No. 22-0909

IN THE

Supreme Court of the United States

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

TEAM NUMBER 10
COUNSEL FOR RESPONDENT

JANUARY 18, 2024

QUESTIONS PRESENTED

I. Whether any post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the debtor or to the bankruptcy estate upon conversion of a case from Chapter 13 to Chapter 7 pursuant to 11 U.S.C. §§ 348 and 541.

II. Can a Chapter 7 trustee sell, as property of the bankruptcy estate, the ability to avoid and recover transfers under 11 U.S.C. §§ 547 and 550 to a single creditor when the Code specifically creates this avoidance power for the trustee and the trustee has a fiduciary obligation to exercise its power for the benefit of the estate?

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The Bankruptcy Court for the District of Moot, the United States District Court for the District of Moot, and the United States Court of Appeals for the Thirteenth Circuit all decided in favor of Respondent on both issues. The Thirteenth Circuit's decision is available at No. 22-0359 and reprinted at Record 3.

STATEMENT OF JURISDICTION

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

PERTINENT STATUTORY PROVISIONS

The relevant part of 11 U.S.C. § 11 U.S.C. § 348(f) provides:

(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 13case 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.

The relevant part of 11 U.S.C. § 541(a) provides:

(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.

The relevant part of 11 U.S.C. § 547(b) provides:

(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.

The relevant part of 11 U.S.C. § 550(a) provides:

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

STATEMENT OF THE CASE

I. Factual History

After retiring from a distinguished military career in 2011, Corporal Eugene Clegg ("Mr. Clegg" or the "Debtor") received 100% membership interest in The Final Cut, LLC ("Final Cut") from his mother, Emily "Pink" Clegg ("Pink"). R. 5. Final Cut owned and operated a historic movie theater in the City of Moot, had no liabilities at the time of the conveyance, and generated a net profit each year. R. 5. The "modest salary" that Mr. Clegg received from Final Cut was his "sole source of income". R. 5.

In 2016, Mr. Clegg sought to renovate the theater and borrowed $850,000 (the "Loan") from Eclipse Credit Union ("Eclipse") to accomplish the renovations. R. 5. Pursuant to the Loan, "Eclipse was granted first priority liens on Final Cut's real and personal property, which were properly perfected." R. 5. Mr. Clegg also provided Eclipse "an unconditional, unsecured personal guaranty in an unlimited amount" as additional security for the Loan. R. 5.

Mr. Clegg was able to complete the renovations by the sweat of his own brow and with help from other local veteran volunteers. R. 5. This allowed Final Cut to reduce labor costs, so Mr. Clegg donated the remaining $75,000 of the Loan to the Veterans of Foreign Wars (the "VFW") as a token of his appreciation. R. 5. Mr. Clegg did not notify Eclipse of the donation, but Final Cut "remained solvent, fully capitalized, and capable of satisfying its debts as they came due." R. 5. Final Cut reopened and was profitable for the following three years. R.5.

Mr. Clegg's string of bad luck began in March 2020 when the COVID-19 pandemic created an international public health emergency. R. 6. Final Cut's theater was unable to operate for almost a year, as the State of Moot mandated all individuals to remain at home by executive order. R. 6. On September 8, 2020, faced with a lack of income, Mr. Clegg was forced to borrow $50,000 from Pink on an unsecured basis. R. 6.

In February of 2021, when the theater reopened to the public, Mr. Clegg attempted to reinvigorate its profitability with a media campaign, and yet attendance failed to return to normal levels. R. 6. Mr. Clegg even incurred significant credit card debt and fell behind on his mortgage payments to Another Brick in the Wall Financial Corporation (the "Servicer") so that he could give his salary to Final Cut to facilitate cash flow. R.6.

With home foreclosure proceedings looming, Mr. Clegg filed for personal bankruptcy under Chapter 13 on December 8, 2021 (the "Petition Date"). On his schedules, Mr. Clegg stated that, based on a recent appraisal, his home's value was $350,000 with a non-contingent, liquidated secured debt to the Servicer for $320,000. R. 6. Mr. Clegg also claimed a $30,000 homestead exemption, the maximum amount allowed in the State of Moot, to protect his interest in his home. R. 6. His schedules also recognized a contingent, unliquidated unsecured debt owed to Eclipse. R. 6. Mr. Clegg also disclosed in his Statement of Financial Affairs that he made payments to Pink amounting to $20,000 within one year prior to the Petition Date. R. 7.

Mr. Clegg's Chapter 13 plan proposed that he would make payments to creditors over a three-year period, and the plan was confirmed by the bankruptcy court on February 12, 2022. R. 8. All parties in interest believed Final Cut was on the brink of bouncing back to profitability, and Mr. Clegg intended to fund his plan payments solely through future earnings from the business. R. 7. However, "Eclipse was livid" when it learned of Mr. Clegg's donation to the VFW. R. 7. Eclipse commenced an adversary proceeding seeking to have Mr. Clegg's debt related to the Loan declared non-dischargeable. R. 7. Eclipse further objected to the plan as not being proposed in good faith even though Mr. Clegg had negotiated with the Chapter 13 trustee to increase his payments to creditors by the alleged preferential transfer amount of $20,000. R. 7-8. After weeks of negotiation, Eclipse agreed to withdraw its objection, finally settling for an estimated claim of $150,000, of which $25,000 was designated non-dischargeable even in the event of conversion. R. 8. Upon confirmation, all property of the estate expressly vested in Mr. Clegg. R. 8.

Mr. Clegg made timely payments under the Chapter 13 plan for eight months until the pandemic dealt him another blow. R. 8. In September 2022, Mr. Clegg contracted long-COVID, preventing him from working at the theater. R. 8. Unable to recover from these unprecedented circumstances, the theater permanently closed in October 2022, with Eclipse at the ready to commence foreclosure proceedings against Final Cut. R. 8.

Faced with no source of income and an inability to continue making plan payments, Mr. Clegg chose to convert to a Chapter 7 proceeding in good faith. R. 8. His conversion schedules again valued his home at $350,000 and disclosed the alleged preferential transfers to Pink. R. 9. The schedules also stated that Mr. Clegg owed Eclipse approximately $200,000 due to the deficiency of his personal guaranty of the Loan after Eclipse's post-conversion foreclosure of Final Cut. R. 9. Mr. Clegg stated that he intended to reaffirm his mortgage debt and remain in his home, a goal once again foiled by the effects of the pandemic. R. 9.

At first, Vera Lynn Floyd, the Chapter 7 trustee ("The Trustee") found that the estate was mostly bereft of assets. R. 9. However, after Mr. Clegg mentioned that homes in his neighborhood were selling "at a premium," the Trustee commissioned an appraisal of the home. R. 9. Sure enough, Mr. Clegg's home's value followed the nationwide trend of increased residence values following the pandemic. R.9. The post-conversion appraisal determined that the non-exempt equity in Mr. Clegg's home had increased by $100,000 since the Petition Date. R. 9.

Consistent with her duties under Chapter 7, the Trustee began marketing Mr. Clegg's home for sale, and Eclipse promptly offered to buy not only Mr. Clegg's home but also the alleged preference claim against Pink for a total of $470,000. R. 9. The Trustee filed a motion to sell ("Sale Motion") both Mr. Clegg's home and the alleged preference claim to Eclipse, "content that Eclipse's offer maximized the value of the assets for the benefit of creditors of the estate." R. 9. Mr. Clegg objected to the Trustee's motion, arguing that "any post-petition, pre-conversion increase in the equity of his home should inure to his [the debtor's] benefit." R. 10. He reasoned that because there was no equity in the home as of the Petition Date, the Trustee could not sell his home. R. 9. Additionally, Mr. Clegg argued that the Trustee's "statutory ability to avoid and recover transfers under sections 547 and 550 cannot be sold." R. 10.

II. Procedural History

After the Trustee filed the Sale Motion and Mr. Clegg objected to the motion, the bankruptcy court considered both the distribution of the increase in the home's equity and the Trustee's statutory ability to avoid and recover transfers. It ruled in favor of the Debtor, Mr. Clegg, on both issues, holding that neither post-petition pre-conversion increases in equity nor the Trustee's power to avoid preferential transfers are estate property. R. 4. The Thirteenth Circuit affirmed. R. 10. The Trustee now appeals the Thirteenth Circuit's ruling in favor of Mr. Clegg. R. 10.

STANDARD OF REVIEW

The questions presented in this case raise pure issues of law under the Bankruptcy Code, thus the standard of review is *de novo*. *See eg. Haas v. Fancher (In re Fancher)*, 802 Fed. App'x 538, 542 (11th Cir. 2020).

SUMMARY OF THE ARGUMENT

Mr. Clegg was a small-business owner who was forced to file for Chapter 13 bankruptcy and eventually convert to Chapter 7 due to the unprecedented effects of the COVID-19 pandemic. The Trustee filed a motion to sell both Mr. Clegg's home and alleged preferential transfer claims. As such, Mr. Clegg asks that this Court affirm the Thirteenth Circuit's ruling and deny the Trustee's sale motion because any post-petition, pre-conversion increases in equity inure to the benefit of the debtor and the Trustee's power to avoid and recover transfers under § 547 and § 550 is not property of the estate that may be sold. Affirming the decision of the Thirteenth Circuit would ensure that consumer debtors like Mr. Clegg are not penalized for their good faith attempts at obtaining a fresh start through bankruptcy and would deter vindictive creditors from usurping the trustee's unique role as designated by the Code. This Court should affirm the Thirteenth Circuit's decision in favor of Mr. Clegg and deny the Trustee's motion.

The Trustee's Sale Motion should be denied because the plain language of the Code directs increases in equity and value of a debtor's home to inure to the benefit of the debtor, not the estate or creditors. The plain language of § 348 limits the Chapter 7 estate to include only the debtor's property on the Petition Date, at which point Mr. Clegg had no equity in his home. § 541's distinction between "interests" and "proceeds" and the Snapshot Rule in § 522 also provide support for Mr. Clegg's position.

Moreover, the rules of statutory construction prevent interpretations of § 348 and § 541 that permit increases in equity to inure to the benefit of the estate. The canon against surplusage dictates that § 348(f)(2)'s special treatment of bad faith conversions precludes the Chapter 7 estate in good faith conversions from claiming post-petition assets and earnings. In addition, the absurd results principle prevents the use of post-petition assets typically used to fund Chapter 13 plans from becoming part of the Chapter 7 estate, usually composed of pre-petition assets.

Finally, the legislative history of § 348 clearly illustrates that Congress intended, in the case of conversions, for property acquired post-petition to not be part of the estate. The committee report even included an illustration, which bears remarkable similarity to the facts of this case, of the confusion the Bankruptcy Reform Act of 1994 intended to correct which bears on the question at issue today.

According to the plain language of the Code, the Trustee's avoidance and recovery powers under § 547 and § 550 are not property of the estate that may be sold to Eclipse. The Code specifically grants the avoidance and recovery powers under § 547 and § 550 to the Trustee and no other party. As such, the Trustee is the only party that may exercise avoidance and recovery powers under § 547 and § 550. The plain language of § 541(a) does not include the Trustee's avoidance powers under § 547 and § 550 as property of the estate, because the Trustee's avoidance powers are not prepetition causes of action of the debtor nor are the avoidance powers interests in property acquired by the estate after the Petition Date. Rather, the Trustee's avoidance abilities are statutorily created powers that come into existence as of the filing of the case and therefore are not interests in property themselves.

Additionally, the Trustee's avoidance and recovery powers under § 547 and § 550 are not property of the estate that may be sold to Eclipse because such an interpretation of § 541(a) would create absurd results and conflicts with other Code provisions. Judicial precedent interpreting § 547 and § 550 excludes the Trustee's avoidance powers from being property of the estate because individual creditors do not have standing to assert and recover an avoidance claim. Avoidance and recovery claims under § 547 and § 550 only exist within a bankruptcy proceeding to be exercised by the Trustee, thus it would be absurd to interpret the avoidance powers as property of the estate that Eclipse may purchase when Eclipse can never use them. Interpreting the Trustee's avoidance powers under § 547 and § 550 as property of the estate that may be sold to Eclipse also improperly renders § 541(a)(3) superfluous and conflicts with § 550(a)'s requirement that the powers be exercised for the benefit of the entire estate.

Finally, the Trustee's avoidance and recovery powers under § 547 and § 550 are not property of the estate that may be sold to Eclipse because such an interpretation would subvert the underlying policies and principles of the Bankruptcy Code. Construing the Trustee's avoidance powers as property of the estate that may be sold to a single creditor compromises her unique role as a neutral fiduciary and undermines the Code's central policy of equality of distribution among creditors because it allows Eclipse to commandeer these Chapter 7 proceedings and recover for its own benefit. This interpretation of avoidance claims also improperly expands the Trustee's avoidance powers that are purposefully limited by the Code to support the key bankruptcy principle that the state cannot possess more than the debtor itself did outside of bankruptcy. Thus, to ensure that consumer debtors achieve a fresh start under bankruptcy and are not dismembered by vengeful creditors in the event of conversion, this Court should affirm the decision of the Thirteenth Circuit.

ARGUMENT

I. Post-Petition, Pre-Conversion Increases in Equity And Appreciation of Value Inure to the Benefit of the Debtor After Conversion from Chapter 13 To Chapter 7.

The Bankruptcy Code enables overburdened debtors to discharge their debts and start fresh. *Harris v. Viegelahn*, 575 U.S. 510, 513 (2015). A consumer debtor's two main options for relief are a Chapter 7 liquidation and a Chapter 13 reorganization. *Id.* A Chapter 7 debtor must sell most of his property to pay his creditors, but he is able to protect his post-petition earnings and acquisitions from creditors' claims. *Id* at 514. Chapter 13 allows a debtor to keep his encumbered property while he repays his debts in three to five years according to a court-approved plan. *Id*. However, many debtors fail to complete a Chapter 13 plan. *Id*. Recognizing the difficulty, Congress gave debtors the non-waivable right to convert their Chapter 13 cases to Chapter 7 cases "at any time." 11 U.S.C. § 1307(a). *Id*. However, when a debtor converts from a Chapter 13 reorganization plan to a Chapter 7 liquidation plan, there are questions about the disposition of a debtor's post-petition funds at the time of conversion.

Prior to the Bankruptcy Reform Act of 1994, which added § 348(f) to the Code, courts considering the disposition of a debtor's post-petition funds at the time of conversion found that the funds were either (i) property of the new Chapter 7 estate, (ii) property of the debtor, or (iii) property of creditors under a confirmed Chapter 13 plan. *DeHart v. Michael* (*In re Michael)*, 699 F.3d 305, 308 (3rd Cir. 2012); *See Harris v. Viegelahn*, 575 U.S. 510, 516-517 (2015).

"In interpreting a statute, the Court must begin its analysis with the plain meaning of the statute." *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004). "The starting point is 'the language [of the statute] itself." *U.S. v. James*, 478 U.S. 597, 604 (1986). If the plain meaning of the statute is, on its own, insufficient to construct a harmonious interpretation of the Code, the court should look to the structure and context of the language or its place in the statutory scheme to aid in its decision-making. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997).

A. The plain language of the Code requires post-petition pre-conversion increases in equity and appreciation of value of the Debtor's home inure to the Debtor.

In interpreting the Bankruptcy Code, "the first step ... is to determine whether the language [of a statute] has a plain and unambiguous meaning with regard to the particular dispute." *Castleman v. Burman* (*In re Castleman*), 75 F.4th 1052, 1055 (9th Cir. 2023). If the plain meaning is unambiguous, it controls. *Id.*11 U.S.C. § 348(f) defines the post-conversion Chapter 7 estate. The relevant statutory language provides that when a case is converted, "property of the estate … shall consist of property of the [Chapter 13] estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion ..." 11 U.S.C. § 348(f)(1)(A). According to the plain language of this provision, "the date of the filing of the petition" is the date the debtor filed the original Chapter 13 petition and, thus, the Chapter 7 estate will generally consist of the same property interests as if the debtor had originally filed under Chapter 7. *Harris v. Viegelahn*, 575 U.S. 510, 517 (2015); *DeHart v. Michael (In re Michael),* 699 F.3d 305, 310 (3rd Cir. 2012); *Rodriguez v. Barrera* (*In re Barrera*), 22 F.4th 1217, 1220-1221 (10th Cir. 2022).

1. Judicial interpretations of the plain language of § 348(f)(1)(A) supports post-petition pre-conversion equity increases inuring to the benefit of the debtor.

The plain meaning of § 348(f)(1)(A) excludes property acquired post-petition from the Chapter 7 estate. In *Harris v. Viegelahn*, the Supreme Court found post-petition wages should be excluded from the pre-conversion bankruptcy estate. 575 U.S. 510, 521. Future earnings or other future incomes are generally excluded from the post-conversion Chapter 7 estate, which is composed of the debtor's assets as of the time of the original Chapter 13 petition. *Rockwell v.*

Hull (*In re Rockwell*), 968 F.3d 12, 18-19 (1st Cir. 2020). When the original Chapter 13 petition was filed, the Debtor here was without equity and, thus, the Chapter 7 estate has no claim to equity in the Debtor's home. R. 7.

While the Debtor acquired equity from repaying a portion of his mortgage debt to the Servicer, this equity should not inure to the benefit of the Chapter 7 estate. R. 8-9. As the Supreme Court explained in *Harris v. Viegelahn*, one of the principal differences between Chapter 7 and Chapter 13 bankruptcy is the source of repayment to creditors. 575 U.S. 510, 513 (2015). Under § 541(a)(1) Chapter 7 bankruptcy is funded by pre-bankruptcy assets whereas under § 1322(a)(1), Chapter 13 bankruptcy is funded by future income or earnings. *Id*. Now that the Debtor has converted his case, it must be treated as what it is: a Chapter 7 case. *Rockwell v. Hull (In re Rockwell)*, 968 F.3d 12, 22. (1st Cir. 2020). Because the increased equity in the Debtor's home is not a pre-petition asset, the Debtor is entitled to the post-petition pre-conversion increase in equity the same way the debtor in Harris was entitled to his post-petition wages.

Though the precedent is clear that post-petition wages inure to the benefit of the Debtor, the circuit courts do disagree regarding whether post-petition equity increases go to the Debtor or to the estate. The Ninth Circuit, in *Schwaber v. Reed*, interpreted § 541(a) and found that equity increases in a pre-petition asset are not separate post-petition property interests and, thus, such increases should inure to the benefit of the estate. (*In re Reed*), 940 F.2d 1317, 1323 (9th Cir. 1991). *See Castleman v. Burman* (*In re Castleman*) 75 F.4th 1052, 1056-1057 (9th Cir. 2023); *Wilson v. Rigby,* 909 F.3d 306, 309 (9th Cir. 2018).

However, the Third and Tenth Circuits have found that post-petition, pre-conversion increases in value should inure to the debtor's benefit, not the bankruptcy estate. See *Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217 (10th Cir., 2022) and *DeHart v. Michael (In re Michael)*, 699 F.3d 305 (3rd Cir. 2012). The Court here should follow the interpretations of the Third and Tenth Circuits and find that the equity increases in the Debtor's home should go to the Debtor rather than the estate.

2. The plain language of § 348 and § 541's meanings, taken together, mandate that post-petition pre-conversion equity inure to the benefit of the debtor.

§ 541(a) of the Bankruptcy Code defines the Chapter 7 bankruptcy estate. 11 U.S.C. § 541. § 541(a)(1) includes "all legal or equitable interests of the debtor in property as of the commencement of the case" in the estate and § 541(a)(6) adds "[p]roceeds … or profits of or from property of the estate" as well. *Id*. § 348(f)'s further restricts the Chapter 7 estate to include only "property of the [Chapter 13] estate, as of the date of filing of the petition …" Taken together, § 541(a) and § 348(f) transform the Chapter 13 bankruptcy into a Chapter 7 bankruptcy without beginning the proceeding anew. *Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1220 (10th Cir., 2022). Additionally, § 348(f)'s limiting of the post-conversion Chapter 7 estate to only that property in the Chapter 13 estate on the petition date considered alongside § 541's inclusion in the estate of profits of estate property creates an interesting distinction between property interest and proceeds from sale. *Id* at 1223. 11 U.S.C. § 348(f)(1)(A).

In *Rodriguez v. Barrera*, where the debtors sold their home which had appreciated in value post-petition but pre-conversion, the court recognized a legal distinction between "legal and equitable interests" in § 541(a)(1) and "proceeds" from those interests in § 541(a)(6). *(In re Barrera),* 22 F.4th 1217, 1222-1223 (10th Cir., 2022). Based on the plain language of § 541(a), sale proceeds are a property interest distinct from the physical house from which they were derived and do not enter the converted Chapter 7 estate. *Id* at 1223. 11 U.S.C. § 348(f)(1)(A).

The distinction between "legal and equitable interests" in § 541(a)(1) and "proceeds" in § 541(a)(6) make post-petition sale proceeds not a part of the Chapter 7 estate upon conversion. Here, like in *Rodriguez v. Barrera*, any proceeds from the sale of the Debtor's house at a current, higher valuation that the valuation at the time of the original Chapter 13 filing do not exist yet and did not exist on the date of filing the Chapter 13 petition, so they cannot have "remain[ed] in the possession of or [have been] under the control of the debtor on the date of conversion." *(In re Barrera)* 22 F.4th 1217, 1223 (10th Cir., 2022) (emphasis added). Therefore, they may not be included in the Chapter 7 estate.

3. The Snapshot Rule and the Debtor's intended reaffirmation of the mortgage loan permit the Debtor to retain his home, removing it from the Chapter 7 estate.

Pursuant to § 522(b)(3)(A), a debtor can exempt certain property from the bankruptcy estate, including the debtor's interest in his home (called a 'homestead exemption'). *Rockwell v. Hull (In re Rockwell)*, 968 F.3d 12, 18 (1st Cir. 2020). In *Rockwell v. Hull*, where the court decided a debtor's homestead exemption is unchanging as of the day he filed for bankruptcy, the court demonstrated the snapshot rule: the debtor's financial situation froze in time as if someone had taken a snapshot of it. Under this rule, exemptions are determined at the time the debtor files his bankruptcy petition. *In re Rockwell),)*, 968 F.3d 12, 18 (1st Cir. 2020) (citing *White v. Stump*, 266 U.S. 310, 313 (1924); *Myers v. Matley*, 318 U.S. 622, 628 (1943)).

When the snapshot rule applies to an asset, the asset will retain whatever status it had when the debtor filed for bankruptcy and cannot be altered by circumstances that change later.

Rockwell v. Hull (In re Rockwell), 968 F.3d 12, 18 (1st Cir. 2020). Therefore, the "value" of exemptions is the "fair market value as of the date of the filing of the petition …" 11 U.S.C. § 348(a). 11 U.S.C. § 522(a)(2). *Wilson v. Rigby*, 909 F.3d 306, 309 (9th Cir. 2018).

Here, on the Petition Date, the value of the home was $350,000. R. 6. However, after conversion the Chapter 7 Trustee commissioned an appraisal of the Debtor's home which confirmed that the non-exempt equity in it had increased by $100,000. R. 9.

The snapshot rule should apply to the Debtor's pre-petition equity in the home just as it applies to homestead exemptions under § 522. Because the estate does not begin anew, and "nothing in the Code denies debtor's funds that would have been theirs had the case proceeded under Chapter 7 from the start", the court must examine the Debtor's the debtor's financial situation at the time of the initial Chapter 13 filing, like in *Rockwell v. Hull. (In re Rockwell)* 968 F.3d 12, 20 (1st Cir. 2020) (citing *Harris v. Viegelahn,* 575 U.S. 510 (2015)) At the time of the Chapter 13 filing, the Debtor properly claimed a state law homestead exemption in the amount of $30,000. R. 6. See 11 U.S.C. § 522(b). Reaffirmation of the Servicer's mortgage loan would permit the Debtor to except the debt from discharge and keep the property that secures the debt. In re Meloy, Bankr. LEXIS 1774, (S.D.W. Va., 2000). Therefore, the Debtor's home would be outside the Chapter 7 estate.

B. Statutory construction supports the interpretation that § 348 excludes post-petition pre-conversion increases in equity or appreciation of value of a property from the Chapter 7 estate.

1. The Surplusage Canon precludes an interpretation of § 348(f) which allows increases in equity or appreciation in value to inure to the benefit of the estate.

It is the court's duty 'to give effect … to every clause and word of a statute.'" *Duncan v. Walker*, 533 U.S. 167, 174 (quoting United States v. Menasche, 348 U.S. 528, 538-539 (1955); *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)); see also *Williams v. Taylor*, 529 U.S. 362, 404 (2000) (describing this rule as a "cardinal principle of statutory construction"). Courts are therefore "reluctant to treat statutory terms as surplusage" in any setting. *Id*. (citing *Babbitt v. Sweet Home Chapter, Communities for Great Ore.*, 515 U.S. 687 (1995)).

Congress has enacted § 1307(a) to incentivize debtors to choose Chapter 13 reorganization over Chapter 7 liquidation, incentives such as the non-waivable right of debtors to convert a Chapter 13 bankruptcy to another Chapter at any time. See 11 U.S.C. § 1307(a). *Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1220 (10th Cir., 2022). In a case converted from Chapter 13, § 348(f)(1)(A) excludes a debtor's post-petition earnings and acquisitions from the new Chapter 7 estate. By excluding post-petition wages from the Chapter 7 estate, § 348(f)(1)(A) removes those earnings from the pool of assets that may be liquidated and distributed to creditors. *Harris v. Viegelahn*, 575 U.S. 510, 518 (2015). Congress's exception in § 348(f)(2) penalizes debtors who convert "in bad faith…", by including post-petition, pre-conversion earnings and acquisitions in the estate, essentially taking post-petition funds from the what would otherwise be a "fresh start" for the debtor. *Id* at 517. With § 348(f)(2), Congress ensured that, *only* in instances of bad faith will bankruptcy courts look to the debtor's assets on the conversion date rather than the petition date. *Id.* 11 U.S.C. § 348(f)(2). See *Harris*, 575 U.S. 510 (2015); *Rockwell v. Hull* (*In re Rockwell*), 968 F.3d 12 (1st Cir. 2020).

Reading § 348(f)(1)(A) to exclude increases in equity or value of a property from "post-petition earnings and acquisitions" would render § 348(f)(2)'s penalty for bad faith conversions superfluous. *City of Chicago v. Fulton*, 141 S. Ct. 585, 591 (2021). The canon against surplusage prevents the interpretation of statutory provisions like the Bankruptcy Code from lacking effect or contradicting other terms within the statute. Thus, § 348(f)(1)(A) cannot be read to permit the Chapter 7 estate to capture the benefit of increases in equity or appreciation of value where the Debtor has converted his case in good faith.

2. The Absurd Results Principle prevents an interpretation of §541 which requires that increases in equity inure to the Chapter 7 estate.

The absurd result principle is "an exception to the rule that a statute should be interpreted according to its plain meaning." *Clay v. Cuyahoga Cty. Med. Exam'rs Office*, 152 Ohio St. 3d 163, 167 (2017). It is a guiding principle of statutory construction that "when [Congress] enacts a statute, it does not intend to produce an absurd result." *Id*. Even if the Court here were to find a distinction between the post-petition wages in Harris and the post-petition, permitting the Chapter 7 Trustee to claim the equity the Debtor acquired through making regular payments on their mortgage would violate the basic statutory distinctions between the plain meanings of Chapter 7 and Chapter 13 and would create an absurd result.

C. The legislative history of § 348(f) supports the interpretation that § 348 excludes post-petition pre-conversion increases in equity or appreciation value of a property is excused from the post conversion Chapter 7 estate.

Even if the Court is convinced that the plain meaning of the text is ambiguous and the statutory scheme of the Bankruptcy code does not adequately support the interpretation that post-petition pre-conversion increases in equity or appreciation of value inures to the Debtor's benefit, the legislative history of § 438 clearly indicates Congress's preference as to what property belongs to a debtor after conversion, and ultimately directs. *DeHart v. Michael (In re Michael)*, 699 F.3d 305, 309 (3rd Cir. 2012).

When the Congress was crafting the Bankruptcy Reform Act of 1994, it considered numerous changes to the Bankruptcy Code, including an amendment to § 348 to clarify that Congress intended that post-petition payments held by the Chapter 13 trustee revert to the debtor on conversion." *Id.* at 314. The report of the committee's discussion included the following explanation:

> This amendment would clarify the Code to resolve a split in the case law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7. The problem arises because in chapter 13 (and chapter 12), any property acquired after the petition becomes property of the estate, at least until confirmation of a plan. Some courts have held that if the case is converted, all of this after-acquired property becomes part of the estate in the converted chapter 7 case, even though the statutory provisions making it property of the estate do not apply to chapter 7. Other courts have held that property of the estate in a converted case is the property the debtor had when the original chapter 13 petition was filed.
>
> . . .
>
> This amendment overrules the holding in cases such as *Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991) [(finding that real estate inherited by a Chapter 13 debtor post-petition but pre-conversion was part of the converted Chapter 7 estate) and adopts the reasoning of In re Bobroff, [(finding tort claims that accrued post-petition, pre-conversion were NOT part of the converted Chapter 7 estate)] 766 F.2d 797 (3d Cir. 1985). However, it also gives the court discretion in a case in which the debtor has abused the right to convert and converted in bad faith, to order that all property held at the time of conversion shall constitute property of the estate in the converted case.

H.R. Rep. No. 835 (1994).

The report also included an illustration of the "serious disincentive to file Chapter 13 filings" it sought to eliminate with § 348(f):

> [A] debtor who had $10,000 equity in a home at the beginning of the case, in a State with a $10,000 homestead exemption, would have to be counseled concerning the risk that after he or she paid off a $10,000 second mortgage in the chapter 13 case, creating $10,000 in equity, there would be a risk that the home could be lost if the case were converted to chapter 7 (which can occur involuntarily). If all of the debtor's property at the time of conversion is property of the chapter 7 estate, the trustee would sell the home . . . to realize the $10,000 in equity for the unsecured creditors and the debtor would lose the home."

Id.

The Trustee now asks the Court to find that § 348(f) creates the opposite legal effect than the legislators who crafted it intended. *Id.* Instead of eliminating a disincentive to Chapter 13, finding that increases in post-petition pre-conversion equity and appreciation of value inure to the benefit of the estate, would perpetuate this disincentive to Chapter 13 debtors who wish to convert to a Chapter 7 bankruptcy. Such a holding would contravene Congress' decisions to shield post-petition wages from creditors in a converted Chapter 7 case, and to give Chapter 13 debtors a right to convert to Chapter 7 "at any time," 11 U.S.C. § 1307(a); *see also* 11 U.S.C. § 348(f)(1)(A); *see also Harris v. Viegelahn,* 575 U.S. 510 (2015). Therefore, the legislative history and policy rationale underling §348 further support the outcome to which a textual analysis already points: the pre-conversion house-sale proceeds are not property of the Chapter 7 estate and should inure to the benefit of the Debtor. *Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1225 (10th Cir., 2022).

II. THE TRUSTEE'S POWER TO AVOID AND RECOVER PREFERENTIAL TRANSFERS UNDER II U.S.C. §§ 547, 550 ARE NOT PROPERTY OF THE ESTATE THAT MAY BE SOLD.

The Trustee may not sell her ability to avoid and recover transfers under 11 U.S.C. §§ 547 and 11 U.S.C. § 550 of the Bankruptcy Code because the Code creates this right of action specifically for the benefit the entire bankruptcy estate, not for the benefit of a single creditor.

The Trustee can invoke her "avoidance powers…only in narrow circumstances," as provided in § 544 through § 553 of the Code. *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1663 (2019). § 547 allows the trustee to avoid any transfers of a debtor's interest in property made within ninety days of the petition date, or within one year of the petition date for transfers made to insiders. 11 U.S.C. § 547(b). Throughout the proceedings in this case, the Debtor has transparently disclosed that he made transfers to his mother, an insider, within one year of filing for bankruptcy, in the aggregate amount of $20,000. R.7, 9. § 550 provides that, "to the extent that a transfer is avoided" under § 547, "the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property…" 11 U.S.C. § 550(a).

§ 547 serves two basic policies. *Union Bank v. Wolas*, 502 U.S. 151, 160 (1991) (citation omitted). First and most importantly, § 547(b) advances equality of distribution among creditors, a "central policy" of the Code, by preventing the debtor from "favoring one creditor over others by transferring property shortly before filing for bankruptcy." *Begier v. IRS,* 496 U.S. 53, 58 (1990). Given that § 547(b) seeks to preserve the property of the estate, the "'property of the debtor' subject to the…. provision is best understood as that property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings." *Id*. § 547(b) further serves the policy goal of discouraging creditors from "racing to the courthouse to dismember the debtor during his slide into bankruptcy," a goal which, if achieved, can enable the debtor "to work his way out of a difficult financial situation through *cooperation* with *all* of his creditors." *Union Bank*, 502 U.S. at 161 (emphasis added) (citation omitted).

The Trustee's avoidance and recovery powers under § 547 and § 550 are not property of the estate that the Trustee may sell to Eclipse. The plain language of the Code dictates that the

Trustee alone has the right to exercise avoidance and recovery powers under § 547 and § 550, and these powers do not fall within the definition of "property of the estate" under § 541(a). Expanding § 541(a) to include the Trustee's powers under § 547 and § 550 as property of the estate creates absurd results and conflicts with other code provisions, such as § 541(a)(3) and § 550(a). Allowing the Trustee to sell her powers under § 547 and § 550 clashes with her role as a neutral fiduciary and circumvents the Code's policy of equitable distribution, and holding otherwise would encourage predatory behavior by creditors. Thus, the Trustee's avoidance powers are not property of the estate that she may sell to the benefit of a single creditor.

A. The plain language of the Code dictates that the Trustee alone has the right to exercise avoidance and recovery powers under § 547 and § 550, and these powers are not property of the estate under § 541(a).

The Thirteenth Circuit correctly held that the Code's plain language dictates that the Trustee alone is granted the right to exercise avoidance and recovery powers, and that these powers are not property of the estate that the Trustee may sell. R. 19-21. This Court has directed that "when the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (citation omitted) (internal quotation marks omitted). In doing so, this Court has recognized that Congress "says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992). The relevant statutory language of § 547 states, "…the trustee may…avoid any transfer of an interest of the debtor in property…" 11 U.S.C. § 547(b). The relevant statutory language of § 550 similarly states, "…the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property…" 11 U.S.C. § 550(a).

This Court has held that, when the Code specifies that "the trustee" is granted the right to invoke certain provisions, this right belongs to the trustee alone. *See Hartford Underwriters*, 530 U.S. at 6-7. The Court's decision in *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.* dealt specifically with § 506(c)'s conferral of powers to trustees, pointing to several general contextual features of the Code that indicated "exclusivity [to trustees] is intended" and that trustees have a "unique role" in bankruptcy proceedings. *Id*. Pointing to other Code sections, such as §502(a) and §503(b)(4), where Congress broadly described the parties authorized to act as "part[ies] in interest" or "entit[ies]," the Court reasoned that "[t]he broad phrasing of these sections, when contrasted with the use of 'the trustee' in § 506(c), supports the conclusion that entities other than the trustee are not entitled to use § 506(c)." *Id*. (citing *Rusello v. U.S.*, 464 U.S. 16, 23, 78 (1983)).

§ 547 and § 550 specifically grant "the trustee" the right to avoid and recover preferential transfers; thus, this right belongs exclusively to the Trustee and cannot be sold to Eclipse as property of the estate. 11 U.S.C. §§ 547(b), 550(a). *Hartford Underwriters* examined § 506(c)'s granting of rights to the trustee, and § 547(b) and § 550(a) similarly designate that "the trustee may" exercise the powers conferred in these sections. *Id*. Instead of broadly describing the parties authorized to act as it did in other provisions of the Code like § 502(a) and § 503(b)(4), here, Congress specifically named that the Trustee could exercise the powers granted under § 547 and § 550. *See* 11 U.S.C. §§ 502(a), 503(b)(4), 547(b), 550(a). Given the Trustee's unique role in bankruptcy proceedings and Congress' choice to specifically grant the Trustee avoidance and recovery rights under § 547 and § 550, the Thirteenth Circuit correctly held that the Trustee cannot sell her avoidance powers to Eclipse as property of the estate, because she is the only party authorized to use them. R. 19.

Additionally, the Trustee's right to avoid and recover preferential transfers under § 547 and §550 are not causes of action included in the property of the estate under § 541(a)(1). *Guttman v. Fabien (In re Fabien),* 458 B.R. 235, 258 (Bankr. D. Md. 2011); *See Official Comm. Of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 243 (3d Cir. 2000). As stated in § 541, the bankruptcy estate is comprised of "all legal or equitable interests *of the debtor* in property as of the *commencement of the case*." 11 U.S.C. § 541(a)(1) (emphasis added). These interests include the debtor's pre-petition causes of action. *See In re Cybergenics Corp*., 226 F.3d at 243. While the trustee's avoidance and recovery powers are "causes of action," avoidance claims are "independent of, and separate from, prepetition causes of action possessed by the debtor outside of bankruptcy [because]… [t]hese actions arise *after* the petition date, and therefore are not themselves property of the estate." *Guttman*, 458 B.R. at 258. Avoidance claims do not represent an "interest of the debtor in property" under § 541(a) but, rather, are rights explicitly given to the trustee. *Id.*

The Trustee's powers to avoid and recover the alleged preferential transfers made by Mr. Clegg to Pink were not pre-petition causes of action and thus did not become property of the estate upon commencement of this case. While Mr. Clegg had an interest in the property prior to its pre-petition transfer to Pink, he had no interest in avoidance or recovery causes of action, as the avoidance claims did not and could not exist prior to the Petition Date. The Code gives the Trustee alone the right to avoid and recover transfers upon the filing of the petition. R. 20. Thus, because the Trustee's powers under § 547 and § 550 do not represent a pre-petition property interest of Mr. Clegg, the plain language of the Bankruptcy Code precludes the avoidance claims from being property of the estate under § 541(a)(1) and, therefore, disallows the Trustee from selling such claims.

The Trustee's avoidance powers also fail to constitute property of the estate under § 541(a)(7). *See Moyer v. ABN AMRO Mortg. Group Inc. (In re Feringa)*, 376 B.R. 614, 624 (Bankr. W.D. Mich. 2007). Under § 541(a)(7), "any interest in property that the *estate acquires* after commencement of the case" is included in property of the estate. 11 U.S.C. § 541(a)(7) (emphasis added). The estate in a Chapter 7 case exists separately from the debtor, and "§ 541(a)(7) covers only property that the *estate itself* acquires after the commencement of the bankruptcy proceeding." *Osherow v. Wells Fargo Home Mortg., Inc. (In re Rhinesmith)*, 450 B.R. 630, 632 (Bankr. W.D. Tex. 2011) (citation omitted). The trustee's avoidance abilities are statutorily created powers "which come into existence as of the filing of the case." *Wagner v. Christiana Bank & Trust Co. (In re Wagner)*, 353 B.R. 106, 113 n.4 (Bankr. W.D. Pa. 2006). The trustee's avoidance power is not an interest in property itself. *In re Feringa*, 376 B.R. at 624.

The Trustee's power to avoid and recover the alleged preferential transfers made to Pink is not an interest in property that the estate acquired post-petition, and thus cannot be construed as property of the estate under § 541(a)(7). The trustee's avoidance powers came to existence as of the filing of the case; thus, the Trustee's right to assert an avoidance claim does not align temporally with § 541(a)(7). Further, the Trustee's avoidance powers under § 547 and § 550 are not interests in property, nor are they "acquired" by the estate itself. Rather, the Trustee's avoidance power is a statutorily created right of action that belongs to the trustee alone. Thus, the Thirteenth Circuit correctly held that the Trustee's avoidance powers under § 547 and § 550 cannot be construed as property of the estate under § 541(a)(7). R. 21.

B. Characterizing the Trustee's avoidance and recovery powers under § 547 and § 550 as property of the estate creates absurd results and conflicts with other Code provisions.

The Thirteenth Circuit correctly held that § 541 should not be interpreted so broadly as to include the Trustee's avoidance powers as property of the estate because, when read in context of the Code as whole, this interpretation would create absurd results and conflicts with other Code provisions. R. 21. A plain reading of § 541 demonstrates that the Trustee's avoidance and recovery powers under § 547 and § 550 are not interests of the debtor that become property of the bankruptcy estate. However, this Court has noted that "Congress intended a broad range of property to be included in the estate," and that § 541(a) should be viewed as "a definition of what is included in the estate, rather than as a limitation." *U.S. v. Whiting Pools, Inc.*, 462 U.S. 198, 203-204 (1983). Thus, it is necessary to interpret the statutory language in the context of the Code as a whole because "[s]tatutory language…cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Servs.*, 566 U.S. 93, 101 (2012) (citation omitted).

1. Judicial precedent interpreting § 547 and § 550 excludes the Trustee's avoidance and recovery powers from the bankruptcy estate because individual creditors do not have standing to recover an avoidance claim.

Numerous courts have prohibited the sale of avoidance actions created by § 547, noting that individual creditors do not have standing to assert avoidance claims themselves. *Briar Cap. Working Fund Cap., LLC v. Remmert*, No. 4:18-CV-2867, 2022 U.S. Dist. LEXIS 163689, at *17 (S.D. Tex. Sept. 12, 2022) (collecting cases). "The cases recognize a distinction 'between avoidance claims that the bankruptcy statute creates specifically for the trustee and pre-existing claims inherited from creditors under § 544(b).'" *Id*. at *16 (citation omitted). In *In re McGuirk*, the court explained,

> a trustee's avoidance powers, including those under § 547…are unique statutory powers intended to benefit the estate, not a single creditor. Standing to assert actions…to recover preferences…is limited to the trustee, and individual creditors have no standing to bring such actions except through the trustee…

In re McGuirk, 414 B.R. 878, 879 (Bankr. N.D. Ga. 2009).

Where courts have held that a trustee may sell its Chapter 5 avoidance powers as property of the estate, the cases have often specifically concerned causes of action that existed outside of bankruptcy which the trustee inherited from creditors. *See, e.g.*, *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 261 (5th Cir. 2010); *See Morely v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427 (1st Cir. 2007); *Nat'l Tax Credit Partners, L.P. v. Havlik*, 20 F.3d 705 (7th Cir. 1994). This is a notable distinction, as these types of avoidance claims "are unique among the trustee's avoidance powers, because they do not create a cause of action, but allow the trustee to step into the shoes of a creditor with an existing claim." *Cedar Rapids Lodge & Suites, LLC v. Seibert*, No. 14-CV-4839, 2018 U.S. Dist. LEXIS 47912, at *10 (D. Minn. Feb. 7, 2018). Conversely, § 547 *creates* a cause of action specifically for the trustee which, without the initiation of bankruptcy proceedings, would not otherwise exist. *See* 11 U.S.C. § 547(b).

Interpreting the Trustee's avoidance and recovery powers under § 547 and § 550 as property of the estate that may be sold to Eclipse would absurdly allow Eclipse to purchase claims which it has no standing to assert or recover for its own benefit. The Trustee's avoidance powers under § 547 are unique statutory powers. The Trustee has not inherited claims that exist outside of bankruptcy, and she alone has the standing to assert actions to recover preferences for the benefit of the estate. The Thirteenth Circuit properly determined that Eclipse "cannot ever use" the avoidance powers conferred to the Trustee under § 547 and § 550; thus, the Trustee cannot sell her avoidance claims to Eclipse as property of the estate. R. 19.

2. Allowing the Trustee to sell her avoidance and recovery powers under § 547 and § 550 to a single creditor is at odds with § 550's requirement that a trustee recover avoidance claims for the benefit of the estate.

A single creditor cannot bring an independent avoidance action on its own behalf. *See, eg.*, *Brekelmans v. Salas (In re Salas)*, No. 318-02662, 2020 Bankr. LEXIS 3408, at *11-*14 (Bankr. M.D. Tenn. Dec. 7, 2020); *In re Clements Mfg. Liquidation Co., LLC*, 558 B.R. 187, 188-189 (Bankr. E.D. Mich. 2016) (collecting cases). § 550(a) permits that when a transfer is avoided, "the trustee may recover, *for the benefit of the estate*, the property transferred, or, if the court so orders, the value of such property…" 11 U.S.C. § 550(a) (emphasis added). While courts have approved creditors bringing avoidance actions acting on behalf of the entire estate, the sale of "avoidance claims…is not permitted if the creditor intends to pursue the claims on its own behalf." *Republic Credit Corp. I v. Boyer (In re Boyer)*, 372 B.R. 102, 105 (D. Conn. 2007).

The Trustee's avoidance and recovery powers under § 547 and § 550 should not be construed as property of the estate that the Trustee may sell to Eclipse because Eclipse would use the claims for its own benefit, rather than for the benefit of the estate as required by § 550(a). Nothing in the record suggests that Eclipse seeks the court's approval to bring the avoidance claims on behalf of the entire estate. R. 3-35. Instead, as noted by the Thirteenth Circuit, the Trustee's sale of her avoidance powers to Eclipse would merely allow Eclipse "to recover *for its own benefit*, not for the estate and its creditors." R. 23. Thus, interpreting the Trustee's avoidance and recovery powers as property of the estate that may be sold to Eclipse circumvents the language of § 550, which clearly states that avoided transfers may be recovered for the benefit of the estate, not for the benefit of a single creditor such as Eclipse.

3. To construe the Trustee's avoidance and recovery powers under § 547 and § 550 as property of the estate under § 541(a)(1) or § 541(a)(7) would render § 541(a)(3) superfluous.

Construing a trustee's avoidance and recovery powers under § 547 and § 550 as property of the estate under § 541(a)(1) or § 541(a)(7) renders § 541(a)(3) superfluous. *See Steffen v. Gray, Harris & Robinson, P.A.*, 283 F. Supp. 3d 1272, 1284 n.24 (M.D. Fla. 2003); s*ee* 11 U.S.C. § 541(a)(3). § 541(a)(3) states that the estate is comprised of "any interest in property that the trustee recovers under…§ 550…" 11 U.S.C. § 541(a)(3). As this Court has explained, "it is a cardinal principle of statutory construction that a statute ought…to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation omitted). Further, "the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *City of Chicago v. Fulton*, 141 S. Ct. 585, 591 (2021) (citation omitted).

The Trustee's avoidance and recovery powers under § 547 and § 550 should not be interpreted as property of the estate under § 541(a) because it improperly renders §541(a)(3) superfluous. § 541(a)(3) states that property of the estate includes property recovered from avoidance actions under § 550, yet, if avoidance actions themselves are property of the estate under § 541(a)(1), this provision is unnecessary. If avoidance claims are property of the estate that the Trustee may sell, then it follows that the property recovered by those avoidance actions is property of the estate, and § 541(a)(3) is thus rendered meaningless. Interpreting § 541(a) to include avoidance claims as property of the estate would render a provision in the very same section of the Code superfluous, thus avoidance actions should not be interpreted as property of the estate under § 541(a).

C. The Trustee's avoidance and recovery powers under § 547 and § 550 should not be construed as property of the estate that the Trustee may sell because such a construction would subvert underlying policies and principles of the Bankruptcy Code.

The Thirteenth Circuit correctly held that the purpose and policies behind the Bankruptcy Code do not support constructing the Trustee's avoidance powers as property of the estate that may be sold to Eclipse. R. 23-24. To construe the Trustee's avoidance powers as property of the estate would be to "adopt an interpretation that compromises the integrity of the bankruptcy system by allowing creditors like Eclipse to pursue personal vendettas using powers intended to be utilized by a neutral trustee." R. 24. This Court should avoid setting a potentially dangerous precedent that would allow creditors to usurp the role of trustees to serve their personal agendas.

Interpreting the trustee's avoidance powers as property of the estate that can be freely bought by creditors would contravene the trustee's role as the representative of all creditors and the Code's policy of equality of distribution. *In re Boyer*, 372 B.R. at 106. The Code specifically grants the *trustee* the power to avoid a preference because "only the trustee…represents the interests of all the creditors in maximizing the value of the debtor's estate." *Id*. Further, "it is feared that by allowing one creditor to buy a claim from the trustee and pursue that claim on his own behalf, that creditor may be allowed to recover more of the estate's assets than would otherwise rightfully be due to that creditor." *Id*. Given the trustee's "unique role as an independent fiduciary," allowing a creditor "to go forward in the Chapter 7 trustee's stead could facilitate a creditor 'hijacking' a Chapter 7 bankruptcy case in a manner that Congress did not envision." *Reed v. Cooper (In re Cooper)*, 405 B.R. 801, 812 (Bankr. N.D. Tex. 2009).

Additionally, allowing the Trustee here to sell her avoidance powers to Eclipse as property of the estate would undermine the Code's limitations on avoidance actions. *See Mission Prod. Holdings v. Tempnology, LLC*, 139 S. Ct. 1652, 1663 (2019). A general principle of bankruptcy is that the estate cannot possess anything more than the debtor itself did outside of bankruptcy, as "a debtor's property does not shrink by happenstance of bankruptcy, but it does not expand, either." *Id.* (citation omitted). This Court recognized that the Code places "stringent limits" on avoidance actions, keeping them "cabined—so they do not threaten the rule that the estate can take only what the debtor possessed before filing." *Id*.

Construing the Trustee's ability to avoid and recover the alleged preferential transfers as property of the estate that is essentially "up for grabs" to creditors like Eclipse compromises the Trustee's unique role as a neutral party and minimizes the Code's central policy of equality of distribution. Eclipse was "livid, to say the least," when it learned of Mr. Clegg's donation of a portion of its loan to the VFW during his Chapter 13 case, and, as such, Eclipse initiated an adversary proceeding under section § 523(a)(2)(A) along with an objection to Mr. Clegg's plan under section § 1325(a)(3). R. 7-8. It then took weeks of negotiation for Eclipse to reach a settlement with Mr. Clegg and the Chapter 13 trustee. R. 8. There is nothing in the record to suggest that Eclipse attempted to renegotiate with Mr. Clegg regarding his payments after both his business and his health collapsed under the unprecedented weight of the Covid-19 pandemic. R. 3-35. Instead, Eclipse commenced foreclosure proceedings on Mr. Clegg's business and proceeded to attempt to purchase both Mr. Clegg's home and the alleged preference claim against Pink when the case was converted. R. 8-9. Given these events, the Thirteenth Circuit aptly characterized Eclipse's actions as a "personal vendetta" against Mr. Clegg and found that enabling the Trustee to sell her avoidance powers to a creditor that has exhibited these relentless behaviors would create a dangerous precedent for future bankruptcies. R. 24. The Trustee is an independent fiduciary with a duty to all of Mr. Clegg's creditors, like Pink and the credit card agencies, so allowing Eclipse to "hijack" this Chapter 7 case and recover for its benefit alone would fail to demonstrate to these other creditors that the Trustee also represents their interests.

Finally, expanding the definition of property of the estate to include the Trustee's avoidance and recovery powers under § 547 and § 550 conflicts with the bankruptcy principle that the estate cannot possess more than the debtor itself did outside of bankruptcy, and allowing the sale of these powers to creditors expands avoidance powers that are purposefully limited by the Code. As noted by the Thirteenth Circuit, Mr. Clegg did not possess an interest in an avoidance action outside of bankruptcy. R. 20. Thus, the debtor's property cannot expand to include an avoidance action so that it may be sold to Eclipse by the Trustee. Such an expansive interpretation of estate property and who may exercise the Trustee's statutorily granted avoidance powers would be at odds with the Code's tight limitations on avoidance actions in general and would work against the policy rationales underlying the Code.

CONCLUSION

For the foregoing reasons, this Court should find in favor of Respondent, Mr. Eugene Clegg, and affirm the decision of the Court of Appeals for the Thirteenth Circuit.