No. 18-0918

IN THE

Supreme Court of the United States

OCTOBER TERM, 2018

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IN RE BACKSTREETS 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

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BRIEF FOR THE PETITIONER

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TEAM P. 43
Counsel for the Petitioner

QUESTIONS PRESENTED

I. Whether a party violates 11 U.S.C. § 362(a)(3) when the party refuses to relinquish control of estate property post-petition and causes the debtor's reorganization to fail?

II. Whether a party can receive an administrative expense for a substantial contribution to a chapter 7 case when the payout directly conflicts with the plain text of 11 U.S.C. § 503(b) and the party still decreased the overall value of the estate?

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OPINIONS BELOW

In unreported opinions, the Bankruptcy Court for the District of Moot held that Milton Weinberg, the Respondent, did not violate the automatic stay and that he was entitled to an administrative expense for a substantial contribution to a chapter 7 case. R. at 6, 8. The Bankruptcy Appellate Panel for the Thirteenth Circuit affirmed in another unreported opinion. R. at 9. In a split decision, the United States Court of Appeals for the Thirteenth Circuit also affirmed. R. at 3. The Supreme Court of the United States then granted Steven Vin Sant's petition for writ of certiorari.

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

The relevant statutory provisions involved in this case are listed below and are reproduced in Appendices A through F:

11 U.S.C. § 362

11 U.S.C. § 363

11 U.S.C. § 503

11 U.S.C. § 507

11 U.S.C. § 541

11 U.S.C. § 542

STATEMENT OF THE CASE

Christopher Clemons ("Clemons") was the sole shareholder of Backstreets Plowing, Inc. (the "Debtor). R. at 3. The Debtor operated a seasonal snow removal business. R. at 3. In the spring of 2015, Clemons decided to purchase new, fuel-efficient snow plow trucks. R. at 3. The older trucks had burdened the Debtor with outrageous fuel costs and ever-increasing maintenance costs. R. at 3. But the Debtor could not afford to purchase new snow plow trucks on its own. R. at 4. Clemons chose to borrow funds to invest in new trucks—knowing that reducing the burdensome expenses would allow the Debtor to compete for valuable snow plowing contracts. R. at 4.

Milton Weinberg ("Weinberg"), an acquaintance of Clemons and the Respondent, agreed to lend the funds to purchase the trucks in exchange for a purchase money security interest in the trucks.[1] R. at 4. In addition, Clemons signed a personal guarantee on the loan. R. at 4. The loan agreement provided that the Debtor was to begin making monthly payments in December of 2015. R. at 4.

Things began to fall into place for the Debtor. The new snow plow trucks allowed the Debtor to place a bid that was far superior to its competitors. R. at 4. The Debtor was awarded a valuable snow plowing contract. R. at 4. The weather seemed to be cooperating. R at 5. Things were not working out between Clemons and Weinberg personally however. R. at 4. The two had a falling out and ceased communication in October of 2015. R. at 4–5.

A couple of loan payments were not received by Weinberg. R. at 5. By February of 2016, Weinberg chose to force a confrontation with Clemons. R. at 5. First, Weinberg repeatedly called

[1] This lien was properly perfected under applicable non-bankruptcy law. Its existence and status are undisputed by the parties. R. at 4.

Clemons. R. at 5. Unfortunately, February is part of the busy season for snow removal, and Clemons did not answer. R. at 5. Weinberg chose to then storm over to the Debtor's place of business. R. at 5. There, Weinberg caused such a frenzy that he had to be forcibly removed from the premises. R. at 5. As he was being removed, Weinberg threatened Clemons. R. at 5. Unsurprisingly, the working relationship between Clemons and Weinberg did not improve after Weinberg's affront. R. at 5. Weinberg continued to escalate the conflict. R. at 5. His next act was to sue both the Debtor and Clemons personally on the loan agreement. R. at 5. A default judgment was received by Weinberg. R. at 5.

The following winter, matters deteriorated further between Clemons and Weinberg. R. at 5. The Debtor's business fell victim to several savage snowstorms, resulting in massive losses. R. at 5–6. Because the snow plowing contract paid out a pre-set amount for an entire season, the Debtor received no additional pay for clearing an exorbitant amount of snow. R. at 5–6. The Debtor was forced to operate at a loss just to keep the streets safely cleared. R. at 5–6.

But the weather could not chill Weinberg's vendetta against the Debtor. In January of 2017, Weinberg hired a repossession company to seize the Debtor's new snow plow trucks. R. at 6. The trucks were locked up in a warehouse owned by Weinberg, where they currently remain. R. at 6.

Operating at a loss, missing the core equipment for its trade, and faced with heavy snowfall, the Debtor was forced into bankruptcy. R. at 6. A chapter 11 petition was filed on February 4, 2017. R. at 6. Shortly after the petition was filed, the Debtor's attorneys informed Weinberg that he needed to return the snow plow trucks so that the Debtor could continue to earn income. R. at 6. Weinberg testified before the bankruptcy court that he refused to return the trucks. R. at 6. Without the trucks, the Debtor's chances of successfully reorganizing plummeted.

R. at 7. Faced with few options, the Debtor then asked the bankruptcy court to find that Weinberg was violating the automatic stay by continuing to possess valuable property of the bankruptcy estate that was crucial to the Debtor's successful reorganization. R. at 6. Drawing a distinction between active and passive retention, the bankruptcy court refused to make the finding. R. at 6.

The Debtor timely appealed the decision but was then served devastating news. R. at 6–7. The City of Badlands was not going to be offering the Debtor a contract the following year. R. at 6–7. Cash poor and still lacking access to its revenue-earning property, the Debtor was forced to convert to a liquidation under chapter 7. R. at 7. Steven Vin Sant ("Vin Sant"), a chapter 7 trustee, was appointed to the case and took charge of the appeal. R. at 7.

Meanwhile, Weinberg continuously sought new avenues to further extract money from both the Debtor and Clemons personally. R. at 7. Weinberg hired a collection law firm to examine Clemons' finances. R. at 7. The law firm found approximately $100,000 in a bank account. R. at 7. The account was in the name of Patti, Clemons' daughter, and was comprised of funds of the Debtor. R. at 7. As soon as the examination was complete, Weinberg supplied this information to Vin Sant. R. at 7. Vin Sant amicably settled with Patti for $75,000. R. at 7. Weinberg claimed that conducting the examination cost $25,000. R. at 7. He sought reimbursement from the bankruptcy court on the theory that the provided information was a substantial contribution to the bankruptcy estate and was therefore entitled to be treated as an administrative expense. R. at 7. Vin Sant opposed Weinberg's motion, explaining that substantial contributions are not permissible in chapter 7 cases. R. at 7–8. The bankruptcy court nevertheless granted Weinberg's motion. R. at 8. Vin Sant timely appealed. R. at 8.

In September of 2017, Vin Sant received a letter from Tenth Avenue, one of the Debtor's competitors. R. at 8. Tenth Avenue offered to purchase substantially all of the Debtor's assets—including the snow plow trucks. R. at 8. But Tenth Avenue's offer was contingent on Vin Sant obtaining physical possession and legal title of the Debtor's snow plow trucks. R. at 8. Understanding that Tenth Avenue's offer represented the best opportunity for maximizing the value of the estate, Vin Sant attempted to negotiate with Weinberg for the trucks. R. at 8. Weinberg refused. R. at 8. Tenth Avenue withdrew its offer two months later when the winter season began, and the Debtor's snow plow trucks collected dust in Weinberg's warehouse. R. at 8.

Stone Pony, another snow removal company, then offered to purchase the remaining assets in the estate (excluding the snow plow trucks) for $100,000 less than Tenth Avenue had offered. R. at 8–9. Knowing that any future cooperation from Weinberg seemed unlikely at best, and the estate property would only continue to diminish in value, Vin Sant was forced to accept Stone Pony's offer. R. at 8–9. The bankruptcy court approved the sale to Stone Pony. R. at 9. Weinberg's "passive possession" of the trucks actively cost the estate $100,000. R. at 8–9.

Despite the final sale of the Debtor's assets, the assets of the bankruptcy estate have not been entirely liquidated. R. at 9. The two appeals being pursued by Vin Sant represent claims that could benefit creditors who were similarly harmed by Weinberg's antics. Weinberg currently stands to gain a windfall from the Debtor's bankruptcy: After retaining the new snow plow trucks, the substantial contribution award from the bankruptcy court, and avoiding any form of liability for violating the automatic stay, Weinberg stands to receive more from the Debtor's liquidation than he likely ever would have received had the Debtor remained solvent.

This windfall would occur even though Weinberg *systematically* refused to work with the Debtor post-petition. R. at 6, 8.

The two issues, concerning passive violations of the automatic stay and substantial contribution administrative expenses in a chapter 7, were consolidated for appeal. R. at 2. The Bankruptcy Appellate Panel for the Thirteenth Circuit affirmed the rulings of the bankruptcy court. R. at 9. The United States Court of Appeals for the Thirteenth Circuit also affirmed. R. at 9. Vin Sant now appeals to the Supreme Court of the United States to confirm the broad protections afforded by the automatic stay and to prevent Weinberg from improperly profiting from a debtor that he personally drove into bankruptcy.

SUMMARY OF THE ARGUMENT

Impermissibly expanding creditor protections, the courts below have failed to adhere to the plain language of the Bankruptcy Code. As a result, the courts have allowed Weinberg to profit from intentionally preventing the Debtor's reorganization and have additionally given him a priority payment from the estate. Vin Sant is before the Supreme Court today because of this inequitable result.

First, passive, post-petition retention of estate property violates section 362(a)(3) of the automatic stay. The plain language of section 362(a)(3) shows that Congress did not intend to create a loophole for creditors who possess estate property when the petition is filed. Congress used ordinary language with broad meaning to make the protections afforded by the automatic stay as expansive as possible. There is no ambiguity in the language of section 362(a)(3), and it is not necessary to look beyond the plain text to hold that Weinberg violated the automatic stay.

Looking deeper into section 362(a)(3) only further supports a broad interpretation that encompasses passive, post-petition retention of estate property. Treating the Bankruptcy Code as

a "comprehensive scheme" and looking at the automatic stay as a whole, Congress clearly intended to ensure that creditors could not commandeer estate property. The automatic stay ensures that creditors are treated fairly relative to each other and that the debtor has a chance for a fresh start. Allowing creditors to retain possession of estate property would run against these policy considerations. The statutory history of section 362(a)(3) also shows that Congress has continued to expand the scope of the automatic stay, ensuring that estate property is protected.

The trustee also does not have to make a turnover demand under section 542(a) in order to find a creditor liable for violation section 362(a)(3). Section 542(a) is self-effectuating. The language of section 542(a), like the language of section 362(a)(3), is plain and unambiguous. Moreover, requiring parties to surrender estate property as soon as the Debtor files its petition is in line with the policy of the Code. To require the trustee to serve each creditor with notice and a hearing before they can be liable for violating the automatic stay would consume the estate with legal fees. Congress would not have intended for an estate's assets to primarily be spent bringing creditors in court over section 542(a).

Finally, forcing creditors to return estate property is consistent with the underlying policy of the Code. A debtor will never have the chance to receive a fresh start if creditors are allowed to retain possession of estate property. A broad reading of section 362(a)(3) is consistent with the fair balance of debtor and creditor rights. If this Court holds that passively possessing estate property does not violate section 362(a)(3), the priority scheme of the Code will basically be rewritten in favor of creditors who possess estate property when the debtor declares bankruptcy.

Second, Congress purposely excluded chapter 7 from section 503(b)(3)(D) when it expressly named chapters 9 and 11. The interpretive canon of *expressio unius* says that when Congress takes the time to mention some members of a group, it purposely excludes those it

leaves unmentioned. By purposely mentioning chapters 9 and 11 in section 503(b)(3)(D), Congress was purposely excluding the chapters it left unmentioned—including chapter 7.

When Congress used the word "including" in section 503(b), Congress did not intend to prevent every subsection of 503(b) from being exhaustive. While "including" could indicate that Congress meant for the subsections of 503(b) to be illustrative, Congress made specific subsections of 503(b) only applicable to certain chapters—showing that while the broad statute may be non-exhaustive, the chapters included within specific subsections like 503(b)(3)(D) are meant to be exhaustive. Accordingly, this Court does not need to look to equitable grounds. The statutory language makes it clear that Congress did not intend for section 503(b)(3)(D) to be applicable to a chapter 7 case.

Even if this Court does decide the administrative expense on equitable grounds, this Court should still reverse the lower court's decision. The Code provides opportunities for a party to receive an administrative expense for costs it incurred when providing a substantial contribution to a chapter 7 case in other provisions. But the Code requires that the party seek court approval of the costs before the party incurs the cost, not after. Weinberg was not a diligent but unfortunate creditor with equitable considerations in his favor. He slept on his rights and then asked the court to ignore the statutory requirements of the Code and grant him an administrative expense anyway.

Finally, Weinberg does not come before this court with clean hands. Weinberg withheld property necessary for the debtor's reorganization from the debtor, knowing full well that he was condemning the debtor to a liquidation. Then, when the estate received a large offer for all of the estate property—including the property Weinberg possessed—Weinberg refused to cooperate so that the sale could go through. This refusal was devastating to the value of the estate. Weinberg

has been a consistently bad actor since before the Debtor's bankruptcy and is not deserving of an equity award. Accordingly, this Court should reverse the lower court's decision affirming Weinberg's administrative expense.

ARGUMENT

The facts of this case are undisputed. This appeal consists solely of questions of law, which are reviewed de novo. *In re Applied Theory Corp.,* 493 F.3d 82, 85 (2d Cir. 2007). When a court uses a de novo standard of review, the court decides the issues before it without consideration of the lower court's holding. *Bd. of Cty. Comm'rs v. Robert Kimball & Assocs.,* 860 F.2d 683, 686 (6th Cir. 1988).

I. Retaining possession of estate property post-petition violates section 362(a)(3) of the automatic stay.

The court below held that section 362(a)(3) only prohibits affirmative actions against estate property that occur post-petition. The court then went on to hold that in order to find a party liable for a violation of the automatic stay under section 362(a)(3), the trustee must first affirmatively seek turnover under section 542(a). In doing so, the court drastically departs from the well-reasoned majority view. This minority approach runs counter to the statutory language of the Bankruptcy Code, canons of statutory construction, and important policy considerations.

A. The statutory language should be plainly read.

Statutory interpretation begins with the language of the statute. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240–41 (1989). When statutory language is unambiguous, "judicial inquiry is complete except in rare and exceptional circumstances." *Demarest v. Manspeaker*, 498 U.S. 184, 190 (1991). The plain meaning of the statutory language must be applied when no definition is provided. *Walters v. Metro Educ. Enters., Inc.*, 519 U.S. 202, 207 (1998). Courts

must "presume that a legislature says in a statute what it means and means in a statute what it says there . . ." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). The plain meaning in section 362(a)(3) make it apparent that Weinberg violated the automatic stay.

Section 362(a)(3) provides that the automatic stay is violated when "any act to obtain possession of property of the estate . . . or to exercise control over property of the estate" occurs. 11 U.S.C. § 362(a)(3). It is undisputed that the snow plow trucks are property of the estate. Thus, whether Weinberg violated section 362(a)(3) rests on whether his conduct qualifies as either an "act" to obtain possession of property of the estate or an "act" to exercise control over property of the estate. *Id.* The Bankruptcy Code does not define "act," instead it leaves it to the courts to determine the meaning. *See In re Peake,* 588 B.R. 811, 832 (Bankr. N.D. Ill. 2018).

Courts have routinely applied a broad meaning to "act" and have interpreted the language in section 362(a)(3) expansively. *See, e.g.*, W*eber v. SEFCU (*I*n re Weber)*, 719 F.3d 72, 81 (2d Cir. 2013) (explaining broadly that estate property does the most good when in the hands of debtor, not the creditors); *Thompson v. Gen. Motors Acceptance Corp., LLC,* 566 F.3d 699, 707–708 (7th Cir. 2009) (explaining that if a creditor is able to retain possession of the debtor's property, the reorganization process will be severely compromised).

This majority approach is consistent with the statutory language of section 362(a)(3). There is a strong presumption that "the legislative purpose is expressed by the ordinary meaning of the words used." *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982). Neither the statutory language nor the ordinary meaning of the word supports a narrow definition. For the ordinary meaning of a word, courts should consult general or legal dictionaries. *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995). The word "act" has a broad, straightforward meaning. *See* BLACK'S LAW DICTIONARY 27 (9th ed. 2009) ("the process of doing something . . .").

Weinberg "did something" every time he refused to return the estate property to the Debtor. The ordinary meaning of "control" is similarly broad: "to exercise power or influence over." BLACK'S LAW DICTIONARY 403 (10th ed. 2014). Applying the plain meaning of the statutory language, Weinberg exercised power over the snow plow trucks by locking them in his warehouse and refusing to produce them.

Standard statutory interpretation obligates courts to presume that Congress meant what it said when it uses specific language—even language with broad meaning. *Germain*, 503 U.S. at 253–54. Had Congress intended to drastically limit the scope of section 362(a)(3), it certainly could have done so. But there is nothing in section 362(a)(3) that presents an ambiguity, let alone anything that suggests that Congress intended for the language to be narrowly construed. Instead, Congress used ordinary words with broad meanings such as "act" and "control." 11 U.S.C. § 362(a)(3). The plain meaning of the statutory language makes it apparent that Weinberg violated the automatic stay when he continually refused to relinquish possession of estate property.

The court below attempted to distinguish Weinberg refusing to return the estate property to the Debtor post-petition from a post-petition "act." This reasoning led the lower court to arrive at a distinction without a difference. The Debtor requested[2] that Weinberg surrender control of the estate property and Weinberg actively refused to do so. In fact, Weinberg even traveled to the bankruptcy court to testify in front of the bankruptcy court judge that he was not going to relinquish control of the estate property. Weinberg may have refused to turn over the estate property, but there was nothing "passive" about his acts. The court below erred when it ended its section 362(a)(3) inquiry with its determination that Weinberg had not performed an "act" and thus could not have violated the automatic stay.

[2] When the debtor requested that Weinberg return the estate property, the debtor was in a chapter 11 and was exercising its trustee power. *See* 11 U.S.C. § 1107(a).

Weinberg performed numerous post-petition acts as he continued to exercise control over the snow plow trucks. To attempt to draw a distinction between an "act" and a refusal to perform an action is to engage in a redundant exercise in semantics. Moreover, this distinction drastically reduces the scope of the automatic stay without any indication that Congress intended for it to be reduced. The record clearly indicates that Weinberg knew he possessed valuable estate property and he purposely ensured that the Debtor would not be able to use the snow plow trucks to reorganize successfully. Holding that a secured creditor hamstringing a debtor going through a reorganization is not an "act" of "control" over estate property fails to realistically apply the plain meaning of section 362(a)(3). This issue could sufficiently end here. The plain language of section 362(a)(3) makes it clear that Weinberg violated the automatic stay. Any deeper examination into the issue merely furthers this conclusion.

B. Canons of statutory construction also support broadly construing section 362(a)(3) to govern passive, post-petition retention of estate property.

A small minority of courts have, however, chosen to narrowly construe "act" in section 362(a)(3) regardless of its plain meaning. *See WD Equip., LLC v. Cowen (In re Cowen),* 849 F.3d 943, 948 (10th Cir. 2017). According to this minority, passively refusing to return estate property does not trigger section 362(a)(3) liability. *Id.* The court below sought to join this minority and found ambiguity in the meaning of section 362(a)(3). When an ambiguity does arise in a statute, courts utilize methods of statutory construction to ascertain Congress' intent. *Yates v. United States*, 354 U.S. 298, 305 (1957). There is no ambiguity in the statute here, as the statutory language on its face makes it clear that Weinberg violated section 362(a)(3). Moreover, a deeper examination into section 362(a)(3) and relevant canons of statutory construction only makes this conclusion more apparent.

When examining a statute beyond its plain language, courts must consider statutory phrases within the context of the entire statute—including the statute's design, objective, and policy. *Samantar v. Yousuf*, 560 U.S. 305, 319 (2010). This Court has previously held that provisions of the Bankruptcy Code specifically should be interpreted together as part of a "comprehensive scheme." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). And when an individual word is ambiguous, the interpretive maxim *noscitur a sociis* (a word may be known by the company it keeps) states that its meaning can be ascertained by reference to other words in the statute. *Graham County Soil and Water Conversation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 281 (2010).

The automatic stay plays a balancing role in bankruptcy cases: it provides debtors with a breathing spell while they get back on their feet and it protects the debtor's creditors by preventing a race to deplete the debtor of its assets. *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 755–56 (9th Cir. 1995). Without the broad protections of the automatic stay, debtors would have little chance of emerging financially sound from bankruptcy, and additional creditors may would lose to the first creditor the chance pursue their own remedies against the debtor. With a comprehensive balancing scheme, the protections provided must be interpreted and applied broadly so that one creditor cannot ruin the debtor and deplete the estate for its own benefit. *Id.* When these protections are not recognized, the facts will look remarkably similar to this case: a failed reorganization because the debtor did not have enough assets to operate its business and an estate that is substantially smaller than it should have been.

If the word "act" creates an ambiguity in section 362(a)(3), courts should look to how Congress worded the rest of the statute to resolve that ambiguity. *Graham*, 559 U.S. at 281. Other phrases in the automatic stay illustrate that Congress clearly intended for the statute to be

construed broadly. For example, section 362(a) contains phrases such as "applicable to all entities" and "any act." 11 U.S.C. § 362(a). The structure of section 362 itself also supports this conclusion. 11 U.S.C. § 362. Section 362 is arranged so that section 362(a) encompasses all potential automatic stay violations and section 362(b) qualifies important exceptions. *See, e.g.*, 11 U.S.C. S 362(b)(1) (explaining that the commencement of criminal action against the debtor does not violate the automatic stay). This statute is not worded in a way that suggests Congress intended for its terms to be narrowly construed. The statute's wording illustrates Congress's intent of an expansive statute that broadly protects estate property.

The statutory history of section 362(a)(3) is similarly illustrative. The Bankruptcy Amendments and Federal Judgeship Act of 1984 significantly broadened the scope of the automatic stay. *Weber*, 719 F.3d at 80. Whereas section 362(a)(3) pre-1984 only prevented "an act to obtain possession" of estate property, the language added in 1984 expanded the scope to also cover "an act . . . to exercise control" over estate property. Pub. L. No. 98–353, § 98 Stat. 333, 371 (1984). This expansion was indicative of Congress' intent to broaden debtor protections, without regard to who had possession of the estate property when the petition was filed. *Weber*, 719 F.3d at 80. The lower court explained the added language as protection for intangible property rights (rights that were incapable of being possessed). *See In re Hall*, 502 B.R. 650, 654–59 (Bankr. D.D.C. 2014). This explanation makes sense, as it is indicative of Congress's intent behind expanding section 362(a)(3)—Congress has made clear that protections afforded to the debtor and estate property are capacious. *Weber*, 719 F.3d at 80. Courts discussing the added language have also made it clear that Congress intended to prevent creditors from possessing estate property post-petition. *Id.*

The court below relied upon other canons of statutory interpretation. But even these canons support interpreting section 362(a)(3) broadly. For example, the court below states that it is "an elementary view of construction that 'the act cannot be held to destroy itself.'" *Citizens Bank of Md. v. Strumpf*, 516 U.S. 16, 20 (1995) (internal citations omitted). But forcing such a narrow interpretation of the automatic stay would effectively destroy it. If creditors could subvert liability so easily, creditors would lack little incentive to work with a debtor as it approaches bankruptcy. Secured creditors would instead be encouraged to circle the debtor like vultures, waiting for the chance to repossess their property before the debtor files. These mass-repossessions would not only ensure that the debtor did in fact become bankrupt, but just as the Debtor in this case also experienced, they would ensure that the debtor will be forced to liquidate. Successful reorganizations with secured property would become a rare exception, not the rule. Congress cannot have intended the courts to interpret section 362(a)(3) so that secured creditors only fall under its preview when they fail to repossess their collateral pre-petition. The dissenting opinion from the lower court also feared the precedent that would result from allowing passive violations of section 362(a)(3) to go unanswered: "debtors will be denied any realistic prospect of reorganization and the fresh start to which they would otherwise be entitled." R. at 27.

Attempting to explain why Congress did not intend for passive retention of property to violate section 362(a)(3), one court stated, "When a creditor holds property it seized prepetition, the debtor does not possess the property. Accordingly, the creditor's continued retention of possession is not an exercise of control over any existing possession by the debtor of the property." *Hall*, 502 B.R. at 667. This quotation is indicative of the semantic gymnastics that a narrow interpretation of section 362(a)(3) requires. The creditor's continued retention of

possession *is* an exercise of control over estate property. Whether or not the debtor physically possesses the property, it still becomes estate property when the petition is filed. 11 U.S.C. § 541; *U.S. v. Whiting Pools, Inc.*, 462 U.S. 198 (1983) ("The reorganization estate includes property of the debtor that has been seized by a creditor prior to the filing of a petition for reorganization.").

Even when looking far beyond the plain language of section 362(a)(3), canons of statutory construction, the scheme of the Bankruptcy Code, and the policy behind the Code holistically support a broad interpretation of the text. A narrow interpretation requires a court to set aside the majority view's careful consideration of the statutory language and policy of the Code in exchange for a minority viewpoint that is based on misleading wordplay**.** The court below therefore erred when it held that Weinberg did not violate section 362(a)(3) when he continuously prevented the Debtor from utilizing estate property to successfully reorganize.

C. Requesting turnover under section 542(a) is not a required prerequisite to finding a violation of the automatic stay under section 362(a)(3).

We must again look to the first and most basic rule of statutory interpretation: judicial inquiry both starts and ends with the plain text when the statute is clear and unambiguous. *Demarest*, 498 U.S. at 190. Section 542(a) is clear: "An entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell or lease . . . shall deliver to the trustee, and account for, such property. . . ." 11 U.S.C. § 542(a). "Shall" has an ordinary meaning: "Has a duty to; more broadly, is required . . . This is the mandatory sense that drafters typically intend and that courts typically uphold." BLACK'S LAW DICTIONARY 1585 (10th ed. 2014). Inquiry into whether Weinberg violated the automatic stay should have ended with section 362(a)(3). Moreover, section 542(a) does not support Weinberg's

position any more than section 362(a)(3) did. The plain text clearly indicates that Congress intended Weinberg's duty to turn over the estate property post-petition to be self-effectuating and mandatory.

The willingness of the court below to blindly speculate about what it thinks Congress may have meant in section 542(a) is both troubling and inconsistent with the role courts perform in statutory interpretation. Courts should not "engage in speculation and attempt to divine congressional wisdom." *U.S. Trustee v. Farm Credit Bank of Omaha (In re Peterson),* 152 B.R. 612, 614 (Bankr. D.S.D. 1993). Yet this is exactly what the court below did. The court reasoned that if Congress had intended to require parties possessing estate property to turn the property over to the trustee, then Congress would have said so. *See, e.g., Cowen,* 849 F.3d at 950. Congress did say so. Congress clearly stated that an entity in possession of estate property *shall* turn it over to the trustee. When "shall" is used in a statute, it is meant to convey a mandatory duty. *United States Capitol Police v. Office of Compliance,* 908 F.3d 748, 759 (Fed. Cir. 2018).

The court below went on to use phrases such as "And [Congress] likely would have done so by . . ." and "It is highly unlikely that Congress would . . ." when trying to explain its interpretation of section 542(a). R. at 15. This blind speculation is exactly what courts are not supposed to do when engaging in statutory interpretation. Congress wrote section 542(a) in a plain, straightforward manner. It is obvious that the court below does not agree with Congress's decision to make the turnover power self-effectuating. But a court's disagreement with Congress does not give the court a right to re-interpret the statute's meaning. *U.S. v. Rodgers,* 466 U.S. 475, 475–476 (1984) (explaining that Congress must the resolve of the pros and cons of a statute's interpretation, not the courts).

Courts must assume that Congress said what it meant and means what it said. *Germain*, 503 U.S. at 254. Congress demonstrated in section 542 that it knows how to require a court order when it intends for one to be necessary. *Compare* 11 U.S.C. § 542(a) ("shall") *with* 11 U.S.C. § 542(e) (notice and a hearing is a necessary perquisite for a court to require turnover). Congress chose not to require notice and a hearing, or some other series of events, for section 542(a). It would be inappropriate to assume that Congress made a mistake and to force an interpretation of the statute that is not consistent with what Congress wrote.

The court below also states that the turnover power cannot be self-effectuating because that could create conflicts when a secured lender holds a possessory lien and wishes to request adequate protection under section 363(e). R. at 13. This point, while creative, does not hold weight. This Court has held that its interpretation does not change "just because the text as written creates an apparent anomaly as to some subject it does not address." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 794 (2014). Section 542(a) describes what an entity must do with estate property, and it does not cross reference provisions dealing with adequate protection. 11 U.S.C. § 542(a).

Furthermore, this Court has already held this interpretation of section 542(a) is incorrect: "Section 542(a) simply requires the [creditor] to seek protections of its interests according to the congressionally established procedures, rather than by withholding the seized property . . ." *U.S. v. Whiting Pools*, 462 U.S. 198, 211–12 (1983). Congress made a conscious judgment to prioritize preservation of the estate over the protections afforded to secured creditors. This policy may be seen as undesirable by creditors, but it is in line with the scheme of the Bankruptcy Code as a whole. *Thompson v. Gen. Motors Acceptance Corp., LLC,* 566 F.3d 699, 702 (7th Cir. 2009)

("An asset actively used by a debtor serves a greater purpose to both the debtor and his creditors than an asset sitting idle [in] a creditor's [warehouse].").

After failing to reconcile its desired outcome with the plain text of section 362(a)(3), the court below attempted to force an interpretation of section 542(a) that is not supported by the plain text of the statute and that this Court has already rejected. Congress could not have intended the turnover provision to serve as a prerequisite to finding a party liable for violating the automatic stay. Doing so would place unreasonable burdens on the debtor and the estate only to expand creditor protections.

The court below has engaged in result-oriented statutory interpretation that is not supported by accepted means of statutory interpretation or the scheme of the Bankruptcy Code itself. Although the court below seems to genuinely believe that it is making improvements to the Bankruptcy Code, the court erred when it chose to rewrite the Code rather than interpret it.

D. The majority view best serves the purpose of bankruptcy because it ensures that debtors can reorganize and that creditors are treated fairly.

The underlying, most basic principle of bankruptcy is that the "honest but unfortunate debtor" deserves a fresh start. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). The Debtor in this case did something that individuals and businesses do millions of times a year—it borrowed money to grow. Oftentimes, this gamble of taking on debt to expand leads to a financially stronger entity, and the economy is better off for it. Sometimes, like in this case, it does not. Whether it is a poorly timed economic cycle, unpredictable weather events, or difficult market trends, some leveraged businesses and individuals will naturally become unable to pay their debts. When this happens, bankruptcy is here to ensure equally that the debtor has every opportunity to turn things around and that the creditors are treated fairly. The delicate balance

allows both parties to take the initial risk. If bankruptcy favored one side to the extreme, either debtors or creditors would grow unwilling to take the risk of borrowing and lending.

The decision by the court below would upset this balance. The majority approach stresses the importance in protecting estate property from overreaching creditors:

> The primary goal of reorganization bankruptcy is to group *all* of the debtor's property together in his estate such that he may rehabilitate his credit and pay off his debts; this necessarily extends to all property, even property lawfully seized pre-petition. An asset actively used by a debtor serves a greater purpose to both the debtor and his creditors . . .

Thompson, 566 F.3d at 702 (internal citations omitted) (emphasis in original). Allowing creditors to preemptively take possession of estate property harms both the debtor and fellow creditors. The priority scheme of the Code will also become rather redundant—as the true priority scheme will favor the creditors who manage to repossess their property pre-petition above all others, leaving remaining creditors to split whatever is left. If Congress had intended for this drastic departure, then it would have said so.

Holding Weinberg liable for sabotaging the Debtor's reorganization will not restore the Debtor's business. But it will compensate the estate for the damages that Weinberg caused. More significantly, it will also force the courts that follow the minority approach to stop allowing creditors to jeopardize a debtor's reorganization by intentionally withholding estate property. This Court should reverse the decision of the lower court and put an end to the damaging results stemming from the minority approach jurisdictions.

II. A party cannot receive an administrative expense for a substantial contribution to a chapter 7 case under section 503(b)(3)(D).

The Supreme Court has opined that Congress "says in a statute what it means and means in a statute what it says there." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). The basis on which the lower court reached its conclusion requires speculation and subjective judgments that are unnecessary in interpreting section 503(b) for two main reasons. First, Congress included chapter 9 and chapter 11 in section 503(b)(3)(D) but did not include chapter 7 in the statute. Second, the equitable considerations relied on by the Thirteenth Circuit overlook the fact that the Bankruptcy Code provides in section 503(b)(3)(B) a proper channel for that which the respondent is now trying to retroactively accomplish.

A. Congress knowingly excluded chapter 7 in section 503(b)(3)(D), while including chapters 9 and 11.

A majority of courts that have addressed the question of whether a substantial contribution in a case under chapter 7 is entitled to an administrative expense through section 503(b)(3)(D) have held that the inclusion of chapters 9 and 11 precludes the application of the statute to cases under chapter 7. *See, e.g., In re Lloyd Sec., Inc.*, 75 F.3d 853, 857 (3d Cir. 1996); *Lebron v. Mechem Fin. Inc.*, 27 F.3d 937, 946 (3d Cir. 1994); *In re Fesco Plastics Corp., Inc.*, 996 F.2d 152, 157 n.5 (7th Cir. 1993); *see also Goodman v. Phillip R. Curtis Enter., Inc.*, 809 F.2d 228, 231 n.4 (4th Cir. 1987). Sections 503(b)(3)(B) and (C) provide a clear illustration of how significant the inclusion of "chapters 9 and 11" in section 503(b)(3)(D) is. Sections 503(b)(3)(B) and (C) provide examples of claims entitled to administrative priority. Congress chose not to limit the applicability of either provision with any chapter-specific limitations. *See* 11 U.S.C. § 503(b)(3)(B), (C). In section 503(b)(3)(D), however, Congress named the specific chapters in which a party can receive an administrative expense for a substantial contribution. *In*

re Hackney, 351 B.R. 179, 201 (Bankr. N.D. Ala. 2006) ("Congress knew how to create a 'substantial contribution' administrative expense for cases it believed were appropriate for that benefit. It did that in section 503(b)(3)(D) for Chapter 9 and Chapter 11 cases. It could have done the same in Chapter 7 cases. It did not.").

i. Congress's inclusion of chapters 9 and 11 in section 503(b)(3)(D) demonstrates an intent to exclude chapter 7.

In considering the significance of the congressional omission of chapter 7 in section 503(b)(3)(D), the interpretive canon of *expressio unius* is illustrative. *Expressio unius est exclusion alterius* stands for the proposition that "expressing one item of [an] associated group or series excludes another left unmentioned." *NLRB v. SW Gen., Inc.*, 137 S.Ct. 929, 940 (2017) (quoting *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002)); *United States v. Vonn*, 535 U.S. 55, 65 (2002).

Chapters 7, 9, 11, 12, 13, and 15 are all available for congressional inclusion or exclusion, and—absent any express restriction—rules contained in section 503 apply to all chapters. It would not be unusual for Congress to make a subsection of section 503 broadly applicable to all chapters. *See e.g.*, 11 U.S.C. §§ 503(b)(3)(B), (C) (examples of subsections that can be applied to any chapter). The expression of chapters 9 and 11 in section 503(b)(3)(D) excludes chapter 7 because it was another of the same group, left unmentioned. Had Congress intended for the bankruptcy court to apply section 503(b)(3)(D), Congress could have worded it as it did the two immediately preceding subsections. 11 U.S.C. §§ 503(b)(3)(B), (C).

Instead, Congress expressly named the chapters to which it intended section 503(b)(3)(D) to be applied. By leaving chapter 7 unnamed, Congress made clear that chapter 7 was not one of these chapters. A straightforward application of the well-established *expressio unius* canon to the statutory language is adequate as a matter of interpretation to find for the petitioner.

ii. The use of "including" in section 503(b) does not prevent section 503(b)(3)(D) from being restrictive.

If *expressio unius* was not considered individually adequate, however, the use and omission of the word "including" is also illustrative of Congress' intent. The court below relies heavily on the use of the word "including" in section 503(b). The view is premised on the concept that the list of appropriate administrative expenses following the word "including" cannot be limiting. *See, e.g.,* A*l Copeland Enters., Inc.*, 991 F.2d 233, 238 (5th Cir. 1993) ("[A]dministrative expenses entitled to first priority status are not necessarily confined to those enumerated at 11 U.S.C. § 503(b)."") (quoting I*n re Flo-Lizer, Inc.*, 916 F.2d 363 (6th Cir. 1990)).

The principal case relied on by the court below sought to avoid rendering the word "including" superfluous in section 503(b) so the court refused to interpret any terms thereunder as limiting. *See Mediofactoring v. McDermott* (I*n re Connolly N. Am., L.L.C.)*, 802 F.3d 810, 821 (6th Cir. 2015) ("Congress deliberately inserted 'including' into the text of § 503(b) and expressly instructed, in § 102(3), that the term '[is] not limiting[.]'"). The word "including," as used in section 503(b), however, would retain full effect if section 503(b)(3)(D) were interpreted with its plain meaning.

There is a list of nine subsections under 503(b) that constitute examples of administrative expenses. *See* 11 U.S.C. § 503(b)(1–9). Reading any and all of these subsections as limiting based on the word "including" is reasonable. For example, section 503(b)(6) elevates "[t]he fees and mileage payable under chapter 119 of title 28"[3] to administrative priority. 11 U.S.C. § 503(b)(6). It would not render the word "including" superfluous to refuse an extension of section 503(b)(6) to fees and mileage unrelated to chapter 119 of title 28. In the same way, subsection 503(b)(3)(D) contains specific and intentional language designed to indicate congressional

[3] 28 U.S.C. § 1821 – Per diem and mileage generally, subsistence.

intent. *Compare* 11 U.S.C. § 503(b)(3)(D) ("in a case under chapter 9 or 11 of this title") *and* 11 U.S.C. § 503(b)(6) ("under chapter 119 of title 28"). Reading the restricting language of Congress as it is drafted does not render the word "including" superfluous as used in section 503(b). The enumerated subsections of section 503(b) may not be generally exhaustive, while Congress worded individual subsections to be exhaustive. An illustrative, general section and restrictive subsections are not mutually exclusive.

Although the word "including" appears in section 503(b), Congress did not use it in section 503(b)(3). *See* 11 U.S.C. § 503(b)(3). The use of the term carries meaning, as it appears in section 503(b)(1)(A), but not in section 503(b)(3). *Compare* 11 U.S.C. § 503(b)(3) *and* 11 U.S.C. § 503(b)(1)(A). The fact that Congress did not use the word "including" in section 503(b)(3) indicates the list of "'actual, necessary expenses' covered by that provision is exclusive." *Mediofactoring*, 802 F.3d at 821 (O'Malley, J., dissenting). This reasoning would mean that section 503(b)(3) contains an exhaustive list within a non-exhaustive list. Accordingly, it would be improper to expand the scope of the administrative priority for expenses related to substantial contributions under section 503(b)(3)(D).

The exclusion of chapter 7 despite the inclusion of chapters 9 and 11 provides a clear case for the interpretive canon, *expressio unius*, and indicates a congressional intent to limit the scope of administrative expenses for substantial contributions under section 503(b)(3)(D) to those in the enumerated chapters. Additionally, a straightforward application of the statutory text in section 503(b)(3)(D) does not render the word "including," as used in section 503(b), superfluous. Finally, Congress did not use the word "including" in section 503(b)(3), signifying that the list of expenses covered in the subsection is exhaustive.

B. Equitable considerations do not favor granting an administrative claim to Weinberg in light of the statutory framework.

Under the *Connolly* approach, as applied by the court below, the totality of the circumstances, including equitable principles, are considered when granting administrative priority. *See Mediofactoring*, 802 F.3d at 815. However, the role of the courts is not to write new legislation under the guise of equity, and courts should avoid exercising equitable authority in a way that contradicts existing law. The Supreme Court stated that a bankruptcy court's equitable power "can only be exercised within the confines of the Bankruptcy Code." *Law v. Siegel*, 571 U.S. 415, 421 (2014) (citing *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)); *see also Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 24–25 (2000) ("Bankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law . . . but are limited to what the Bankruptcy Code itself provides.").

A bankruptcy court does not lack equity powers, but the court must operate within the confines of the Code. When the Code clearly indicates that particular section is not applicable to a party, a court cannot use principles of equity to apply that section anyway. Accordingly, it is unnecessary in this case to consider the equities behind Weinberg's claim. Section 503(b)(3)(D) bars his administrative expense.

Moreover, it is not the court's role to attempt to revise the statute through creative interpretation. If Congress excluded chapter 7 from section 503(b)(3)(D) erroneously, it is up to Congress to remedy the omission. *See Mediofactoring*, 802 F.3d at 824 (O'Malley, J., dissenting) ("We should be hesitant, as an Article III court, to make a policy determination about the appropriate scope of § 503(b) based solely on Congressional inaction. . . . Congress has said nothing about Chapter 7. . . . [W]e should limit claims for substantial contribution to the express

language of § 503(b)(3)(D), and leave it to Congress to expand that authority to Chapter 7 proceedings if it so desires.").

If a balancing of the equities is to take place, the interests of all stakeholders must be considered as well. Administrative claims are paid out of the estate's assets before general unsecured creditors—and those of lower priority, generally—receive any distributions. 11 U.S.C. § 507. Freely granting administrative claims in the name of equity harms good faith creditors waiting for their turn at a distribution. *See In re Federation Dep't Stores, Inc.*, 270 F.3d 994, 1000 (6th Cir. 2001) ("Claims for administrative expenses under § 503(b) are [to be] strictly construed because priority claims reduce funds available for creditors and other claimants.").

Even if Weinberg's section 503(b)(3)(D) claim is ultimately decided solely on equitable grounds, Weinberg still cannot prevail. Weinberg came before the court asking for a retroactive remedy because he missed the opportunity provided by the Code to specifically request an administrative expense for a substantial contribution to a chapter 7. Bankruptcy law rarely—if ever—favors those who are slow to exercise their rights. An equitable remedy is also inappropriate for Weinberg because he did not operate in good faith.

i. Weinberg should not be rewarded for sleeping on his rights.

A consideration of all pertinent facts is not complete until the statutory framework is applied. Rather than considering section 503(b)(3)(D) in isolation, it must be read considering its place within the statute. *RadLAX Gateway Hotel, L.L.C.*, 566 U.S. at 645 (provisions of the Bankruptcy Code are to be considered as part of a "comprehensive scheme"). Congress provides, through provisions of section 503 other than subsection (b)(3)(D), for the "reimbursement of expenses incurred in connection with a chapter 7 proceeding." *Lebron*, 27 F.3d at 945 (discussing how parties in chapter 7 cases fall under section 503(b)(3)(B) among others.).

The Third Circuit and the dissent in *Connolly* found that expenses incurred in contribution to the estate in chapter 7 were intended by Congress to be reimbursable through the provisions explicitly provided or not at all. *Lebron v. Mechem Fin. Inc.*, 27 F.3d at 945; *Mediofactoring*, 802 F.3d at 823 (O'Malley, J., dissenting). In the particular circumstances of this case, expansively reading section 503(b)(3)(D) to include a creditor who forewent his right to an administrative claim within the confines of the statute does not serve justice or equity under the Bankruptcy Code.

Section 503(b)(3)(B) authorizes administrative priority for expenses incurred by creditors that recover, "after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor." 11 U.S.C. § 503(b)(3)(B). Of significance here, section 503(b)(3)(B) provides an unrestricted and irrefutable path to administrative priority for exactly what the respondent did in this case. The only limiting factor in the subsection is prior court approval. Weinberg now relies on inferences to manipulate and expand section 503(b)(3)(D) to achieve that which he is no longer able to achieve under section 503(b)(3)(B), because he failed to acquire court approval before incurring the relevant expenses. In a chapter 7 conversion case, Congress requires court approval *before* costs are incurred if the creditors wish to receive an administrative expense for recovering concealed or fraudulently transferred estate property. *See Mediofactoring*, 802 F.3d at 823 (O'Malley, J., dissenting); *Lebron*, 27 F.3d at 945.

Weinberg is not a disadvantaged party without a remedy. He is a party who chose to sleep on his rights. "It is a familiar maxim that equity favors the diligent and not those who sleep on their rights." *In re GSYS Enters.*, 343 B.R. 568 (Bankr. N.D. Tex. 2006). Thus, even if Weinberg's motion is considered solely on the basis of the underlying equity, Weinberg still

should not have received an administrative expense. This Court should not help a party when he was unwilling to help himself.

The court is not exercising its discretion and equitable powers to correct an injustice by bending section 503(b)(3)(D) to grant the respondent administrative priority. Rather, the court is re-writing the statute and ignoring the explicit statutory scheme. Weinberg missed his chance to receive court approval before incurring expenses. Reversing Weinberg's administrative expense is not inequitable—it is properly adhering to the Code and holding Weinberg responsible for failing to preemptively receive court approval before incurring expenses.

ii. Weinberg does not come before the court with clean hands.

In considering the statutory implications of the equitable analysis, it is important to recall the well-established maxim: "He who comes into equity must come with clean hands." *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co*., 324 U.S. 806, 814 (1945). Weinberg is directly responsible for the Debtor's liquidation and a lower value from the sale of the Debtor's assets. Although "equity does not demand that its suitors shall have led blameless lives [. . .] as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue." *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co*., 324 U.S. 806, 814–815 (1945) (citing *Keystone Driller Co. v. General Excavator Co*., 290 U.S. 240, 245 (1933).

While the Debtor stood at the precipice facing almost certain failure, Weinberg hoarded assets necessary for the Debtor's successful reorganization. Snuffing out any chance for a successful reorganization, Weinberg again refused to relinquish possession of the estate assets when a willing buyer put forth the highest offer the estate would ultimately receive. Because of his refusal, the buyer revoked its offer. The following offer was $100,000 less than the offer by

the buyer that Weinberg drove off. Even Weinberg's contribution to the estate cannot cover this deficit. Weinberg's contribution only brought in $75,000 and he received a $25,000 administrative expense for it. The estate would have an additional $50,000 in assets if Weinberg would have cooperated with Vin Sant.

Weinberg has acted selfishly to the detriment of the debtor, the estate, and all other creditors in this case. Only Weinberg benefitted from his actions. Yet he went before the bankruptcy court requesting an administrative expense and the court below affirmed the expense, finding it to be the equitable result. But he who seeks equity must do equity, and Weinberg is not an unfortunate victim in need. He is a causal agent in the Debtor's ongoing hardship.

CONCLUSION

It is understandable that the courts below desired to rule for a secured creditor attempting to make the most out of a debtor's bankruptcy—especially when that creditor loaned a substantial amount of money to the debtor. But the approach taken by the courts below ignores the statutory language of the Bankruptcy Code. Even worse, the approach runs contrary to the policies of the Code.

Weinberg clearly violated the automatic stay when he refused to relinquish possession of estate property. The violation was harmful to the debtor, the estate, and other creditors in the case. His pre-petition race to deplete the Debtor of its assets is the exact sort of behavior that the automatic stay is meant to prevent. Weinberg also unjustly received an administrative expense from the estate. By refusing to turn over the snow plow trucks, Weinberg ultimately cost the estate $100,000. Even with his "substantial contribution" to the estate, Weinberg had an overall negative effect on the value of the estate.

Weinberg had every opportunity to work with the Debtor and to mutually benefit from the Debtor's successful reorganization. Instead, Weinberg chose to ruin the Debtor's reorganization attempt and to stunt the estate's recovery by refusing to turn over the snow plow trucks.

Now, Weinberg comes before this Court asking to have his erroneous escape from liability and inequitable payout affirmed. He systematically undercut and worked against the Debtor throughout the bankruptcy case. Yet he is the only party who stands to profit from this case. Weinberg should be the last party in this case who should receive a windfall, not the only one. Therefore, this Court should reverse the decision of the lower court.

APPENDIX A

11 U.S.C. § 362 (2012).

Automatic stay

(a) Except as provided in subsection (b) of 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—

> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> (3) 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;
>
> (4) any act to create, perfect, or enforce any lien against property of the estate;
>
> (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
>
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
>
> (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

> (1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

[Remainder of 11 U.S.C. § 362 is omitted]

APPENDIX B

11 U.S.C. § 363 (2012).

Use, sale, or lease of property

(a) [omitted]

(b) [omitted]

(c) [omitted]

(d) [omitted]

(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).

[Remainder of 11 U.S.C. § 363 is omitted]

APPENDIX C

11 U.S.C. § 503 (2012).

Allowance of administrative expenses

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

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

(1)

(A) the actual, necessary costs and expenses of preserving the estate including—

(i) wages, salaries, and commissions for services rendered after the commencement of the case; and

(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;

(B) any tax—

(i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or

(ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;

(C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and

(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;

(2) compensation and reimbursement awarded under section 330(a) of this title;

(2) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by—

(A) a creditor that files a petition under section 303 of this title;

(B) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;

(C) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;

(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 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;

(E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian; or

(F) a member of a committee appointed under section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee;

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

(5) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title;

(6) the fees and mileage payable under chapter 119 of title 28;
(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from an entity other than the debtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);

(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

(A) in disposing of patient records in accordance with section 351; or

(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business; and

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

(c) Notwithstanding subsection (b), there shall neither be allowed, nor paid—

(1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court based on evidence in the record that—

(A) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;

(B) the services provided by the person are essential to the survival of the business; and

(C) either—

(i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or

(ii) (ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;

(2) a severance payment to an insider of the debtor, unless—

(A) the payment is part of a program that is generally applicable to all full-time employees; and

(B) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or

(3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.

APPENDIX C

11 U.S.C. § 507 (2012).

Priorities

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

(2) Second, administrative expenses allowed under section 503(b) of this title, unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343),[1] and any fees and charges assessed against the estate under chapter 123 of title 28.

(3) Third, unsecured claims allowed under section 502(f) of this title.

[Remainder of 11 U.S.C. § 507 is omitted]

APPENDIX D

11 U.S.C. § 541 (2012).

Property of the estate

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

(1) [omitted]

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

[Remainder of 11 U.S.C. § 541 is omitted]

APPENDIX E

11 U.S.C. § 542 (2012).

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 property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

(b) [omitted]

(c) [omitted]

(d) [omitted]

(e) Subject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee.

APPENDIX F

11 U.S.C. § 1107 (2012).

Rights, powers, and duties of debtor in possession

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

(b) [omitted]