No. 23-0115

IN THE

Supreme Court of the United States

JANUARY TERM, 2024

IN RE EUGENE CLEGG, DEBTOR

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER

v.

EUGENE CLEGG, RESPONDENT

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

JANUARY 18, 2024

TEAM NUMBER 8
COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

I. Whether, in the context of converting a chapter 13 bankruptcy case to chapter 7, a post-petition equity increase should be rightfully attributed to the debtor, consistent with a holistic jurisprudential approach, or allocated to the converted estate.

II. Whether a chapter 7 trustee may sell, as property of the bankruptcy estate, the ability to avoid and recover a transfer pursuant to 11 U.S.C. §§ 547 and 550, notwithstanding the omission of a trustee's strong-arm powers from "property of the estate" as enumerated in 11 U.S.C. § 541.

TABLE OF CONTENTS

TABLE OF CONTENTS ..... **iii**

TABLE OF AUTHORITIES ..... **iv**

STATEMENT OF JURISDICTION ..... **viii**

STATEMENT OF FACTS **1**

SUMMARY OF THE ARGUMENT **5**

ARGUMENT **8**

I. The Thirteenth Circuit correctly held that post-petition, pre-conversion equity increases in a debtor's property benefit the debtor upon conversion of a case from chapter 13 to chapter 7 because the Bankruptcy Code requires a holistic reading rather than a piecemeal interpretation. **8**

A. Excluding post-petition equity increases in the new estate adheres to the "snapshot" rule of § 522, preserving the statutory framework for determining Cpl. Clegg's entitlement to his property upon case conversion in § 348. 9

B. Cpl. Clegg's entitlement to the post-petition equity increase not only directly aligns with statutory text but also underscores the legislature's commitment to ensure a fair and consistent application of bankruptcy laws. 10

C. Recognizing Cpl. Clegg's home and its equity increase as distinct interests that benefit him is vital for maintaining a consistent and equitable statutory framework, aligning with policy concerns, the Bankruptcy Code's legislative history, and judicial interpretation. 14

II. The Thirteenth Circuit correctly held that Trustees Cannot Sell the Power to Avoid and Recover Transfers Under Sections 547 and 550. ..... **17**

A. The power to avoid and recover transfers is not property of the estate, because a plain reading of sections 541 and 547 indicates that this power is statutorily-granted and cannot be transferred. 18

B. Legislative history and judicial precedence support a finding that a trustee's "avoidance powers" are not property of the estate, where pre-Bankruptcy Code practice upheld the principle that this power is not transferrable. 22

C. Permitting trustees to sell their "avoidance powers" flouts the Bankruptcy Code's overarching purpose and policy to create a court-facilitated process that provides creditors of the same class with equal treatment. 24

CONCLUSION **26**

APPENDIX **27**

TABLE OF AUTHORITIES

Page(s)

Cases

UNITED STATES SUPREME COURT CASES

Begier v. IRS,
496 U.S. 53 (1990) 23
Board of Trade of Chicago v. Johnson,
264 U.S. 1 (1924) 18
City of Chicago v. Fulton,
141 S. Ct. 585 (2021) 13, 14
Harris v. Viegelahn,
575 U.S. 510 (2015) ..... *passim*
Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,
530 U.S. 1 (2000) 19
Highmark Inc. v. Allcare Health Mgt. System, Inc.,
572 U.S. 559 (2014) 7
Kelly v. Robinson,
479 U.S. 36 (1986) 22
Lamar, Archer & Cofrin, LLP v. Appling,
138 S. Ct. 1752 (2018) 16, 22
Lamie v. United States,
540 U.S. 526 (2004) 16
Law v. Siegel,
571 U.S. 415 (2014) 8
Lorillard v. Pons,
434 U.S. 575 (1978) 17
Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.,
474 U.S. 494 (1986) 22
Mission Prod. Holdings, Inc. v. Tempnology, LLC,
139 S. Ct. 1652 (2019) 18
Richards v. United States,
369 U.S. 1 (1962) 7
U.S. v. Ron Pair Enterprises, Inc.,
489 U.S. 235 (1989) 18, 22
Union Bank v. Wolas,
502 U.S. 151 (1991) 16, 23
United States v. Whiting Pools, Inc.,
462 U.S. 198 (1983) 7

FEDERAL COURT OF APPEALS CASES

Castleman v. Burman (In re Castleman),
75 F.4th 1052 (9th Cir. 2023) 15
Goetz v. Weber (In re Goetz),
651 B.R. 292 (B.A.P. 8th Cir. 2023) 13
In re Bobroff,
766 F.2d 797 (3d Cir. 1985) 13, 14
In re Cybergenics Corp.,
226 F.3d 237 (3d Cir. 2000) 21
In re Martin,
91 F.3d 389 (3d Cir. 1996) 25
In re Michael,
699 F.3d 305 (3d Cir. 2012) 9, 10, 11
In re Moore,
608 F.3d 253 (5th Cir. 2010) 17
In re N.S. Garrott & Sons,
772 F.2d 462 (8th Cir. 1985) 19
In re Simply Essentials, LLC,
78 F.4th 1006 (8th Cir. 2023) 21
In re WEB2B Payment Sols., Inc.,
815 F.3d 400 (8th Cir. 2016) 19
Pancic v. Lokan (In re Lokan), No. OR-22-1249-CLB,
2023 Bankr. LEXIS 1556 (B.A.P. 9th Cir. 2023). 9
Rockwell v. Hull (In re Rockwell),
968 F.3d 12 (1st Cir. 2020)..... 8, 12
Rodriguez v. Barrera (In re Barrera),
22 F.4th 1217 (10th Cir. 2022) 10, 12
Wilson v. Rigby,
909 F.3d 306 (9th Cir. 2018) 8, 12

DISTRICT COURT CASES

Canright v. General Finance Corp.,
35 F. Supp. 841 (E.D. Ill. 1940) 21
In re Boyer,
372 B.R. 102 (D. Conn. 2007)..... 24
U.S. v. Gen. Resources, Ltd.,
204 F. Supp. 872 (D. Colo. 1962) 21, 22

BANKRUPTCY COURT CASES

In re Boynewicz, No. 02-30250-LMW,
2002 WL 33951315 (Bankr. D. Conn. Nov. 27, 2002) 24

In re Carragher,
249 B.R. 817 (Bankr. N.D. Ga. 2000) 23, 25
In re Krahenbuhl, No. 09-29618-svk,
2013 Bankr. LEXIS 2918 (Bankr. E.D. Wis. July 19, 2013) 8
In re Nichols,
319 B.R. 854 (Bankr. S.D. Ohio 2004) 9
In re Sapolin Paints, Inc.,
11 B.R. 930 (Bankr. E.D.N.Y. 1981) 6, 16, 21
In re Sargente,
202 B.R. 1023 (Bankr. S.D. Fla. 1996) 10
Salas v. McGranahan (In re Salas), No. 2:05-cv-1107-GEB,
2006 U.S. Dist. LEXIS 68980 (E.D. Cal. Sep. 15, 2006) 14

STATUTES

11 U.S.C. § 96(b) 22
11 U.S.C. § 109(c) 20
11 U.S.C. § 303 18
11 U.S.C. § 348 ..... *passim*
11 U.S.C. § 348(a) 9
11 U.S.C. § 348(f) 9, 10, 11
11 U.S.C. § 348(f)(1) 9
11 U.S.C. § 348(f)(1)(A) ..... *passim*
11 U.S.C. § 348(f)(2) 3, 9, 11, 14
11 U.S.C. § 349 18
11 U.S.C. § 362 ..... 18, 24, 27
11 U.S.C. § 363 ..... 25, 27
11 U.S.C. § 502 18
11 U.S.C. § 522 ..... *passim*
11 U.S.C. § 522(a)(2) 12
11 U.S.C. § 524(c) 3, 4
11 U.S.C. § 541 ..... *passim*
11 U.S.C. § 541(a) 4, 6, 18, 19
11 U.S.C. § 541(a)(1) 18
11 U.S.C. § 541(a)(5) 8
11 U.S.C. § 544(a) 19
11 U.S.C. § 544 ..... 17, 19, 21, 31
11 U.S.C. § 544(b) 17
11 U.S.C. § 546 18
11 U.S.C. § 547 ..... *passim*
11 U.S.C. § 547(a) 18
11 U.S.C. § 547(b) 17, 18, 19
11 U.S.C. § 550 3
11 U.S.C. § 554 ..... 20, 34
11 U.S.C. § 554(a) 20
11 U.S.C. § 701 ..... 20, 34

11 U.S.C. § 702 ..... 20, 35
11 U.S.C. § 746 18
11 U.S.C. § 749 18
11 U.S.C. § 901 18
11 U.S.C. § 902 35
11 U.S.C. § 902(5) 20
11 U.S.C. § 926 ..... 18, 19, 20, 35
11 U.S.C. § 926(a) 20
11 U.S.C. § 1307 ..... 8, 36
11 U.S.C. § 1325(a)(4) 2, 3
11 U.S.C. § 1521 18
11 U.S.C. § 1523 18

OTHER AUTHORITIES

3 Collier on Bankruptcy ¶ 60.57, at 1095 (14th ed. 1979) 22
3 Collier on Bankruptcy ¶ 348.07 (16th ed. 2023) 16
David Gray Carlson, *The Chapter 13 Estate And Its Discontents*, 17 Am. Bankr. Inst. L. Rev. 233 (2009) 5
Hon. Steven Rhodes, *The Fiduciary and Institutional Obligations of A Chapter 7 Bankruptcy Trustee*, 80 Am. Bankr. L.J. 147 (2006) 24
Hon. Elizabeth L. Gunn & Shelby Kostolni, *Post-Petition Appreciation: Whose Line (Item) Is It, Anyway?*, 42 Am. Bank. Inst. J. 18 (2023) 14

OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 23-0115 and reprinted starting at Record 2. Both the bankruptcy court and the bankruptcy appellate panel for the Thirteenth Circuit decided in favor of Eugene Clegg, the Debtor. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed.

STATEMENT OF JURISDICTION

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

STANDARD OF REVIEW

The issues on appeal turn on statutory interpretation of the Bankruptcy Code and are therefore purely questions of law. Accordingly, the standard of review for this appeal is *de novo*. *Highmark Inc. v. Allcare Health Mgt. System, Inc.*, 572 U.S. 559, 563 (2014) ("Traditionally, decisions on questions of law are reviewable *de novo*.") (cleaned up).

STATEMENT OF FACTS

I. FACTUAL HISTORY

Cpl. Eugene Clegg ("Cpl. Clegg") is a distinguished war veteran and the owner of The Final Cut, LLC ("Final Cut"), a small business that operates a movie theatre in the City of Moot. (R. at 5). In 2016, while renovating the theatre, Cpl. Clegg borrowed $850,000 (the "Loan") from Eclipse Credit Union ("Eclipse"). (*Id.*). In exchange, Cpl. Clegg executed "an unconditional, unsecured personal guaranty in an unlimited amount" and granted Eclipse "first priority liens on Final Cut's real and personal property," which Eclipse properly perfected. (*Id.*). Aided by local veterans, Cpl. Clegg was able to complete the renovations at a lower cost than the amount of the Loan. (*Id.*). As a gesture of appreciation, Cpl. Clegg donated the remaining $75,000 of the Loan to the Veterans of Foreign Wars ("VFW") in 2017. (*Id.*).

Beginning in March 2020, the COVID-19 pandemic led to a year-long closure of the theatre. (*Id.*) With his only source of income cut off, Cpl. Clegg turned to his mother, Pink, who lent him $50,000 on an unsecured basis. (*Id.*). When the theatre continued to struggle after its reopening in February of 2021, Cpl. Clegg chose to forego his salary. (*Id.*). As a result, Cpl. Clegg incurred credit card debt and was unable to make payments on his personal home mortgage, which was serviced by Another Brick in the Wall Financial Corporation (the "Servicer"). (*Id.*). To stave off the Servicer's attempt to foreclose on his home, Cpl. Clegg filed for bankruptcy under chapter 13 of the Bankruptcy Code on December 8, 2021 (the "Petition Date"). (*Id.*). As a part of the petition, Cpl. Clegg declared the value of his home at $350,000 on Schedule A/B of his petition and claimed a homestead exemption of $30,000, which is the "maximum amount in the State of Moot." (*Id.* at 6–7.). Additionally, Cpl. Clegg "identified a non-contingent, liquidated and undisputed secured debt" of $320,000 to the Servicer, an

unspecified amount of a "contingent and unliquidated unsecured debt" to Eclipse, and a $20,000 transfer to Pink made "within one year prior to the Petition Date." (*Id.*).

The Debtor's subsequent, proposed Chapter 13 plan aimed to repay creditors over three years, relying on future earnings from Final Cut. (*Id.* at 7.). Eclipse, discovering the Debtor's donation to the VFW during a creditors' meeting, initiated an adversary proceeding seeking non-dischargeability of the Loan under section 523(a)(2)(A). (*Id.*). The chapter 13 trustee also objected to the plan under 11 U.S.C. § 1325(a)(4), asserting that the transfer to Pink should be avoided and recovered. (*Id.*). To address this, the Debtor amended the plan, increasing the total payments to creditors by $20,000 over the life of the plan, with a stipulation ensuring that the trustee would not attempt to avoid and recover Cpl. Clegg's pre-petition payments to Pink. (*Id.* at 7–8.). Eclipse further agreed to withdraw its objection to the plan "as not being proposed in good faith" in exchange for an estimated claim of $150,000, $25,000 of which was deemed non-dischargeable. (*Id.* at 8.). Finally, on February 12, 2022, the bankruptcy court confirmed the plan, approved the settlement between Cpl. Clegg and Eclipse, and "expressly provided that all property of the estate vested in the Debtor." (*Id.*).

Despite making payments for eight months, Cpl. Clegg, facing long-COVID and the permanent closure of the theater in October of 2022, converted the case to Chapter 7. (*Id.* at 8.). The chapter 13 trustee reported that she had distributed $10,000 to the Servicer under the plan and returned the reserved funds to Cpl. Clegg. (*Id.* at 9.). Following the conversion to Chapter 7, Vera Lynn Floyd (the "Trustee") was appointed as Trustee to oversee Cpl. Clegg's estate. (*Id.*). Cpl. Clegg's conversion schedules reported a $350,000 valuation of his home, as of the Petition Date, and alleged preferential transfers to Pink. (*Id.*). Additionally, Cpl. Clegg stated an approximate $200,000 debt to Eclipse due to a deficiency in his loan guarantee post-foreclosure,

completed after conversion. (*Id.*). Cpl. Clegg further expressed the intention to reaffirm the mortgage debt owed to the Servicer and retain his home under 11 U.S.C. § 524(c). (*Id.*).

After Cpl. Clegg highlighted the recent increase in home values, the Trustee commissioned an appraisal of Cpl. Clegg's home that revealed "that the non-exempt equity in it had increased by $100,000 increase since the Petition Date." (*Id.*). The Trustee proceeded to market the sale of the home. (*Id.*). Eclipse offered $470,000 to purchase the home and the alleged preference claim against Pink. (*Id.*). Convinced that this "offer maximized the value of the assets for the benefit of creditors of the estate," the Trustee filed a motion under section 363(b) to sell the home and the preference claim to Eclipse (the "Sale Motion"). (*Id.*).

Cpl. Clegg objected to the sale on two grounds. (*Id.* at 10.). First, Cpl. Clegg argued that any increase in home equity should benefit him. (*Id.*). Second, he argued "that the Trustee's statutory ability to avoid and recover transfers under sections 547 and 550," or her "avoidance powers," cannot be sold. (*Id.*).

II. PROCEDURAL HISTORY

The Bankruptcy Court for the District of Moot ruled in favor of Cpl. Clegg on both objections and denied the Trustee's Sale Motion. (*Id.* at 10.). The Trustee subsequently appealed the court's ruling. (*Id.*). The Thirteenth Circuit affirmed. (*Id.* at 24.). In rejecting the Trustee's argument that the post-petition, pre-conversion increase in equity in Cpl. Clegg's property belongs to the bankruptcy estate, the court reasoned that the Trustee's interpretation would "render inconsequential the distinction between good faith and bad faith conversions under section 348(f)(1)(A) and section 348(f)(2), respectively." (*Id.* at 13). Additionally, the court explained that if section 348(f)(1)(A) is not subject to section 522's "snapshot" rule, which designates the petition date as the valuation date when determining a debtor's exemptions, "the

Bankruptcy Code would be rendered non-sensical in that it could result in vastly different valuations as to the same property." (*Id.* at 13–14). The court further observed that assuring debtors that "chapter 7 trustee[s] will not be able to seize any post-petition, pre-conversion equity for the benefit of the estate upon conversion" maintains the integrity of chapter 13's policy, which aims to allow debtors to retain their property while repaying his debts. (*Id.* at 16–17). Accordingly, because the court found that Cpl. Clegg had made a good faith effort to repay his debts under chapter 13, he should not be penalized for his eventual inability to satisfy his obligations. (*Id.*).

With regards to the Trustee's attempted sale of her power to avoid and recover Cpl. Clegg's transfer to Pink, the court first held that "when the Bankruptcy Code uses the word 'trustee,' it means the trustee and no one else." (*Id.* at 19). For that reason, the court found that because Eclipse can never exercise the Trustee's avoidance powers, the Trustee cannot sell those powers. (*Id.*). The court further found "that Congress's omission of section 547 [from section 541(a)] was intentional," such that "avoidance powers" are not property of the estate. (*Id.*). Beyond the plain meaning of section 541(a), the court pointed out that reading section 547 in context with section 554 "would absurdly vest [a trustee's strong-arm] powers in the debtor upon abandonment" and "render inconsequential, if not incomprehensible, numerous other sections of the Bankruptcy Code." (*Id.* at 21).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit properly ruled in favor of the debtor, Cpl. Clegg, when it held, first, that Cpl. Clegg was entitled to the post-petition, pre-conversion equity increase in his home upon converting the case from chapter 13 to chapter 7 because the Bankruptcy Code must be read with consideration to the intricate interplay and relationship among various sections. (R. at 4, 12). Second, the Thirteenth Circuit properly ruled that the Trustee cannot sell the power to avoid and recover transfers under sections 547 and 550 because "avoidance powers" are not estate property but are instead statutorily granted powers that the Code vests exclusively in the Trustee. (R. at 18–23).

Excluding post-petition equity increases in the post-conversion estate adheres to the "snapshot" rule of section 522 and preserves the statutory framework for determining Cpl. Clegg's entitlement to his property upon case conversion under section 348. *See* 11 U.S.C. §§ 348, 522. Section 348 stipulates that the newly formed chapter 7 estate does not consist of a debtor's post-petition acquisitions and income. *See id*. § 348. The interplay and overlap between sections 348 and 522 demonstrate that section 348(f)(1)(A) is subject to section 522's "snapshot" rule, such that the valuation date for Cpl. Clegg's property should be set on the original petition date. *See* David Gray Carlson, *The Chapter 13 Estate And Its Discontents*, 17 Am. Bankr. Inst. L. Rev. 233, 244 (2009) (affirming that "[s]ection 348(f)(1) makes clear that the debtor may keep 'property of the estate' if it was acquired post-petition"). In order to ensure a functional bankruptcy framework, a proper interpretation of the Code requires consideration of the interactions between different provisions. Accordingly, because the dissent's overly narrow interpretation of section 348 erroneously overlooks the reciprocity between sections 348 and 522, this Court should find that the post-petition, pre-conversion equity increases belong to Cpl. Clegg.

Furthermore, recognizing Cpl. Clegg's home and its equity increase as distinct interests is imperative for preserving a uniform and fair statutory framework. This interpretation is directly consistent with the Code's policy considerations, legislative history, and judicial precedent. Here, recognizing Cpl. Clegg's home and its equity increase as separate reduces the risk of misuse and selective manipulation of sections 348 and 522. *See* 11 U.S.C. §§ 348, 522. Importantly, overlooking these concerns can disincentivize usage of certain chapters of the Code because of the different resulting valuations. Recognizing that the post-petition appreciation and the equity in Cpl. Clegg's home are separate and distinct aligns with the provisions of the Code and ensures uniform conformity with the Code's intentions.

Similarly, the Trustee's endeavor to sell the power to avoid and recover the Cpl. Clegg's transfer to Pink is legally unsound. The Thirteenth Circuit correctly applied a plain reading approach to section 541 in finding that the trustee's "avoidance powers," as outlined in section 547, are not property of the bankruptcy estate. *See* 11 U.S.C. § 547. The plain language of section 541, which governs estate property, does not encompass statutorily granted powers of the trustee, including "avoidance powers." *See id.* § 541. This is evident in the absence of any reference to section 547 in section 541. *See* 11 U.S.C. §§ 541, 547.

A plain reading of section 541(a) and section 547 further indicates that "avoidance powers" are vested solely in the trustee and are not transferrable, and historical bankruptcy practices, highlighted in pre-Bankruptcy Code decisions like *United Capital Corp. v. Sapolin Paints, Inc. (In re Sapolin Paints, Inc.),* affirm the principle that a trustee cannot sell or assign avoidance powers. *See In re Sapolin Paints, Inc.*, 11 B.R. 930, 937 (Bankr. E.D.N.Y. 1981); *see also* 11 U.S.C. §§ 541, 547. Legislative history and judicial precedent further reinforce this understanding that a trustee's avoidance powers are not property of the estate.

Likewise, permitting the sale of “avoidance powers” conflicts with the underlying goal of the Code, which seeks to facilitate a fair, court-assisted process for achieving equal distribution among similarly situated creditors. The legal consequence of such sales would allow creditors to recover for their own benefit, which risks there being a race among creditors to adjudicate and settle preference claims without court supervision. Adopting the Trustee's interpretation would thus undermine the protections allotted by the Code and erode the impartial role of trustees in the bankruptcy court process.

ARGUMENT

This Court should affirm the Thirteenth Circuit's decision because section 348 of the Bankruptcy Code excludes post-petition equity increases in a debtor's property from the new chapter 7 case upon conversion, in line with the statutory framework. This Court should also affirm the Thirteenth Circuit's decision because rejecting the Trustee's attempt to sell his "avoidance powers" is consistent with the Code's purpose of maximizing the value of the bankruptcy estate for the benefit of all creditors.

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT POST-PETITION, PRE-CONVERSION EQUITY INCREASES IN A DEBTOR'S PROPERTY BENEFIT THE DEBTOR UPON CONVERSION OF A CASE FROM CHAPTER 13 TO CHAPTER 7 BECAUSE THE BANKRUPTCY CODE REQUIRES A HOLISTIC READING RATHER THAN A PIECEMEAL INTERPRETATION.

In converting a case from chapter 13 to chapter 7, section 348 of the Bankruptcy Code stipulates that the resultant chapter 7 estate does not consist of a debtor's post-petition acquisitions and income. *Harris v. Viegelahn*, 575 U.S. 510, 517 (2015). While section 541 broadly defines the bankruptcy estate as "all legal or equitable interests of the debtor in property as of the commencement of the case," it is crucial to note that "a section of a statute should not be read in isolation." 11 U.S.C. § 541; *Richards v. United States*, 369 U.S. 1, 11 (1962). For that reason, section 541 should be read holistically "to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code." *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204 (1983). Here, section 348 provides a specific exception to section 541 for post-petition acquisitions and earnings in the case of a chapter 13 to chapter 7 conversion.

A. Excluding post-petition equity increases in the new estate adheres to the "snapshot" rule of § 522, preserving the statutory framework for determining Cpl. Clegg's entitlement to his property upon case conversion in § 348.

Including post-petition equity increases in property as part of the new chapter 7 estate infringes on Cpl. Clegg's bankruptcy rights as a debtor to convert his case, because the different resulting valuations contradict the "snapshot" rule. Section 522 provides general guidelines for the exemptions a debtor may claim. *See* 11 U.S.C. § 522. The "snapshot" rule effectively locks in the value of any property "as of the date of the filing of the petition." *Id*. § 522(a)(2). While federal law does not give bankruptcy courts the ability to create an exemption if the Code does not specify such grounds, section 522's "snapshot" rule specifically provides for certain exemptions. *See Law v. Siegel*, 571 U.S. 415, 425 (2014). This rule governs both a debtor's possible exemptions and the value of those exemptions. *Wilson v. Rigby*, 909 F.3d 306, 308 (9th Cir. 2018). While a "snapshot" could be "incomplete"—because certain conditions can later change an asset's status relative to the bankruptcy estate—the Code indicates that this designation applies solely to situations where a debtor receives property by "bequest, devise, inheritance, divorce, life insurance, or death benefit" within 180 days of the petition date. *Rockwell v. Hull (In re Rockwell),* 968 F.3d 12, 18 (1st Cir. 2020); 11 U.S.C. § 541(a)(5). Thus, excluding an asset's post-petition value per the "snapshot" rule upholds the Code's guidelines and ensures consistent compliance with the statutory framework, particularly for debtor exemptions.

Consistent with the broader bankruptcy statutory framework, excluding an asset's post-petition value adheres to the "snapshot" rule. Section 1307, which is specific to chapter 13, allows the debtor to convert a case to "chapter 7 [] at any time." 11 U.S.C. § 1307. The impact of this conversion is regulated by section 348, which addresses the general process for converting

cases from one chapter to another. *In re Krahenbuhl*, No. 09-29618-svk, 2013 Bankr. LEXIS 2918, at *2 (Bankr. E.D. Wis. July 19, 2013). Specifically, section 348(f)(1)(A) specifies "the scope of property of the estate in a case converted in good faith from chapter 13 to chapter 7." *Pancic v. Lokan (In re Lokan)*, No. OR-22-1249-CLB, 2023 Bankr. LEXIS 1556, at *8 (B.A.P. 9th Cir. 2023). It is crucial to note that a new case is not commenced by converting it from chapter 13 to chapter 7; rather, "[t]he existing case continues along another track, [c]hapter 7 instead of [c]hapter 13, without 'effect[ing] a change in the date of the filing of the petition.'" *Harris*, 575 U.S. at 515 (quoting 11 U.S.C. § 348(a)). Absent bad faith conversion, section 348 clarifies that property attained by the debtor between the petition filing and case conversion is not considered part of the new chapter 7 estate. *Pancic v. Lokan (In re Lokan)*, 2023 Bankr. LEXIS 1556, at *8 (quoting *Harris*, 575 U.S. at 517; § 348(f)(1)-(2)). The text of section 348(f) explicitly underscores this notion by including "converted in good faith." 11 U.S.C. § 348(f)(1)(A). Further, the inclusion of the statement that "a debtor who converts in bad faith is not entitled to this post-petition property" in the statute's text logically necessitates that the same debtor, acting in good faith, must obtain the property. *In re Michael*, 699 F.3d 305, 313–14 (3d Cir. 2012).

B. Cpl. Clegg's entitlement to the post-petition equity increase not only directly aligns with statutory text but also underscores the legislature's commitment to ensure a fair and consistent application of bankruptcy laws.

While direct case law on this issue is sparse, a thorough examination of available precedents and legislative history reinforces the conclusion that interpreting the equity increase as advantageous to the debtor in cases of conversion is well-supported by the statutory text. Various bankruptcy courts support this position as well, finding that "post[-]petition appreciation in the value of an asset is a separate interest or 'new equity' that inures to a debtor's benefit upon

conversion to a [c]hapter 7 case." *In re Nichols*, 319 B.R. 854, 856 (Bankr. S.D. Ohio 2004) (discussing how the legislative history of § 348(f) illuminates its textual meaning to match the debtor's treatment if a chapter 7 case was initially filed); *see also In re Sargente*, 202 B.R. 1023, 1026 (Bankr. S.D. Fla. 1996) (highlighting Congress's enactment of section 348(f) as a means of clarifying a previously ambiguous statute). Moreover, reading section 348(f) considering its legislative history suggests that equity increases should benefit the debtor upon conversion to encourage debtors "to attempt to repay their debts through reorganization rather than liquidation." *In re Michael*, 699 F.3d at 316.

In re Barrera further highlights the importance of statutory language in the treatment of post-petition assets in Chapter 13 to Chapter 7 conversions. There, the Tenth Circuit held that the language of section 348(f)(1)(A) "specifically addresses conversions from [c]hapter 13 to [c]hapter 7" to dispense the same property interests in both the pre-conversion chapter 13 estate and post-conversion chapter 7 estate. *Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1220–21 (10th Cir. 2022). The court found that debtors attempting to abide by a repayment plan but are unsuccessful "are generally no worse off upon a good-faith conversion than if they had originally filed under [c]hapter 7." *Id*. at 1221. Since debtors are no worse off in good-faith conversion scenarios under either chapter 13 or 7, the court reasoned that the interplay between code sections and legislative history indicated that the statute mandates the exclusion of any appreciation in property value in a chapter 7 estate upon conversion. *See id*. at 1221–22 (suggesting that, considering the legislative history and Code's aversion to penalize debtors for attempting repayment, the statute is clear that any property benefit goes to the debtor).

In *Harris v. Viegalahn*, the Supreme Court adopted the *Barrera* principles regarding the statute's textual significance concerning pre-conversion equity increases. *See Harris*, 575 U.S. at

516. There, the Court held that debtors receive any undistributed, post-petition equity upon conversion from a chapter 13 case to a chapter 7 case. *Id.* In support of its holding, the Court recognized that "other courts, including several Courts of Appeals, [have] held that, upon conversion, all post[-]petition earnings and acquisitions became part of the new [c]hapter 7 estate." *Id*. However, the Court ultimately read the statutory text to bar a debtor's post-petition equity from the new estate. *Id*. In recognition of these courts' decisions and its own decision, the Court reasoned that congressional intent and legislative history "addressed the matter" in adding section 348(f) to the Code, because inclusion of the equity increases was incompatible with that statutory design. *Id*. at 517–18 (reasoning that excluding the equity increases "enables the 'honest but unfortunate debtor' to make the "fresh start" the Bankruptcy Code aims to facilitate"). The Court observed "nothing in the Code denying debtors funds that would have been theirs had the case proceeded under [c]hapter 7 from the start" and that a practical, textual reading provides as such. *Id*. at 518–19.

Here, Cpl. Clegg is entitled to the post-petition, pre-conversion equity increases because the Code dictates a holistic statutory analysis. Under *Harris*, the statutory design of the Code is incompatible with including equity increases in the converted case's estate because, as an "honest but unfortunate debtor," Cpl. Clegg has the right to convert in good faith without penalty. *Id*. However, upon exercising his conversion right, Cpl. Clegg was wrongly penalized in direct contravention of the statutory text requiring that the debtor in a good faith conversion case be entitled to the property. *In re Michael*, 699 F.3d at 313–14; 11 U.S.C. § 348; (R. at 8–10). The *Michael* court emphasized that section 348(f)(2), which addresses bad-faith conversions, guides the equity interest analysis, reinforcing the principle that penalization should align with statutory text. *In re Michael*, 699 F.3d at 313–14. Thus, this decision underscores that Cpl. Clegg is

entitled to receipt of the equity interests resulting from his good-faith actions because "[s]ection 348(f)(2)'s exception for bad-faith conversions is instructive in this regard." *Harris*, 575 U.S. at 518 (discussing how the statutory text directs the Court as to when penalization is appropriate and suggesting that a lack of inclusion of inappropriate penalization was a conscious choice for practicality).

The dissent contends that section 348 plainly mandates that any estate property at the initial filing remains property of the estate upon conversion to chapter 7. (R. at 25–26). However, this reading overlooks the holistic interplay between sections 348 and 522. Section 522, which governs debtor exemptions and their valuation, stipulates the "snapshot" rule and dictates specific circumstances for "incomplete "snapshots." *See Wilson*, 909 F.3d at 308; *Rockwell*, 968 F.3d at 18 (suggesting that when such a snapshot is "incomplete," it may be subject to later inclusion or exclusion of the bankruptcy estate). When considering the dissent's discussion alongside the "snapshot" rule, the inclusion of post-petition equity increases in the new chapter 7 estate contradicts section 522 because it continues to govern asset inclusion even after case conversion. *See Rockwell*, 968 F.3d at 20 (stating that properly exempted property under section 522 "is immunized against liability for prebankruptcy debts"). Section 522's continued governance is supported by *Barrera* because it prescribes identical property interests for pre-conversion chapter 13 estates and post-conversion chapter 7 estates under section 348, bolstering the nearly identical statutory text of the two sections. *Barrera*, 22 F.4th at 1220–21; 11 U.S.C. § 522(a)(2). Both sections 348 and 522 directly rely on the petition date to control the valuation; asset valuation upon conversion only relies upon the conversion date in the case of bad faith, which is inapplicable here. *Rockwell*, 968 F.3d at 22; 11 U.S.C. §§ 348, 522. The interaction and similarities between sections 348 and 522 provide that 348(f)(1)(A) is subject to section 522's

"snapshot" rule, such that Cpl. Clegg's property valuation should align with the original petition date. Therefore, the dissent's narrow interpretation of section 348, which overlooks the nuanced interaction with section 522, was erroneous and results in a flawed understanding of Cpl. Clegg's property valuation.

C. Recognizing Cpl. Clegg's home and its equity increase as distinct interests that benefit him is vital for maintaining a consistent and equitable statutory framework, aligning with policy concerns, the Bankruptcy Code's legislative history, and judicial interpretation.

Analyzing the statutory text is bolstered by the policy considerations behind the equity increase benefiting Cpl. Clegg as the debtor. The legislative history of sections 348 and 522 not only speaks directly to the textual analysis but to the legislative intent of carrying out the Bankruptcy Code's purposes. *Goetz v. Weber (In re Goetz)*, 651 B.R. 292, 298–99 (B.A.P. 8th Cir. 2023) (indicating how the statutory sections align with the legislative goal of removing disincentives for filing bankruptcy under a specific chapter). The goal of the Code is to "encourag[e] the use of debt repayment plans rather than liquidation." *In re Bobroff,* 766 F.2d 797, 803 (3d Cir. 1985) (citing See H.R. Rep. No. 595, 95th Cong., 1st Sess. 118 (1977)). In furtherance of this goal, the risk that debtor property acquired in the period of repayment would then be liquidated if conversion was necessary would need to be negligible at best. *Id.* Any nominal risk of liquidation would disincentivize debtors from attempting to reorganize under chapter 13, so policy considerations suggest that creditors should be "put back in precisely the same position as they would have been had the debtor never sought to repay his debts." *Id.*

The risk of disincentivizing debtor use of certain chapters of the Bankruptcy Code extends to the complications that arise from the interplay of sections 348 and 522. *City of Chicago v. Fulton*, 141 S. Ct. 585, 591 (2021) (expressing how the application of one section of the Code should not render another section unnecessary and inapplicable). Excluding an asset's

post-petition value under the "snapshot" rule would uphold the Code's guidelines while ensuring consistent compliance with the statutory framework. As the lower court points out, the vastly different valuations of the same property highlight this reasoning. (R. at 14). Like in *Bobroff*, which stressed the importance of minimizing debtors' liquidation risk upon conversion, concerns arise when debtors use Code sections to strategically time conversions to chapter 7 to exploit equity increases. *See id*. This potentially leads to widespread manipulation of the bankruptcy framework for personal benefit because of the current chapter of a case. *See Salas v. McGranahan (In re Salas)*, No. 2:05-cv-1107-GEB, 2006 U.S. Dist. LEXIS 68980, at *7–8 (E.D. Cal. Sep. 15, 2006) (suggesting a standardized reorganization and debt repayment process aligns with the broader goals of bankruptcy law to provide a fair and orderly process for both debtors and creditors); *see also* Honorable Elizabeth L. Gunn & Shelby Kostolni, *In This Issue:, Consumer Corner, Post-Petition Appreciation: Whose Line (Item) Is It, Anyway?*, 42 Am. Bankr. Inst. J. 18, 59 (2023) (suggesting that case outcomes may vary depending on "the current chapter of a debtor's case" in the event of conversion).

Here, recognizing Cpl. Clegg's home and its equity increase as separate for his benefit mitigates the potential for abuse and selective exploitation of sections 348 and 522. According to *City of Chicago*, ambiguities in statutory interpretation are resolved by using other Code sections as a benchmark to ensure conformity with the Code's purposes. *See City of Chicago*, 141 S. Ct. at 590–91 (suggesting that reading the statute narrowly creates a concern of an incomprehensive analysis of the bankruptcy statutory scheme). The trustee's plain meaning interpretation in the lower court regarding the connectedness of Cpl. Clegg's home and equity increase raises concerns of incomplete analysis, echoing issues raised in *Chicago*. *See id.*; (R. at 12–13). As the lower court correctly stated, the trustee's argument could render inconsequential the distinction

between good faith and bad faith conversions under section 348(f)(1)(A) and section 348(f)(2), respectively. (R. at 13). This is because of the risk of exploitation of the statutory framework that may arise from recognizing a property's equity increase as indistinct from the property, thereby hindering the debtor's fresh start. *See Harris*, 575 U.S. at 513 (stating that "[t]he Bankruptcy Code provides diverse courses overburdened debtors may pursue to gain discharge of their financial obligations, and thereby a 'fresh start'" and thus already accounts for such abuse in the various provisions). Thus, maintaining the distinction between Cpl. Clegg's home and its equity increase prevents abuse of statutory provisions, ensuring a fair analysis aligned with the Bankruptcy Code's principles for providing debtors with a genuine fresh start.

Contrary to the dissent's assertion, a clear distinction exists between post-petition appreciation in the value of the home and the home itself. (R. at 25–26). This distinction aligns with the Code's statutory provisions, ensuring consistency and compliance with the Code's intended purposes. *See Castleman v. Burman (In re Castleman)*, 75 F.4th 1052, 1062 (9th Cir. 2023) (holding that "post-petition, pre-conversion appreciation belongs to the [debtors][] rather than the converted [c]hapter 7 estate"); *see also* 3 Collier on Bankruptcy ¶ 348.07 (16th ed. 2023) (stating that "[e]xemption valuations should be determined consistent with section 348(f)(1)(A), which provides that increases in value during the chapter 13 case do not become property of the chapter 7 estate after conversion"). While *Castleman* acknowledged post-petition appreciation as belonging to the estate, the dissent importantly articulated that proceeds generated after confirmation "do not become estate property as the underlying property no longer belongs to the estate." *Castleman*, 75 F.4th at 1061 (Tallman, C.J., dissenting). The majority in *Castleman* clarified that newly acquired, post-petition property would not become part of the converted estate" if the debtor acted in good faith." *Id.* at 1058 (pointing to the fluid nature of

this decision and how it is "simply a happenstance of market conditions"). This textual analysis of sections 348 and 522 upholds the "snapshot" rule, freezing Cpl. Clegg's property at the initial filing date while acknowledging the creation of a new property interest through the increase in equity post-petition. The synergy between section 348(f)(1)(A) and section 522 acts as a strategic measure to enhance justice and efficiency to avoid the need for "relitigation of valuation issues." 3 Collier on Bankruptcy ¶ 348.07 (16th ed. 2023). Ultimately, the Code's language is clear, and the Court's role is to enforce it. *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004). The Court must also recognize the difference between post-petition equity increases and the property itself due to implications for future statute abuse.

II. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT TRUSTEES CANNOT SELL THE POWER TO AVOID AND RECOVER TRANSFERS UNDER SECTIONS 547 AND 550.

This Court should find that the Trustee may not sell the power to avoid and recover the Debtor's transfer to Pink, because "avoidance powers" are not property of the bankruptcy estate. Rather, those powers are statutorily granted powers born from the Bankruptcy Code's underlying policy of promoting equality of distribution among equally positioned creditors. *See, e.g., Union Bank v. Wolas*, 502 U.S. 151, 151–52 (1991). A plain reading of section 547 reveals that Congress intended for "avoidance powers" to be exclusive to the trustee, an interpretation buttressed by the omission of section 547 from section 541, which governs what property is brought into the estate upon the debtor's filing of a bankruptcy petition. *See* 11 U.S.C. §§ 541, 547. Moreover, given the substantial similarity of the provisions governing trustees' "avoidance powers" in the Bankruptcy Act and the current Bankruptcy Code, the Pre-Bankruptcy Code principle that trustees may not sell or assign their statutorily granted "avoidance powers," continues to hold weight. *See In re Sapolin Paints, Inc.*, 11 B.R. 930, 937 (Bankr. E.D.N.Y. 1981); *see also Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1762 (2018)

("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." (quoting *Lorillard v. Pons,* 434 U.S. 575, 580 (1978))). Finally, permitting the sale of a trustee's "avoidance powers" contradicts the fundamental goals of the Bankruptcy Code, which seeks to promote equality among creditors and to deter the proverbial "race to the bottom." Where authorizing trustees to sell their "avoidance powers" impermissibly allows creditors to recover for their own benefit and places the adjudication of avoidance actions beyond bankruptcy court supervision, this Court should approve the lower court's affirmation of the bankruptcy court's decision to deny the Trustee's request to sell the right to avoid and recover the Debtor's transfers to Pink.

A. The power to avoid and recover transfers is not property of the estate, because a plain reading of sections 541 and 547 indicates that this power is statutorily-granted and cannot be transferred.

The Trustee's power to avoid and recover the Debtor's transfer to Pink is not "property of the estate" under section 541, because these powers are statutorily granted powers vested in the trustee rather than a legal interest of the debtor. Sections 544 through 553 vest in the trustee "avoidance powers," which provide the trustee with the power to avoid and recover preferential transfers made by the debtor on or within ninety days of before the filing of the petition, or within one year in the case of an insider. 11 U.S.C. §§ 544, 547(b). Under section 544, "the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim . . . ." 11 U.S.C. §§ 544(b). Thus, section 544(b) authorizes the trustee to "step into the shoes" of an actual, unsecured creditor and "avoid" a transfer. *In re Moore*, 608 F.3d 253, 260 (5th Cir. 2010); *accord Wesco Aircraft Holdings, Inc. v. SSD Invs. Ltd.* (*In re Wesco Aircraft Holdings, Inc.*), No. 23-90611, at *8 (Bankr. S.D. Tex. Jan. 14, 2024). Similarly, section 547 bestows on the trustee the strong-arm power to avoid preferential transfers, which are "transfer[s]

of an interest of the debtor in property [] to or for the benefit of a creditor[] for or on account of an antecedent debt . . . made while the debtor was insolvent" within 90 days of the filing of the petition. 11 U.S.C. § 547(b). As an initial matter, the trustee and the dissent's argument in favor of permitting the trustee to sell a preference cause of action is grounded on the erroneous assumption that these "avoidance powers" are property of the estate. (R. at 30–35). However, as the lower court correctly observes, a plain reading of section 541 dismantles that assumption. *See U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 243 (1989) (hereinafter "*Ron Pair*") (stating that "[t]he plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters"); (R. at 19).

The breadth and grammatical structure of section 541, which governs what property comes into the bankruptcy estate upon the filing of a bankruptcy petition, indicates that it did not mean to encompass trustees' statutorily granted avoidance powers. 11 U.S.C. § 541. First, as the lower court observed, however, while the drafters expressly cross-referenced section 547 in over fifteen other sections of the Code, section 541(a) makes no reference to section 547. *Compare* 11 U.S.C. § 547(a) *with* 11 U.S.C. §§ 303, 349, 362, 502, 521, 522, 546, 550–552, 749, 746, 901, 926, 1521, 1523. Instead, section 541(a) pulls into the estate "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). As the Supreme Court elucidated in *Mission Production Holdings, Inc. v. Tempnology, LLC*, the language of that section mandates that the bankruptcy "estate cannot possess anything more than the debtor itself did outside bankruptcy." *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1663 (2019) (citing 11 U.S.C. § 541(a)(1) and *Board of Trade of Chicago v. Johnson*, 264 U.S. 1, 15 (1924)). The dissent attempts to circumvent the omission of section 547 in section 541 by

characterizing "avoidance powers" as a "preference cause of action" that constitutes a "legal or equitable interest" of the debtor. (R. at 32). However, this expansive reading fails because it ignores the temporal component of section 541(a). Section 544 states explicitly that "avoidance powers" only come into existence "as of the commencement of a case"–these powers are not drawn from a debtor's preexisting, pre-petition body of legal interests. 11 U.S.C. § 544(a). Where state law does not provide for the extent to which a certain type of interest constitutes the debtor's property, "federal bankruptcy law dictates." *In re WEB2B Payment Sols., Inc.*, 815 F.3d 400, 405 (8th Cir. 2016) (quoting *In re N.S. Garrott & Sons*, 772 F.2d 462, 466 (8th Cir. 1985)).

Here, state law is necessarily silent on the issue of a trustee's "avoidance powers," because these powers are created upon the commencement of a bankruptcy case by provisions of the federal Bankruptcy Code. *See, e.g.*, 11 U.S.C. § 547. Federal law similarly denies debtors an interest in avoidance actions. Where sections 544–553 unambiguously assign "avoidance powers" to the "trustee," and the trustee alone, the drafters intended such a designation to be exclusive to the trustee. *See, e.g.*, 11 U.S.C. §§ 544(a), 547(b). This plain reading approach finds support in the Supreme Court's decision in *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, where the Court explained that where "a statute authorizes specific action and designates a particular party" who has "a unique role in bankruptcy proceedings" to carry out that action, exclusivity is appropriate. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). Accordingly, neither state law nor federal law bestows debtors with a "legal or equitable interest" in the trustee's "avoidance powers."

This reading is further enforced by a juxtaposition of section 541 with other sections of the Code, such as section 926, that provide for section 547. Section 926 provides that where "the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a), or 550 . . .

then on request of a creditor, the court may appoint a trustee to pursue such cause of action." 11 U.S.C. § 926(a). The dissent's claim that section 926 indicates that the Bankruptcy Code characterizes "avoidance powers" as "causes of action" is misled. (R. at 31–32). First, section 926 applies in the context of municipal bankruptcies, which are governed by Chapter 9 of the Code. *See* 11 U.S.C. § 109(c). Unlike in cases filed under chapter 7 and chapter 13, bankruptcy courts' powers over cases filed under chapter 9 are limited, such that they cannot appoint trustees outside of limited circumstances. *Compare* 11 U.S.C. §§ 701, 702 (laying out procedures for appointment of trustees in chapter 7 filings) *with* 11 U.S.C. § 902(5) (clarifying that "trustee" means the debtor, "except as provided in section 926"). Accordingly, in a chapter 9 case, a municipal debtor is responsible for carrying out the responsibilities of a de facto trustee. *See* 11 U.S.C. § 902(5). Section 926 thus refers not to "causes of action" held by the debtor on the petition date, but "causes of action" arising from powers vested in the *debtor acting as a trustee* upon the commencement of the case, where the exclusive list of sections accounted for in section 926–sections 544, 545, 547, 548, 549, and 550–all pertain to the same "avoidance powers" statutorily vested in the trustee under chapter 7 and chapter 13. *See* 11 U.S.C. § 926(a).

Finally, section 554, which permits the trustee to abandon property of the estate "that is of inconsequential value and benefit to the estate," markedly makes no mention of section 547. 11 U.S.C. § 554(a). Section 554 is structurally airtight, such that it provides that unless abandoned or administered in the bankruptcy case, property remains property of the estate. Because section 554 does not provide for section 547, the Trustee's reading would permit for "avoidance powers" to be abandoned and vested in the Debtor, a result that illogically grants to the Debtor a claim that did not exist prior to the commencement of the case. This outcome is materially inapposite to the function of a trustee's transfer powers, which the Third Circuit in *In*

re Cybergenics Corp. characterized as placing the trustee or debtor in possession "in the shoes" of a creditor. *In re Cybergenics Corp.*, 226 F.3d 237, 243–44 (3d Cir. 2000) (further highlighting that the exercise of "avoidance powers" is limited to circumstances that benefit creditors, not the debtors). For that same reason, the Trustee's reliance on the Eighth Circuit's decision *In re Simply Essentials, LLC*, which rests on the debtor's supposed "inchoate interest" in avoidance actions, is misplaced. *See In re Simply Essentials, LLC*, 78 F.4th 1006, 1009 (8th Cir. 2023); (R. at 20). While the Debtor may have held an interest in the property itself at some point prior to the filing of the petition, the matter in dispute is not that interest itself but the trustee's *power* to avoid a transfer of such interest. As such, whether the debtor has an "inchoate interest" in the transferred property is immaterial to this analysis.

Accordingly, because a plain reading of sections 544–553 indicates that "avoidance powers" are statutorily granted powers exclusively vested in the trustee, they are not property of the estate and cannot be transferred to another party.

B. Legislative history and judicial precedence support a finding that a trustee's "avoidance powers" are not property of the estate, where pre-Bankruptcy Code practice upheld the principle that this power is not transferrable.

A plain reading of sections 547 and 541 is further fortified by historical bankruptcy practices. As the lower court correctly observed, courts during the pre-Bankruptcy Code era, as highlighted in *In re Sapolin Paints, Inc.*, recognized the "well-settled principle" that a trustee cannot sell or assign "avoidance powers." (R. at 21–22); *see In re Sapolin Paints, Inc.*, 11 B.R. at 937; s*ee also U.S. v. Gen. Resources, Ltd.*, 204 F. Supp. 872, 875–76 (D. Colo. 1962) (holding that "the action to avoid a preference must be brought by the trustee"). This was because, as the *Sapolin Paints* court stressed, "[t]he power to avoid a preference is one which is to be exercised in the interests of securing equality of distribution among creditors." *Id.* (quoting *Canright v. General Finance Corp.*, 35 F. Supp. 841, 844 (E.D. Ill. 1940)). The "right of recovery vested by

the [Bankruptcy] Act in the trustee is not assignable. Nor can a purchaser of the bankrupt's assets require the trustee to proceed with a suit to recover a preference for the purchaser's benefit." 3 COLLIER ON BANKRUPTCY ¶ 60.57, at 1095 (14th ed. 1979).

As the lower court correctly points out, upon the enactment of the Bankruptcy Code in 1978, Congress did not indicate any desire to deviate from this pre-Code interpretation. (R. at 22); *compare* 11 U.S.C. § 547 *with* Bankruptcy Act of 1898, ch. 541, sec 70(e), 30 Stat. 562 (codified as amended at 11 U.S.C. § 96(b) (1958)) (stating, in relevant part, that "[t]he trustee may avoid any transfer by the [debtor] of his property which any creditor . . . might have avoided"). In both the Code and the Act, provisions pertaining to "avoidance powers" place them squarely within the exclusive sphere of the trustee's powers. Moreover, as explained in *Ron Pair, Midlantic National Bank v. New Jersey Dept. of Environmental Protection*, 474 U.S. 494 (1986), and *Kelly v. Robinson*, 479 U.S. 36 (1986), clarified that unless "Congress has expressed an intent to change the interpretation of a judicially created concept in enacting the Code," pre-Code practice still holds binding effect. *Ron Pair*, 489 U.S. at 243–44 (explaining that "clear conflict with state or federal laws" indicates Congress's intent to change its interpretation).

Where Congress chooses to employ the "materially same language" of a section of the Code, the Supreme Court has held that Congress "presumptively was aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning." *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1762 (2018). Accordingly, Congress, by retaining "materially" the same language exclusively authorizing the trustee to carry out "avoidance powers" in the current Bankruptcy Code, affirmed the longstanding interpretation of sections 547 and 541, supporting the contention that a trustee's "avoidance powers" are not to be treated as property of the estate.

C. Permitting trustees to sell their "avoidance powers" flouts the Bankruptcy Code's overarching purpose and policy to create a court-facilitated process that provides creditors of the same class with equal treatment.

Permitting the Trustee to sell his "avoidance powers" to Eclipse directly contravenes the underlying aim of the Bankruptcy Code to promote a fair, court-facilitated process that promotes equality of treatment for creditors. *See, e.g., Begier v. IRS*, 496 U.S. 53, 58 (1990) ("Equality of distribution among creditors is a central policy of the Bankruptcy Code."). Crucially, the Supreme Court stressed in *Union Bank v. Wolas* that section 547 was enacted to "promote equality of distribution among all creditors" and to deter "creditors from racing to the courthouse to dismember a debtor." *Union Bank v. Wolas*, 502 U.S. at 151–52. However, the sale of a trustee's "avoidance powers" is in direct contravention of these policies for two key reasons.

First, authorizing such sales impermissibly permits creditors, such as Eclipse, to recover for their own benefit and to pursue actions for improper reasons. In *In re Carragher*, the United States Bankruptcy Court for the Northern District of Georgia, Atlantic Division, raised this concern when a trustee sought to conduct an out-of-court sale of the right to avoid a preferential transfer. *In re Carragher*, 249 B.R. 817, 820 (Bankr. N.D. Ga. 2000). The court began by explaining that under extraordinary circumstances, courts may allow creditors to avoid transfers "in lieu" of the trustee. *Id.* However, the court distinguished that situation from the disputed sale, which would impermissibly permit the purchasers of the "avoidance" rights to recover on their own behalf. *Id.* That same danger was recognized in *In re Boyer*, in which the United States District Court for the District of Connecticut held that the assignment of avoidance claims is permissible only where the "creditor intends to pursue avoidance claims on behalf of the estate" and where assignment is in the estate's best interests. *In re Boyer*, 372 B.R. 102, 105–06 (D. Conn. 2007).

Concerningly, permitting Eclipse to purchase the Trustee's power to avoid the Debtor's transfer to Pink caps the bankruptcy estate's recovery of that claim at the sale price for that "avoidance power." If Eclipse brings the action against Pink and recovers an amount greater than that sale price, the additional amount in recovery will inure to Eclipse's sole benefit rather than the benefit of all the creditors. A reading of section 547 and section 541 that permits this outcome thus flies in the face of the Code's interest in "maximizing the value of the debtor's estate" for "the interests of all creditors." *Id.*; s*ee* Hon. Steven Rhodes, *The Fiduciary and Institutional Obligations of A Chapter 7 Bankruptcy Trustee*, 80 Am. Bankr. L.J. 147, 165 (2006) (explaining that "the trustee's 'duty is to endeavor to maximize . . . the *net* assets'" of the estate). Instead, the Trustee's interpretation opens the floodgates to creditors battling to purchase "avoidance powers" in the hopes of subverting the automatic stay and recovering ahead of other creditors, a prospect that courts have cautioned against. *See* 11 U.S.C. § 362; *see, e.g.*, *In re Boynewicz*, No. 02-30250 LMW, 2002 WL 33951315, at *1–3 (Bankr. D. Conn. Nov. 27, 2002) (denying the sale of avoidance claims in exchange for 5 percent of the net recovery of the claim, where the purchaser's potential substantial recovery was "inadequate . . . to obviate the potential for inequitable distribution").

Second, permitting the sale of "avoidance powers" allows the Trustee and Eclipse to circumvent judicial supervision of the adjudication and settlement of preference claims. Because the record leaves Eclipse's motivations for purchasing the right to pursue the avoidance action unstated, it is unknown as to Eclipse's reasons for seeking to shoulder the litigation costs and potential risks of bringing an action to avoid and recover the transfer. Where the purpose of the Bankruptcy Code is to provide an orderly process that holds in abeyance creditors' rush to "dismember a debtor," allowing creditors to purchase the right to avoid and recover transfers

places the adjudication and monetary determination of such claims beyond the purview of the bankruptcy court. This result is at odds with the Code's enforcement of the principle that bankruptcy is a court-supervised process, such that trustees cannot sell property of the estate without court approval. *See* 11 U.S.C. § 363 (permitting the "use, [sale], or lease" of cash collateral only after the court "authorizes such use, sale, or lease in accordance with the provisions of" section 363); *see also In re Martin*, 91 F.3d 389, 394–95 (3d Cir. 1996) (finding that settlement agreements implicate section 363). However, the sale of "avoidance powers" enables the purchaser to bring an action for recovery outside of the scrutiny of the bankruptcy court and the protections offered by the Code. *See, e.g.*, *In re Carragher*, 249 B.R. at 821 (noting that the purchasers of the avoidance action stated their intention to bring any action in state court). Adopting an interpretation of section 541 and section 547 that produces such a result would thus erode the protections created by the Code's vesting of strong-arm powers in trustees, who are neutral actors beholden to the court's supervision.

CONCLUSION

The Respondent respectfully requests that this Court affirm the Thirteenth Circuit's decision and hold that (1) post-petition, pre-conversion equity increases in a debtor's property inures to the benefit of the debtor upon conversion of a case from chapter 13 to chapter 7 because the Bankruptcy Code requires a holistic reading, and (2) trustees cannot sell the power to avoid and recover transfers because of the plain language of sections 547 and 550, pre-Bankruptcy Code practice, and the Code's principle of fair and equitable distribution among creditors.

For the foregoing reasons, we ask that this Court AFFIRM.

APPENDIX

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.

(b) Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10), 727(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1201(a), 1221, 1228(a), 1301(a), and 1305(a) of this title, "the order for relief under this chapter" in a chapter to which a case has been converted under section 706, 1112, 1208, or 1307 of this title means the conversion of such case to such chapter.

(c) Sections 342 and 365(d) of this title apply in a case that has been converted under section 706, 1112, 1208, or 1307 of this title, as if the conversion order were the order for relief.

(d) A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112, 1208, or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

(e) Conversion of a case under section 706, 1112, 1208, or 1307 of this title terminates the service of any trustee or examiner that is serving in the case before such conversion.

(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

(C) with respect to cases converted from chapter 13—

(i) the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

(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. § 362. 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.

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

(a) In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

(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-

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease-

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

(c)

(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless-

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section-

(1) in the case of a debtor that is a corporation or trust that is not a moneyed business, commercial corporation, or trust, only in accordance with nonbankruptcy law applicable to the transfer of property by a debtor that is such a corporation or trust; and

(2) only to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.

(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).

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if-

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(g) Notwithstanding subsection (f) of this section, the trustee may sell property under subsection (b) or (c) of this section free and clear of any vested or contingent right in the nature of dower or curtesy.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if-

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(i) Before the consummation of a sale of property to which subsection (g) or (h) of this section applies, or of property of the estate that was community property of the debtor and the debtor's spouse immediately before the commencement of the case, the debtor's spouse, or a co-owner of such property, as the case may be, may purchase such property at the price at which such sale is to be consummated.

(j) After a sale of property to which subsection (g) or (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-owners of such property, as the case may be, and to the estate, the proceeds of such sale, less the costs and expenses, not including any compensation of the trustee, of such sale, according to the interests of such spouse or co-owners, and of the estate.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(l) Subject to the provisions of section 365, the trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11, 12, or 13 of this title may provide

for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

(n) The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

(p) In any hearing under this section-

(1) the trustee has the burden of proof on the issue of adequate protection; and

(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

11 U.S.C. § 522. Exemptions.

(a) In this section--

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

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.

(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.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(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.

11 U.S.C. § 544. Trustee as lien creditor and as successor to certain creditors and purchasers.

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by-

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

(b)

(1) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.

11 U.S.C. § 547. Preferences.

(a) In this section-

(1) "inventory" means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

(2) "new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

(3) "receivable" means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

(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.

(c) The trustee may not avoid under this section a transfer-

(1) to the extent that such transfer was-

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was-

(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

(B) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the debtor-

(A) to the extent such security interest secures new value that was-

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property; and

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 30 days after the debtor receives possession of such property;

(4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor-

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

(5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of-

(A)

(i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or

(ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or

(B) the date on which new value was first given under the security agreement creating such security interest;

(6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title;

(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $600; or

(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.

(d) The trustee may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

(e)

(1) For the purposes of this section-

(A) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable

law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and

(B) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made-

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such 30 days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of-

(i) the commencement of the case; or**(ii)** 30 days after such transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the debtor has acquired rights in the property transferred.

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.

(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment schedule between the debtor and any creditor of the debtor created by an approved nonprofit budget and credit counseling agency.

(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.

11 U.S.C. § 554. Abandonment of property of the estate.

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

11 U.S.C. § 701. Interim trustee.

(a)

(1) Promptly after the order for relief under this chapter, the United States trustee shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 or that is serving as trustee in the case immediately before the order for relief under this chapter to serve as interim trustee in the case.

(2) If none of the members of such panel is willing to serve as interim trustee in the case, then the United States trustee may serve as interim trustee in the case.

(b) The service of an interim trustee under this section terminates when a trustee elected or designated under section 702 of this title to serve as trustee in the case qualifies under section 322 of this title.

(c) An interim trustee serving under this section is a trustee in a case under this title.

11 U.S.C. § 702. Election of trustee.

(a) A creditor may vote for a candidate for trustee only if such creditor—

(1) holds an allowable, undisputed, fixed, liquidated, unsecured claim of a kind entitled to distribution under section 726(a)(2), 726(a)(3), 726(a)(4), 752(a), 766(h), or 766(i) of this title;

(2) does not have an interest materially adverse, other than an equity interest that is not substantial in relation to such creditor's interest as a creditor, to the interest of creditors entitled to such distribution; and

(3) is not an insider.

(b) At the meeting of creditors held under section 341 of this title, creditors may elect one person to serve as trustee in the case if election of a trustee is requested by creditors that may vote under subsection (a) of this section, and that hold at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section.

(c) A candidate for trustee is elected trustee if—

(1) creditors holding at least 20 percent in amount of the claims of a kind specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section vote; and

(2) such candidate receives the votes of creditors holding a majority in amount of claims specified in subsection (a)(1) of this section that are held by creditors that vote for a trustee.

(d) If a trustee is not elected under this section, then the interim trustee shall serve as trustee in the case.

11 U.S.C. § 902. Definitions for this chapter.

In this chapter—

(5) "trustee", when used in a section that is made applicable in a case under this chapter by section 103(e) 1 or 901 of this title, means debtor, except as provided in section 926 of this title.

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. § 1307. Conversion or dismissal.

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.
(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.
(c) Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including--

(1) unreasonable delay by the debtor that is prejudicial to creditors;
(2) nonpayment of any fees and charges required under chapter 123 of title 28;
(3) failure to file a plan timely under section 1321 of this title;
(4) failure to commence making timely payments under section 1326 of this title;
(5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
(6) material default by the debtor with respect to a term of a confirmed plan;
(7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
(9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);
(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

(d) Except as provided in subsection (f) of this section, at any time before the confirmation of a plan under section 1325 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 or 12 of this title.
(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

(f) The court may not convert a case under this chapter to a case under chapter 7, 11, or 12 of this title if the debtor is a farmer, unless the debtor requests such conversion.
(g) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

Bankruptcy Act of 1898, Ch. 541, Sec. 70. Title to Property.

(e) The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.