No. 23-00115

In the Supreme Court of the United States

OCTOBER TERM, 2023

IN RE EUGENE CLEGG, DEBTOR,

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE

Petitioner,

v.

EUGENE CLEGG,

Respondent.

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

BRIEF FOR PETITIONER

TEAM 3
Counsel for the Petitioner

QUESTIONS PRESENTED

I. Whether post-petition, pre-conversion increases in property value inure to the bankruptcy estate upon conversion from chapter 13 to chapter 7.

II. Whether a chapter 7 trustee may sell avoidance actions as property of the bankruptcy estate under sections 547 and 550.

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STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived in accordance with the Rules of the Duberstein Bankruptcy Moot Court Competition.

STATEMENT OF THE FACTS

In 2011, Eugene Clegg (the "Debtor") became the sole member of Final Cut, LLC ("Final Cut"), a historic, single-screen movie theater, after his mother ("Pink") transferred her 100% membership interest to him. (R. 4–5.) In 2016, the Debtor caused Final Cut to borrow $850,000 (the "Loan") from Eclipse Credit Union ("Eclipse") to renovate Final Cut. (R. 5.) Despite completing the renovations under budget, with $75,000 of the loan left over, the Debtor transferred the remaining funds to a third party rather than pay back Eclipse. (*Id.*) The Debtor did this without notifying Eclipse. (*Id.*)

Final Cut struggled financially amidst the COVID-19 pandemic, causing the Debtor to borrow $50,000 from Pink, incur significant credit card debt, and fall behind on his mortgage payments. (R. 6.) Unable to satisfy his financial obligations, the Debtor filed for relief under chapter 13 of the Bankruptcy Code (the "Code") on December 8, 2021 (the "Petition Date"). (*Id.*) However, before the Petition Date, the Debtor made $20,000 worth of payments to Pink. (R. 7.) The Debtor's schedules listed the value of his house as $350,000 based on a recent appraisal, as well as a secured debt to Another Brick in the Wall Financial Corporation in the amount of $320,000. (R. 6.) The Debtor also claimed a homestead exemption of $30,000, the maximum allowable under the laws of the State of Moot. (R. 6–7.) Under these valuations, the Debtor maintained no equity in his home for unsecured creditors. (R. 7.)

On February 12, 2022, the bankruptcy court confirmed the Debtor's plan, which provided that payments to his unsecured creditors would be made solely from future earnings derived from Final Cut. (R. 7–8.) In September 2022, Final Cut permanently closed and the Debtor defaulted.

(R. 8.) In October 2022, the Debtor converted his chapter 13 case to chapter 7. (*Id.*) Upon conversion, Vera Lynn Floyd was appointed as the chapter 7 trustee (the "Trustee"). (R. 9.)

The Trustee realized that the estate was bereft of assets. (*Id.*) At the post-conversion section 341 meeting, the Debtor disclosed that property values in his neighborhood had increased. (*Id.*) The Trustee had the house appraised, revealing that its value had increased by $100,000, thus creating equity that could be sold for the benefit of creditors. (*Id.*) Recognizing an opportunity to recover its losses, Eclipse offered to purchase the house for $450,000. (*Id.*) Similarly, recognizing that the Debtor's payments to Pink were potentially avoidable (R. 7.), Eclipse also offered to purchase the avoidance actions arising from the Debtor's transfers to Pink for $20,000.[1] (*Id.*) Consistent with her duty to liquidate the "property of the estate,"[2] the Trustee filed a motion (the "Sale Motion") to sell the house and the avoidance actions to Eclipse $470,000. (*Id.*)

The Debtor objected to the sale, arguing that any post-petition, pre-conversion appreciation in the house should inure to his benefit. (R. 10.) The Debtor also contended that the Trustee could not sell the avoidance actions. (*Id.*)

The bankruptcy court ruled for the Debtor on both questions of law. (*Id.*) The Trustee appealed, and the Thirteenth Circuit affirmed. (R. 24.)

STANDARD OF REVIEW

The standard of review for both issues is *de novo* because both issues are questions of law. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). Under a *de novo* standard of review, this Court renders a judgment as if it were the original court. *See id.* at 560.

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[1] The Debtor's payments to Pink were potentially avoidable because Pink was the Debtor's mother and the Debtor made the transfers within one year before the Petition Date. *See* 11 U.S.C. 547(b)(4)(B).

[2] "Property of the estate" is a term of art. *Castleman v. Burman (Matter of Castleman)*, 75 F.4th 1052, 1056 (9th Cir. 2023). Hereinafter, it will be referenced without quotations.

SUMMARY OF THE ARGUMENT

This Court should hold that post-petition, pre-conversion increases in value inure to the bankruptcy estate upon conversion from chapter 13 to chapter 7. Further, this court should hold that trustees may sell avoidance actions to creditors as property of the estate.

Under the Code's plain language, the benefit of any post-petition, pre-conversion increase in value inures to the chapter 7 estate. Read together, sections 348(f)(1)(A) and 541(a) show that the post-petition, pre-conversion increase in value in the Debtor's house inures to the benefit of the estate. The house was always property of the estate under section 541(a)(1) and became property of the chapter 7 estate under section 348(f)(1)(A) because it remained in the Debtor's possession at the time of conversion. Appreciation in value is not a distinct, separable interest from real property. Even if appreciation is distinct from estate property, appreciation is a proceed of that property under section 541(a)(6).

Reading section 348(f) in context confirms that Congress' intent and public policy support inuring any post-petition, pre-conversion appreciation in value to the estate. Some courts read section 348(f) against section 522's "snapshot rule," which freezes valuations of property on the petition date, to conclude that appreciation in value cannot belong to the estate. But Congress explicitly rejected this reading when it amended section 348(f)(1)(B) in 2005, excluding chapter 13 valuations from cases converted to chapter 7. Any ambiguity between sections 348(f)(1)(A) and 1327(b) is illusory: under section 103(j) the provisions of chapter 13 do not apply to chapter 7. Congress intended that section 348(f) encourage debtors to file under chapter 13. Specifically, Congress contemplated that equity earned by the debtor through payments made under the chapter 13 plan would not be at risk of liquidation if the case was converted. Similarly, section 348(f)(2)'s bad faith provision covers only newly acquired property interests. Granting post-petition appreciation to the estate does not disincentivize chapter 13 filings and does not detract from

348(f)(2)'s distinction between good faith and bad faith because the value of the house was always property of the estate. Additionally, public policy favors inuring appreciation to the estate. Market fluctuations cause estate values to rise and fall; if the benefit of post-petition appreciation belonged to the debtor, then the debtor would also be responsible for any losses in value when the market is unfavorable. The best policy, therefore, separates the changes in estate value from the debtor.

Concerning Eclipse's offer to purchase the avoidance actions against Pink, the sale should have been permitted because the avoidance actions were property of the estate. Section 541(a)(1) classifies "all legal or equitable interests of the debtor in property as of the commencement of the case" as property of the estate. Avoidance actions are property of the estate under the Code's plain language. Moreover, reading the Code in its full context confirms that avoidance actions are property of the estate. Courts have consistently recognized chapter 5 causes of action as property of the estate. Chapter 7 trustees are authorized to sell avoidance actions as property of the estate under section 363(b).

Additionally, denying the sale of the avoidance actions undermines Congress' intent that meritorious avoidance actions be pursued. In cases like this one, where the estate is "bereft of assets," the trustee may be unable to pursue every meritorious avoidance action. By selling preference powers, the trustee can bring money into the estate. Such sales are essential to bankruptcy. Practicality establishes that the Trustee was able to sell the avoidance actions in this case.

For these reasons, the Court should reverse the Thirteenth Circuit on both issues.

ARGUMENT

I. POST-PETITION, PRE-CONVERSION INCREASES IN MARKET VALUE INURE TO THE BANKRUPTCY ESTATE UPON CONVERSION FROM CHAPTER 13 TO CHAPTER 7.

Bankruptcy law has two purposes. The first is to allow the debtor to make a "fresh start." *Harris v. Viegelahn*, 575 U.S. 510, 518 (2015). The second is to maximize creditor recoveries. *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 71 (2011). In holding that post-petition, pre-conversion increases in market value belong to the debtor, the Thirteenth Circuit overlooked bankruptcy law's second purpose. *See id.* But "[l]ogic and an adherence to bankruptcy's underlying policy of fairness strongly suggest that the . . . debtor should not reap the rewards of the marketplace while their creditors receive less than full payment on their claims." Krispen Carroll, *Tug-of-War over Post-Confirmation Appreciation in Chapter 13*, Am. Bankr. Inst. J., December 2023, at 33. "Equity and the Bankruptcy Code demand" that courts not become comfortably numb to the needs of creditors. *Id.* at 71. When debtors attempt to retain the appreciated value of estate property, courts should give effect to the Code by favoring creditors. *Id.*

A. The Bankruptcy Code Clearly and Expressly States That Post-Petition, Pre-Conversion Increases in Value Are Property Of The Chapter 7 Estate.

The Code plainly states that post-petition, pre-conversion appreciation in property value belongs to the chapter 7 estate where a case is converted from chapter 13 to chapter 7. Courts tasked with resolving a dispute in a statute's meaning must start with the text of the statute itself. *United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 241 (1989). "Where . . . the statute's language is plain, 'the sole function of the courts is to enforce [the statute] according to its terms.'" *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (internal citation omitted). Only where the statute's plain language is ambiguous may a court reach beyond the text to determine a statute's meaning. *Ron Pair*, 489 U.S. at 242. "The fact that litigants, or courts for that matter, may read a statute

differently does not invariably mean that the statute is ambiguous; it may simply mean that one of the interpretations is wrong." *In re Adams*, 641 B.R. 147, 156 (Bankr. W.D. Mich. 2022). Here, the language of the Bankruptcy Code clearly states that when a case is converted from chapter 13 to chapter 7, post-petition, pre-conversion appreciation in property value is property of the chapter 7 estate.

When filing for bankruptcy, a debtor chooses to file under chapter 7 or chapter 13. *Harris*, 575 U.S. at 513. Chapter 7 serves as a "clean break" for the debtor, requiring the trustee to liquidate the debtor's assets, but protecting the debtor's post-petition earnings from creditors. *Id.* at 513–14. Chapter 13, on the other hand, allows the debtor to retain his property and pay creditors with "future earnings or other future income." *Id.* at 514 (citing 11 U.S.C. § 1322(a)(1)) (internal quotations omitted). Often, chapter 13 debtors fail to pay according to the plan, which is why Congress included an irrevocable option for debtors to convert from chapter 13 to chapter 7. *Harris*, 575 U.S. at 514. When a conversion from chapter 13 to chapter 7 occurs, the case respects the original petition date but continues on "another track" governed by section 348. *Id.* at 515; *See* 11 U.S.C. § 348(a) (explaining that a converted case continues without a "change in the date of the filing of the petition."). And when the case is converted from chapter 13 to chapter 7, the contents of the bankruptcy estate are determined by section 348(f)(1)(A). *See* 11 U.S.C. § 348(f).

1. Sections 348(f)(1)(A) and 541(a) Unambiguously Define Property of the Estate in a Converted Case.

Section 348(f)(1)(A) provides that "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion . . . ." 11 U.S.C. § 348(f)(1)(A). Congress's use of the language "property of the estate" in section 348(f)(1)(A) explicitly references section 541, which defines property of the estate as "all legal or equitable interests of the debtor in

property [as of the commencement of the case,]" including "[p]roceeds . . . from property of the estate." *Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1222 (10th Cir. 2022) (first quoting 11 U.S.C. § 541(a)(1) and then 11 U.S.C. § 541(a)(6)) (internal quotations omitted).

Read together sections 348(f)(1)(A) and 541(a) paint a clear picture of what property belongs to the estate, leaving no ambiguity on some dark side of the statute. When a debtor files a chapter 13 petition, all then-existing property interests fill the chapter 13 bankruptcy estate. When the case is converted to chapter 7, those original property interests as of the petition date that remain in the debtor's possession are converted to property of the chapter 7 estate. 11 U.S.C. § 541(a)(1).

Here, "[t]he house is easy." *Coslow v. Reisz*, 811 F. App'x 980, 982 (6th Cir. 2020). The Debtor had a legal or equitable interest in the house on the Petition Date. (*See* R. 6.) Therefore, upon filing his chapter 13 petition, the Debtor's house became property of the estate. (*See* R. 7.) When he converted his case to chapter 7, the Debtor's house, which was still in his possession, became property of the converted chapter 7 estate. *See In re Cofer*, 625 B.R. 194, 197 (Bankr. D. Idaho 2021), *abrogated in part by Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023) ("A plain language reading of [section] 348(f)(1)(A) results in the [h]ome, which was owned by the [d]ebtor on the date she filed her chapter 13 petition, and remained in the [d]ebtor's possession on the date of conversion, being property of the chapter 7 estate upon conversion."). *Cf. In re Barrera*, 22 F.4th at 1223 ("The physical house was not 'in the possession of or . . . under the control of the [D]ebtor[s] on the date of conversion'—they had sold it.") (quoting 11 U.S.C. § 348(f)(1)(A)). Therefore, the Debtor's house is indisputably property of the estate.

Many courts faced with the issue correctly read the plain language of section 541(a) to mean that "the [estate] is entitled to post-petition appreciation in the property because the real

estate was *always* property of the estate under section 541(a) of the Code." *In re Goins*, 539 B.R. 510, 515 (Bankr. E.D. Va. 2015) (emphasis original). Courts, however, are split as to which provision yields this result: some rely on section 541(a)(1) while others rely on section 541(a)(6). *Compare In re Adams*, 641 B.R. at 152 *with Castleman v. Burman (Matter of Castleman)*, 75 F.4th 1052, 1056 (9th Cir. 2023). Regardless of which provision courts rely on, the outcome is the same—under the plain language of section 541(a), post-petition, pre-conversion appreciation belongs to the chapter 7 estate. *Potter v. Drews (In re Potter)*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999). Indeed, "[n]othing in Section 541 suggests that the estate's interest is anything less than the entire asset, including any changes in its value which might occur after the date of filing." *Id.*; *see also In re Adams*, 641 B.R. at 156 ("Among the interests included within the estate is the right to sell the property and enjoy the proceeds of sale, including any post-petition appreciation in value . . . .").

2. Appreciation in Property Value is Inextricably Linked to the Interest in Real Property.

Under section 541(a)(1), post-petition appreciation belongs to the estate because appreciation is inseparable from the underlying asset. *In re Larzelere*, 633 B.R. 677, 683 (Bankr. D.N.J. 2021). Appreciation is not something that a debtor can separately pledge, mortgage, or liquidate; appreciation is solely a result of market forces and the condition and location of the property. *Id.*; *In re Adams*, 641 B.R. at 152. For example, in *Goetz*, the Bankruptcy Appellate Panel of the Eighth Circuit held that the post-petition, pre-conversion increase in value was property of the converted chapter 7 estate because appreciation is merely a characteristic of property already in the estate. *Goetz v. Weber (In re Goetz)*, 651 B.R. 292, 297 (B.A.P. 8th Cir. 2023). "If the asset is property of the converted bankruptcy estate, the increase in [value] . . . is also property of the estate" under section 541(a)(1). *Id.*

Other courts take a different approach, concluding that "any post-petition increase in the property's [value] is the 'proceeds, product, offspring, rents or profits' of the estate's original property under [section] 541(a)(6)." *Matter of Castleman*, 75 F.4th at 1056. But even under this approach, the post-petition appreciation is *not* separate, after-acquired property that would be excluded by section 348(f)(1)(A) upon conversion. *Id.* at 1057. *See also In re Goins*, 539 B.R. at 515–16. (collecting cases).[3]

In chapter 7 cases, section 541(a)(6) includes post-petition appreciation, and that logic extends to cases converted from chapter 13. *Matter of Castleman*, 75 F.4th at 1057. In *Castleman*, like here, the debtors originally filed their case in chapter 13 but converted to chapter 7 when they were unable to make payments during the pandemic. *Id.* at 1054; (R. 8.) While that case was pending in chapter 13, the house's value increased by about $200,000, prompting the chapter 7 trustee to seek a sale to recover the value for creditors. *Id.* The court relied solely on the plain language of sections 541(a) and 348(f) to hold that the post-petition, pre-conversion appreciation in the home's value inured to the estate as proceeds of estate property. *Id.* at 1055.

Whether courts treat appreciation as an incident of real property under section 541(a)(1) or treat appreciation as an inseparable proceed of estate property under section 541(a)(6), the outcome is the same. Here, on the Petition Date, the house became property of the bankruptcy estate. (R.

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[3] *See also Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 1321 (9th Cir. 1992) (agreeing with circuit precedent stating that post-petition appreciation belongs to the estate); *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1323 (9th Cir. 1991) ("appreciation enures to the bankruptcy estate, not the debtor"); *In re Potter*, 228 B.R. at 424 ("Except to the extent of the debtor's potential exemption rights, post-petition appreciation in the value of property accrues for the benefit of the trustee."); *In re Moyer*, 421 B.R. 587, 594 (Bankr. S.D. Ga. 2007) ("[A]ny increase in . . . value is property of the estate as profits or proceeds from property of the estate under [section] 541(a)(6)."); *In re Shipman*, 344 B.R. 493, 495 (Bankr. N.D. W.Va. 2006) ("[T]he trustee is entitled to any post-petition appreciation in value of the property."); *In re Paolella*, 85 B.R. 974, 977 (Bankr. E.D. Pa. 1988) ("Because sale does not generally, if ever, occur simultaneously with formation of a bankruptcy estate, [section] 541(a)(6) mandates that the estate receive the value of the property at the time of the sale. This value may include appreciation or be enhanced by other circumstances creating equity which occur postpetition.").

6.); *See* 11 U.S.C. § 541(a)(1). The Debtor remained in possession and control of the house throughout his chapter 13 case and on the conversion date. (R. 8.) *See* 11 U.S.C. § 348(f)(1)(A). The Debtor's house is undoubtedly part of the converted chapter 7 estate. *See Goetz*, 651 B.R. at 300 ("There can be no question about whether the residence is property of the converted chapter 7 estate—it is."). Because the post-petition value in the house is inseparable from the house itself, the post-petition increase in value is also property of the converted chapter 7 estate. *Id.*

3. Even if Appreciation is Distinct from the Underlying Property, it Still Constitutes Proceeds of Estate Property under 541(a)(6).

Some courts treat proceeds as separate, after-acquired property and hold that because proceeds are a distinct property interest, the benefit of post-petition appreciation belongs to the debtor. *In re Barrera*, 22 F.4th at 1222–23; *In re Elassal*, 654 B.R. 434, 436 (Bankr. E.D. Mich. 2023). The *Barrera* court distinguished between "all legal and equitable interests," as described in section 541(a)(1), and the "proceeds" from those interests, as described in section 541(a)(6). 22 F.4th at 1223. The court reasoned that, by section 541(a)'s plain language, proceeds *must* be distinct from the real property because, otherwise, section 541(a)(6) would be redundant. *Id.*; *See Chicago v. Fulton*, 592 U.S. 154, 159 (2021) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.") (internal citation and quotations omitted).

These cases, however, are distinguishable because they addressed actual cash proceeds from a sale, not mere appreciation in value. *See In re Marsh*, 647 B.R. 725, 735–36 (Bankr. W.D. Mo. 2023) (finding proceeds to be separate property but conceding that "*unrealized appreciation* cannot be separated from the underlying [property]") (emphasis original) (internal quotations and citations omitted). For example, in *Barrera*, the Tenth Circuit held that, under the plain language of sections 541(a) and 348(f)(1)(A), post-petition, pre-conversion proceeds belonged to the debtors

where they sold their house *while their chapter 13 case was pending*. 22 F.4th at 1221–22. There, the sale proceeds were after-acquired property and did not enter the chapter 7 estate because the house sold before conversion while it was vested in the debtors under section 1327(b).[4] *Id.* at 1223. The house itself was no longer "in the possession of or . . . under the control of" the debtors on the date of conversion. *Id.* (citing 11 U.S.C. § 348(f)(1)(A)). Under section 541(a)(6), therefore, the proceeds were not "of or from property of the estate." 22 F.4th at 1223–24. "And the [cash] proceeds from the sale of the physical house did not exist on the date of filing the Chapter 13 petition, so . . . could not have *remained* in the possession of . . . the debtor on the date of conversion." *Id.* at 1223 (emphasis original) (internal quotations omitted).

Even where sale proceeds are after-acquired property interests, those proceeds "cannot be untethered from the real property itself." *In re Elassal*, 654 B.R. at 436. In *Elassal*, the court held that proceeds attained by selling the debtor's home while the case was in chapter 13 belonged to the debtor, not the chapter 13 estate. *Id.* at 443. Because the debtor sold the property while it was vested in him under section 1327(b), and those sale proceeds were untetherable from the real property, the sale proceeds were also vested in him. *Id.*

Though the facts are distinguishable, the reasoning of *Barrera* and *Elassal* applies with equal force here and dictates that the post-petition, pre-conversion appreciation in the Debtor's house belongs to the bankruptcy estate. Unlike in *Barrera* and *Elassal*, the Debtor did not sell his house while the chapter 13 case was pending. (R. 8.)[5] *See* 22 F.4th at 1224; 654 B.R. at 443. Rather, the Debtor remained in possession of the house at the time of conversion. (R. 8.) Therefore, it

[4] Section 1327(b) of the Code vests all property of the estate in the debtor when the chapter 13 plan is confirmed. 11 U.S.C. § 1327(b).
[5] *See* Appendix A for a visual representation of the timeline of the Debtor's case.

became estate property under section 348(f)(1)(A). *See* 22 F.4th at 1224; (R. 8.) If the trustee now sells the house, which is estate property, the sale proceeds, which will include any increase in value, "cannot be untethered from the real property itself," and belong to the estate under section 541(a)(6). *In re Elassal*, 654 B.R. at 436; s*ee also Matter of Castleman*, 75 F.4th at 1057. Indeed, the *Elassal* court even acknowledged that appreciation of pre-petition property is property of the estate in a converted case. 654 B.R. at 440.

In sum, the plain language of sections 541(a) and 348(f)(1) mandate that property of the estate at the original petition date that remains in the debtor's possession on the conversion date becomes part of the converted bankruptcy estate. Under this clear language, the overwhelming majority of case law requires that any post-petition, pre-conversion appreciation in the value of that property is also part of the converted estate.

B. A Contextual Reading of the Code Proves that Post-Petition, Pre-Conversion Appreciation in Value Belongs to the Estate.

Because the meaning of a statute's plain language depends on context, the statute must be read as a whole. *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) (citations omitted). *See also Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.").

1. Section 348 is the Only Provision that Governs in a Converted Case.

The Thirteenth Circuit mistakenly found ambiguity in the Code's plain language by reading section 522 against section 348(f)(1)(A). (R. 13.) The court reasoned that because section 522's "snapshot rule" freezes the value of property for exemption purposes on the petition date, section 348(f)(1)(A) cannot be read to include appreciation in property value as estate property. (*Id.*) But "[t]his argument . . . confuses the *value* of estate property with the legal or equitable *interests* in

that property, as of the commencement of the case." *In re Adams*, 641 B.R. at 151 (emphasis original). Sections 541 and 348(f)(1)(A) deal with interests, not value, and "the value of any property [is] an attribute or incident of the property, not a separate right or interest." *Id.*

In fact, Congress expressly prohibited applying the snapshot rule to converted cases when it amended section 348 in 2005. *Id.* at 152. The amendment clarified section 348(f)(1)(B), which now explicitly states that "valuations of property . . . in the chapter 13 case shall . . . not [apply] in a case converted to a case under chapter 7 . . . ." 11 U.S.C. § 348(f)(1)(B). Under this plain language, even if the estate's interest was valued during the chapter 13 case, before any appreciation, that valuation would not apply post-conversion. *See In re Adams*, 641 B.R. at 152.

Some courts have attempted to grapple with the inherent tension between sections 1306 and 1327(b) when deciding a converted chapter 7 case. *Compare* 11 U.S.C. § 1306 ("Property of the estate includes . . . all property of the kind specified in [section 541] that the debtor acquired after the commencement of the case but before the case is closed, dismissed, or converted . . . .") *with* 11 U.S.C. § 1327(b) ("[T]he confirmation of a plan vests all of the property of the estate in the debtor."). *See In re Elassal*, 654 B.R. at 437 (discussing differing approaches to reconcile sections 1306 and 1327 and collecting cases doing the same). However, the tension between those two provisions does not affect the outcome of the present case.

The Bankruptcy Code makes clear that the provisions of chapter 13 apply only to chapter 13. 11 U.S.C. § 103(j). Therefore, when a case is converted from chapter 13 to chapter 7, "the case is placed under Chapter 7's governance, and no Chapter 13 provision holds sway." *Harris*, 575 U.S. at 520. In such a case, "section 348 governs the scope of estate property." *In re Goetz*, 651 B.R. at 300.

2. Section 348's Legislative History Confirms that Post-Conversion Appreciation is Property of the Estate.

Inuring the benefit of post-petition, pre-conversion appreciation in value to the estate does not create a disincentive to chapter 13 filings, and therefore, does not interfere with Congress' intent in enacting section 348(f). *See In re Nichols*, 319 B.R. 854, 856 (Bankr. S.D. Ohio 2004). This is because the disincentive Congress was actually concerned with was "transferring [to the creditors in a converted chapter 7 case] the benefits *made by a debtor by diligently making payments* under a chapter 13 plan." *Id.* (emphasis added). Importantly, the example in the legislative history to section 348 sheds light only on cases where the Debtor creates equity by paying down secured debt during the case. H.R. Rep. No. 103-835, at 57 (1994). However, the legislative history is not helpful in determining which party is entitled to the equity created by appreciation of the property. *In re Goins*, 539 B.R. at 516. In fact, most courts that rely on legislative history to grant the benefit of post-petition equity to the debtor have done so in the context of equity earned by paydowns. *See In re Hodges*, 518 B.R. 445, 449 (E.D. Tenn. 2014) (collecting cases). Where, as here, a debtor's already-existing property appreciates in value through no effort of the debtor, inuring that appreciation to the chapter 7 estate does not create a disincentive from filing under chapter 13 in the first place. *See In re Nichols,* 319 B.R. at 856.

Divergence between courts' interpretations of a statute and Congress' intent often has unintended consequences. *In re Nw. Eng'g Co.*, 863 F.2d 1313, 1317 (7th Cir. 1988). One such consequence is the potential for debtors to shield assets. *In re Barrera*, 22 F.4th at 1225. Even courts holding that appreciation belongs to the debtors acknowledge the danger that debtors will shield assets. *Id.* In *Barrera*, unlike here, the debtors converted their chapter 13 case to chapter 7—after selling their home. *Id.* at 1219. The court held that, under section 348(f)(1)(A), the sale proceeds, including post-petition appreciation, belonged to the debtors. *Id.* at 1226. The court

recognized that its interpretation of section 348(f)(1)(A) "potentially allows converting debtors to sell property of the estate after confirmation of the Chapter 13 plan prior to conversion to shield the value of those assets from creditors." *Id.* at 1225. However, the *Barrera* court noted that Congress addressed this danger in section 348(f)(2), which includes as estate property all property as of the conversion date when a debtor converts in bad faith. *Id.* (citing 11 U.S.C. § 348(f)(2)).

3. Section 348(f)(2)'s Distinction Between Good Faith and Bad Faith Conversions is Still Meaningful if Appreciation Belongs to the Chapter 7 Estate.

Some courts mistakenly extend section 348(f)(2) past what Congress intended, misinterpreting the bad faith penalty as meaning that the debtor would otherwise have been entitled to keep post-petition appreciation upon a good faith conversion. *In re Barrera*, 22 F.4th at 1225. Under this interpretation, section 348(f)(2)'s distinction between good faith and bad faith would be rendered superfluous "if Congress intended for post-petition assets to be property of the estate upon conversion from a chapter 13 case without exception . . . ." *In re Leon & Elionder Harmon*, No. 18-10579, 2022 WL 20451952, at *9 (Bankr. E.D. La. June 9, 2022) (internal citation omitted).

But section 348(f)(2)'s distinction between good faith and bad faith conversions is still meaningful if appreciation belongs to the chapter 7 estate because "[section] 348(f) only clarified that *newly-acquired*, post-petition property would not become part of the converted estate if the debtor had been acting in good faith." *Matter of Castleman*, 75 F.4th at 1058 (emphasis added). Holding otherwise inappropriately treats appreciation as a separate property interest: this is incorrect. *See In re Marsh*, 647 B.R. at 735–36 ("[*U*]*nrealized appreciation* cannot be separated from the underlying [property].") (emphasis original) (internal quotations omitted); *In re Larzelere*, 633 B.R. at 683 (Bankr. D.N.J. 2021) ("Appreciation, itself, . . . cannot be and is not a

separate asset."). Indeed, "[b]oth of the referenced cases [in the House Committee notes][6] dealt with new assets acquired after the date of petition, not value changes to existing assets." *In re Castleman*, 631 B.R. 914, 919 (Bankr. W.D. Wash. 2021), *aff'd sub nom. Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023) (quoting H.R. Rep. No. 103-835, at 57). Therefore, where a debtor possesses after-acquired property, "[section] 348(f)(2) could [still] punish debtors for converting a case in bad faith." *In re Harmon*, 2022 WL 20451952, at *9.

Here, the house was property of the chapter 13 estate on the Petition Date and remained in the possession of the Debtor on the conversion date. (R. 25.) The house, and its incidental value, were not acquired post-petition. (R. 25.) Because the property was not after-acquired, section 348(f)(2)'s safeguard against opportunistic, strategic conduct by the Debtor is not rendered useless. *In re Harmon*, 2022 WL 20451952, at *10.

Moreover, if Congress truly intended to exclude post-petition appreciation from estate property, it would have drafted that language directly into the statute. *Matter of Castleman*, 75 F.4th at 1057. Congress expressly included such exclusions in other sections of the Code. *See id.* (listing exclusions found in sections 541(a)(6) and 541(b)). For example, section 541(a)(6) excludes earnings for debtor's services after filing. 11 U.S.C. § 541(a)(6). That Congress did not originally draft an exclusion of appreciation into section 348(f), did not include such an exclusion in the 2005 amendment, and has not attempted to draft an exclusion in a subsequent amendment

[6] In enacting section 348(f)(1)(A), Congress rejected the reasoning of *Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991), which held that post-petition, pre-conversion property belonged to the estate. *In re Castleman*, 631 B.R. at 918 (quoting H.R. Rep. No. 103-835, at 57). Instead, Congress adopted the reasoning of *Bobroff v. Cont'l Bank (In re Bobroff)*, 766 F.2d 797 (3d Cir. 1985), which held that post-petition, pre-conversion property belonged to the debtor. *Id.*

is indicative: Congress did not intend for post-petition, pre-conversion appreciation to be excluded from property of the estate in a case converted from chapter 13.

C. Fluctuations in Property Value Should Not Affect the Debtor's Obligations in Bankruptcy.

A happenstance of market conditions may potentially benefit the debtor and other times potentially benefit the estate. *Matter of Castleman*, 75 F.4th 1052, 1058 (9th Cir. 2023). Estate property may depreciate or appreciate without any input from the debtor or creditors. *Id.* In the interest of fairness, the Code should not be read to create disparate obligations and outcomes for debtors because of market conditions. (R. 27 at n.19.) ("If, as the majority holds, the debtor gets the benefit of the post-petition appreciation in a home, what happens when the home decreases in value during that same period? Would a debtor be responsible to the chapter 7 trustee for the depreciation in the value of the home occurring during the time his or her chapter 13 plan was pending and prior to conversion?") (citing *In re Lang*, 437 B.R. 70, 72 (Bankr. W.D.N.Y. 2010)).

In *Lang*, a debtor filed for bankruptcy under chapter 13, but later converted the case to chapter 7. 437 B.R. at 71. The debtor owned a vehicle that retained some non-exempt value. *Id.* After being appointed to the case, the chapter 7 trustee filed a motion to compel the debtor to turn over the vehicle's non-exempt value. *Id.* at 72. The vehicle, however, depreciated in value over the course of the case. *Id.* The trustee sought to recover the vehicle's non-exempt value before depreciation. *Id.* Citing section 348(f)(1)(A), the court explained that estate property in a converted case must have been (1) property of the estate on the petition date and (2) in the debtor's control on the conversion date. *Id.*; *see also* 11 U.S.C. §348(f)(1)(A). Based on that provision, the court reasoned that the trustee could only administer the vehicle at its depreciated value. 437 B.R. at 72. Accordingly, only the vehicle—but not its depreciated value—was an asset of the estate. *Id.* Basically, changes in the vehicle's value were simply lost to the debtor and the estate. *Id.* The upshot of the court's reasoning was that the debtor could not be compelled to pay value lost to

depreciation back into the estate. *See id.* at 73. ("Any duty to deliver or to account will create *no additional obligation* to pay a value that the asset may have lost with the passage of time. In the present instance, therefore, the debtor's automobile is now to be administered *at [only] its currently depreciated value.*") (emphasis added). Thus, the asset's change in value did not "follow" the debtor; the estate was limited to the value of its assets as of the conversion date. *See id.* ("[The] chapter 7 estate will include only the value of assets at the time of conversion.")

If the Thirteenth Circuit's approach to changes in value is adopted, debtors like the one in *Lang* would bear the burden of paying any loss in value. (R. 27 at n.19.) Public policy favors the *Lang* model for post-petition, pre-conversion changes in value. (*See id.*) Just as charging a debtor for their vehicle's lost value goes against public policy, tying a debtor to a volatile asset goes against public policy. (*See id.*)

Here, the house's value appreciated because of market conditions caused by the COVID-19 pandemic—an event completely outside of the debtor's control. (R. 9.); *see In re Adams*, 641 B.R. at 153 ("[H]appy outcome[s] for debtors [are] the product of the fortuity of the market and mortgage balances, not any statutory or other right to post-petition appreciation."). Under the *Lang* approach, debtors escape the unpredictability of market fluctuations and are given a fresh start. *See Harris*, 575 U.S. at 514. Thus, the Lang approach satisfies public policy. *See id.* While, in this case, uncontrollable events would potentially grant this Debtor a windfall, the same kinds of uncontrollable events could just as easily distress a different debtor. (*See* R. 27 at n.19.) For example, if the Debtor converted his case during the 2007-2008 financial crisis, the house would likely have significantly depreciated. *See In re Lang*, 437 B.R. at 71. Or if the State of Moot was struck by a natural disaster, causing an insurance crisis, the house could be rendered worthless. *See id*. In either of those scenarios, under the Thirteenth Circuit's holding, the Debtor would be

accountable for sums of money he simply could not come up with. (R. 27. at n.19) Because the Code does not distinguish between punishing and rewarding debtors for market fluctuations, debtors would encounter wildly different obligations and outcomes depending on market conditions under the Thirteenth Circuit's reasoning. (*See id.*) In the interest of making bankruptcy even-handed and predictable, the *Lang* model should be adopted: changes in estate value do not follow debtors. (R. 27 at n.19.)

II. CHAPTER 7 TRUSTEES MAY SELL AVOIDANCE ACTIONS AS PROPERTY OF THE BANKRUPTCY ESTATE.

Chapter 5 contains several avoidance actions; one such avoidance action is a claim to recover transfers voidable under the Code. *In re Simply Essentials, LLC*, 78 F.4th 1006, 1008 (8th Cir. 2023). Because those avoidance actions are legal and equitable interests of the debtor, they are property of the estate. 11 U.S.C. § 541(a)(1); *see also In re Parker*, 499 F.3d 616, 624 (6th Cir. 2007) ("As 'legal and equitable interests,' causes of action . . . constitute property of the estate under [section] 541(a)(1)."). Chapter 7 trustees are obligated to reduce the property of the estate to money. 11 U.S.C. § 704(a)(1). Therefore, the Trustee's motion to sell the avoidance actions to Eclipse was proper.

A. Avoidance Actions are Property of the Estate, Which May be Sold under the Code.

The Code designates "all legal or equitable interests of the debtor in property as of the commencement of the case" and "[a]ny interest in property that the estate acquires after the commencement of the case" as property of the estate. 11 U.S.C. § 541(a)(1), (7). The scope of estate property is not limited by section 541(a)'s language because Congress intended the definition of property of the estate to be broad. *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203, 205 (1983); *see also* H.R. Rep. No. 95-595, at 367 (1977) ("The scope of [section 541(a)(1)] is broad.

It includes all kinds of property, including tangible or intangible property [and] causes of action . . . .").

1. Avoidance Actions are Property of the Estate under the Code's Plain Language.

Section 541 defines "any legal interest" as property of the estate, and avoidance actions are legal interests. 11 U.S.C. § 541(a). Therefore, avoidance actions are property of the estate. *See Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, 460 B.R. 106, 114 (Bankr. S.D.N.Y. 2011) (internal citations omitted) ("Property of the estate therefore includes any cause of action the debtor had on the petition date, *as well as avoidance actions created on the petition date*.") (emphasis added) (internal citations omitted).[7] That section 541(a) makes no specific reference to the trustee's avoidance powers bears no weight on this Court's analysis. This Court's longstanding precedent holds that section 541 should not be read to narrow the scope of property of the estate. *See Whiting Pools*, 462 U.S. at 203 ("Although these statutes could be read to limit the estate to those 'interests of the debtor in property' at the time of the filing of the petition, we view them as a definition of what is included in the estate, rather than as a limitation."). Moreover, other sections of the Code identify avoidance actions as causes of action. 11 U.S.C. § 926(a) (explaining that courts may appoint trustees to "pursue a *cause of action* under section . . . 547 . . . .") (emphasis added). Logically, then, the cause of action arising from the Debtor's pre-petition transfer to his mother is estate property. *See Whiting Pools*, 462 U.S. at 203.

This Court recognizes that avoidance actions are causes of action. *See, e.g.*, *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53 (1989) (describing "right to recover a fraudulent

[7] Regardless of whether the cause of action existed before the petition date or was created on the petition date, the cause of action still falls under the umbrella of estate property because "[a]ny interest in property that the estate acquires after the commencement of the case," is estate property. 11 U.S.C. § 541(a)(7).

conveyance" as a "statutory cause of action"). And the majority of circuit courts correctly understand that because avoidance actions fit plainly within the scope of section 541(a), avoidance actions are property of the estate. *See, e.g.*, *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 262 (5th Cir. 2010) ("We conclude, therefore, that the fraudulent-transfer claims are property of the estate under [section] 541(a)(1) . . . . [Alternatively], the fraudulent-transfer claims became estate property under [section] 544(b) and—like other estate property—may be sold pursuant to [section] 363(b)."); *Morley v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427, 431 (1st Cir. 2007) ("The Bankruptcy Code broadly defines the property of the estate . . . [and] it is well established that a claim for fraudulent conveyance is included within this type of property.") (internal citations omitted); *Moratzka v. Morris (In re Senior Cottages of Am., LLC)*, 482 F.3d 997, 1001 (8th Cir. 2007) ("The property of the estate includes 'all legal or equitable interests of the debtor in property as of the commencement of the case.' Causes of action are interests in property and are therefore included in the estate. . . .") (internal citations omitted); *Kelley v. Boosalis*, 974 F.3d 884, 903 (8th Cir. 2020) (describing chapter 5 actions as "federal cause[s] of action"). Accordingly, the estate's avoidance actions here are causes of action, and therefore property of the estate within the meaning of the Code.

2. Section 541's Legislative History and Structure Confirm that Avoidance Actions are Property of the Estate.

While the Code's language alone proves that avoidance actions are property of the estate, section 541's legislative history demonstrates that Congress intended avoidance actions to be property of the estate. H.R. Rep. No. 95-595, at 367. Congress drafted section 541(a)(1) with the explicit understanding that "[estate property] includes all kinds of property, including . . . causes of action . . . ." *Id.* Because avoidance actions are chapter 5 causes of action, Congress intended for those avoidance actions to be property of the estate. *See id.* Property interests are broadly

included in the estate unless explicitly excluded from the estate by "clearly expressed legislative intention." *Patterson v. Shumate*, 504 U.S. 753, 761 (1992) (internal quotations and citations omitted). Here, neither statutory language nor legislative history suggests that avoidance actions are excluded from property of the estate. *See* 11 U.S.C. § 541(a)(1); *see also* H.R. Rep. No. 95-595, at 367. Put simply, avoidance actions are property of the estate because they are causes of action and Congress defined causes of action as property of the estate.

Even though the plain language and legislative history of section 541 establish that avoidance actions are estate property, the structure of the statute itself confirms that avoidance actions are estate property. *See* 11 U.S.C. § 541(b), (c)(2). Section 541 does not list every kind of property interest comprising property of the estate, but it does exclude specific things. *Id.* If avoidance actions were excluded from estate property, that exclusion would be written in a subdivision of section 541. *See Addison v. Seaver (In re Addison)*, 540 F.3d 805, 820 (8th Cir. 2008) (explaining that 529 accounts are property of the estate because they are not excluded under sections 541(b) or (c)(2)). Because avoidance actions are not mentioned in sections 541(b) or (c)(2), they are necessarily estate property. *See Marrama v. Degiacomo (In re Marrama)*, 316 B.R. 418, 423 (B.A.P. 1st Cir. 2004) (explaining that a debtor's power being excluded from section 541(b) "plainly implies" that power is included in the bankruptcy estate).

Thus, including the avoidance actions as property of the estate in this case conforms with this Court's understanding that the chapter 7 estate is comprised of all the debtor's property interests. *See Law v. Siegel*, 571 U.S. 415, 417 (2014); *see also Marshall v. Picard (In re Bernard L. Madoff Inv. Sec. LLC)*, 740 F.3d 81, 88 (2d Cir. 2014) ("Every conceivable interest of the debtor, future, nonpossessory, contingent, speculative, and derivative, is within the reach of the bankruptcy estate.") (internal brackets and citation omitted).

3. Because Avoidance Actions are Property of the Estate, They May be Sold under Section 363.

The Debtor's contention that the avoidance action cannot be sold disregards the Code's treatment of estate property. *See* 11 U.S.C. §§ 363(b)(1), 704(a)(1). Section 704(a) obligates chapter 7 trustees to "collect and reduce to money the property of the estate . . . ." 11 U.S.C. § 704(a)(1). To enable the trustee to reduce estate property to money, section 363(b) permits "[t]he trustee . . . [to] sell . . . property of the estate . . . ." 11 U.S.C. § 363(b)(1). By attempting to sell the avoidance action for cash, the Trustee was simply carrying out her obligations under the Code. *See id.* The sale motion was permissible. (R. 35.)

4. The Majority of Circuits Hold that Trustees May Sell Avoidance Actions.

While the Code's statutory scheme describing the sale of estate property shows that avoidance actions may be sold, the Eighth Circuit's well-reasoned analysis in *Simply Essentials* provides useful guidance for this Court. In *Simply Essentials*, the Eighth Circuit Court of Appeals held that chapter 5 causes of action are property of the estate that chapter 7 trustees may sell. *Pitman Farms v. ARKK Food Co. (In re Simply Essentials, LLC)*, 78 F.4th 1006, 1011 (8th Cir. 2023). There, an estate possessed avoidance actions, but the trustee determined there were insufficient funds to pursue the available avoidance actions. *Id.* at 1007–08. Citing this Court's precedent in *Whiting Pools* and *Segal v. Rochelle*,[8] the Eighth Circuit determined that avoidance actions are property of the estate and can be sold. *Id.* at 1009, 1011. The court explained that avoidable transfers are only made prior to the commencement of bankruptcy. *In re Simply Essentials, LLC*, 78 F.4th at 1009. Because debtors then file for bankruptcy and trustees file avoidance actions to recover those transfers, debtors have an "inchoate interest" in the avoidance

[8] *Segal v. Rochelle*, 382 U.S. 375, 379 (1966).

actions prior to bankruptcy's commencement, making the actions property of the estate. *Id.* And because the avoidance actions are property of the estate, the Eighth Circuit reasoned that the actions could be sold. *Id.* at 1010–11. The Court also noted a consensus among courts that avoidance actions are property of the estate.[9] *Id.* at 1010.

This Court should adopt *Simply Essentials*' reasoning because of that case's similarity to the present case. Here, as in *Simply Essentials*, the Debtor made a transfer that was recoverable under a chapter 5 cause of action. (R. 9.); 78 F.4th at 1007. The Trustee here determined that there were not enough funds in the estate to pursue the avoidance actions, just like the trustee in *Simply Essentials* did. (R. 9.); 78 F.4th at 1007. The Trustee here tried to sell the actions in the same manner as the trustee in *Simply Essentials*. (R. 9.); 78 F.4th at 1007–08. In both cases, the alleged preferential transfers took place before bankruptcy's commencement, granting the debtors "inchoate interests" in the estates' avoidance actions. (R. 7.) ("[T]he Debtor disclosed on his Statement of Financial Affairs that he had made payments to Pink within one year prior to the Petition Date in the aggregate amount of $20,000."); 78 F.4th at 1008–09. Accordingly, the avoidance actions in both cases were property of the estate that could be sold. 78 F.4th at 1010–11.

This Court should adopt the Eight Circuit's reasoning because the majority of circuit courts agree with the Eighth Circuit and because the Thirteenth Circuit's reasoning relies on a misunderstanding of this Court's precedent. The Thirteenth Circuit's reliance on *Hartford Underwriters* to assert that avoidance actions are exclusive to the trustee is misplaced: there, this

[9] Many courts recognize that avoidance actions are property of the estate and that avoidance actions can be sold. *See In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 513 (Bankr. S.D. Ohio 2021) ("[The First, Fifth, Seventh and Ninth Circuits hold] that avoidance actions constitute property of a debtor's bankruptcy estate. [Many] reported and unreported decisions approv[e] the [sale] of avoidance actions.").

Court declined to decide whether a "court can allow other interested parties to act in the trustee's stead in pursuing recovery." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 13 n.5. This Court should permit chapter 7 trustees to sell avoidance actions because that is the best-reasoned, most popular approach. *In re Simply Essentials*, 78 F.4th at 1010.

B. In a Liquidation under Chapter 7, Trustees Must be Authorized to Sell All Property of the Estate, Including Avoidance Actions.

Chapter 7 trustees have a duty to maximize the value of the estate. *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). Courts should not impede the trustee's ability to maximize the estate's value. *See id.* at 353.

1. The Code Contemplates the Sale of Avoidance Actions.

The Trustee's proposed sale of the avoidance actions is practical. As the bankruptcy court noted in *Simply Essentials*, trustees are commonly unable to pursue causes of action because the estate lacks the requisite funds. 640 B.R. at 930. In such cases, creditors must pursue these actions. *Id.* That is exactly the case here: one of the Trustee's first observations was that the estate was "bereft of assets." (R. 9.) Congress was undoubtedly aware that many trustees lack the funds to pursue avoidance actions; that is to say, Congress knew that trustees would often lack funds to pursue meritorious chapter 5 actions. *In re Simply Essentials*, 640 B.R. at 930. Yet Congress still wrote the expansive avoidance and recovery scheme found in the Code. Congress took the time to develop this scheme, indicating that selling avoidance actions is implied and essential to the Code's normal functioning. *Id.* Congress would not write so much about chapter 5 causes of action if it did not intend for those causes to be pursued in most cases. *Id.* It would be absurd to allow these statutorily allowed actions to go unpursued. *Id.* For that reason, trustees are allowed to sell avoidance actions to creditors. *Id.*

Without the proposed sale, the Debtor will have successfully removed money from creditors' reach. This conduct is disfavored by the Code. 11 U.S.C. § 547. Preventing the Trustee from selling the avoidance actions gives no effect to Congress' inclusion of the actions as estate property. *See In re Simply Essentials*, 640 B.R. at 930. By selling the actions, the Trustee can do her part in servicing all the claims of the estate. *Id.* For those reasons, the sale of the actions should be allowed.

2. Avoidance Actions are Sold in Chapter 11 and Should be Sold in Chapter 7.

Sales of the kind attempted by the Trustee here are commonplace in Chapter 11 cases where parties have long-running business relationships. (R. 35.) The same rationale applies in chapter 7 cases. (R. 35.) The Debtor has had a relationship with Eclipse for nearly a decade. (R. 5.) The Debtor made an unauthorized transfer using money loaned by Eclipse and preferentially transferred estate money to his mother. (R. 5, 7.) Eclipse has an interest in personally pursuing these actions against the Debtor—especially considering that the Trustee is financially unable to bring the actions herself. (R. 35.); *see In re Murray Metallurgical*, 623 B.R. at 106–07. While the Debtor took accountability for the alleged preferential transfer under the chapter 13 plan, Eclipse cannot hope to recover on the avoidance actions now that the Debtor has decided to liquidate, unless the Trustee is allowed to sell the actions. (R. 7–9.)

3. Selling Avoidance Actions Supports the Policy of Maximizing the Estate's Value.

The Trustee's proposed sale of the actions should be approved because doing so would "maximize the value of the estate." *Weintraub*, 471 U.S. at 352. The Trustee cannot pursue the avoidance actions herself because the estate lacks funds. (R. 9.) But Eclipse's offer of $470,000 for the avoidance actions and the house would immediately inject cash into the estate and satisfy the Trustee's statutory duty to maximize the estate's value. *In re Simply Essentials*, 78 F.4th at

1010; (R. 9.) In proposing the sale motion, the Trustee converted lifeless avoidance actions into value for creditors and eliminated the administrative expenses associated with researching, investigating, and litigating the avoidance actions. (R. 35.) Altogether, the proposed sale demonstrated the Trustee's dedication to her role in this case.

CONCLUSION

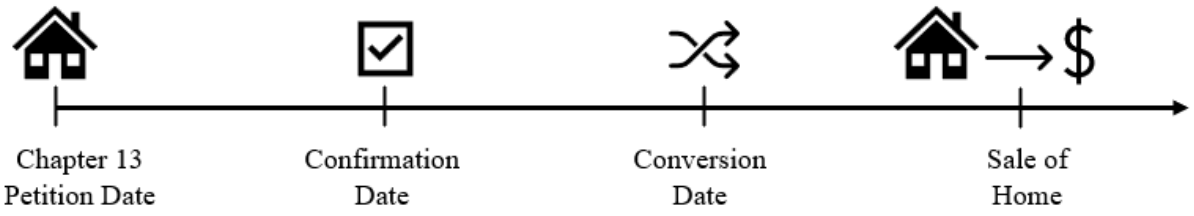
For the foregoing reasons, this Court should reverse the Thirteenth Circuit's decision.

DATED: January 18, 2024

Respectfully submitted,

Team 3
Counsel for the Petitioner

APPENDIX A



= all legal or equitable interests of the debtor in property as of the petition date (§541(a)(1))

= confirmation of plan vests all property of the estate in the debtor (§1327(b))

= conversion means all pre-petition property still in the possession or under the control of the debtor is property of the estate (§348(f)(1)(A))

= proceeds from property of the estate are property of the estate (§541(a)(6))

APPENDIX B

11 U.S.C. § 103. Applicability of chapters.

(j) Chapter 13 of this title applies only in a case under such chapter.

11 U.S.C. § 348. Effect of conversion

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.
(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and

(f)(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

11 U.S.C. § 363. Use, sale, or lease of property.

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

11 U.S.C. § 541. 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) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.
(b) Property of the estate does not include—
(c)(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

11 U.S.C. § 547. Preferences.

(b) Except as provided in subsections (c) and (i) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 704. Duties of trustee.

(a) The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

11 U.S.C. § 926. Avoiding powers.

(a) If the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a), or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action.

11 U.S.C. § 1326. Property of the estate.

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

11 U.S.C. § 1322. Contents of plan.

(a) The plan—

(1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

11 U.S.C. § 1327. Contents of plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.