No. 23-0115

IN THE

Supreme Court of the United States

OCTOBER TERM, 2023

IN RE EUGENE CLEGG, DEBTOR

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER,

V.

EUGENE CLEGG, RESPONDENT.

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

BRIEF FOR THE PETITIONER

TEAM NUMBER 13
COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

I. Whether post-petition, pre-conversion appreciation in equity belongs to the bankruptcy estate or the debtor upon conversion from chapter 13 to chapter 7.

II. Whether a chapter 7 trustee may sell their section 547 & 550 avoidance actions as property of the bankruptcy estate in order to satisfy their obligations under the Bankruptcy Code.

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OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 22-0359 and reprinted starting at Record 3. The United States Bankruptcy Court for the District of Moot decided in favor of Eugene Clegg. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed.

STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived pursuant to the Rules of the Duberstein Bankruptcy Moot Court Competition.

PERTINENT STATUTORY PROVISIONS

This action implicates statutory construction of certain provisions of Title 11 of the United States Code.

The relevant portion of 11 U.S.C. § 348(f)(1) provides:

> **(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

The relevant portion 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.
> **(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
> **(7)** Any interest in property that the estate acquires after the commencement of the case.

The relevant portion of 11 U.S.C. § 547 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—
> (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;

The relevant portion of 11 U.S.C. § 550 provides:

> (1) 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

The relevant portion of 11 U.S.C § 704 provides:

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

The relevant portion of 11 U.S.C § 363 provides:

> **(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

The relevant portion of 11 U.S.C. § 926 provides:

> (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

STATEMENT OF FACTS

Cpl. Eugene Clegg, (the "Debtor") retired from the United States Army in 2011. Less than a year after retirement, the Debtor received 100% membership interest in The Final Cut, LLC ("Final Cut"), from his mother Emily "Pink" Clegg ("Pink"). At the time, Final Cut had no liabilities. Final Cut owned and operated a successful single-screen movie theater in the City of Moot. The Debtor's only source of income was a salary from Final Cut.

In 2016, the Debtor borrowed $850,000 (the "Loan") through Final Cut from Eclipse Credit Union ("Eclipse") to renovate the theater and its ornamental ceiling. Eclipse was given first priority liens on Final Cut's real and personal property and the Debtor effected an unconditional unsecured personal guaranty with an unlimited amount.

To avoid extra labor costs, the Debtor and local veterans assumed most of the renovation on the theater. In gratitude to the local veterans, the Debtor donated the remainder of the Loan, close to $75,000, to the Veterans of Foreign Wars (the "VFW") in 2017. Eclipse was not aware of this donation at the time. After reopening with new renovations, Final Cut was profitable for three years.

In March 2020, in response to the COVID-19 pandemic, the Governor of the State of Moot issued a stay-at-home order for residents. Consequently, the theater closed its doors and suspended operations for nearly a year. On September 8, 2020, the Debtor obtained an unsecured loan of $50,000 from Pink to stay afloat. The theater reopened in February 2021, but patron attendance did not recover to pre-pandemic numbers. Facing diminishing profits, the Debtor decided to forgo taking a salary. Unfortunately, this adjustment proved insufficient and the financial downpour became increasingly difficult for the Debtor to manage. The Debtor failed to make his mortgage payments served by Another Brick in the Wall Corporation (the "Servicer") for several months

and incurred significant credit card debt. After several months, Servicer began foreclosure proceedings on the home.

On December 8, 2021 (the "Petition Date"), the Debtor petitioned for relief under chapter 13 of the Bankruptcy Code to save his home. Under Schedule A/B, an appraisal of the Debtor's home found the value to be $350,000. Schedule D determined a non-contingent, liquidated, and undisputed secured debt of $320,000 owed to the Servicer. Schedule E/F and Schedule H included an unknown amount of contingent and unliquidated unsecured debt owed to Eclipse. On Schedule C, the Debtor asserted the maximum amount, $30,000, for the state of Moot, of the state law homestead exemption. The Debtor disclosed his payments made to Pink within one year of the Petition Date amounting to $20,000.

The initial chapter 13 plan prescribed a three-year payment plan to creditors. The Debtor stipulated that all of the income from Final Cut would be used to fund the plan, because at this time all parties involved were hopeful about Final Cut's future profits. The Debtor planned to pay the mortgage arrears and make monthly payments to Servicer through a trustee pursuant to sections 1322(b)(5) and 1326(c). According to the chapter 13 plan, the Debtor's home was valued at $350,000. Because of the homestead exemption, the home retained equity from the Petition Date.

While discussing the chapter 13 plan, Eclipse became aware of the donation to VFW. As a result, Eclipse brought an adversary proceeding against the Debtor requesting the Loan related debt be declared non-dischargeable under section 523(a)(2)(A). After complaint from the chapter 13 trustee that the plan did not satisfy section 1325(a)(4), because the rule requires that each creditor receive no less than they would otherwise receive in a chapter 7 liquidation. 11 U.S.C. § 1325(a)(4). To resolve the trustee's objection, the plan was updated to increase payments to creditors by $20,000 to balance the preferential transfer to Pink with the other creditors of the

estate. The chapter 13 trustee agreed to this amendment and stated she would not seek to avoid and recover the payments to Pink made prior to the Petition Date. Eclipse raised another objection to the plan on a good faith basis. *See* 11 U.S.C. § 1325(a)(3). After negotiation, Eclipse withdrew their objections and agreed to a claim of $150,000 with $25,000 regarded as non-dischargeable regardless of conversion. The plan was confirmed by the bankruptcy court on February 12, 2022.

For eight months, the Debtor made steady payments in accordance with the plan. In September 2022, the Debtor contracted long-COVID and could not work at the theater. After continued financial strain, Final Cut permanently closed its doors in October 2022. Without any income from Final Cut, the Debtor was unable to continue payment under the chapter 13 plan. In consequence, Eclipse brought foreclosure proceedings against the Debtor. Facing dismissal of the case with no income to survive impending collection efforts, the Debtor chose to convert to chapter 7. *See* 11 U.S.C. §§ 348, 1307. Before conversion was completed, the chapter 13 trustee disclosed that $10,000 was distributed to Servicer under the plan, and the Debtor received the funds that were held in reserve for Eclipse.

The chapter 7 conversion was ordered by the bankruptcy court and Vera Lynn Floyd ("Floyd") was appointed as trustee. The Debtor signaled in his statement of intention that he planned to reaffirm his mortgage debt and continue to stay in the home. During the required meeting of the creditors, the Debtor stated homes in his area were selling at a higher rate. After an appraisal of the Debtor's home, Floyd confirmed its equity had appreciated by $100,000 since the Petition Date. In accordance with the duties of the trustee under section 704(a)(1), Floyd started promoting the home for sale to maximize the estate's value. 11 U.S.C. § 704(a)(1). Eclipse offered to buy the home and the preference claims against Pink for $470,000. Understanding Eclipse's offer maximized the value of the assets and benefited the creditors of the estate, Floyd filed a Sale

Motion to sell the home and alleged preference claims to Eclipse, permitted by section 363(b). 11 U.S.C. § 363(b).

The Debtor challenged the motion, arguing any post-petition, pre-conversion increase in equity inured to his benefit and Floyd could not sell his home. The Debtor also argued that Floyd's ability to avoid and recover transfers was not sellable under sections 547 and 550. The bankruptcy court found for the Debtor on both issues, and the Thirteenth Circuit affirmed. Floyd filed a timely appeal of the Thirteenth's judgment.

STANDARD OF REVIEW

The standard of review for issues of law is *de novo*. *See*, e.g., *In re Chicago Mgmt. Consulting Grp.*, 929 F.3d 804, 809 (7th Cir. 2019). Under a de novo standard of review, the reviewing court decides an issue as if the court were the original trial court in the matter, declining to defer to the lower courts. *See*, e.g., *Razavi v. Comm'r of Internal Reven*ue, 74 F.3d 125, 127 (6th Cir. 1996).

SUMMARY OF THE ARGUMENT

Post-petition, pre-conversion appreciation belongs to the chapter 7 estate because the plain meaning of the Bankruptcy Code boldly supports this conclusion and appreciation in equity is not a distinct property interest separate from the property itself. The Thirteenth Circuit erred by reading exclusion of appreciation into the Code. Two circuits accepted plain meaning and held post-petition, pre-conversion is a proceed that inures to the estate. Even the legislative history does not sustain the view Congress intended to exclude appreciation in value from a converted estate. The Thirteenth Circuit quotes an appreciation hypothetical made reality in this case that was not addressed by the finalized amendment. Section 348(f)(1) only excludes property *first* acquired during the chapter 13 estate and does not apply to property acquired before the petition date. The

Debtor's homestead exemption also does not bar the estate from recovering assets above the statutory limit.

As an inherent characteristic of a home, market value is indiscernible without the home. The Thirteenth Circuit's misguided distinction between market value and the home is based on a misconstrued assumption that inuring appreciation to the estate would unjustly penalize the Debtor. The bad faith provision allows the court to penalize bad faith debtors by establishing property of the estate from the conversion date. This provision does not apply here because the home was acquired pre-petition. The Thirteenth Circuit wished to reward the Debtor for his good faith conversion by inuring the change in market value to him. Applied broadly, this line of reasoning could detrimentally affect debtors where market value depreciates. An estate could theoretically make the Debtor responsible for the loss of value which doesn't occur when change in market value is inured to the estate.

As it relates to the sale of chapter 7 trustee avoidance actions, the Thirteenth Circuit erroneously restricted Floyd's ability to fulfill her duties under the Code. The Debtor seeks to avoid sale of these actions to prevent equitable distribution among the creditors of the bankruptcy estate. In accordance with bankruptcy law, those funds must be distributed pro rata among the estate's creditors. Sections 541 and 547 are designed to complement each other when evaluating what property of the debtor also constitutes property of the estate. Plain language interpretation dictates that section 541 defines the scope of "property of the estate," while section 547 establishes that these causes of action are property of the debtor. Thus, preferential transfer actions under section 547 are considered property of the estate. That established, we then apply section 550. Section 550 is the only way the funds can be recovered and returned to creditors, and its application is valid once a transfer is avoided. These circumstances warrant the application of

section 926 and section 363(b), permitting the trustee to sell property of the estate with court approval. As the chapter 7 trustee, Floyd must be able to sell these actions to generate proceeds within the financially distressed estate in compliance with section 704(a) of the Code.

The Debtor's manipulation of the language in these rules would yield an absurd result, as Congress did not expressly limit the exercise of these avoidance actions solely to the trustee. When a trustee is unwilling or unable to pursue an avoidance cause of action, they can sell the action to a creditor and allow that creditor to act in the trustee's stead. This principle has been affirmed by the Supreme Court and multiple circuits. In conclusion, prevention of this sale contradicts the Code and the objectives set forth in Chapter 7, which aims to expedite a debtor through bankruptcy while maximizing the estate to satisfy outstanding debts to creditors. Without the funds generated by the Sale Motion, the Debtor's estate will not be able to continue through bankruptcy at the required pace, hindering the Debtor's ability to meet his financial obligations.

ARGUMENT

This Court should reverse the decision of the Thirteenth Circuit Court of Appeals because post-petition pre-conversion appreciation constitutes a proceed of property that rightfully belongs to the bankruptcy estate. This Court should also reverse the circuit court's decision because a chapter 7 trustee can permissibly sell their avoidance powers to maximize the value of the bankruptcy estate and comply with their duties under the Code.

I. POST-PETITION, PRE-CONVERSION APPRECIATION IN EQUITY OF A DEBTOR'S PROPERTY VESTS TO THE BENEFIT OF THE CHAPTER 7 BANKRUPTCY ESTATE.

The Bankruptcy Code does not exclude appreciation in value from the bankruptcy estate. *In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015). As an inseparable proceed of the bankruptcy estate, appreciation in value therefore belongs to the estate. *Id.* at 515.

A. The Plain Language of the Bankruptcy Code Sufficiently Supports the Conclusion That Appreciation in Equity Belongs to The Estate.

Interpretation of the statutory text in sections 348(f)(1) and 541(a)(1) should begin and end with the plain text itself. *United States v. Ron Pair Enters.*, Inc., 489 U.S. 235, 241 (1989). The widely recognized meaning of property in bankruptcy is defined as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Section 348(f)(1) narrows this definition to specified circumstances, mandating that property of a converted estate consists of "property of the estate, as of the date of filing of the petition, that remains in the possession of … the debtor on the date of conversion". 11 U.S.C. § 348(f)(1). Respecting the plain language of the statute, any property owned on the petition date that is still in the possession of the debtor is considered property of the converted estate. The Debtor owned the home and included the valuation in his initial chapter 13 petition. Following the conversion, the Debtor still retains possession of the home. Consequently, the home constitutes property that is part of the chapter 7 estate.

Upon conversion from chapter 7 to chapter 13, chapter 13 provisions do not control. *Harris v. Viegelahn*, 575 U.S. 510, 520 (2015). This is because chapter 13 provisions only apply to cases within that chapter. 11 U.S.C. § 103(j). Once the Debtor exercised his right to convert from chapter 13 to chapter 7, the bankruptcy estate became bound to the provisions under chapter 7. Chapter 13 provisions that vest property of the estate to the debtor are no longer relevant.

1. A Plain Language Interpretation of Section 348(f)(1) and 541(a) Reveals Intentional Omission by Congress that is Persuasive.

The Ninth Circuit recently held that post-petition, pre-conversion appreciation of a home must be included as property of a chapter 7 estate after conversion. *Matter of Castleman*, 75 F.4th 1052, 1056 (9th Cir. 2023). Similar to the present facts, debtor-couple elected to convert from

chapter 13 to chapter 7 estate after chronic illness and many failed mortgage payments. *Id.* at 1054. During the interim, the home's equity increased up to $200,000. The debtor-couple challenged the sale of their home arguing that the appreciation belongs to the debtor and not the estate. *Id.* Satisfied with the plain meaning of sections 348(f)(1) and 541(a), the Ninth Circuit rightfully noted that increase in equity belongs to the estate upon conversion. *Id.* at 1055.

This conclusion was derived from the court's reasoned judgment in *Reed,* where the court determined that the broad scope of 541(a) encompasses any post-petition appreciation. *In re Reed*, 940 F.2d 1317, 1323 (9th Cir. 1991). The court highlighted the textual absence of exclusions for the appreciation in value of property from a converted estate. *Castleman*, 75 F.4th at 1057. If Congress had intended to exclude appreciation from the estate, it would have done so explicitly. *Id.* Appreciation of the Debtor's home accrues to the estate because a broad reading of section 541(a) includes appreciation of property. Without an unequivocal exclusion of value in section 348(f)(1) and 541(a), this court should follow the Code and find post-petition, pre-conversion appreciation of property acquired before the Petition Date to inure to the estate.

The Eighth Circuit found post-petition pre-conversion appreciation of a home accrues to the estate unless the appreciation resulted from earnings by the debtor after the petition date. *In re Goetz*, 651 B.R. 292, 298 (B.A.P. 8th Cir. 2023). Section 348(f)(1) does not address whether the debtor was "entitled to post-petition, pre-conversion appreciation" as a result of market changes. *Goetz*, 651 B.R at 299. Finding section 348(f)(1) did not speak to changes in market value, the Eight Circuit held the plain meaning of the statute was sufficient. *Id.* The court reasoned that compromise is a common result of legislation. *Id.* The absence of market value in section 348(f)(1) indicates the omission was intentional. *Id.* To accept the argument that appreciation inures to the

debtor and not the estate, the court must read a clarification into the statute that is not evident from the text.

2. Statutory Construction Indicates Appreciation Vests to the Estate.

Sections of the Code written specifically for converted cases overtake general sections for typical bankruptcy cases. The dissent from below correctly underlined that section 348(f)(1) supersedes section 1327(b). (R. at 26). Section 1327(b) "vests all property of the estate to the debtor" according to the confirmation plan ordered by the bankruptcy court. 11 U.S.C. § 1327(b). Under the established canon of statutory construction, the specific supersedes the general. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384-85 (1992). Section 348 governs all *converted* bankruptcy cases, with 348(f)(1) specifically governing cases converted from chapter 13. Section 1327(b) generally controls the confirmation plans in typical bankruptcy cases. Converted cases are not typical and require extra administration from the court. The extra attention needed for converted cases necessitated a separate section of the Code for those specific cases. Section 348(f)(1) is the more specific statute and, therefore, supersedes the more general approach to "all property of the estate" in section 1372(b). In addition to the absence of a conflict between the statutes, it is noteworthy that when the statute was amended in December 2010 to include section 348(f)(1), Congress had the opportunity to cross-reference section 1327(b) but declined. *Castleman*, 75 F.4th at 1057. Because section 348(f)(1) supersedes section 1327(b), the Debtor's home became property of the estate upon conversion from chapter 13 to chapter 7.

If Congress intended to exclude the value of property, it would have done so with specificity. Value of property is specifically addressed in at least fourteen areas of the bankruptcy code including sections: 348(f)(1)(B), 522(b)(3)(A), 506(a)(2), 542(a), 547(d), 554(b), 1225(a)(4), 1225(a)(5)(B)(ii), 1225(b)(1)(A), 1325(a)(4), 1325(a)(5)(B)(ii), 1325(b)(1), and 1129. *In re Adams*, 641 B.R. 147, 151 (Bank W.D. Mich. 2022). Section 348(f)(1) does not

exclude value and section 541(a)(1) only mentions legal interests and not value in property of the estate. Congress's lack of explicit exclusion is a clear indication of their intent. The Thirteenth Circuit read into the statute an exclusion that is not present.

3. Legislative History Lends No Direct Answer to the Question Presented.

Examination of legislative history is unnecessary to decide this issue. The majority below pointed to a hypothetical submitted when section 348(f)(1) was proposed.

> [A] debtor who had $ 10,000 equity in a home…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…If all 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.

H.R. REP. NO. 103-835, at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366. The hypothetical contemplated a scenario where debtors could be disincentivized from chapter 13 filings because of post-petition, pre-conversion appreciation of a property that could be liquidated to benefit the estate upon conversion. *Id.*

> The problem arises because in chapter 13 …, 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… Other courts have held that the property of the estate in a converted case is the property the debtor had when the original chapter 13 petition was filed.

Id. The final amendment did not solve the issue contemplated in the hypothetical and only limited property of the estate to property owned or acquired by the petition date. *Id.* Section

348(f)(1) only excluded property *first* acquired during a chapter 13 estate. *Castleman*, 75 F.4th at 1057-58. Because the Debtor's home was pre-petition property, it was not *first* acquired during the chapter 13 estate. Therefore, the home is a part of the estate. It logically follows that appreciation in the value of the Debtor's home also belongs to the estate.

4. The Homestead Exemption Does Not Remove a Home from the Bankruptcy Estate.

Claimed exemptions in a bankruptcy estate only exempt *interest* in the property up to the statutory limit. *Schwab v. Reilly*, 560 U.S. 770, 782 (2010). If the value of property is above the statutory limit, the estate is not required to object to preserve its ability to recover assets above the amount claimed as exempt. *Id.* The Debtor claimed his home under the homestead exemption within the State of Moot limit. (R. at 7) After the home appreciated in value, the Debtor's homestead exemption exceeded the statutory limit. Therefore, the estate still can recover the assets above the statutory limit. (*Id.) This* means that the appreciation in value of the Debtor's home accrues to the estate.

B. Appreciation is An Inseparable Property Interest that Inures to the Estate.

Value is an inherent characteristic of a home. *In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015). Value is not a separate incident or asset apart from a home. *In re Adams,* 641 B.R. 147, 151 (Bankr. W.D. Mich. 2022). Appreciation of the Debtor's home is inseparable from the home itself because the $100,000 derives directly from the home. The appreciation of equity in the home would not exist without the home. To detach a home from its market value is akin to differentiating a fruit from the essential characteristics that define it as a fruit. The separation is indiscernible.

1. Appreciation is a Proceed of Property That Inures to the Estate.

As a consequence of market forces, appreciation is a proceed of property. Pursuant to section 541(a)(6), "profits, proceeds, and offspring" of an estate include appreciation in the value of a home. *Castleman*, 75 F.4th at 1057. Property of the estate includes "any changes in its value which might occur after the filing date". *In re Goetz*, 651 B.R. 292, 298 (B.A.P. 8th Cir. 2023). Value of real estate is subject to market forces, location, and property. *Id*. All these factors are governed by or fluctuate by chance. *Castleman*, 75 F.4th at 1058.

The appreciation in value of the Debtor's home is a proceed of the property because it is a consequence of the home itself. The home must come first for the appreciation in value to occur. Appreciation is based on the location of the home, condition, and other market forces. Inherently, proceeds, offspring, and profit result from an antecedent event. In the conversion meeting with creditors, the Debtor mentioned that the value of homes in the neighborhood was increasing. Due to the location of the home and market forces, appreciation occurred. In accordance with section 541(a)(6), appreciation of the Debtor's home is a derivative proceed of the home that directly vests to the estate.

2. Appreciation Inured to the Debtor Could Result in Responsibility for Depreciation.

If appreciation of estate property inured to the debtor, depreciation in market value could adversely affect the debtor. *Castleman*, 75 F.4th at 1058. Upon conversion, a debtor is not responsible to the chapter 7 trustee for pre-conversion depreciation in value of property. *In re Lang*, 437 B.R. 70, 72 (Bankr. W.D.N.Y. 2010). Under the current bankruptcy code, the estate only benefits from the change in market value of property. The debtor is not penalized for pre-conversion decrease in value. The Debtor's argument would cut both ways and create a dangerous

precedent for future bankruptcy proceedings. Inuring changes in market value to the estate protects debtors from responsibility to the trustee and ensures creditors benefit from the estate.

3. Appreciation of Pre-Petition Property Renders the Bad Faith Provision Immaterial.

The Debtor's home was acquired pre-petition and therefore does not invoke the bad faith provision. The bad faith provision in section 348(f)(2) allows the court to include property as of the conversion date and not the original petition date. Unless the debtor converted in bad faith, property *first* acquired between the petition date and the conversion date does not become a part of the estate. *Goetz*, 651 B.R. at 296. The Thirteenth Circuit presumed the Debtor converted in good faith and would be punished if the appreciation of the home was vested to the estate. (R. at 13). Declining the plain meaning of the statute, the court reasoned Congress would not have included the bad faith provision of 348(f)(2) if it intended post-petition, pre-conversion appreciation inured to the estate. *Id.* The majority concluded inuring appreciation to the estate would make the good and bad faith distinctions of the Code insignificant. *Id.* This conclusion is based on a misconstrued fact. Bad faith provision in 348(f)(2) does not apply to the present facts. Section 348(f)(2) only penalizes a bad faith debtor by vesting property *first* acquired after the petition date into the estate. The Debtor's home was acquired before the Petition Date was included in the chapter 13 estate, so the bad faith provision does not apply.

II. SELLING A CHAPTER 7 TRUSTEE'S AVOIDANCE ACTIONS AS PROPERTY OF THE BANKRUPTCY ESTATE IS A RIGHTFUL EXERCISE OF THE TRUSTEE'S STATUTORY AUTHORITY.

Section 547 was drafted to discourage creditors from seeking litigation when a debtor is approaching bankruptcy and to provide support to the notion of equal distribution among creditors. *Union Bank v. Wolas*, 502 U.S. 151, 160-161 (1991). Both the transfer and the avoidance action

constitute property of the bankruptcy estate, so the chapter 7 trustee then has the obligation to reduce all of that property to money expeditiously in order to give creditors their shares. 11 U.S.C. § 704(a)(1). Allowing the sale of a chapter 7 trustee's avoidance actions comports with the principles underlying the Bankruptcy Code itself, the plain language of both sections 541 and 547, the trustee's statutory duties under section 704(a), and current bankruptcy court practice.

A. A Trustee is Responsible for Collecting and Selling Property of the Bankruptcy Estate Under Sections 704 and 363.

The duties imposed upon Chapter 7 trustees are enumerated in section 704(a) of the Code, which states that a trustee is responsible for collecting all property of the bankruptcy estate and reducing it to money in addition to closing the estate expeditiously in the best interests of the parties in interest. 11 U.S.C. § 704(a)(1). Section 363(b)(1) reinforces these duties, stating "a trustee may sell property of the estate with court approval." 11 U.S.C. § 363(b)(1). The responsibilities assigned to a chapter 7 trustee aim to optimize the estate's value and facilitate a swift liquidation process, enabling debtors to quickly regain financial stability. As articulated by the Thirteenth Circuit, the trustee acquires these powers upon commencement of the bankruptcy proceedings. (R. At 21). Therefore, Floyd received these powers when appointed as the chapter 7 trustee. The Thirteenth Circuit decision unjustifiably limits Floyd from fulfilling these obligations. The avoidance actions being sold to Eclipse by way of the Sale Motion would have revived the otherwise barren estate to benefit creditors and close the bankruptcy proceedings quickly, allowing the Debtor to move forward.

B. This Court Has Confirmed that "Property of the Estate" Includes Section 547 Avoidance Actions.

The Thirteenth Circuit evaluated the language of sections 547 and 541 and held that avoidance actions are not included in the phrase "property of the estate." This is an incorrect

interpretation because it fails to contextualize the statutory language. In interpreting statutes, it is a fundamental canon of statutory construction to read the statute in context, considering the surrounding language and considering the statutory language's placement within the broader statutory framework. *Roberts v. Sea-Land Services, Inc.*, 566 U.S. 93, 101 (2012). Section 547(b) allows a trustee to avoid a transfer of interest in the debtor's property made within one year of the bankruptcy filing. 11 U.S.C. § 547(b). The $20,000 transfer to Pink is preferential under the Code because the transfer: (1) occurred within one year prior to the Petition Date, (2) was made to an unsecured creditor before secured creditors, and (3) because Pink is the Debtor's relative, she is an insider, prompting application of the one-year limitation. *Id*.

Looking to section 541, property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The Supreme Court has expressly stated that section 541(a) acts "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 (1983). The Court further explained that property of the estate includes "any property made available to the estate by other provisions of the Bankruptcy Code." *Id*. at 205. This interpretation directly conflicts with that of the Thirteenth Circuit, which held that the lack of cross reference to section 547 in section 541 demonstrates congressional intent to exclude avoidance of a preferential transfer from property of the estate. (R. at 19).

This interpretation is flawed because the omission of a cross-reference to section 547 cannot feasibly illustrate an intent to exclude, that conclusion extends beyond a straightforward plain language interpretation. Additionally, this argument directly conflicts with their citing of *Lamie v. United States Trustee*, which held "[t]here is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted."

Lamie v. U.S. Tr., 540 U.S. 526, 538 (2004). In conflating the absence of a cross-reference with congressional intent, the Thirteenth Circuit is rewriting the rule rather than addressing a void created by congressional silence. There is no indication within the Code that permits congressional oversight to be interpreted as an intentional omission that effectively changes the rule application. The Thirteenth Circuit conflicts with their own citation a second time, in their argument that Congress did not intend for the pre-Code bankruptcy practices to change. *Lamie* found that "[t]he starting point in discerning Congressional intent is existing statutory text, … not the predecessor statutes." *Id.* at 534. Our interpretation is supported by existing statutory application.

The Supreme Court reached a similar result in *Patterson v. Shumate*. In *Shumate*, the Court found that property of the estate is to be read very broad in scope, and that reading includes causes of action. *Patterson v. Shumate*, 504 U.S. 753, 757 (1992). Moreover, even if the Thirteenth Circuit was correct in their interpretation, the inclusion of section 547 in section 550's cross-references still dilutes their conclusion. Moreover, section 541(a)(3) states that the created estate consists of "(a) all the following property, wherever located and by whomever held… (3) [a]ny interest in property that the trustee recovers under section…550… of this title." 11 U.S.C. § 541(a)(3).

Following the Court's reasoning, the inclusion of section 550 in section 541(a)(3) suggests that Congress erred in that omission. This is made evident in section 550(a) which allows the trustee to recover an avoided transfer for the benefit of the estate and requires that the transfer be avoided prior to recovery. The recovered proceeds from an avoidance action satisfy the claims of priority and general unsecured creditors ahead of the Debtor, ensuring adherence to the priority scheme outlined in the Bankruptcy Code. 11 U.S.C. § 550(a). If the benefits of avoiding the transfer are contingent on the application of section 550(a), the inclusion of section 550 in section 541(a)(3) appears to supplement the gap highlighted by the Thirteenth Circuit. This notion is

supported by the Thirteenth Circuit's own assertion, stating, "[w]hen it enacted the Bankruptcy Code, Congress clearly knew how to include a cross-reference to section 547, as it did so in fifteen sections." (R. at 19). If Congress knew how to include cross-references to section 547 in fifteen other sections, then an unintentional oversight makes more logical sense than an intentional exclusion. Additionally, as highlighted by the dissent, Congress devoted eleven provisions in section 541 to the exclusion of specific items from being considered property in this context. If Congress intended to exclude section 547, it could have explicitly done so. (R. at 32).

The Supreme Court tied all of these pieces together in *Begier v. IRS*. The discussion involved a similar issue to ours in determining what constitutes property of the debtor referenced in section 547. *Begier v. I.R.S.*, 496 U.S. 53 (1990). The Court held that under section 547, property of the debtor is any property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings." *Id.* at 58. Further, the Court stated that section 541 determines the scope of the phrase "property of the estate" and serves as the post-petition analog to section 547's phrase "property of the debtor." Id. at 59. Put another way, evaluation of the property of the debtor must be done by applying section 541(a)'s scope – "all legal and equitable interests of the debtor" – then adding section 547 – "property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings." 11 U.S.C. §541(a)(1); *Begier*, 496 U.S. at 58. Thus, the preferential transfer to Pink constitutes a legal and equitable interest of the Debtor which gives rise to the avoidance action, and that avoidance action is property of the bankruptcy estate which can be sold by the trustee to accomplish the goals set by chapter 7 of the Code.

1. Avoidance Actions are Causes of Action, Which are Considered Property of the Estate.

Section 926 of the Bankruptcy Code establishes that the avoidance actions, namely sections 544, 545, 547, 548, and 549, are causes of action possessed by the debtor. 11 U.S.C. § 926(a). If a creditor requests, the court can appoint a trustee to pursue said causes of action. *Id.* The Supreme Court confirmed that avoidance powers are considered chapter 5 causes of action stating that "the right to recover a post-petition transfer under §550 is clearly a 'claim'...and is 'property of the estate.'" *U.S. v. Nordic Vill., Inc.*, 503 U.S. 30, 37 (1992). Other circuits echo this notion. *Parker* from the Sixth Circuit held that "causes of action that belong to the debtor constitute property of the estate under §541(a)(1)." *In re Parker*, 499 F.3d 616, 624 (6th Cir. 2007). The Eighth Circuit in *Simply Essentials* held that the trustee's avoidance actions, whether they are brought by the trustee or by a creditor, are brought "for the benefit of the estate and therefore belong to the estate." *In re Simply Essentials, LLC*, 78 F.4th 1006, 1008 (8th Cir. 2023). Finally, the Fifth Circuit in *Moore* held that "[a] trustee may sell litigation claims that belong to the estate, as it can other estate property." *In re Moore*, 608 F.3d 253, 258 (5th Cir. 2010).

2. The Debtor Maintained an Interest in the Preferential Transfer Funds.

The Thirteenth Circuit contends that the Debtor "disposed of the funds he transferred to Pink", which destroys any interest he may have had in them. (R. at 20). This detail is arguably immaterial, as the Thirteenth Circuit later said, "the relevant inquiry is not…whether the funds the Debtor transferred to Pink remain property of the estate." *Id*. Even if this detail was relevant, the Supreme Court concluded "property of the estate includes inchoate or contingent interests held by the debtor prior to the filing of the bankruptcy." (R. at 33); *See also Segal v. Rochelle*, 382 U.S. 375, 379 (1966). The Debtor undoubtedly had interest in the initial unsecured loan from Pink pre-

petition, and retained that interest through filing for chapter 13, making the $20,000 payment toward the loan, and converting his case to chapter 7.

3. The Thirteenth Circuit's Counterarguments Are Not Persuasive.

The Thirteenth Circuit asserts that allowing sale of these actions under section 550 would benefit the purchaser rather than the estate. This is reductive of the true case at hand. (R. at 19). Eclipse is the largest creditor of the estate. Settling their claims with the Sale Motion would undoubtedly benefit the Debtor and the estate as a whole, because the largest account is considered paid. The Thirteenth Circuit points to *Official Committee of Unsecured Creditors of Cybergenics Corporation v. Chinery* from the Third Circuit for support but neglected to include that even the Third Circuit classified *Cybergenics* as dicta. The Third Circuit did not need to address the same threshold issue as our case at hand, so they left the conclusion open-ended. *Off. Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 580 (3d Cir. 2003).

C. This Court Should Adopt the Eighth Circuit's Reasoning in *Simply Essentials*.

The Debtor's estate was essentially "bereft of assets" upon Floyd's designation as Trustee. (R. at 9). Thus, in order to comply with her duties under the Code, Floyd sought out a plan to maximize the value of the estate via this sale of her avoidance actions as well as sale of the Debtor's home. The Thirteenth Circuit asserts that per *Hen House*, Eclipse would not be permitted to utilize the avoidance actions, but that is an overstatement of the case, as the court did not analyze the issue fully. (R. at 19) (citing *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6-7 (2000) ("*Hen House*")). Specifically, the Supreme Court in *Hen House* stated, "we do not sit to assess the relative merits of different approaches to various bankruptcy problems." *Hen House*, 530 U.S. at 13. The Court also discussed that the petitioner's use of cases that were found

to pre-date the Code as well as the Bankruptcy Act were not persuasive because they did not establish a bankruptcy practice that is "widespread and well recognized" enough to warrant a deeper look into the issue and a potential change of application. *Id.* at 10. A sufficient number of courts have ruled on the issue, clearly illustrating why *Hen House* is no longer instructive.

The Eighth Circuit recently held that although trustees may be the sole named party in the Code with the authority to bring an avoidance action, this does not necessarily preclude other creditors from bringing the claims if the circumstances permit. *Simply Essentials* is factually similar to our case, a chapter 7 estate that did not have the requisite funds needed to pursue avoidance actions. *In re Simply Essentials, LLC*, 78 F.4th 1006, 1008 (8th Cir. 2023). In order to generate funds for litigation of these claims, the court held the trustee may sell the causes of action. *Id*. Contrary to the Thirteenth Circuit's conclusion, the Eighth Circuit's holding is the correct interpretation. Eclipse would not be barred from bringing the claim on their own. While trustees have the primary opportunity to initiate avoidance actions, if they are unable or unwilling to bring those actions, a creditor may obtain the right to bring them instead. *Id.* The court justified this holding by asserting that the sale of avoidance actions by a trustee would be in compliance with a trustee's duty to maximize the value of the bankruptcy estate - an applicable principle with the current facts.

D. Other Circuits and Bankruptcy Law Practice Point to Allowing Sale of Avoidance Actions.

The Eighth Circuit is not alone in their decision to allow sale of avoidance actions. The Fifth Circuit in the aforementioned *Moore* case found that a single creditor can pursue chapter 5 causes of action with court approval. *See In re Moore*, 608 F.3d at 262. The Sixth Circuit stated, "a creditor who believes a suit should be commenced has the right to petition the Bankruptcy Court to compel the trustee to act, or for leave to prosecute the suit in the interests of the estate." *In re*

Trailer Source, Inc., 555 F.3d 231 (6th Cir. 2009). *Housecraft* from the Second Circuit considered a chapter 7 estate that had virtually no assets and certainly not enough assets to fund litigation of avoidance claims. The court found that both the consent and participation of the trustee in the proceedings were persuasive in considering these sales. Consequently, the court determined that permitting the sale was in the best interest of the bankruptcy estate, considering the estate's limited resources to pursue the action independently and the absence of any risk of loss to the estate. *In re Housecraft Indus. USA, Inc.*, 310 F.3d 64, 70 (2d Cir. 2002). Our case is analogous to *Housecraft* because the Debtor's estate has no assets available to litigate the causes of action, so the sale will benefit the estate by allowing Eclipse the ability to pursue their claim on their own. Additionally, Floyd has complied with all applicable bankruptcy rules such as obtaining court approval for the sale and consenting to the sale herself. Finally, the Ninth Circuit in *Silverman v. Birdsell* confronted this issue with striking similarity, the only main difference being that the sale of the avoidance actions was affirmed by the Bankruptcy Court. The court gave reason for their decision, stating "a bankruptcy trustee may sell an estate's avoidance claims to a creditor when 'the creditor is pursuing interests common to all creditors' and 'allowing the creditor to exercise those powers will benefit the remaining creditors." *Silverman v. Birdsell*, 796 F.App'x 935, 937 (9th Cir. 2020).

Bankruptcy court precedent has consistently ruled in favor of the trustee on this matter. Though for a different chapter of bankruptcy, *Metropolitan Electrical Manufacturing Company* from the United States Bankruptcy Court in the Eastern District of New York held that although the trustee is the only named party to exercise the actions, that may change when the trustee abandons claim or otherwise allows creditors to pursue the claim independently. *In re Metro. Elec. Mfg. Co.*, 295 B.R. 7 (Bankr. E.D.N.Y. 2003). This case seems to resolve the Thirteenth Circuit's

concerns over the exercise of the trustee's avoidance powers by a single creditor, stating "[p]utting an end to litigation in this bankruptcy case and distributing the funds available to creditors is in the best interests of this estate, and this benefit far outweighs any benefit in selling the Trustee's rights." *Id.* at 15. More factually similar to our case, the bankruptcy court in the Eastern District of New York held in *Greenburg* that a primary creditor in a chapter 7 case may purchase a trustee's avoidance actions. *In re Greenberg*, 266 B.R. 45, 52 (Bankr. E.D.N.Y. 2001). The estate in *Greenburg* struggled to secure funds for the litigation independently, leading the court to authorize the sale. The creditor, much like Eclipse, held the majority of the claims within the estate. Consequently, the court deemed it to be in the estate's best interest to approve the sale of the trustee's avoidance actions, recognizing it as the most lucrative option. *Id.* at 50.

The principles applied in these cases align closely with the principles that support the outcome sought by Floyd. Eclipse's intentions are fully aligned with the estate, Floyd has unequivocally granted the power to pursue the claim, and the $470,000 purchase price stands as a decisively fair and just resolution for all parties involved. All of the aforementioned Circuit and Bankruptcy Court decisions strengthen the dissent's assertion that "[b]ecause the sale eliminates the need for the Trustee to incur administrative expenses investigating and litigating the preference claim, the ultimate distribution is maximized." (R. at 35).

Overall, the sale of these avoidance actions complies not only with the plain meaning of sections 541, 547, and 550; they comply with the ideals that support the foundation of the Bankruptcy Code. Expediting chapter 7 proceedings by selling Eclipse the avoidance actions and the Debtor's home at above market price is the most effective way for Floyd to satisfy her duty under section 704(a) of the Code.

CONCLUSION

This Court should reverse the decision of the Thirteenth Circuit and hold that post-petition, pre-conversion appreciation is a proceed of property that inures to the benefit of the estate and also hold that a bankruptcy estate's avoidance actions vested in a chapter 7 trustee may be sold as property of the bankruptcy estate.

APPENDIX A

11 U.S.C. § 348. Effect of 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. § 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. § 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.[1]

(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. § 1327. Effect of confirmation.

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.
(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.
(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.