Team 19

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.

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

BRIEF FOR THE PETITIONER

TEAM NUMBER 19
Counsel for Petitioner

QUESTIONS PRESENTED

I. Under the Bankruptcy Code, whether a post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the bankruptcy estate when the case is converted from chapter 13 to chapter 7.

II. Whether, because of their statutory duty toward creditors, a chapter 7 trustee may sell the ability to avoid and recover transfers as property of the bankruptcy estate.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF JURISDICTION

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

STATEMENT OF THE CASE

I. Factual History.

Cpl. Eugene Clegg (the "Debtor") is a retired member of the United States Army. (R. at 5). The Debtor owns a 100% membership interest in The Final Cut, LLC ("Final Cut"), an entity that operates a single-screen movie theater. (R. at 5). The theater is located in the City of Moot. (R. at 5). The Debtor's only source of income was a salary from Final Cut. (R. at 5).

In 2016, the Debtor wanted to renovate the theater and used Final Cut to borrow $850,000 (the "Loan") from Eclipse Credit Union ("Eclipse"). (R. at 5). Eclipse received first-priority liens on Final Cut's real and personal property as well as an unconditional, unsecured personal guaranty in an unlimited amount. (R. at 5). Volunteer efforts brought the cost of the project down significantly, allowing the Debtor to donate approximately $75,000 in remaining loans to the Veterans of Foreign Wars (the "VFW") in 2017. (R. at 5). After completing the project, Final Cut was profitable until 2020. (R. at 6).

In March 2020, the Governor of the State of Moot declared a public health emergency due to the COVID-19 pandemic, ceasing theater operations for 1 year. (R. at 6). With no income, the Debtor borrowed $50,000 from his mother, Emily "Pink" Clegg ("Pink"), on an unsecured basis. (R. at 6). When the theater reopened in 2021, attendance was low, causing the Debtor to forgo his salary to help Final Cut with its cash flow. (R. at 6). This salary loss led the Debtor to incur significant credit card debt and miss payments on his home mortgage. (R. at 6). Another Brick in the Wall Financial Corporation (the "Servicer") serviced the mortgage. (R. at 6).

Faced with the possibility of foreclosure, the Debtor initiated proceedings under chapter 13 of the Bankruptcy Code on December 8, 2021. (R. at 6). According to an appraisal obtained days before the petition, the value of the Debtor's home was $350,000. (R. at 6). The debt to the

Servicer was valued at $320,000. (R. at 6). The debt to Eclipse was a contingent and unliquidated, unsecured debt in an unknown amount. (R. at 6). The Debtor also claimed a state law home exemption of $30,000 and disclosed payments totaling $20,000 that he made to Pink one year prior to the petition date. (R. at 6-7).

II. Procedural History.

Initially, the Debtor filed a chapter 13 plan to pay creditors over a three-year period. (R. at 7). The plan included continuing monthly payments to the Servicer with the chapter 13 trustee as the fiduciary. (R. at 7). The plan also valued the Debtor's home at $350,000 and stated that, given the secured indebtedness and homestead exemption, the Debtor had no equity in his home as of the petition date. (R. at 7). The plan was to be funded solely through the Debtor's future earnings from Final Cut. (R. at 7). The parties believed Final Cut was very close to profitability. (R. at 7).

Eclipse first found out about the Debtor's donation to VFW after the creditor's meeting. (R. at 7). As a result, it commenced an adversary proceeding to have the loan debt declared non-dischargeable under § 523(a)(2)(A). (R. at 7).

The chapter 13 trustee objected to the Debtor's plan because creditors under chapter 13 plans are required to receive no less than what they could hypothetically receive under a chapter 7 liquidation. 11 U.S.C. § 1325(a)(4); (R. at 7). If this were a liquidation, the preferential transfers to Pink would be recovered and distributed to the creditors. (R. at 7). In response, the Debtor increased the aggregate payments to the creditors by $20,000 over the plan's commitment period. (R. at 7). In a stipulation, the chapter 13 trustee agreed not to seek to avoid and recover the payments made to Pink before the petition date. (R. at 7).

Eclipse initially objected to the plan, but Eclipse, the Debtor, and the chapter 13 trustee came to an agreement. (R. at 8). Eclipse would withdraw its plan objection for an estimated claim of $150,000, $25,000 of which would be non-dischargeable even with a conversion. (R. at 8). On February 12, 2022, the bankruptcy court confirmed the Debtor's plan, including the settlement with the chapter 13 trustee and an express disclosure that all estate property vested in the Debtor. (R. at 8). The bankruptcy court also approved the settlement with Eclipse. (R. at 8).

The Debtor made timely and consistent payments under the plan until September 2022, when he contracted long-COVID, and had to stop working. (R. at 8). In October 2022, Final Cut permanently closed, and the Debtor had no income to pay off the plan. (R. at 8). The Debtor then converted the case to chapter 7. (R. at 8). The chapter 13 trustee's final report stated that she distributed $10,000 to the servicer under this plan and that she returned the funds held in reserve for Eclipse upon conversion. (R. at 8-9).

The conversion schedules and documents had the Debtor's home valued at $350,000 and disclosed the preferential transfers to Pink. (R. at 9). These documents also stated the Debtor owed Eclipse $200,000 due to the deficiency regarding his guarantee of the Loan after foreclosure. (R. at 9). The Debtor's statement of intention indicated an intent to reaffirm his mortgage debt and remain in his home. (R. at 9).

At a meeting of creditors, the Debtor mentioned that he saw homes in his neighborhood selling at a premium, as many did after the COVID-19 pandemic. (R. at 9). A new appraisal confirmed the non-exempt equity of the home increased by $100,000 since the petition date. (R. at 9). The trustee then began marketing the home for sale, consistent with their duty to creditors. 11 U.S.C. § 704(a)(1); (R. at 9). Eclipse offered to purchase the home and alleged preference claim against Pink for $470,000 total. (R. at 9). The Trustee filed a motion (the "Sale Motion") to sell the home and alleged claim to Eclipse under 363(b). (R. at 9).

The Debtor objected to the Sale Motion. (R. at 10). First, the Debtor argued that any post-petition, pre-conversion increase in his home equity should be to his benefit. (R. at 10). Thus, because there was no equity available on the Petition Date, the Trustee could not sell the home. (R. at 10). Second, the Debtor argued the Trustee's statutory ability to avoid and recover transfers under sections 547 and 550 cannot be sold. (R. at 10). The bankruptcy court ruled both issues in favor of the Debtor and denied the Sale Motion. (R. at 10). The Trustee timely appealed the court's ruling. (R. at 10). Upon the request of the parties, the disputes were certified for direct appeal to this court pursuant to 28 U.S.C. § 158(d)(2)(A). The two issues are consolidated in this appeal. (R. at 10).

SUMMARY OF THE ARGUMENT

Vera Lynn Floyd, the chapter 7 Trustee, is tasked with furthering the public's interest in resolving bankruptcy proceedings quickly, economically, and in a manner that is just. The Bankruptcy Code provides her with powers to further this interest, whereby she can reduce the Debtor's assets to money and repay the Debtor's creditors some of what they are owed. By voluntarily entering the chapter 7 case, the Debtor agreed that upon liquidation of his assets, the Trustee would distribute the proceeds to his Creditors, causing any remaining debts to be discharged and providing him with the opportunity to start anew.

The Debtor had first attempted to proceed with a chapter 13 bankruptcy case, which, had he been able to complete, would have allowed him to keep his assets. During the pendency of his chapter 13 case, his property appreciated in value. Additionally, shortly before filing for bankruptcy, he received a secured loan from Eclipse Credit Union, an unsecured loan from his mother, Pink, and had a mortgage on his property with Another Brick in the Wall Financial Corporation. The issues presented today concern whether the appreciation in value inures to the bankruptcy estate, and whether a preference action may be sold by the Trustee as a part of the bankruptcy estate.

An application of the plain meaning of §§ 348 and 541 compels the conclusion that post-petition, pre-conversion equity in a debtor's property inures to the benefit of the bankruptcy estate upon conversion from chapter 13 to chapter 7. Legislative history must only be used to determine the application of a statute when the statute's language is ambiguous, or the application of the statute's plain meaning will create an outcome at odds with the drafter's intent.

In this case, the code is clear and does not uniformly create an outcome that is at odds with the drafter's intent. Therefore, the statute applies as written, and legislative history is not to be used to reach a different result. Thus, the appreciation in value of the Debtor's property inures to the bankruptcy estate upon conversion from chapter 13 to chapter 7.

Another way for the Trustee to further their duty to maximize the bankruptcy estate is by selling preference actions. Section 547(b) governs preference actions and allows a trustee to avoid certain transfers of an interest in the debtor's property. This promotes equality in the distributions made to creditors by preventing the debtor from favoring certain creditors over others. After a trustee avoids a transfer under § 547(b), they then recover the payment, pursuant to § 550(a), and disperse the funds to the creditors.

The trustee's fiduciary duty to maximize the value of the estate can be accomplished through § 363, which provides trustees with the authority to use, sell, or lease property of the bankruptcy estate. Section 541 sets forth what is included in the property of the bankruptcy estate. This statute has been interpreted broadly to include preference actions, and the majority of circuit courts have held the same. Because the Trustee is statutorily permitted to sell the property of the estate, and because the property of the estate includes preference actions, the Trustee is permitted to sell preference actions to satisfy their fiduciary duties as trustee of the estate.

The United States Court of Appeals for the Thirteenth Circuit's decision is available at No. 22-0359 and is reprinted beginning at Record 3. The bankruptcy court decided in favor of the Debtor, and on appeal, the Thirteenth Circuit affirmed the bankruptcy court's decision.

The Trustee respectfully requests that this Honorable Court reverse the decision of the Thirteenth Circuit and hold that the appreciation of the Debtor's property during the chapter 13 case inures to the bankruptcy estate upon conversion, and that she may sell the ability to avoid and recover transfers as the property of the bankruptcy estate to fulfill her duties as the Trustee.

ARGUMENT

The U.S. Trustee Program, a component of the Department of Justice, seeks to further the public interest in just, speedy, and economical resolution of bankruptcy cases. U.S. Dep't of Just., ABOUT THE UNITED STATES TRUSTEE PROGRAM, https://www.justice.gov/ust/about-program#FT2 (last visited January 16, 2024); *In re Ventura*, 375 B.R. 103, 107 (Bankr. E.D.N.Y. 2007). Trustees accomplish this goal by maintaining the integrity of the bankruptcy process for the benefit of debtors, creditors, and the public. U.S. Dep't of Just., ABOUT THE UNITED STATES TRUSTEE PROGRAM, https://www.justice.gov/ust/about-program#FT2 (last visited January 16, 2024); *In re Ventura*, 375 B.R. at 107. The Bankruptcy Code provides honest people who find themselves in unfortunate financial situations with the opportunity for a "fresh start." *Castleman v. Burman (Castleman II)*, 75 F.4th 1052, 1055 (9th Cir. 2023) (quoting *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007)).

Chapter 13 allows debtors the opportunity to obtain a discharge of their debts while remaining in possession of their property. Under chapter 13, the debtor must file a plan, which if confirmed, allows the debtor to repay their debts over three to five years. 11 U.S.C. §§ 1306(b), 1321, 1322, 1327(b). chapter 13 offers benefits to both debtors and creditors. *See Harris v. Viegelahn*, 575 U.S. 510, 514 (2015); *Castleman II*, 75 F.4th at 1055. Debtors have the ability to retain their assets, and creditors typically receive more of the money they are owed than they would under a chapter 7 liquidation. *Harris*, 575 U.S. at 514; *Castleman II*, 75 F.4th at 1055. Unfortunately, most debtors are unable to complete their obligations under their chapter 13 plan and never reach the point where their debts are discharged. *Harris*, 575 U.S. at 514; *Castleman II*, 75 F.4th at 1055. For these situations, Congress provides the debtor with the nonwaivable right to convert their case, at any time, to one under chapter 7. *Harris*, 575 U.S. at 514 (citing 11 U.S.C. §

1307(a)); *Castleman II*, 75 F.4th at 1055. Under a chapter 7 case, in return for a discharge of their debts, the debtor's nonexempt assets are controlled by a chapter 7 trustee and may be liquidated by the trustee who then distributes the proceeds to creditors. *Marrama*, 549 U.S. at 367.

In this case, the Debtor, Eugene Clegg, successfully commenced a chapter 13 bankruptcy plan, which entailed making payments to creditors over a three-year period. (R. at 7). At the commencement of the Debtor's petition, his home was valued at $350,000, with a secured debt to his mortgage lender in the amount of $320,000. (R. at 6). The Debtor claimed a state law homestead exemption in the amount of $30,000, the maximum amount allowed in his state. (R. at 6-7). For eight months, the Debtor made timely payments. (R. at 8).

After contracting long-COVID, the Debtor was no longer able to work and was ultimately forced to close his business. (R. at 8). Lacking income to continue making payments to his creditors, the Debtor chose to convert to chapter 7. (R. at 8). At this time, homes in the Debtor's neighborhood were selling at a premium, as was consistent with the nationwide increase in home values after the COVID pandemic. (R. at 9). The chapter 7 trustee commissioned an appraisal of the Debtor's home and discovered that its non-exempt equity had increased by $100,000. (R. at 9). The effect of this increase in equity, discovered after conversion, and whether it inures to the benefit of the Debtor, or the bankruptcy estate is what is at issue here today.

The parties do not dispute the facts as set forth herein. The two issues on appeal turn on questions of law. Therefore, this Court should review both issues de novo. See, e.g. *Fox v. Hathaway (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. See, e.g. *Razavi v. Comm'r of Internal Revenue,* 74 F.3d 125, 127 (6th Cir. 1996) (quotation omitted).

I. THE STATUTE'S PLAIN LANGUAGE COMPELS THE CONCLUSION THAT UPON CONVERSION FROM CHAPTER 13 TO CHAPTER 7, POST-PETITION, PRE-CONVERSION EQUITY IN A DEBTOR'S PROPERTY INURES TO THE BENEFIT OF THE BANKRUPTCY ESTATE.

The Bankruptcy Code compels the conclusion that post-petition, pre-conversion equity in a debtor's property inures to the benefit of the bankruptcy estate when a case converts from chapter 13 to chapter 7. *Castleman II*, 75 F.4th at 1057. Because the code is clear and does not uniformly create an outcome that is at odds with the drafter's intent, the statute applies as written. *See In re Adams*, 641 B.R. 147, 152-53 (Bankr. W.D. Mich. 2022). If the statute applies as written, legislative history is not to be used to reach a different result. *See id*.

A. The Plain Language of § 348(F)(1)(A) Dictates That Property Under the Debtor's Control on the Chapter 13 Petition Date, and on the Conversion Date, Becomes Property of the Chapter 7 Estate.

When faced with an issue involving the interpretation of the Bankruptcy Code, the proper approach is to determine whether the statute has a plain and unambiguous meaning in relation to the specific issue. *See Hawkins v. Franchise Tax Bd. of Cal.*, 769 F.3d 662, 666 (9th Cir. 2014) ("[T]he first step . . . is to determine whether the language [of a statute] has a plain and unambiguous meaning with regard to the particular dispute."). If such is the case, the application of the statute controls. *Castleman II*, 75 F.4th at 1055; *see also Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016) (explaining that when a statute has a plain meaning, it controls). This issue is governed by 11 U.S.C. § 348(f)(1), which states in pertinent part:

> **(1)** Except as provided in paragraph (2), when a case under chapter 13 of this title [11 USCS §§ 1301 et seq.] 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*;

11 U.S.C. § 348 (emphasis added). Here, the plain language dictates that when the debtor had possession of, or control over, property on the date of petition, and maintained that control or

possession through the date of conversion, that property is property of the bankruptcy estate upon conversion from chapter 13 to chapter 7. *Id*. Similarly, if a Debtor acquires a new interest during the pendency of the chapter 13 estate, absent bad faith, it does not become a part of the chapter 7 estate upon conversion. *Id*; *In re Goetz*, 647 B.R. 412, 415 (Bankr. W.D. Mo. 2022). Therefore, to determine whether the post-petition, pre-conversion appreciation resulting from market forces and mortgage payments made under the Debtor's chapter 13 plan inure to the chapter 7 estate, it must be determined whether they constitute a new interest, or an interest the Debtor has had all along.

B. Pursuant to the Definition of Property in § 541(a), Any Post-Petition Appreciation in the Property Inures to the Benefit of the Bankruptcy Estate.

Courts have repeatedly relied on § 541(a) when determining what constitutes property of the bankruptcy estate. *See, e.g. In re Goins*, 539 B.R. 510, 515-16 (Bankr. E.D. Va. 2015); *In re Reed*, 940 F.2d 1317, 1323 (9th Cir. 1991); *Potter v. Drewes (In re Potter)*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999). Section 541(a) provides that:

> **(a)** The commencement of a case under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303] creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> > **(1)** Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
> >
> > . . .
> >
> > **(6)** Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

11 U.S.C. § 541. Because the property of the estate includes any increases in value from the property of the estate, "[t]he equity is inseparable from the real estate" and thus, has been included in the estate since the commencement of the chapter 13 case. *In re Goins*, 539 B.R. at 516; *see also In re Goetz*, 647 B.R. at 416 (explaining that the broad definition of "property of the estate" in § 541(a) "captures the debtor's entire ownership interest in each asset that exists on the petition

date without fixing the estate's interest to the precise characteristics the asset has on that date"). Therefore, when the Debtor has maintained possession or control over the property for the entirety of the chapter 13 case, the inseparability of the interest in the real estate and the interest in the real estate's appreciation means that the property's appreciation is a part of the bankruptcy estate upon conversion to chapter 7. *In re Goins,* 539 B.R. at 516; *see e.g. In re Reed*, 940 F.2d at 1323 ("appreciation [i]nures to the bankruptcy estate, not the debtor"); *In re Potter*, 228 B.R. at 424 (holding that post-petition appreciation resulting from an increase in property value benefits the trustee).

The fact that § 348 (f)(1)(B) now provides that valuations from chapter 13 do not carry over to chapter 7 cases upon conversion does not change this result. *In re Goins*, 539 B.R. at 515-16. In the case of *In re Goins*, the court was similarly faced with determining whether post-petition increases in property value were inured to the benefit of the bankruptcy estate. *Id*. at 511. In that case, the court held that relying on § 541(a)(6) was appropriate because "the equity attributable to the post-petition appreciation of the property is not separate, after-acquired property," in which case § 348(f)(1)(A) would appropriately govern. *Id*. The court held that the increase in equity of the debtor's property during the course of their chapter 13 case was for the benefit of the estate, and therefore, the trustee was able to sell the property. *Id*.

Admittedly, the court in *In re Goins* held that the debtor's principal payments inured to the debtor and not the estate, however, this is simply because the parties stipulated that the debtor was entitled to the value of the principal payments made on the home mortgage, and not a result of the court determining who would receive this benefit had it been contested. *Id*. at 15; *see also* Lawrence Ponoroff, *Allocation Of Property Appreciation: A Statutory Approach To The Judicial Dialectic*, 13 WM. & MARY BUS. L. REV. 721, 732. Therefore, that case demonstrates that when dealing with property that remained in the debtor's control for the entirety of the chapter 13 case, it inures to the benefit of the bankruptcy estate.

Similarly, the court in *In re Adams* explained that the reason for § 541 is to aggregate all property of the debtor for the purpose of paying creditors' claims. *See In re Adams*, 641 B.R. at 151-52. That case involves debtors who converted their case from chapter 13 to chapter 7 under the false assumption that they would be able to keep their property. *Id*. at 149. While their case was under chapter 13, the debtors made fairly consistent payments to their mortgage holder through their plan until their financial circumstances changed and rendered them unable to continue with their obligations under chapter 13. *Id*. At 150-51.

Upon conversion, the debtors argued that the increased equity in their home post-conversion should inure to their benefit because it was the market and their payments that created the increased equity, not the actions of the trustee. *Id*. at 151. The court disagreed, pointing out that in their reliance on § 151(a)(1), the debtors were confusing their legal and equitable interests in the property with the value of the property. *Id*. Section 541 discusses the legal and equitable interests in the property, not the value of the property. *Id*; 11 U.S.C. § 541. The question of who the value of the property insures to is based on the parties' interests in the property. *In re Adams*, 641 B.R. at 153. Because the value of real estate is not an independent interest in the property, and instead is a consequence of the housing market, the appreciation in value inures to whoever the property inures to. *Id*. In *In re Adams*, the property, and therefore the appreciation in the value of the property, was for the benefit of the chapter 7 estate under § 541(a). *Id*. at 152.

In yet another instance, *In re Castleman*, debtors John and Kimberly Castleman filed for chapter 13 bankruptcy and listed their home in their assets. *Castleman II,* 75 F.4th at 1054. The Castlemans' property was valued at $500,000 and had a mortgage with an outstanding balance of

$375,077. *Id*. The Castlemans also had a homestead exemption of $124,923. *Id*. The bankruptcy court confirmed the Castlemans' chapter 13 plan, but temporary job loss, effects of the pandemic, and a diagnosis of Parkinson's Disease for Mr. Castleman made satisfying the plan difficult. *Id*. Thus, the Castlemans converted to chapter 7. *Id*. Between initial valuation and conversion, the home's value rose $200,000. *Id*. While the debtors argue the increased equity belongs to them, and not the bankruptcy estate under § 348 (f)(1)(A), the Ninth Circuit Court disagrees. *Id*. at 1055. The court states that the plain language of § 348(f)(1) says:

> any property of the estate at the time of the original filing that is still in debtor's possession at the time of conversion once again becomes part of the bankruptcy estate, and … case law dictates that any change in the value of such an asset is also part of that estate.

Id. at 1058. An increase or decrease in value is only due to market conditions and could benefit the debtor or the estate depending on the circumstances. *Id*. In *In re Castleman*, the property—including its mortgage—and the appreciation in the value of the property, was for the benefit of the chapter 7 estate. *Id*.

C. Legislative History Must Only Be Relied On When a Statute is Ambiguous or Creates a Result Opposite to its Legislative Intent.

The legislative history regarding § 348 (f) discusses an example of a debtor converting from chapter 13 to chapter 7 and the trustee selling the debtor's property to capture the increase of equity created by payments on the secured debt during the chapter 13 case. H.R. REP. NO. 103-835, at 57 (1994). The statute as it was enacted into law does not specifically address the treatment of a property's increased equity over the course of a chapter 13 case. 11 U.S.C. § 348(f); *In re Castleman (Castleman I)*, 631 B.R. 914, 919 (Bankr. W.D. Wash. 2021) *aff'd Castleman v. Burman (In re Castleman)*, 75 F.4th 1052 (9th Cir. 2023) ("The new Section 348(f) does not at all address the effect of conversion on paydown of secured debt during the chapter 13 case or changes in the value of pre-petition assets.").

Some courts have used this legislative history to hold that appreciation does not inure to the bankruptcy estate. *See e.g. In re Barrera*, 620 B.R. 645, 653 (Bankr. D. Colo. 2020), *aff'd sub nom. Rodriguez v. Barrera (In re Barrera)*, 2020 WL 5869458, at *5-7 (B.A.P. 10th Cir. Oct. 2, 2020), *aff'd Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1219 (10th Cir. 2022). However, their reliance on the legislative history is misplaced. *See Castleman I*, 631 B.R. at 919-20; *see also In re Peter*, 309 B.R. 792, 795 (Bankr. D. Or. 2004). This is because "[t]he plain meaning of legislation should be conclusive, except in the "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters."' *United States v. Ron Pair Enters.*, 489 U.S. 235, 242 (1989) (citing *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)); *accord Castleman I,* 631 B.R. at 918 (applying this reasoning to the interpretation of § 348(f)). Therefore, in this case, the legislative history should only be relied on if either (1) the text of § 348(f) is ambiguous, or (2) the application of § 348(f) is at odds with the drafter's intent.

1. Because § 348(f) is not ambiguous, the legislative history can only be relied on if the statute's application is at odds with the drafter's intent.

The fact that a statute does not address an example discussed in its legislative history does not make the statute ambiguous. *Castleman I*, 631 B.R. at 919 ("Where, as here, the statute is clear and consistent with overall legislative intent, the failure to in any manner address the example provided in the legislative history does not create ambiguity."). This court has held numerous times, and in numerous circumstances, that legislative history should not be used to determine the meaning of a clearly drafted statute. *See e.g. Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 649-50 (1990) ("Moreover, and more generally, the language of a statute. . . .is not to be regarded as modified by examples set forth in the legislative history."); *Matal v. Tam*, 582 U.S. 218, 218-19 (2017) (finding that when a statute's meaning is clear, resorting to the legislative history to interpret the statute is inappropriate)**.** Because § 348 is clear, legislative history can only be relied on if application of the law will produce a result that is demonstrably at odds with the drafter's intent. *See Castleman I,* 631 B.R. at 919 (Finding that § 348's plain language is clear); *see supra* I (A).

2. Section 348's application does not uniformly produce a result at odds with legislative intent because there are scenarios where application of § 348's plain meaning would not cause debtors to lose their homes.

While § 348 is clear, it is also not clearly in opposition to the legislative intent on application. There are different scenarios that could present themselves when considering how the equity in a home can change over a period of a chapter 13 case; here, two will be considered. "Scenario A" is when, as a result of market forces or payments on the home loan, or both, the debtor's equity in the home increases over the pendency of the chapter 13 case. As a result, the trustee could obtain this equity for distribution to the parties the debtor owes by sale of the property. "Scenario B" is when the property is "underwater," meaning "the value of encumbrances, costs of sale, and exemption claims exceed the value of the property" and therefore, the chapter 7 trustee cannot capture any value for the benefit of the creditors upon sale. *In re Adams*, 641 B.R. at 153. Thus, the homeowner's equity in the home as compared to the home's value makes it so that the trustee is likely to abandon the property to the debtors under § 554. *Id*. In this case, Scenario A is present. Undoubtedly, debtors would prefer to retain their house. However, the difference between Scenario A and B "is the product of the fortuity of the market and mortgage balances, not any statutory or other right to post-petition appreciation." *Id*. Both of these outcomes are possible, due to the fluctuating nature of real estate values, under application of the plain meaning of § 348. *See Castleman II*, 75 F.4th at 1058; *see also In re Adams*, 641 B.R. at 153-54.

Logically, for it to be true that "the literal application of a statute *will* produce a result demonstrably at odds with the intentions of its drafters," *Ron Pair Enters.*, 489 U.S. at 242 (citing *Griffin,* 458 U.S. at 571 (emphasis added)), the literal application would have to have the adverse effect of the drafter's intent in *all* applications. That is simply not the case with § 348. Here, while the application *may* produce the effect the drafters discussed, it is not true that § 348's application *will definitively* be contrary to the drafter's intent. *See Castleman II*, 75 F.4th at 1058; *see also In re Adams*, 641 B.R. at 153-54. Therefore, reliance on the legislative history is not appropriate because § 348 is clear, and its application is not uniformly at odds with the drafter's intent. Section 348 should be applied literally and the debtor's post-petition, pre-conversion equity in his property inures to the benefit of the bankruptcy estate.

While it is unfortunate that the application of the Bankruptcy Code as written can create a situation where a debtor is facing the loss of their home, it must not be forgotten that the law intends to provide a fresh start for the debtor while balancing the interests of all parties—creditors included. *Castleman II*, 75 F.4th at 1055 (quoting *Marrama,* 549 U.S. at 367). In cases like this, the creditors will receive back some of the money they are owed, and the debtor will, in return, receive a discharge of their remaining debts, and the chance to start anew. *See In re Adams*, 641 B.R. at 153-54. This is why debtors choose to enter into bankruptcy proceedings, and the risk of their property being sold to satisfy their debts is one risk they accept when striking this compromise with their creditors. *Id*. If Congress intended a different effect, it is in their purview to make a change to the law, not the court's. *Id*. (citing *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,* 530 U.S. 1, 13-14 (2000)).

D. The Equity in the Debtor's Property Inures to the Bankruptcy Estate, and Therefore, Trustee Vera Lynn Floyd Can Use the Property's Appreciation to Repay the Debtor's Creditors.

In this case, because market conditions cause the application of § 348 to create an outcome that is less favorable to the Debtor, the Debtor is attempting to change the rules of the game. In both *In re Castleman* and the case at issue here, the debtors began their bankruptcy proceedings under chapter 13. *Castleman II*, 75 F.4th at 1054; (R. at 6). In the Castlemans' case, temporary job loss, effects of the pandemic, and Mr. Castleman's Parkinson's disease meant they no longer could satisfy their chapter 13 payment plan, and they made the decision to convert their case to one under chapter 7. *Castleman II,* 75 F.4th at 1054. In this case, the Debtor was similarly unable to continue making his chapter 13 payments due to illness and the loss of his business, and made the decision to convert to a chapter 7 case. (R. at 4).

Like the Castlemans' property in *In re Castleman*, the Debtor's property appreciated in value between the start of the chapter 13 case and the conversion to chapter 7. *Castleman II*, 75 F.4th at 1054; (R. at 6-9). At the date of the chapter 13 petition, December 8, 2021, the value of the Debtor's property was $350,000. (R. at 6). After converting to chapter 7, the Trustee discovered that the house had appreciated by $100,000. (R. at 9). In *Castleman*, the Ninth Circuit held that the plain language of § 348(f)(1) dictates that any property of the estate at the time of the original filing that is still in debtor's possession at the time of conversion becomes property of the chapter 7 estate. *Castleman II*, 75 F.4th at 1058. The court further held that any change in the value of the home was also part of the estate. *Id*. This result aligns with the overwhelming majority of the circuits and is the application of the plain language of the Bankruptcy Code.

In this case, applying the plain meaning of § 348 compels the conclusion that the appreciation in value inures to the bankruptcy case. Therefore, the Trustee, with the court's permission, may sell the Debtor's property to satisfy his creditors, and in return, the Debtor will receive a discharge of his debts and a fresh start. *Castleman II*, 75 F.4th at 1055 (quoting *Marrama*, 549 U.S. at 367). Thus, because the law is clear, the post-petition, pre-conversion appreciation in the Debtor's property inures to the bankruptcy estate upon conversion from chapter 13 to chapter 7.

II. THE BANKRUPTCY CODE PERMITS A CHAPTER 7 TRUSTEE TO SELL PREFERENCE ACTIONS AS PROPERTY OF THE BANKRUPTCY ESTATE.

Section 704 enumerates the responsibilities of the bankruptcy trustee. 11 U.S.C. § 704. The trustee is directed to "collect and reduce to money the property of the estate for which such trustee serves and close such estate as expeditiously as is compatible with the best interests of parties in interest." 11 U.S.C. § 704(a)(1). In furtherance of this goal, the trustee is empowered with various causes of action, contained in chapter 5 of the Bankruptcy Code. Among the powers of the trustee is the ability to avoid and recover preferential transfers the debtor made prior to the commencement of the bankruptcy case. 11 U.S.C. § 547(b); *see also Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC)*, 78 F.4th 1006, 1008 (8th Cir. 2023).

Section 547(b) governs preference actions and allows a trustee to avoid transfers of an interest in the debtor's property when the transfer (1) is to or for the benefit of a creditor; (2) on account of antecedent debt; (3) was made during the debtor's insolvency; (4) was made within either ninety days, or in circumstances involving insiders, one year, prior to the petition date; and (5) enables such creditor to receive more than they would under a hypothetical chapter 7, or if the transfer had not been made. 11 U.S.C. § 547(b); *Begier v. IRS*, 496 U.S. 53, 58 (1990). Section 547(b) furthers one of the Bankruptcy Code's central policies: equality in the distributions made to creditors. *Begier*, 496 U.S. at 58. By allowing the trustee to avoid certain pre-petition transfers, the debtor is prevented from favoring certain creditors over others. *Id*. Once a trustee has avoided a transfer under § 547(b), they recover the payment under § 550(a) and distribute the funds to the creditors. 11 U.S.C. § 550(a).

A. Preference Actions Are Included in the Property of the Bankruptcy Estate Because the "Property of the Estate" Definition Outlined In § 541 Should Be Interpreted Broadly.

Section 541(a)(1) states that 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). Courts have interpreted "property of the estate" broadly, finding that the definition of the estate's property in § 541(a)(1) includes property that other provisions of the Bankruptcy Code make available to the estate, such as intangible property and causes of action. *In re Simply Essentials, LLC*, 78 F.4th at 1008; *see Whetzal v. Alderson*, 32 F.3d 1302, 1303 (8th Cir. 1994) ("[t]he scope of this section is very broad and includes property of all descriptions, tangible and intangible, as well as causes of action."); *see United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983) (rejecting the idea that the language of § 541(a)(1) limits the estate to the interests in property the debtor had at the time of filing the petition, and instead viewing the statute "as a definition of what is included in the estate, rather than as a limitation"). In fact, the legislative history describes the debtor's estate as "all embracing." H.R. REP. NO. 95-595 at 549 (1977).

This broad interpretation has led courts to regularly find that causes of action constitute property of the estate. *See, e.g. Parker v. Goodman (In re Parker)*, 499 F.3d 616, 624 (6th Cir. 2007) ("As 'legal and equitable interests,' causes of action … constitute property of the estate under § 541(a)(1)."); *see also, Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 262 (5th Cir. 2010) (concluding that under § 541(a)(1) fraudulent-transfer claims are property of the estate); *Morley v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427, 431 (1st Cir. 2007) (noting the well-established rule that claims for fraudulent conveyance are included in the property of the estate under § 541(a)(1));

see also In re Murray Metallurgical Coal Holdings, LLC, 623 B.R. 444, 518 (Bankr. S.D. Ohio 2021) ("The Court concludes that the. . . Avoidance actions and their proceeds are property of the estate that may be sold.").

This Court has characterized chapter 5 avoidance powers as causes of action. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53-54 (1989). Additionally, in § 926 the Bankruptcy Code itself refers to chapter 5 avoidance powers as causes of action. 11 U.S.C. § 926 (referring to causes of action under sections 544, 545, 547, 548, and 549(a)). The court in *In re Simply Essentials, LLC* emphasized that the broad interpretation of the statute means that avoidance causes of actions are a part of the estate, noting that no case could be located "where a court has denied a motion to sell after finding avoidance actions were not part of the estate." *In re Simply Essentials, LL*C, 78 F.4th at 1010.

In *Simply Essentials, LLC*, the Eight Circuit affirmed the lower court's holding that avoidance actions are property of the bankruptcy estate that can be sold. *In re Simply Essentials, LLC*, 78 F.4th at 1010-11. Thus, they approved the trustee's motion to sell avoidance actions. *Id*. In that case, the debtor was a chicken production and processing facility operator that found itself in a tough financial spot. *Id*. at 1007. An involuntary petition under chapter 7 was filed by a group of "disgruntled farmers," causing a chapter 7 trustee to be appointed. *Id*. The trustee determined that while the estate had avoidance actions that could be pursued, it did not have sufficient assets to pursue them. *Id*. As a result of the financial constraints, the trustee decided to compromise and sell the avoidance actions. *Id*. at 1007-08. The Trustee collected bids from creditors, and filed a motion with the bankruptcy court, which was granted, to sell the avoidance actions to the highest value bidder under § 363(f) of the Bankruptcy Code. *Id*. at 1008. The other bidder, Pitman Farms, challenged this sale. *Id*. Pitman Farms was notably the losing bidder and the party that the avoidance action was against. *Id*. at 1007-08. The Eighth Circuit, following an analysis of § 541(a) determined that avoidance actions, including claims to recover preferential transfers made to creditors in the months leading up to the bankruptcy filing, are causes of action and therefore, interests in property and property of the estate. *Id*. at 1008-11.

The conclusion that preference actions are property of the estate also survives claims that interpreting the statute in such a way creates surplusage. *See In re Simply Essentials, LLC*, 78 F.4th at 1010 ("Given the drafting history and the complex nature of the Bankruptcy Code, the possibility of our interpretation creating surplusage does not alter our conclusion that avoidance actions are part of the estate under the plain language of § 541(a)."); *see In re Harris,* 886 F.2d 1011, 1014 (8th Cir. 1989) (demonstrating that when statutes, like the Bankruptcy Code, are amended over time, it is not unusual for redundancies to exist). Because avoidance actions are part of the estate under § 541(a)(1), the trustee is permitted to sell them to fulfill their fiduciary duties. *Id*; 11 U.S.C. § 541(a)(1); 11 U.S.C. § 363.

Even if the Court were to hold that the debtor lacks an interest in the avoidance actions prior to the commencement of the bankruptcy case, the avoidance actions still qualify as property of the estate under § 541(a)(7). *In re Simply Essentials, LLC*, 78 F.4th at 1009*; MT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 525 (5th Cir. 2014) (explaining that § 541(a)(7) encompasses any post-petition property interests that arise, including interests that arise out of pre-petition interests of the bankruptcy estate).

Because Subsection (7) includes "[a]ny interest in property that the estate acquires after the commencement of the case," and because avoidance actions are available to the estate after the commencement of the case, they constitute property of the estate under § 541(a)(7). 11 U.S.C. § 541(a)(7); *In re Simply Essentials, LLC*, 78 F.4th at 1009. The interest in preference causes of action created under § 547(b) is acquired by the trustee when the case commences. *See e.g., Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, 460 B.R. 106, 114 (Bankr. S.D.N.Y. 2011) (finding that property of the estate includes avoidance actions created on the petition date). The Debtor's arguments that the interest in the property was created at a third point of time, the moment the bankruptcy proceeding commences, are unpersuasive because a holding that such a third period of time exists "would frustrate the bankruptcy policy of a broad inclusion of property in the estate[.]" *In re Simply Essentials, LLC*, 78 F.4th at 1009 (citing *Whetzal*, 32 F.3d at 1304). Additionally, if Congress intended to exclude avoidance actions from the estate, instead of doing so through an inconspicuous timing scheme, it is far more likely that Congress would have done so by explicitly including avoidance actions with the other listed exclusions in § 541(b). *See* 11 U.S.C. § 541(b).

B. A Number of Circuits Have Held that Avoidance Actions Are Property of the Bankruptcy Estate.

Six Circuits have held that chapter 5 avoidance actions are included in the property of the estate. *See In re Simply Essentials, LLC,* 78 F.4th at 1009 ("Therefore, avoidance actions are property of the estate under § 541(a)(1)."); *Silverman v. Birdsell*, 796 F. App'x 935, 936-38 (9th Cir. 2020) ("The record simply does not demonstrate that the bankruptcy court abused its discretion when it authorized the sale of the avoidance claims. . . ."); *In re Moore*, 608 F.3d at 262 ("We conclude, therefore, that the fraudulent-transfer claims are property of the estate under § 541(a)(1). . . ."; *In re Ontos, Inc.*, 478 F.3d at 431 (explaining that it is well established that a claim for fraudulent conveyance is included in the property of the estate under § 541(a)(1)); *Nat'l Tax Credit Partners, L.P. v. Havlik*, 20 F.3d 705, 708-09 (7th Cir. 1994); *Delgado Oil Co. v. Torres*, 785 F.2d 857, 861 (10th Cir. 1986).

Nonetheless, the Debtor cites a Third Circuit case, *Cybergenics*, in support of its opposite position. *See Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 243 (3d Cir. 2000) (stating that state law fraudulent transfer claims that a trustee could pursue under § 544 were never the debtor's assets, and therefore, were not sold to the purchaser of the estate's assets). Unfortunately for the Debtor, the Third Circuit Court's persuasive support is weakened by their recent description of their own statements in *Cybergenics* as *dicta*. *See Artesanias Hacienda Real S.A. de C.V. v. N. Mill Capital, LLC (In re Wilton Armetale, Inc.)*, 968 F.3d 273, 285 (3d Cir. 2020). In *In re Wilton Armetale, Inc.*, the Third Circuit explained that their opinion in *Cybergenics* leaves open the question of whether a trustee can transfer a cause of action, and therefore, their opinion does not hold that a trustee cannot transfer causes of action. *Id*. Thus, a majority of the circuits have determined that preference causes of action are property of the estate.

C. The Trustee is Statutorily Permitted to Sell Property of the Estate to Compensate Creditors for the Debtor's Debts.

As per § 704(a) of the Bankruptcy Code, chapter 7 trustees have a statutory duty to "collect and reduce to money the property of the estate" in an expeditious manner, considering the best interests of all involved parties. 11 U.S.C. § 704(a)(1); *see Harris*, 575 U.S. at 513-14. To maximize the value of the estate, § 363(b) allows the trustee to sell property of the estate with court approval. 11 U.S.C. § 363(b)(1). Because "property of the estate" includes preference actions in chapter 7 cases, the trustee is not only permitted to sell the preference action following court approval under § 363(b)(1), but the trustee is also charged with reducing this action to money that can be distributed to the creditors. *See Harris*, 575 U.S. at 513-14.

Trustees have a fiduciary duty to maximize the value of the bankruptcy estate, and allowing trustees to sell avoidance actions helps them fulfill this duty. *In re Simply Essentials, LLC,* 78

F.4th at 1010. This is particularly true in circumstances where the estate does not have the financial means to pursue the avoidance actions itself. *Id*. It is common for trustees to be in a position where the estate lacks the resources to prosecute claims, even when the claims are colorable. *See generally id*. In these cases, selling avoidance actions is "the best way to maximize the value of the estate." *Id*. at 1010 ("When an estate cannot afford to pursue avoidance actions, the best way to maximize the value of the estate is to sell the actions.").

Section 363 of the Bankruptcy Code governs the use, sale, or lease of property, and outlines actions that a trustee is permitted to take. 11 U.S.C. § 363. In relevant part, the statute states that, subject to some exceptions, "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . ." 11 U.S.C. § 363(b)(1). Additionally, trustees have a fiduciary duty to "maximize the value of the estate," which § 363 provides them with authority to accomplish by using, selling, or leasing property of the bankruptcy estate. *Id*; *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). Therefore, the Trustee is permitted to sell preference actions in furtherance of their fiduciary duties. 11 U.S.C. § 363(b)(1); *Commodity Futures*, 471 U.S. at 352. Because preference actions are property of the estate, not only is it permissible for the trustee to sell them, but in some cases, it is preferable for a trustee to do so. *Commodity Futures*, 471 U.S. at 352.

D. Because Preference Actions Are Property of the Estate, The Trustee Is Permitted to Sell Them in Furtherance of The Trustee's Duties.

In this case, the Trustee, Vera Lynn Floyd, sought to carry out her duties as specified in § 704. The Debtor was indebted to two secured creditors, Eclipse Credit Union, and Another Brick in the Wall Financial Corporation. (R. at 5-6). He was indebted to Eclipse Credit Union on a business loan and to Another Brick in the Wall Financial Corporation on his home mortgage. (R. at 5-6). In addition, the Debtor owed his mother Pink for a loan on an unsecured basis. (R. at 6).

At the time of the Debtor's conversion from chapter 13 to chapter 7, the Debtor's home was valued at nearly $450,000. (R. at 9). The value of the preference claim was $20,000. (R. at 9). Eclipse offered to purchase both the home and the alleged preference claim for a total of $470,000, an amount which would ensure a maximum distribution to each of the creditors. (R. at 9). When a trustee can recover value from the non-exempt portion from the sale of a home there is little question about the propriety of the trustee's action. *See In re Simply Essentials, LLC,* 78 F.4th at 1007-08. The issue, therefore, centers on whether the trustee could sell the preference claim.

As aforementioned, because the property of the estate definition under § 541 must be interpreted broadly, the $20,000 preference claim is included in the property of the bankruptcy estate. *In re Simply Essentials, LLC*, 78 F.4th at 1008; *see Silverman*, 796 F. App'x at 936-38. The First, Fifth, Seventh, Eighth, Ninth, and Tenth Circuits have agreed with this sentiment that avoidance actions are property of the bankruptcy estate. As the chapter 7 Trustee, Floyd's purpose is to collect and reduce to money the property of the estate. 11 U.S.C. § 704(a)(1); *see Harris*, 575 U.S. at 513-14. Therefore, one of her objectives here is to reduce the preference claim to money as well. Floyd's fiduciary duty to "maximize the value of the estate" can be accomplished through § 363. This provides her with the authority to use, sell, or lease property of the bankruptcy estate, which has been determined to include the preference claim. *see Harris*, 575 U.S. at 513-14; *Commodity Futures*, 471 U.S. at 352. Because the preference claim is property of the bankruptcy estate and the trustee has a duty to maximize the value of that estate, it is permissible for the Trustee to obtain court approval to sell the preference claim under § 363.

CONCLUSION

For the foregoing reasons, the Petitioner, Vera Lynn Floyd, chapter 7 Trustee, respectfully requests that this Honorable Court reverse the decision of the Thirteenth Circuit and hold that (1) upon a case's conversion from chapter 13 to chapter 7, any post-petition, pre-conversion increase in equity of the Debtor's property inures to the bankruptcy estate, and (2) that as a part of the chapter 7 Trustee's statutory duty to the creditors, the Trustee may sell the ability to avoid and recover transfers as the property of the bankruptcy estate.