtor's dwindling estate. (R. at 9.) First, the Trustee blames Mr. Weinberg for the Trustee's failed negotiation with Tenth Avenue and hopes to recover the difference between the Tenth Avenue deal and the Stone Pony deal, accusing Mr. Weinberg of an alleged automatic stay violation. (R. at 9.) Second, Trustee appeals another court ruling, which found that Mr. Weinberg deserved substantial contribution in a chapter 7 case under 503(b)(3)(D). (R. at 9.) The appellate court found for Mr. Weinberg and against the Trustee on both counts. (R. at 9.) The Trustee appealed timely. (R. at 9.)

SUMMARY OF THE ARGUMENT

This Court should affirm the decision of the Bankruptcy Court and the Bankruptcy Appellate Panel and hold that Mr. Weinberg did not violate section 362(a)(3) by passively retaining collateral that was repossessed pre-petition. Section 362(a)(3) does not prohibit passive retention of property by a secured creditor, when that property was lawfully repossessed pre-petition. Section 362(a)(3) operates to automatically stay any acts by a creditor to obtain possession of or exercise control over property of the debtor's estate immediately upon the filing

of a bankruptcy petition. The most important word in section 362(a)(3) is "act," which functions as the modifier of the infinitive phrases "to obtain possession of property of the estate" and "to exercise control over property of the estate." The common meaning of the word "act" is to "take action" or "do something." The statute prohibits taking action to obtain possession of property and doing something to exercise control over property of the estate. Mr. Weinberg's inactivity post-petition does not come within the scope of the language of the statute. Mr. Weinberg engaged in no acts once the Debtor's petition was filed.

The next phrase of importance in section 362(a)(3) is "property of the estate." In the Bankruptcy Code, the term "estate" carries a legal definition. That definition is found in section 541(a), which states that an "estate" is created upon the "commencement of a case under section 301, 302, or 303." The Debtor's petition was voluntary, and thus falls under section 301. The Debtor's estate was created upon his filing for bankruptcy. Mr. Weinberg's pre-petition repossession of the snowplows does not violate section 362(a)(3), because the statute requires existence of an estate for the automatic stay to apply.

Beyond the plain text of the statute, the legislative history of section 362(a)(3) shows that Congress did not desire to or attempt to prohibit a secured creditor from exercising his rights. Congress did not intend for the 1984 amendment to the language of section 362(a)(3) to be construed so as to prevent any and all conduct above obtaining possession of an asset that belongs to a Debtor's estate. Instead, the purpose of the 1984 amendment was to close a loophole that had been left by the original language. Originally, section 362(a)(3) only prohibited "any act to obtain possession over property of the estate." Without the addition of "acts...to exercise control over," in 1984, creditors were free to engage in nonpossessory conduct for the purpose of interfering with the Debtor (or the trustee's) authority over property of the estate. By adding the new phrase, the statutory language was tightened to ensure full protection of the debtor's estate.

The competing interpretation of section 362(a)(3), espoused by the majority view courts, erroneously relies on *U.S. v. Whiting Pools*. The *Whiting Pools* holding is inapposite to the present issue because the Supreme Court expressly noted that its analysis depended in part on the reorganization context in which that case was brought. The Debtor here is liquidating, and thus the analysis is factually different from *Whiting Pools.* The case does not inform this inquiry.

The competing interpretation also relies upon a fabricated textual link between section 362(a)(3) and section 542(a), and a misinterpretation of section 542(a) as self-executing. There is no such connection between the two statutes. Section 542(a) is not self-executing because it is subject to defenses, both on its face and by incorporation of section 363. Section 363(e) enables a third party with interest in property of the estate to request adequate protection by the court of that interest. The defenses contained in section 542(a) evince the importance of protecting a creditor's right to protection of his interests in the bankruptcy estate. Section 362(a)(3) is not violated by a secured creditor who lawfully repossesses property pre-petition and cannot be read to do so after consideration of the plain language of the statute and its legislative history.

Turning to the second issue, this Court should affirm the decision of the lower courts in holding that section 503(b) does permit an administrative expense for a substantial contribution in a chapter 7 petition. The Bankruptcy Code permits a court to grant administrative expenses for Mr. Weinberg's contribution to Debtor's estate even though the contribution is under a chapter 7 case. Mr. Weinberg contributed nearly $500,000 to Debtor's estate yet has not seen a dime of his rightful money; the Bankruptcy Court's use of contextual interpretation and driving principle of equity indicate that Mr. Weinberg deserves $25,000 he provided to Debtor's estate, although under a chapter 7 case.

First, bankruptcy courts have a rich history of utilizing contextual interpretations. When statutory language is proven to be unclear, Congress instructs courts to interpret the statute with a

reasonable interpretation. The contested statute in this case, § 503(b) should be interpreted broadly and contextually because of the statute's use of "including." Moreover, bankruptcy courts have held that "including" must be given meaning. The term does not exist within section 503(b) arbitrarily. Bankruptcy courts have also held that substantial contributions are absolutely necessary to an estate. Mr. Weinberg's contributions to Debtor's estate were absolutely necessary: Mr. Weinberg's contribution reveal Debtor's potentially fraudulent transaction and provided $75,000 toward his estate. The trustee even admits that the contribution was substantial.

Even if the Bankruptcy Code were confined to a strict textual interpretation, the Bankruptcy Code instructs that "include" not be a limiting term in section 102(3). This instruction provides ground for ambiguity, giving the Court the opportunity to interpret the section 503 contextually.

Bankruptcy courts have interpreted chapter 7 petitions under section 503(b), because of the close similarities chapter 7 cases have with chapter 9 and chapter 11 cases. Even though chapter 7 cases are not explicitly mentioned in the Bankruptcy Code, courts have interpreted the exclusion as Congress's intentional grouping with chapter 9 and chapter 11 cases. The Debtor originally filed the case under chapter 11, but then changed the case to a chapter 7 case because he was hungry for cash. It does not make sense that a technical alteration would exclude Mr. Weinberg from receiving $25,000 that assisted Debtor and Trustee to make his estate more lucrative.

Second, equity is a driving force behind bankruptcy court decisions, especially if creditors or investors are slighted. If Mr. Weinberg was further stripped of his administrative expense for a substantial contribution, merely because of the textual interpretation excluding chapter 7 cases, it would clearly be a miscarriage of justice. Courts have consistently interpreted statutes in manners that provide parties with a decision that are lined with faithfulness and

fairness; to strip Mr. Weinberg, a creditor, of $25,000 would be anything buy equitable and would not align with Court precedent or the principle of equity.

Further, bankruptcy courts attempt to make decisions that reiterate fairness. Debtor continuously lied to Mr. Weinberg: Debtor promised to make loan payments but failed; Debtor claimed that he could not pay his judgement, but then was revealed to have transferred nearly $100,000 to his daughter. If Debtor's estate is able to rely on an interpretation that further strips Mr. Weinberg of money, then it would encourage degenerate behavior and minimize equitable behavior.

ARGUMENT

I. Section 362(a)(3) is Not Violated When a Creditor Passively Retains a Debtor's Property That Was Repossessed Prepetition.

This Court should affirm the judgment of the two lower courts. The Bankruptcy Court and the Bankruptcy Appellate Panel for the Thirteenth Circuit correctly held that passive retention of collateral, acquired pre-petition, does not violate section 362(a)(3).

A. Section 362(a)(3) is not violated when a creditor passively retains a debtor's property that was repossessed prepetition because the statute's plain language sanctions only affirmative, post-petition action.

When a dispute concerns statutory interpretation, the "one, cardinal canon before all others" instructs the Court to presume that Congress "says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1991). The Court's inquiry here must begin and end with the plain statutory language itself. *U.S. v. Ron Pair Enters., Inc,* 489 U.S. 235, 241 (1989).

1. The plain language of section 362(a)(3) contemplates only affirmative acts by creditors to retain debtor property.

For protection of the debtor, section 362(a)(3) prevents creditors from taking further action against [the debtor] except through the bankruptcy court." *In re Cowen*, 849 F.3d 943, 948

(10th Cir. 2017). Section 362(a)(3) of the Bankruptcy Code functions to stay "*any act* to obtain possession of property of the estate or of property from the estate" or acts "to exercise control over property of the estate." 11 U.S.C.A. §362(a)(3) (Westlaw through Pub. L. No. 115-281) (emphasis added); *In re Cowen*, 849 F.3d at 949 ("any act' is the prepositive modifier of both infinitive phrases.") The term "act" in section 362(a)(3) is not defined by the statute. In situations where a term has not been defined by the statute, the Supreme Court has consistently held that the term is to be construed "in accord with its ordinary or natural meaning." *Smith v. United States*, 508 U.S. 223, 228 (1993); *accord Perrin v. United States,* 444 U.S. 37, 42 (1979); *Asgrow Seed Company v. Winterboer*, 513 U.S. 179, 179 (1995).

The term "act" ordinarily means "to 'take action' or 'do something." *In re Cowen*, 849 F.3d at 949 (citing the primary definition found in *New Oxford American Dictionary* 15 (3d ed. 2010)); *In re Garcia,* 740 Fed.Appx. 163, 164 (10th Cir. 2018) (unpublished). The language of section 362(a)(3) prohibits a creditor from "*doing* something to obtain possession of or to exercise control over the estate's property." *In re Cowen*, 849 F.3d at 949.

A creditor's passive inactivity does not come within the scope of the language of section 362(a)(3). Mr. Weinberg's passive retention of the debtor's property is not an *act* to obtain possession of property of the estate nor is it an *act* to exercise control over property of the estate. Mr. Weinberg thus did not violate section 362(a)(3).

The courts adhering to the competing interpretation of section 362(a)(3) – the majority view – read the word "act" to function the same way discussed above. *In re Weber*, 719 F.3d 72, 80 (2nd Cir. 2013) (section 362(a)(3) prohibit[s] expressly not only 'acts to obtain possession' of property of the estate, but also 'any act…to exercise control over the property of the estate.") Jurisdictions that follow the majority view, while acknowledging the existence of the word "act" in the statute, effectively ignore the word's placement and function. The majority view courts

choose instead to focus on the phrase "to exercise control" in order to reach the conclusion that passive retention violates section 362(a)(3). *Id* at 79. This is an erroneous interpretation of the statute. The infinitive phrase "to exercise control" only becomes relevant if an *act* is involved. This conclusion flows from the agreement between both the majority and minority view adherents that "act" modifies "to control." *Id.* at 80. The controlling inquiry is what the word "act" means, and not what the definition of "control" is, as posited in *Weber.* Further, the majority view's choice to ignore the function of "act" as modifier of "to control" in section 362(a)(3) violates the canon against superfluity. The Supreme Court has instructed that "the canon against superfluity assists only where a competing interpretation gives effect 'to every clause and word of a statute.'" *Marx v. General Revenue Corp*, 568 U.S. 371, 385 (2013). It is the "duty [of the courts] 'to give effect, if possible, to every clause and word of a statute." *U.S. v. Menasche*, 348 U.S. 528, 538 (1955). Here, the minority view gives effect to every word of section 362(a)(3), including the words "act" and "to control," but the majority view does not.

2. The plain language of section 362(a)(3) sanctions only post-petition acts to retain debtor property.

The language of section 362(a)(3) operates as a stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C.A. §362(a)(3). The intention of the automatic stay is to ensure "that creditors do not destroy the bankrupt estate" created upon the filing of a bankruptcy petition "in their scramble for relief." *Id.* at 1473 (citing H.R. Rep. No. 95-595, at 340 (1977) and S. Rep. No. 95-989, at 49, 54-55 (1977)).

The term "estate" is defined in section 541(a). Section 541(a) states that "the commencement of a case under section 301, 302, or 303 of [the Bankruptcy Code] creates an

estate." 11 U.S.C.A. §541(a) (Westlaw through Pub. L. No. 115-281).[1] The language of section 362(a)(3) imposing an automatic stay on acts of possession or control applies only over property of the "estate." That "estate" is created upon the filing of a petition under section 301, 302, or 303 of the Bankruptcy Code.[2]

Mr. Weinberg's lawful repossession of the snow plow trucks in late January 2017 occurred pre-petition. R. at 6. The "estate" referenced in the plain language of the statute had not yet been created. R. at 6. The estate of the debtor was created on February 4, 2017, upon the debtor's filing of the chapter 11 petition. The language of section 362(a)(3) "makes clear that the stay applies only to acts taken *after* the petition is filed." *U.S. v. Inslaw*, 932 F.2d 1467, 1467 (D.C. Cir. 1991); *see in re Hall,* 502 B.R. 650, 653 (Bankr. D.D.C. 2014). Additionally, the language of section 362(a) also does not impose an "affirmative duty to remedy past acts…as soon as a debtor files a bankruptcy petition." *In re Hall,* 502 B.R. at 653 (citing *U.S. v. Inslaw,* 932 F.2d at 1474). The repossession at issue here is not of the kind contemplated by section 362(a)(3), nor does the statute impose an affirmative duty on Mr. Weinberg to return property to the debtor upon the filing of the petition.

B. The 1984 amendment of section 362(a)(3) did not expand the scope of the automatic stay to prohibit passive retention of a debtor's property repossessed prepetition.

Section 362(a)(3) was amended by the Bankruptcy Amendments and Federal Judgeship Act of 1984. *In re Cowen,* 849 F.3d at 949. Prior to the amendment, section 362(a)(3) prohibited only acts to obtain possession of property belonging to the bankruptcy estate. *Id*. The amendment broadened the prohibition in section 362(a)(3) considerably, to include acts to exercise control over property of the estate. *Id*. The majority view blows the scope of the amendment out of

[1] The Chapter 7 case voluntarily filed by the debtor here falls under section 301. 11 U.S.C. §301 (Westlaw through Pub. L. No. 115-281) (voluntary cases); R. at 7.
[2] It is undisputed that the snowplows are property of the debtor's estate under section 541(a)(1). R. at 10.

proportion, to prohibit any conduct "above and beyond obtaining possession of an asset." *In re Cowen,* 849 F.3d at 949 (citing *In re Weber*, 719 F.3d at 80).

A more measured, reasoned interpretation of the amendment of section 362(a)(3) is appropriate: section 362(a)(3) prohibits both a creditor's post-petition possessory conduct and a creditor's post-petition interference with the estate's authority over property. The amendment to section 362(a)(3) actually had the effect of tightening the language of the statute in order to obtain full protection for the debtor and the debtor's estate. *Id.; In re Bernstein*, 252 B.R. 846, 848 (Bankr. D.D.C. 2000). The previous version of 362(a)(3) left a loophole whereby creditors could engage in "nonpossessory conduct that would nonetheless interfere with the estate's authority" over property. *In re Cowen,* 849 F.3d at 949. The court in *Cowen* provides examples of the loophole conduct: a creditor in possession improperly selling the estate's property, or, the exercise of intangible property rights that belong to the estate, such as contract rights or causes of action. *Id.* Introduction of the new phrase by the 1984 amendments was a method to close this loophole and prevent interfering conduct on the part of a creditor. *Id.*

Mr. Weinberg's passive retention of the snowplows does not interfere with Backstreets Plowing's authority over property of the estate. The amendment to section 362(a)(3) to cover "any act…to exercise control over property of the estate" does not extend outward, unrestrained, to cover any imaginable act by a creditor, especially one with a perfected security interest in property of the debtor. The focus of the amendment to section 362(a)(3) is to curb acts of interference with the debtor's authority over the property of the estate. The authority of Backstreets Plowing to exercise both tangible and intangible rights over the snowplows remains intact and is not contested, or affected, by Mr. Weinberg.

C. The majority view's reliance on *Whiting Pools* and the legislative history of section 542(a) are inapposite to the issue at hand.

The goal of the Bankruptcy Code is to provide a breathing period for a debtor to attempt to reorganize. *In re Jackson,* 190 B.R. 808, 811 (W.D. Va. 1995), *rev'd on other grounds.* To achieve this goal, bankruptcy law "modifies the procedural rights available to creditors to protect and satisfy their liens." *U.S. v. Whiting Pools*, 462 U.S. 198, 206 (1983). However, bankruptcy "must not become a safe harbor inside which debtors are forever hidden from debts they have incurred and creditors who deserve payment." *In re Jackson*, 190 B.R. at 811. The minority interpretation of section 362(a)(3) gives full force to the text of the statute, thus furthering the objectives of the Bankruptcy Code. The majority interpretation wades far too deeply into legislative history and irrelevant sections of the Code, rather than paying close attention to the language of section 362(a)(3).

1. The Supreme Court's analysis in *Whiting Pools* does not concern or reach the automatic stay provision of section 362(a)(3).

Courts following the majority view heavily rely on *U.S. v. Whiting Pools. In re Hall*, 502 B.R. at 654. *Whiting Pools* concerned interpretation of section 542(a) of the Bankruptcy Code. The majority courts make a leap from the holding of *Whiting Pools* regarding section 542(a) and create a "textual link" to section 362 that does not exist. *In re Cowen,* 849 F.3d at 950.

In *Whiting Pools*, the creditor attached a tax lien over the debtor's personal property for failure to pay over $90,000 in federal taxes. *Whiting Pools,* 462 U.S. 198, 199-200. To satisfy the lien, the creditor seized the debtor's property, including equipment and vehicles the debtor required to continue earning income for its business. The debtor subsequently filed a chapter 11 reorganization petition. *Id.* at 200. The issue before the Court was "whether section 542(a) of [the] Code authorized the Bankruptcy Court to subject the [creditor] to a turnover order with respect to the seized property." *Id.* at 199.

The Court held that section 542(a) did indeed authorize a Bankruptcy Court to enter turnover orders against creditors, compelling them to return seized property. *Id.* at 208. The Court, in reaching this conclusion, devoted much time and attention to the debtor's chapter 11 reorganization efforts. The Court emphasized that "to facilitate the rehabilitation of the debtor's business, all the debtor's property must be included in the reorganization estate." *Id.* at 203. The Court stated, on more than one occasion, that though the debtor did not have a possessory interest in its property at the time of the filing of the petition, "several of [the Code's] provisions bring [that property] into the estate." *Id.* at 205. The Court concluded that "the reorganization estate includes property of the debtor that has been seized by a creditor prior to the filing of a petition for reorganization" and that Bankruptcy Courts could force creditors to return the seized property by entering a turnover order. *Id.* at 209.

The *Whiting Pools* holding does not instruct the Court's inquiry regarding section 362(a)(3). First, settling the dispute over whether the debtor had a possessory interest over property taken by the IRS was the subject of much of the consideration of section 542(a) in *Whiting Pools*. At first brush, the *Whiting Pools* analysis does not touch the situation Mr. Clemons and Mr. Weinberg find themselves in. The parties here have never disputed that the property retained by Mr. Weinberg is part of the Debtor's bankruptcy estate.

Second, the Supreme Court expressly notes that its analysis in *Whiting Pools* "depends in part on the reorganization context in which the turnover order is sought. [The Court] express[es] no view on the issue whether §542(a) has the same broad effect in liquidation or adjustment of debt proceedings." *Id.* at 209, n. 17. The *Whiting Pools* analysis does not touch Mr. Clemons' chapter 7 bankruptcy petition because the Court reserved opinion about whether section 542(a) should be construed as broadly in a liquidation case. True, Mr. Clemons first filed a chapter 11 reorganization petition. R. at 6. Mr. Clemons then voluntarily changed his petition to a chapter 7

liquidation petition upon the consideration that he was "out of cash" and that the winter season for 2016-2017 was almost over. R. at 7. Mr. Clemons could have maintained his reorganization petition, like the debtor in *Whiting Pools* did. The record does not shed light on Mr. Clemons' subjective reasons for arriving at his conclusion, nor does the record reveal evidence that Mr. Clemons consulted a financial or business advisor before changing from a chapter 11 to a chapter 7 petition.

The issue before the Court here arose under the context of a liquidation petition by the Debtor. *Whiting Pools* only addressed the application of section 542(a) to reorganization petitions. Significant differences exist between the factual situation addressed by the Court in *Whiting Pools*, and the scenario (and statute) confronted by the Court in regard to Backstreets Plowing. The majority view's reliance on *Whiting Pools* is misguided and unhelpful.

2. Passive retention of property repossessed prepetition does not violate section 362(a)(3) because section 542(a) is not self-executing and does not affect administration of section 362(a)(3).

Section 542(a) provides bankruptcy courts with express permission to enter turnover orders against creditors. Mr. Weinberg retained possession of the snowplows upon receipt of demand letters for the snowplows from the Debtor's attorneys. R. at 6. Mr. Weinberg's understanding of the matter was that the Debtor was first required to bring a turnover action, at which point Mr. Weinberg could request adequate protection of his interest in the property. R. at 6.

Section 542(a), informally designated a "turnover" provision, states that an entity "in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease *under section 363 of this title*…shall deliver [the property] to the trustee…*unless such property is of inconsequential value or benefit to the estate.*" 11 U.S.C.A. §542(a) (Westlaw through P.L.

115-281) (emphasis added); *U.S. v. Inslaw*, 932 F.2d at 1471 (stating that section 542(a) is colloquially referred to as a "turnover" provision).

The correct reading of the function of section 542(a) is that the statute expressly permits a bankruptcy court to enter an injunctive order compelling turnover of property in possession of a third party. *In re Hall,* 502 B.R. at 656. However, entry of a turnover order under section 542(a) is subject to defenses, both on the statute's face and by express incorporation of section 363. *In re Hall,* 502 B.R. at 655. Section 363(e) enables an a third party with interest in the debtor's property to request adequate protection by the court of such interest, and "at any time, on request of an entity that has an interest in the property…the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C.A. §363(e) (Westlaw through P.L. 115-281).

Section 542(a) thus is not a self-executing provision. *In re Hall*, 502 B.R. at 656-664; *Denby-Peterson v. Nu2u Auto World,* 2018 WL 5729907 at *5. To defend against entry of a turnover order, an entity "in possession, custody, or control" of property of the debtor's estate has multiple avenues by which to do so. To read the section as immediately forcing a turnover to the trustee of the estate would ignore the creditor's right to seek adequate protection under section 363(e). *Id.* at 660. Indeed, this Court stated in *Whiting Pools* that a creditor's "right to adequate protection replace[s] the protection afforded by possession." The right to adequate protection under section 363(e), section 542(a), and under section 362(a)(3) "cannot be destroyed by treating §542(a) as self-executing and as compelling turnover." *In re Hall*, 502 B.R. at 660.

The conclusion that section 542(a) is not self-executing is further compelled by Federal Rule of Bankruptcy Procedure 7001(1). Rule 7001(1) states that "a proceeding to recover money or property" is an adversary proceeding. FRBP 7001(1). The proceeding required for a

bankruptcy court to enter a turnover order pursuant to section 542(a) is such an adversary proceeding. If section 542(a) were self-executing, no adversary proceeding would be required.

Majority view courts extrapolate from *Whiting Pools* that section 542(a) is self-executing because it "operates to vest the debtor with a possessory interest in the property," so a creditor in possession of property of the estate is required to deliver it to the debtor "without condition or any further action" in order to avoid violating section 362(a)(3). *In re Hall,* 502 B.R. at 653 (citing *In re Weber*, 719 F.3d at 79). This extrapolation flies in the face of the very statute and case that the majority view relies on so heavily. The Code, in essence, would be "destroy[ing] itself" under the majority view. *Citizens Bank of Maryland v. Strumpf,* 516 U.S. 16. This violates yet another rule of statutory construction, that interpretations of statutory language may not cause the Act to destroy itself. *Id.* The minority view interpretation respects the right of a creditor to adequate protection of its interests in property. The minority view does so without stepping on the toes of debtors, who have a right to a breathing period post-petition.

II. 11 U.S.C. § 503(b) is not violated when an administrative expense for a substantial contribution is provided in a chapter 7 case.

This Court should affirm the judgment of the Bankruptcy Court and the Bankruptcy Appellate Panel for the Thirteenth Circuit. The lower courts correctly held that section 503 permits an administrative expense for a substantial contribution provided to the estate in chapter 7 petitions.

Two principles motivate bankruptcy court decisions: equity and statutory interpretation. *Mediofactoring v. McDermott (In re Connolly N. Am., LLC)*, 802 F.3d 810, 814 (6th Cir. 2015). First, the Supreme Court consistently holds that statutory interpretation is the starting point in a dispute resolution, centered on a statute's meaning. *United States v. Ron Pair Enters., Inc., 489 U.S. at 241 (1989)*. If the language in a statute is clear, Congress instructs interpretation to end with the text. *Id*. If a court finds that the application of a statute would be unreasonable, the court

may analyze the construction of an ambiguous statute but may not blatantly disregard what Congress has stated in legislation. *Commissioner v. Asphalt Products Co.*, 482 U.S. 117, 121 (1987). Further, the Supreme Court has urged courts to avoid textual interpretations that lead to internal inconsistencies or illogical results. *United States v. Turkette*, 452 U.S. 576, 580 (1981). If a statute is ambiguous, courts have the option of interpreting one category as another similar category that is not explicitly mentioned in the statute. *In re Joan Fabrics Corp.*, 508 B.R. 881, 888 (Bankr. D. Del. 2014).

Second, the Supreme Court has long revered the principle of equity as a driving force behind bankruptcy court decisions. *Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934). Equity drives courts to preserve rightful justice and fairness in proceedings. *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1956). The Bankruptcy Code instituted more regulation in bankruptcy proceedings, but equity and balancing interests remain fundamental principles to courts when carefully making decision. *In re W.R. Grace & Co.*, 475 B.R. 34, 88 (D. Del. 2012). Equity not only provides bankruptcy courts with the power to stretch beyond the bounds of the Bankruptcy Code, but to strive for a fair result by applying the Code to the unique facts and circumstances of each case. *Holmberg v. Armbrecht*, 327 U.S. 582, 583 (1956). While the bankruptcy court is not able to blatantly disregard regulations set forth by the Bankruptcy Code, bankruptcy courts have the right to interpret the Code as the it sees fit. *Official Comm. of Unsecured Creditors of Cybergenics Corp.ex rel. Cybergenics Corp. v. Chinery,* 330 F.3d 548, 560 (2003).

A. Mr. Weinberg should be granted administrative expenses because 11 USCS § 503(b) warrants a broad and contextual interpretation.

Congress states "in a statute what it means and means in a statute what it says there," explaining that when a statute is clear, it should be interpreted as the text instructs. *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992). When statutory language is unclear, silent, or open to more than one interpretation, then courts have the duty of determining whether a

statutory interpretation is reasonable. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 866 (1984). If a statutory interpretation aligns with the statute's principle goal, then the Court holds that the interpretation is permissible. *Id*.at 863.

The term "including" in section 503(b) is meant to be interpreted unconditionally. *In re CIS Corp.*, 142 B.R. 640, 642 (S. D. N. Y. 1992); *In re Nat't Steel Corp.*, 316 B.R. 287, 299 (N. D. Ill. 2004). In *CIS Corp.*, the court held that section 503(b) did not use "include" to define "necessary costs and expenses" unconditionally, and thus left the statute to incorporate more than the statute lists in the text. 142 B.R. at 642. Nearly two decades later, the court in *Nat'l Steel Corp.* interpreted "includes" in section 503(b) as unconditional also, and thus allowed administrative costs. 316 B.R. at 299. The Court in *CIS Corp.* further declared that if a court allowed expenses that were listed in section 503 but were not necessary to the estate, then the decision would conflict with the Bankruptcy Code. 142 B.R. at 642.

The word "including" must be given contextual meaning; it does not arbitrarily exist. *Hibbs v. Winn* 542 U.S. 88, 101 (2004). In *Hibbs*, the Supreme Court held that a term must be given context in each unique factual situation. 542 U.S. at 118. Moreover, the Bankruptcy Code states that the terms "including" and "includes" are not limiting. 11 U.S.C. § 102(3). Multiple lower courts have followed the Bankruptcy Code's regulation and interpreted "including" as non-limiting. *Al Copeland Enters. Inc. v. Texas (In re Al Copeland Enters., Inc.)*, 991 F.2d 233, 238 (5th Cir. 1993). In *Al Copeland Enters. Inc.*, the court held that the use of "including" in the Bankruptcy Code indicated that § 503 provides mere examples and not limitations of administrative expenses. 991 F.2d. at 239. Further, the court held that if Congress wanted to limit the terms of § 503, then Congress could have revised the Bankruptcy Code, but Congress has not changed the term "including" for nearly 40 years. *Id*. at 239.

Administrative expenses for a substantial contribution in a chapter 7 case is akin to chapter 9 and chapter 11 cases. *Mediofactoring v. McDermott (In re Connolly N. Am., LLC),* 802 F.3d at 816 (6th Cir. 2015). In *Connolly N. Am., LLC,* the court determined that substantial contributions in a chapter 7 case are included in section 503, even though chapter 7 is not explicitly mentioned in the Bankruptcy Code. 802 F.3d at 816. The court held that a deprivation of substantial contributions in chapter 7 cases would neglect potential creditors, like trustees, who might employ personal expenses in order to successfully complete the duties warranted to an estate. *Id.* at 817. The court concluded that Congress intended chapter 7 cases to fall under § 503, because the Bankruptcy Code lacked any other mention of chapter 7 expenses. *Id*.

A business can file for bankruptcy under chapter 11 or chapter 7, but a court can make a chapter 11 case become a chapter 7 case. *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 978 (2017). In a chapter 7 case, a trustee liquidates the debtor's assets and distributes the assets to creditors. *Id*. In comparison, a chapter 11 case requires debtors and creditors to negotiate the which assets to distribute from the estate but try to keep the business afloat. *Id*. A chapter 11 case has three possible outcomes in court: first, a bankruptcy court could provide the business with a court-confirmed plan; second, the court could change the case to a chapter 7 case to liquidate all remaining assets; third, the court could dismiss the chapter 11 case. *Id*. at 979. *Id*.

Withholding an administrative expense for a substantial contribution from creditors in chapter 7 cases could deter creditors from participating in chapter 7 cases altogether. In *Maust Transp.*, Inc., 589 B.R. at 898-99 (W. D. Wa. 2018). In *Maust Transp., Inc,* the court held that section 503(b)(3)(D) includes chapter 7 creditors who provide substantial contributions. *Id*. at 899. The court declared that if the facts of a case warrants a creditor payment, then it would be unfair to deter payment simply because it is not explicitly in the text of section 503. *Id*.

Furthermore, if creditors were slighted, the court warned about future creditor involvement in chapter 7 cases. *Id*.

Mr. Weinberg's administrative expense for a substantial contribution toward Appellant's estate was absolutely necessary. (R. at 7.) If the debtor wanted to keep his business "competitive" then monetary contribution was pertinent. (R. at 3.) Mr. Weinberg's generous $450,000 loan to a mere bowling acquaintance not only made appellant's business more competitive but gave him the opportunity to acquire exclusive contracts with the city. (R. at 3 - 4.) Even after agreeing to the terms of the promissory note, the appellant failed to make sufficient payment to Mr. Weinberg for more than a year. (R. at 4 – 5.) Further, Mr. Weinberg

Mr. Weinberg was further stripped by debtor's estate after contributing $25,000 toward an investigation that revealed appellant's potentially fraudulent behavior. (R. at 5 – 7.) In *CIS Corp.,* the court interpreted "included" in section 503(b) to incorporate substantial contributions by a chapter 7 creditor, to deter from an unfair holding and stated that the Bankruptcy Code demands avoidance of unnecessary expenses. 142 B.R. at 642. Similarly, appellant has contributed nearly half a million dollars to the estate but has seen almost nothing in return (R. at 4 – 7.) Mr. Weinberg's $25,000 expenditure on an investigation revealed $75,000 for appellant's estate, which gave the Trustee the opportunity to make a deal with Stone Pony (R. at 8). If appellee was not provided with his administrative expense for a substantial contribution, it would be an incorrect interpretation of section 503(b) and rebut the Bankruptcy Code's instruction of providing necessary expenses. *CIS Corp.,*142 B.R. at 642.

Even if the Bankruptcy Code were confined to a strict textual interpretation, the Bankruptcy Code instructs that "including" and "includes" are not limiting terms. 11 U.S.C. § 102(3). This notion encourages courts to apply contextual interpretations to section 503. *Id*. Congress did not have the ability to predict appellant's irate behavior over a football game and

withhold nearly half of a million dollars from Mr. Weinberg (R. at 3 - 4.) In Hibbs, the Supreme Court held that terms must be given meaning in the face of unique facts. 542 U.S. at 118. Likewise, although section 503 does not explicitly mention chapter 7 cases in which administrative expenses for substantial contributions are provided to a creditor, Congress intended a contextual interpretation to encourage that creditors do not get defrauded in unforeseen circumstances. *Id*.

Appellant's case was originally a chapter 11 case, which falls under the protection of section 503. Desperate for cash after poor business decisions, appellant changed the chapter 11 case into a chapter 7 case. (R. at 7). Here, the appellant had the option of either a chapter 11 case or a chapter 7, but voluntarily elected to converse his case into a chapter 7 case for fast cash. (R. at 7) Mr. Weinberg should not have to suffer a $25,000 loss due to appellant's selfish and voluntary change to a Chapter 7 case, when the original case was textually included in section 503. (R. at 7). In *Connolly N. Am., LLC*, the court held that chapter 7 administrative expenses are included in section 503 because the Bankruptcy Code does not mention chapter 7 elsewhere in the code. 802 F.3d at 816. Additionally, chapter 7 cases are akin to chapter 9 and chapter 11 cases; in a chapter 7 case, a trustee is elected to liquidate the debtor's estate, whereas in a chapter 11 case, creditors have the duty of organizing an estate. *Id.* If chapter 7 trustees and creditors were not mentioned elsewhere in the Bankruptcy Code, it would leave benevolent people like Mr. Weinberg, who was a mere acquaintance of appellant, without recourse. (R. at 4.)

Appellant's change to a chapter 7 case gave him money, while depriving Mr. Weinberg from receiving his administrative expenses. (R. at 3, 7.) In *Czyzewski*, the Court held that a chapter 11 case has three possible outcomes; one of the possible outcomes is that a court change a chapter 11 case to a chapter 7 case. 137 S. Ct. at 979. If appellant kept the case as a chapter 11 case, a court could have ordered that the case change into a chapter 7 case. *Czyzewski v. Jevic*

Holding Corp., 137 S. Ct. at 978 (2017). In this case, the appellant relies on a textual interpretation to deprive his creditor of money, when the Mr. Weinberg could have received his rightful money under the original chapter 11 case. (R. at 7)

Mr. Weinberg benevolently put $450,000 toward a small business to support a mere acquaintance from his bowling club and now is on the verge of losing $25,000. (R. at 3 – 4, 7.) The court in *Maust Transp., Inc.* held that chapter 7 creditors were deserving of administrative expenses for substantial contributions. 589 B.R. at 898-99. If creditors were not provided with rightful substantial contributions, then creditors would be discouraged from participating in future business opportunities. *Id*. Likewise, if Mr. Weinberg does not receive his substantial contribution, it could discourage Mr. Weinberg and other future creditors to fund businesses in City of Badlands and possibly depriving small businesses and small business owners of necessary funding. *Id*.

The court should grant Mr. Weinberg an administrative expense for a substantial contribution in a chapter 7 case of the Bankruptcy Code, because section 503 warrants a broad and contextual interpretation.

B. Chapter 7 cases are included in 11 U.S.C. § 503 because the bankruptcy court's fundamental principle of equity motivate fair and just results.

Principles of equity have been exercised in a wide variety of bankruptcy issues including bankrupt estates and fraud. *Pepper v. Litton*, 308 U.S. 295, 301 (1939). A bankruptcy court has the duty and power to inquire into claims that may have been the result of unequitable acts. *Lesser v. Gray*, 236 U.S. 70 (1915). Bankruptcy Courts have long had the duty of acting under the law and in equity to ensure that fairness underlies all proceedings *Local Loan Co. v. Hunt*, 292 U.S. at 236 (1934). A bankruptcy court's equitable powers include rejection of claims previously allowed under the equity of a case, entering judgements to enforce the traditional rules of bankruptcy, and the collection or distribution of estates. *Pepper,* 308 U.S. at 301.

Bankruptcy courts reserve the power to act with principles of equity – faithfulness and fairness – if parties act detrimental to investors or creditors. *Taylor v. Standard Gas & Electric Co.*, 306 U.S. 307 (1939). In *Taylor*, a parent company controlled a subsidiary that became wildly undercapitalized, abundant in debt, and in an altogether dangerous financial state while under control of the parent company. *Id.* at 323. The Supreme Court found that the parent corporation a duty of fairness and equitable treatment to subordinates, subsidiaries, and creditors. *Id.* The Court further held that the parent company ignored principles of equity by acting with complete control by dominating all decisions and ignoring the repercussions of both the subsidiary and creditors. *Id.* The Court declared that the "faithless stewardship" and "mismanagement" by the parent company led to its equitable decision in favor of the subsidiary. *Pepper,* 308 U.S. at 308.

Bankruptcy Courts have the power and right to analyze the circumstances of a claim to ensure that equity is pursued, and to ensure that injustice or unfairness do not result. *Pepper*, 308 U.S. at 308. In *Pepper*, the controlling stockholder made a claim against a bankruptcy estate after leaving the claim dormant for years. *Id*. at 312. The defendant, the controlling stock holder, enforced the claim when his debtor was in a financial bind, which led the Supreme Court to find that the stockholder was attempting to instill a fraudulent scheme in in furtherance of slighting creditors. *Id*. The Court carefully dissected the facts of the case and found that injustice or unfairness would result if the Court did not apply the principle of equity and find for the plaintiff. *Id*. at 308. The Court found, driven by the principle of equity, the defendant was not being equitable to his creditors, stockholders, or officers. Id. at 308. Further, the Court declared that even if a corporation is a one-man endeavor, equity cannot be found when claims are unfair to creditors. *Id*. at 308.

Mr. Weinberg should be granted an administrative expense for a substantial contribution because to deprive him would be a deprivation of equitable treatment. Appellant was in dire need of funding for his start-up business, and Mr. Weinberg, an acquaintance from bowling club, was generous enough to act as a creditor and give the appellant nearly half a million dollars. (R. at 4.) After Mr. Weinberg and appellant had an arbitrary falling out, Debtor disregarded ceased payments for two months. (R. at 5.) Mr. Weinberg went to court and even won a judgement for $450,000, but still has not received the money that started as a friendly loan. To deprive Mr. Weinberg of his money would be to ignore the bankruptcy principle of equity and encourage cheating and unfaithful actions by debtors. *Taylor*, 306 U.S. at 323. In *Taylor,* the Supreme Court found that a parent company was being unfaithful, unfair, and thus inequitable toward a subsidiary because the parent company was ignoring the resulting actions on the subsidiary as well as creditors. *Id*. If this court were to keep a textual interpretation from giving Mr. Weinberg the money he generously provided to appellant for his business and thus well-being, (R. at 4.), then it would be ignoring the fundamental quality that the bankruptcy courts have relied on for more than a century: equity. *Taylor*, 306 U.S. at 323

Debtor treated Mr. Weinberg, a creditor, inequitably by depriving him of his rightful loan payment and by making decisions that put Mr. Weinberg in an unfair decision. Not only did Appellant stop making loan payments, but he lied to Mr. Weinberg in regard to not having enough money to fulfill a guarantee. (R. at 4, 7.) Mr. Weinberg hired an investigator who discovered that Appellant had transferred nearly $100,000 to his daughter, which was investigated as a fraudulent transfer. (R. at 7.) Similarly, in *Pepper*, the Court found that the defendant had acted fraudulent toward his creditors with a motivation to deprive the creditors of money. 308 U.S. at 308. The Court decided in favor of the plaintiff because of the defendant's blatant unfairness and inequitable treatment to his creditors. *Id*. Likewise, here the Appellant has

tried to avoid loan payments, avoid his personal guarantee, and now relied on textual interpretation to avoid repaying nearly half a million dollars to Mr. Weinberg. (R. 4, 7, 9.) To deprive Mr. Weinberg of his money would not only result in a huge loss of money, but it would also discourage fairness and equity. *Pepper*, 308 U.S. at 308.

To conclude, the court should grant Mr. Weinberg an administrative expense for a substantial contribution in a chapter 7 case of the Bankruptcy Code, because the bankruptcy court's fundamental principle of equity motivates fair and just results.

CONCLUSION

For all of the foregoing reasons, Respondent Milton Weinberg requests this Court affirm the Bankruptcy Court of the state of Moot and the Bankruptcy Appellate Panel for the Thirteenth Circuit and enter judgement in his favor.

APPENDIX A

11 U.S.C.A. § 102(3)

Rules of Construction

(3) "Includes" and "including" are not limiting;

11 U.S.C.A. § 362(a)(3)

Automatic Stay

(a) Except as provided in subsection (b) in this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of –

> **(3)** any act to obtain possession of property of the estate or of property from the estate or over property of the estate

11 U.S.C.A. §363(e)

Use, sale, or lease of property

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 362).

11 U.S.C.A. §503(b)

Allowance of administrative expenses

(b) After notice and a hearing, there shall be allowed, administrative expense, other than claims allowed under section 502(f) of this title, including –

11 U.S.C.A. § 503(b)(3)(D)

Allowance of administrative expenses

(b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including--

> **(3)** The actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection incurred by--
>
> > **(D)** A creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 or this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;

11 U.S.C.A. § 541(a)

Property of the estate

(a) The commencement of a case under 301, 302, or 303 of this title creates an estate comprised of all the following property, wherever located and by whomever held

11 U.S.C.A. § 542(a)

Turnover of property to the estate

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of the property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 622 of this title, shall deliver to the trustee, and account for, such property or value of such property, unless such property is of inconsequential value or benefit to the estate.

Fed. R. Bankr. P. 7001(1)
Scope of Rules of Part VII
An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:
(1) A proceeding to recover money or property, other than a proceeding to compel the debtor to delivery property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002.