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

BRIEF FOR RESPONDENT

TEAM NUMBER 28
COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

I. Whether any post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the debtor upon conversion from chapter 13 to chapter 7, when section 348(f)(1)(a)'s plain language, legislative history, and underlying policy considerations do support this position.

II. Whether a trustee may sell the ability to avoid and recover transfers, as property of the bankruptcy estate, when section 541(a)'s plain language, surrounding provisions in the Code, and underlying policy considerations do not support this position.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

UNITED STATES COURT OF APPEALS CASES

BANKRUPTCY APPELLATE PANEL CASES

UNITED STATES DISTRICT COURT CASES

STATUTES

LEGISLATIVE MATERIALS

SECONDARY SOURCES

STATEMENT OF JURISDICTION

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

PERTINENT STATUTORY PROVISIONS

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

The relevant portion of 11 U.S.C. § 348(f) 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;

The relevant portions of 11 U.S.C. § 541(a) provide:

> (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.
>
> (6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.
>
> (7) Any interest in property that the estate acquires after the commencement of the case.

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

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

The relevant portion of 11 U.S.C. § 1327(b) provides:

> (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.

STATEMENT OF FACTS

In 2011, Corporal Eugene Clegg ("Debtor") retired from the United States Army as a decorated veteran. R. 4–5. In 2016, Debtor sought to make improvements to his business, The Final Cut, LLC ("Final Cut"). R. 4–5. Acting on behalf of Final Cut, Debtor borrowed $850,000 ("Loan") from Eclipse Credit Union ("Eclipse") to achieve this goal. R. 5. During renovations, Debtor saved approximately $75,000 in labor costs because he performed most of the improvements himself with the help of other chivalrous veterans who volunteered their time. R. 5. As a sign of his appreciation, Debtor donated the unused funds to the Veterans of Foreign Wars ("VFW"). R. 5.

Final Cut reopened to the public in early 2017 and was consistently generating profit. R. 5–6. In March 2020, due to COVID shutdowns, Final Cut was forced to immediately close, remaining so for nearly a year. R. 6. Due to unexpected financial turmoil, Debtor was forced to borrow $50,000 from his mother, Emily "Pink" Clegg ("Pink"). R. 6.

In an attempt to save Final Cut, Debtor sacrificed his salary, which forced him to fall behind on his home mortgage. R. 6. As a result, his home mortgage servicer, Another Brick in the Wall Financial Corporation ("Servicer"), commenced foreclosure proceedings. R. 6.

On December 8, 2021 ("Petition Date"), desperate to save his home, Debtor sought relief under chapter 13 of the Bankruptcy Code ("Code"). R. 6. Debtor's home was valued at $350,000 mere days before the Petition Date. R. 6. Servicer held a secured debt in Debtor's home in the amount of $320,000. R. 6. Debtor correctly claimed a state law homestead exemption of $30,000. R. 6. Lastly, Debtor disclosed that he made $20,000 in payments to Pink. R. 7.

Debtor filed a chapter 13 plan which included a provision stating that Debtor would not maintain equity in his home as of the Petition Date. R. 7. During the meeting of creditors,

Eclipse learned that Debtor donated to VFW. R. 7. Outraged, Eclipse promptly objected to Debtor's plan as being proposed in bad faith. R. 8. Debtor and Eclipse managed to reach a settlement. R. 8. On February 12, 2022, the bankruptcy court confirmed Debtor's chapter 13 plan, which "expressly provided that all property of the estate vested in the Debtor." R. 8.

For eight months, Debtor was diligent in making payments in compliance with the confirmed chapter 13 plan. R. 8. However, when Debtor contracted long-COVID, his diminished health forced him to cease work, which caused further financial suffering. R. 8. In October 2022, Final Cut permanently closed. R. 8. Without this income, Debtor was unable to make further payments under his plan. R. 8.

Debtor chose to convert his case to chapter 7. R. 8. No interested party contested that Debtor lacked good faith in doing so. R. 8 n.8. The bankruptcy court appointed Vera Lynn Floyd ("Trustee"). R. 9. Trustee commissioned an updated appraisal of the home which revealed an increase in equity of $100,000. R. 9. Subsequently, Trustee marketed Debtor's home for sale. R. 9. "Eclipse, perhaps looking for retribution and redemption, offered to purchase both the home and the alleged preference claim against Pink for a total of $470,000." R. 9. Trustee filed a motion ("Sale Motion") to sell both the home and the alleged preference claim to Eclipse under section 363(b). R. 9. Debtor objected to the Sale Motion arguing that: (1) "any post-petition, pre-conversion increase in the equity of his home should inure to his benefit;" and (2) "the Trustee's statutory ability to avoid and recover transfers under sections 547 and 550 cannot be sold." R. 10.

On appeal, the United States Court of Appeals for the Thirteenth Circuit correctly affirmed the bankruptcy court's ruling in favor of the Debtor on both objections. R. 24.

STANDARD OF REVIEW

The matters at issue require statutory interpretation of the Bankruptcy Code, which are questions of law. *See In re Hernandez*, 918 F.3d 563, 566 (7th Cir. 2019). Therefore, the standard of review is *de novo*. *See id.*; *First Weber Grp., Inc. v. Horsfall*, 738 F.3d 767, 776 (7th Cir. 2013).

SUMMARY OF THE ARGUMENT

This Court should affirm the decision of the Thirteenth Circuit Court of Appeals because the property of the chapter 7 estate does not include: (1) any post-petition, pre-conversion increase in equity in Debtor's home; or (2) Trustee's ability to avoid and recover transfers. To rule otherwise would ignore the plain language of the Code and contravene its underlying legislative history and public policy.

The plain language of section 348(f)(1)(A), within the broader context of sections 541(a) and 1327(b), unambiguously provides that any post-petition, pre-conversion increase in equity in a debtor's home will inure to the benefit of the debtor. Section 1327(b) vests all property of the estate to the debtor upon confirmation of the chapter 13 plan; thus, any appreciation that occurs after confirmation is not of or from property of the chapter 13 estate under section 541(a)(6). Therefore, the increased equity in Debtor's home did not belong to the chapter 13 estate as of the date of filing, but rather property of the debtor after filing; it does not belong to the chapter 7 estate upon conversion either.

Alternatively, if this Court found that section 348(f)(1)(A)'s plain language was capable of being understood in two or more ways, it must find that language ambiguous and look past the plain text towards the Code's legislative history, underlying public policy, and statutory construction to determine congressional intent. Section 348(f)(1)(A)'s language does not specify

how the "as of the date of filing" language modifies the scope of property. Thus, courts are left to decide whether Congress intended pre-petition assets to become property of the chapter 7 estate: (1) regardless of what has changed since the petition date, thus including any increased equity; or (2) with the attributes and value it had on the petition date, thus excluding any increased equity.

After examining the legislative history, underlying public policy, and potential statutory conflicts, the Court should find that Congress intended "property of the estate" to be property as it existed on the petition date thus conferring any post-petition, pre-conversion property of the estate to Debtor.

Regarding a trustee's ability to avoid and recover transfers, neither the express terms of the Code nor its underlying policy considerations grant a trustee authority to sell her avoidance power as property of the estate. The Code provides that the trustee may only sell property of the estate. Section 541(a)(1)'s plain language establishes that a trustee's ability to avoid and recover is not property of the estate. Also, under section 541(a)(7)'s plain language, a trustee's ability to avoid and recover is power granted exclusively to trustees, which cannot be transferred. A broader reading of the Code also demonstrates that the ability to avoid and recover transfers is exclusive to trustees.

Additionally, allowing a trustee to sell her avoidance power would render language within sections 541(a)(3), 550, and 551 superfluous. Moreover, the importance of the trustee's role as a neutral party and the Code's emphasis on providing an equal distribution to creditors demonstrates that Congress did not intend for trustees to sell their ability to avoid and recover transfers as property of the estate. Alternatively, even if this Court found that a trustee could sell her avoidance power, it should not allow such a sale when the potential buyer has a history of hostility towards the potential defendant in the preference action.

Therefore, this Court should affirm the Thirteenth Circuit Court's ruling on both issues.

ARGUMENT

This Court should affirm the Thirteenth Circuit Court's decision because: (1) any post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the debtor; and (2) a chapter 7 trustee may not sell, as property of the bankruptcy estate, the ability to avoid and recover transfers.

I. THE CODE'S PLAIN LANGUAGE, LEGISLATIVE HISTORY, AND UNDERLYING POLICY SUPPORT THAT ANY POST-PETITION, PRE-CONVERSION INCREASE IN EQUITY INURES TO THE BENEFIT OF THE DEBTOR.

The Thirteenth Circuit correctly affirmed the Bankruptcy Court's holding that a post-petition, pre-conversion increase in equity in the debtor's home inures to the benefit of the debtor, not the chapter 7 estate upon conversion from chapter 13 to chapter 7. R. 24. To find that the Thirteenth Circuit erred in its decision would disincentivize chapter 13 filings and erode the existing protections of current chapter 13 debtors in direct contravention of section 348(f)(1)(A)'s plain language, congressional intent, and the Code's underlying public policy. 11 U.S.C. § 348(f)(1)(A).

An individual debtor may choose to reorganize under chapter 13 or liquidate their non-exempt assets under chapter 7. *See Harris v. Viegelahn*, 575 U.S. 510, 513–14 (2015). At the commencement of a case, a bankruptcy estate is created from the assets of the debtor. *See* 11 U.S.C. § 541(a). The bankruptcy estate is comprised of "all legal or equitable interests of the debtor in property." 11 U.S.C. § 541(a)(1). Additionally, the estate includes all "[p]roceeds, 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(a)(6).

Under chapter 7, the debtor's non-exempt assets are immediately made property of the estate, to be sold for the benefit of creditors. *See* 11 U.S.C. §§ 541(a)(1), 704(a)(1). However, any assets acquired by the debtor after "the commencement of the case" are not considered property of the estate. *See* 11 U.S.C. § 541(a)(1). Under chapter 13, a debtor retains "his property if he proposes, and gains court confirmation of, a plan to repay his debts over a three- to five-year period." *See Harris*, 575 U.S. at 514 (citing 11 U.S.C. §§ 1306(b), 1322, 1327(b)).

Confirmation of the plan, unless provided otherwise, "vests all of the property of the estate in the debtor." 11 U.S.C. § 1327(b). Therefore, debtors are incentivized to pursue bankruptcy under chapter 13 because they will retain valuable assets, such as their home or car. *See Harris,* 575 U.S. at 514. However, since few chapter 13 plans are completed, "Congress [has] accorded debtors a nonwaivable right to convert a [c]hapter 13 case to one under [c]hapter 7 'at any time.'" *See id.* (quoting 11 U.S.C. § 1307(a)). Conversion "does not effect a change in the date of the filing of the petition [or] the commencement of the case." *Id.* at 515; *see also* 11 U.S.C. § 348(a). As a result, the new chapter 7 case will share the same petition filing date as the chapter 13 case. 11 U.S.C. § 348(a). This becomes particularly important when determining what is considered property of the new chapter 7 estate. *See* 11 U.S.C. § 348(f)(1)(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* . . . .") (emphasis added).

When a chapter 13 case is converted to a chapter 7 case, "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion." 11 U.S.C. § 348(f)(1)(A). Accordingly, the newly created chapter 7 estate will not include any

property acquired between the filing of the chapter 13 petition and the conversion to chapter 7. *See id*.

Thus, the operative question is whether a post-petition, pre-conversion increase in the equity of Debtor's home is, or should be treated as, after-acquired property distinct from Debtor's home. R. 9. If this Court finds in the affirmative, then it should also find that the increased equity is not "property of the estate, as of the date of filing of the petition" and subsequently not property of the chapter 7 estate. *See* 11 U.S.C. § 348(f)(1)(A).

When resolving disputes over statutory meaning, courts must first examine "the language of the statute itself." *See United States v. Ron Pair Enters.*, Inc., 489 U.S. 235, 241 (1989) (citing *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985)). Generally, a court should enforce the plain meaning of the text, "giving each word its common usage." *See In re Jass*, 340 B.R. 411, 415 (Bankr. D. Utah 2006) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993)). However, if the statute's language is ambiguous, the court is at liberty to consult the statute's legislative history to determine the intent of Congress. *United States v. Great N. Ry. Co.*, 287 U.S. 144, 154 (1932); *see also Dewsnup v. Timm*, 502 U.S. 410, 419–20 (1992).

Here, the plain language of sections 348(f)(1)(A) and 541(a) is unambiguous in that any post-petition, pre-conversion increase in equity inures to the benefit of the debtor. 11 U.S.C. §§ 348(f)(1)(A), 541(a). Alternatively, if this Court found that section 348(f)(1)(A)'s plain language was capable of being understood in two or more possible ways, it must find that language ambiguous and look past the plain text. 11 U.S.C. § 348(f)(1)(A). Legislative history, public policy, and canons of statutory construction demonstrate that Congress intended any post-petition, pre-conversion increase in equity to inure to the benefit of the debtor.

A. The Plain Meaning of Sections 348(f)(1)(A) and 541(a)(6) Requires Any Post-Petition, Pre-Conversion Increase in Equity to Inure to the Benefit of the Debtor.

To determine whether statutory language has a plain and unambiguous meaning, this Court examines the "language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). When a court looks at the language of a statute, it "giv[es] the words used their ordinary meaning." *Moskal v. United States*, 498 U.S. 103, 108 (1990). Moreover, "where . . . the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *Ron Pair*, 489 U.S. at 241 (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

The current issue concerns a conversion from chapter 13 to chapter 7, thereby implicating section 348(f). 11 U.S.C. § 348(f). The text of section 348(f)(1)(A) provides that property of the chapter 7 estate will consist of property of the chapter 13 estate "as of the date of filing." *Id.* Within a vacuum, section 348(f)(1)(A) does not define "property of the estate" nor how "as of the date of filing" would modify the scope of the estate's property. *Id.* Therefore, the Court must examine section 348(f)(1)(A)'s language within "the broader context of the statute as a whole." *See Robinson*, 519 U.S. at 341.

Section 541(a) establishes what is included within the property of the estate for both chapter 7 and chapter 13. 11 U.S.C. § 541(a). Property of the estate not only includes "all legal or equitable interests of the debtor in property as of the commencement of the case," but also any "[p]roceeds, product, offspring, rents, or profits of or from property of the estate." 11 U.S.C. § 541(a)(1), (6). By enacting these two provisions, Congress has distinguished between pre-petition property under section 541(a)(1) and after-acquired property under section 541(a)(6). *Id.*

Under section 541(a)(1), Debtor's home is included as property of the estate because the Debtor has a "legal" and "equitable" interest in the home "as of the commencement of the case." 11 U.S.C. § 541(a)(1). Under section 541(a)(6), courts have found "the appreciation in value of a debtor's home" to fall under the "[p]roceeds, product, offspring, rents, or profits of or from property of the estate." *Castleman v. Burman (In re Castleman)*, 75 F.4th 1052, 1056 (9th Cir. 2023); *In re Orton*, 687 F.3d 612, 619 (3d Cir. 2012); 11 U.S.C. § 541(a)(6). Were the Court's analysis to end here, both Debtor's home and its post-petition, pre-conversion, appreciation would be considered property of the estate. 11 U.S.C. § 541(a)(1), (6).

However, the language of section 348(f)(1)(A) explicitly limits the chapter 7 estate to property of the chapter 13 estate "as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion." 11 U.S.C. § 348(f)(1)(A). While "no Chapter 13 provision holds sway," once "a debtor exercises his statutory right to convert," section 348(f)(1)(A) still requires the Court to examine the property of the estate at the time of filing. *Harris,* 575 U.S. at 520.

While chapter 13 may not govern the current estate, its provisions did govern the estate at the date of filing. R. 6. Thus, to determine what was property of the estate "as of the date of filing," the provisions of chapter 13, and their effects, must be understood. 11 U.S.C. § 348(f)(1)(A). The confirmation of a chapter 13 plan "vests all property of the estate in the debtor." 11 U.S.C. § 1327(b). The ordinary meaning of "vest" is "[t]o confer ownership (of property) on a person." *See Vest*, BLACK'S LAW DICTIONARY (11th ed. 2019). Therefore, the plain meaning of section 1327(b) is that confirmation of the chapter 13 plan confers ownership of all of the chapter 13 estate property to the debtor. *See id.*; 11 U.S.C. § 1327(b). As a result,

Debtor's home ceased being property of the estate after the confirmation of the chapter 13 plan and was instead property of the Debtor. R. 8.

As a result, any post-petition, pre-conversion increase in equity would not accrue "from property of the estate" but rather from property of Debtor. *See* 11 U.S.C. § 541(a)(6). It is true that Debtor's home once again becomes property of the estate upon conversion. *See* 11 U.S.C. § 348(f)(1)(A). However, section 348(f)(1)(A) plainly states that the chapter 7 estate is comprised of estate property "as of the date of filing of the petition." *Id.*

At the time of filing, Debtor's home belonged to the estate but there had been no increase in its equity. R. 7. Instead, the home's equity increased after the filing of the petition, when ownership of the home had been conferred to Debtor. R. 8–9. It was not property of the estate that enjoyed an increase in equity, but property of Debtor instead. R. 8.

Consequently, any post-petition, pre-conversion increase in the equity of Debtor's home should inure to the benefit of Debtor because it was not "of or from property of the estate" as of the "filing of the petition," but rather "of or from" property of Debtor after the filing of the petition. 11 U.S.C. §§ 348(f)(1)(A), 541(a)(6).

B. Alternatively, Section 348(f)(1)(A) is Ambiguous and Its Legislative History, Underlying Policy, and Statutory Construction Support Debtor's Argument.

Statutory ambiguity exists if the meaning of the text is "'capable of being understood in two or more possible senses or ways.'" *Chickasaw Nation v. United States*, 534 U.S. 84, 90 (2001) (quoting WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 77 (1985)). Where ambiguity exists, courts must look past the plain language to ascertain congressional intent. *See Dewsnup*, 502 U.S. at 420. In these circumstances, "the intention of the drafters, rather than the strict language, controls." *Ron Pair,* 489 U.S. at 242. When looking past the plain language of the text,

this Court may determine congressional intent by examining: (1) legislative history; (2) underlying policy interests; and (3) potential statutory conflicts. *Id.* at 243.

Here, ambiguity within the language of section 348(f)(1)(A) has produced two differing interpretations among courts. *See* 11 U.S.C. § 348(f)(1)(A). This Court should look past the plain text of the statute to determine which interpretation controls. In doing so, the Court should find that section 348(f)(1)(A)'s legislative history, underlying public policy, and statutory construction support the interpretation that any post-petition, pre-conversion increase in equity inures to the benefit of Debtor.

1. Ambiguity in Section 348(f)(1)(A) Creates Two Interpretations.

Courts are split between two divergent views on what Congress meant by "property of the estate, as of the date of the filing of the petition." 11 U.S.C. § 348(f)(1)(A). Courts have found that section 348(f)(1)(A)'s modifying language makes it so that "property of the estate" refers to property as it existed at the time of filing, holding that any post-petition increase in equity is separate from the pre-petition asset and thus not property of the chapter 7 estate. *See In re Barrera*, 620 B.R. 645, 650 (Bankr. D. Colo. 2020) (collecting cases) (referred to herein as the "*Barrera* interpretation").

Other courts have found that section 348(f)(1)(A)'s "property of the estate" refers to the home regardless of its specific characteristics at the time of filing, holding that any post-petition increase in equity is inseparable from the pre-petition asset and thus property of the chapter 7 estate. *See In re Castleman*, 75 F.4th at 1056; *Goetz v. Weber (In re Goetz)*, 651 B.R. 292, 298 (B.A.P. 8th Cir. 2023) (referred to herein as the "*Castleman* interpretation").

Even courts that have found section 348(f)(1)(A) unambiguous have conceded that courts are divided on this issue. *See In re Goetz*, 647 B.R. at 413; *see also In re Castleman*, 75 F.4th at

1055. This division is a direct result of section 348(f)(1)(A)'s failure to explain who is entitled to post-petition, pre-conversion increases in a debtor's equity. *See* 11 U.S.C. § 348(f)(1)(A). Courts are left to decide whether Congress intended pre-petition assets to become property of the chapter 7 estate: (1) "regardless of what has changed since the petition date," thus including any increased equity; or (2) "with the attributes and value it had on the petition date," thus excluding any increased equity. *See In re Barrera*, 620 B.R. at 650. This lack of clarity allows courts to understand section 348(f)(1)(A) "in two or more possible senses or ways." *See Chickasaw*, 534 U.S. at 90. In light of such ambiguity, this Court should look past the plain text of section 348(f)(1)(A) to ascertain congressional intent.

2. Legislative History and Underlying Policy Support the *Barrera* Interpretation.

Legislative history is a legitimate "aid to construction of the meaning of words," and there is "no rule of law which forbids its use, however clear the [statute's] words may appear on superficial examination." *See United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 544 (1940) (internal citations omitted). Here, the legislative history of section 348(f)(1)(A) supports the interpretation that any post-petition, pre-conversion increase in equity inures to the benefit of Debtor. Moreover, this interpretation is aligned with the Code's underlying policy goal to provide all debtors with a fresh start.

Section 348(f) was amended to "resolve a split in the case law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7." H.R. REP. NO. 103-835, at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366. More specifically, the amendment "adopts the reasoning of In re Bobroff, 766 F.2d 797 (3d Cir. 1985)." *Id*. The court in *Bobroff* reasoned that chapter 13 filings would be greatly disincentivized if debtors were forced to "take the risk that property acquired during the course of an attempt at repayment will

have to be liquidated for the benefit of creditors if chapter 13 proves unavailing." *In re Bobroff*, 766 F.2d at 803. The House Report explored this idea in the following hypothetical:

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

H.R. REP. NO. 103-835, at 57. This result would run contrary to "the Bankruptcy Code's goal of encouraging the use of debt repayment plans rather than liquidation." *In re Bobroff*, 766 F.2d at 803. The House Report suggests that "Congress did not intend that a chapter 13 debtor should lose the benefit of any equity accrued in an asset because of said debtor's compliance with the chapter 13 plan payments." *See In re Nichols*, 319 B.R. 854, 857 (Bankr. S.D. Ohio 2004).

Instead, "[t]he general purpose of § 348(f) was to equalize the treatment a debtor would receive under a Chapter 13 case that converted to a Chapter 7 case with the treatment the debtor would receive if he filed a Chapter 7 originally." *See In re Pearson*, 214 B.R. 156, 164 (Bankr. N.D. Ohio 1997). This general purpose highlights the Code's principal purpose: "grant[ing] a fresh start to the honest but unfortunate debtor." *See Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (internal citations omitted). Should the post-petition appreciation of a chapter 7 debtor's home be made available to creditors, just because he first attempted a chapter 13 plan, he would be denied a proper "fresh start." *See Harris*, 575 U.S. at 518 (holding that "[b]ad-faith conversions apart, we find nothing in the Code denying debtors funds that would have been theirs had the case proceeded under Chapter 7 from the start.").

Furthermore, any attempt to distinguish between post-petition equity created from chapter 13 plan payments or from market appreciation fails to consider the broader implications

of legislative history. *See id*. As previously established, by enacting section 348(f), Congress intended to "leave a debtor who attempts a repayment plan no worse off than he would have been had he filed a chapter 7 case at the outset." *In re Barrera*, 620 B.R. at 653. Accordingly, to further the Code's goal of not disincentivizing chapter 13 filings, no distinction should be made between post-petition equity created from debt repayments or market appreciation. *See In re Bobroff*, 766 F.2d at 803.

The House Report makes clear that Congress did not intend "property of the estate, as of the date of the filing of the petition," in section 348(f)(1)(A) to encompass post-petition, pre-conversion equity. *See In re Barrera*, 620 B.R. at 653; H.R. REP. NO. 103-835, at 57. Rather, Congress intended "property of the estate," in section 348(f)(1)(A) to be "the property *as it existed on the petition date*, with all its attributes, including the amount of equity that existed on that date." *See In re Barrera*, 620 B.R. at 653; H.R. REP. NO. 103-835, at 57. To find otherwise would confer the chapter 7 estate with an unintended windfall, allowing trustees to "reap the benefit of both the debtor's non-exempt assets and his chapter 13 postpetition income." *In re Barrera*, 620 B.R. at 654. Such a result would punish debtors for making their chapter 13 payments, contrary to the Code's "goal of encouraging the use of debt repayment plans rather than liquidation." *In re Bobroff*, 766 F.2d at 803.

Here, Debtor had no equity in his home at the time of the chapter 13 filing. R. 7. If Debtor had chosen to file for chapter 7 at the outset of the case, Trustee would gain nothing from selling Debtor's home, likely allowing Debtor to keep his home. Yet, if this Court finds that any post-petition, pre-conversion increase in equity belongs to the estate, the chapter 7 trustee must sell the home for the benefit of the creditors. R. 9. This would contravene the intent of Congress to equalize the treatment Debtor would receive under a chapter 13 case that converts to chapter 7

with the treatment he would have received if he had filed a chapter 7 originally. *See In re Pearson*, 214 B.R. at 164.

By adopting the reasoning of *Bobroff*, Congress made it clear that Debtor should not be punished for providing "timely made payments under his confirmed plan for eight months." *In re Bobroff*, 766 F.2d at 803; R. 8. Nor should Debtor be punished for his home appreciating in value, as Congress enacted section 348(f) under the guiding principle that "a debtor who attempts a repayment plan," should not be left worse off than if "he had filed a chapter 7 case at the outset." *In re Barrera*, 620 B.R. at 653.

Consistent with the congressional intent demonstrated in the legislative history of section 348(f)(1)(A), and the principal purpose of the Code, this Court should find that the chapter 7 estate includes Debtor's home "as it existed" on the chapter 13 petition date. *See id*. Accordingly, the post-petition, pre-conversion increase in equity in Debtor's home should inure to the benefit of the Debtor. To find otherwise would greatly disincentivize debtors from chapter 13 filings and deny Debtor the fresh start promised to him by the Code.

3. The *Castleman* Interpretation Produces Statutory Conflict.

The *Castleman* interpretation requires this Court to view post-petition appreciation and pre-petition assets as inseparable, thus bringing section 348(f)(1)(A) into conflict with other sections of the Code. *In re Castleman*, 75 F.4th at 1058. Four points of statutory tension demonstrate why it was not the intent of Congress for any post-petition, pre-conversion increase in equity to inure to the chapter 7 estate.

First, this Court has previously expressed "a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment." *See Pa. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 562 (1990). Were this Court to adopt the *Castleman*

interpretation of section 348(f)(1)(A), section 348(f)(2) would be rendered superfluous. *See In re Castleman*, 75 F.4th at 1058. Section 348(f)(2) changes how the property of the newly converted estate is determined when chapter 13 debtors convert in bad faith. 11 U.S.C. § 348(f)(2). As opposed to the chapter 7 estate being comprised of estate property "as of the date of filing," it is comprised of estate property "as of the date of conversion." *See id.*; 11 U.S.C. § 348(f)(1)(A). This distinction was meant to penalize bad-faith debtors by allowing the trustee to liquidate and distribute post-petition assets. *See Rodriguez v. Barrera (In re Barrera)*, BAP No. CO-20-003, 2020 WL 5869458, at *7 (10th Cir. Bankr. App. Panel R. 8026-6 Oct. 2, 2020) (citing *Harris*, 575 U.S. at 518).

The *Castleman* interpretation of section 348(f)(1)(A) would make it so that debtors converting from chapter 13 in good faith would face the punishment ascribed specifically for debtors converting in bad faith under section 348(f)(2). *See id.* Adopting such a view would destroy the bad faith distinction created by section 348(f)(2) and thus render the statute superfluous. *See id.* Here, such a result would punish Debtor for his honest attempt at fulfilling his chapter 13 plan. *See id.*; R. 8. The Court would effectively treat Debtor as if he converted in bad faith, despite no party in interest making such a claim. R. 8 n. 8

Second, courts have an obligation to read the Code as a "symmetrical and coherent regulatory scheme." *See Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 569 (1995). This obligation to "aim[] for harmony over conflict in statutory interpretation grow[s] from an appreciation that it's the job of Congress by legislation, not this Court by supposition, both to write the laws and to repeal them." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018).

Adopting the *Castleman* interpretation would create tension between section 348(f)(1)(A) and other parts of the Code which "freeze the relative rights of the debtor, the creditors, and the

estate as of the petition date." *See In re Barrera*, 620 B.R. at 651. Under section 522(a)(2), the "filing date of a bankruptcy petition . . . freezes the value of the exemptions that the debtor may claim." *See Wilson v. Rigby*, 909 F.3d 306, 308 (9th Cir. 2018). Under section 502(b), unsecured claims do not accrue interest as of the petition's filing date. *See In re Barrera*, 620 B.R. at 651. Under, section 362(a)(4) creditors are prevented "from taking any action to acquire a new lien postpetition." *See id*.

Under the *Barrera* interpretation, section 348(f)(1)(A) maintains uniformity; its reference to property "*as it existed* on the petition date . . . fits well within the context of the Code as a whole." *See id*. Conversely, the *Castleman* interpretation creates a jarring distinction between the value of an asset under section 348(f)(1)(A) and different parts of the Code. *See In re Castleman*, 75 F.4th at 1058. If the present Court were to find that any post-petition, pre-conversion equity inures to the estate upon conversion, Debtor's home would be valued at $450,000 for purposes of the chapter 7 estate. R. 9, 14. Meanwhile, that same home would only be valued at $350,000 for exemption purposes. R. 6. Such a reading of the Code would do little to promote statutory harmony. Instead, it would produce asymmetry within the regulatory scheme, requiring courts to examine one asset yet determine two conflicting values. *See In re Barrera*, 620 B.R. at 651.

Third, this Court has recognized that "[s]pecific terms prevail over the general in the same or another statute which otherwise might be controlling." *See D. Ginsberg & Sons v. Popkin*, 285 U.S. 204, 208 (1932). This advances the "cardinal rule" of statutory interpretation "that, if possible, effect shall be given to every clause and part of a statute." *Id*. The *Castleman* interpretation would require a reading of the Code wherein the more general terms of section 541(a)(6) would prevail over the more specific terms of section 348(f)(1)(A). *See In re Castleman*, 75 F.4th at 1058. Section 541(a)(6) includes certain after-acquired interests within

the property of the estate. 11 U.S.C. § 541(a)(6). Meanwhile, section 348(f)(1)(A) specifically governs what is property of the estate when a case under chapter 13 converts to a different chapter. 11 U.S.C. § 348(f)(1)(A). If, as the legislative history suggests, section 348(f)(1)(A)'s reference to property meant "property as it existed on the petition date," then section 541(a)(6)'s command that post-petition appreciation is property of the estate is not controlling. *See In re Barrera*, 620 B.R. at 653; H.R. REP. NO. 103-835, at 57. Therefore, section 348(f)(1)(A)'s "property of the estate, as of the date of filing of the petition" language controls over section 541(a)(6)'s more general language that property of the estate is comprised of "proceeds [or] product . . . of or from property of the estate." 11 U.S.C. §§ 348(f)(1)(A), 541(a)(6).

Fourth, a closer examination of section 541(a)(6) under the *Castleman* interpretation reveals an additional conflict between section 541(a)(6) and section 348(f)(1)(A). *See In re Castleman*, 75 F.4th at 1058. *Castleman* fails to make any distinction between equity created through market appreciation and equity created through a debtor's chapter 13 plan payments. *Id*.

While *Castleman* highlights how section 541(a)(6) includes the appreciation of value in a debtor's home, it fails to explore how it also excludes "'earnings from services performed by an individual debtor after the commencement of the case.'" *Id.* at 1056 (quoting 11 U.S.C. § 541(a)(6)). If section 348(f)(1)(A) truly captures all post-petition, pre-conversion increases in equity, it would also capture the equity created by the debtor's post-petition earnings used to pay off debt. *Id.* This reading of section 348(f)(1)(A) would not only conflict with section 541(a)(6)'s exclusionary language but also with this Court's ruling in *Harris. Harris*, 575 U.S. at 521 (holding that section 348(f)(1)(A) "shield[s] postpetition wages from creditors in a converted Chapter 7 case").

Some critics of the *Barerra* interpretation may point towards section 348(f)(1)(B) to demonstrate that courts should "not . . . rely on valuation determinations made in chapter 13 cases that are later converted to chapter 7." *See* R. 28 n.20. Critics point towards the 2005 amendment which made it so that "valuations of property and of allowed secured claims in the chapter 13 case" shall not apply in a case converted to chapter 7. 11 U.S.C. § 348(f)(1)(B); *see* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. These critics argue that such changes suggest that Congress intended any post-petition, pre-conversion appreciation in value to inure to the benefit of the estate. *See In re Castleman*, 631 B.R. 914, 920 n.5 (Bankr. W.D. Wash. 2021). However, even the *Castleman* court concluded that "[t]he 2005 amendment to Section 348(f)(1)(B) is . . . irrelevant to [the] interpretation of Section 348(f)(1)(A)." *See id.* The *Castleman* court reasoned that "valuation" did not mean the same as "value" and thus section 348(f)(1)(B) was never relevant in interpreting the value of property under section 348(f)(1)(A). *Id*. Therefore, section 348(f)(1)(B) should play no role in this Court's interpretation of section 348(f)(1)(A). *See id*.

Ultimately, the Thirteenth Circuit did not err in affirming the Bankruptcy Court's holding that a post-petition, pre-conversion increase in equity in the debtor's home inures to the benefit of the debtor, not the chapter 7 estate upon conversion from chapter 13 to chapter 7. R. 24. This holding is supported not only by the plain language of section 348(f)(1)(A) but also by the legislative history and public policy underlying the Code. The Thirteenth Circuit's holding adopted the interpretation of section 348(f)(1)(A) which was most harmonious with the Code's principal purpose: "grant[ing] a fresh start to the honest but unfortunate debtor." *See Marrama*, 549 U.S. at 367 (internal citations omitted).

II. THE CODE'S TEXT AND PUBLIC POLICY CONSIDERATIONS FORECLOSE THE POSSIBILITY OF A TRUSTEE SELLING HER ABILITY TO AVOID AND RECOVER TRANSFERS AS PROPERTY OF THE BANKRUPTCY ESTATE.

The Thirteenth Circuit correctly affirmed the Bankruptcy Court's holding that a chapter 7 trustee may not sell the ability to avoid and recover transfers as property of the bankruptcy estate. R. 24. This follows because the Code's express text does not authorize a trustee to do so. Moreover, granting a trustee such authority would transgress policy considerations underlying a trustee's avoidance powers.

The purpose of the Code is to assist the honest but unfortunate debtor. *Cohen v. de la Cruz*, 523 U.S. 213, 217 (1998). Upon the filing of a petition, the bankruptcy estate is created. *See* 11 U.S.C. § 541(a). It is this estate that is the subject of the bankruptcy administration. *See id.* Additionally, under section 363(b), "[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). Thus, a trustee "may sell only assets that are property of the estate." *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 258 (5th Cir. 2010); *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 504–05 (Bankr. S.D. Ohio 2021).

Sections 544 through 553 contain a trustee's "avoidance powers." 11 U.S.C. §§ 544–553. In the present case, the pertinent sections are section 547 which allows a trustee to avoid certain preferential transfers to creditors, and section 550 which allows a trustee to recover such avoided transfers for the estate's benefit. 11 U.S.C. §§ 547, 550. It is important to note that avoidance is a condition precedent to recovery under section 550(a). *See* 11 U.S.C. § 550(a); R. 18. This means that once a transfer is avoided, it may then be recovered so that the funds can be shared pro rata among creditors. Additionally, a distinction between the money transferred before the filing of the petition and a trustee's ability to avoid and recover—a cause of action—must be made. Since Trustee seeks to sell her ability to avoid and recover Debtor's transfer to Pink as property of the

estate, then Trustee's ability to avoid and recover itself must be property of the estate, not the $20,000 transfer. R. 7.

This Court should find that the plain language of section 541(a) does not allow a trustee to sell her ability to avoid and recover transfers as property of the bankruptcy estate. However, even if this Court were to find that section 541(a) does not foreclose the possibility, this Court should rule in favor of Debtor because adopting Trustee's argument would violate canons of statutory interpretation and ignore the Code's underlying policy.

A. The Plain Language of the Code Does Not Allow a Trustee to Sell Her Ability to Avoid and Recover Transfers as Property of the Bankruptcy Estate.

It is a well-established rule that Congress "says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992). Thus, when "the statute's language is plain, 'the sole function of the courts'"—at least where the disposition required by the text is not absurd—"'is to enforce it according to its terms.'" *Ron Pair Enters., Inc.*, 489 U.S. at 241 (quoting *Caminetti*, 242 U.S. at 485). When a term goes undefined in a statute, the courts must give the term its ordinary meaning. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 565 (2012).

The plain meaning of legislation should be conclusive, except where "the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982). Moreover, in determining whether statutory language is ambiguous, courts look to "'the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.'" *William F. Sandoval Irrevocable Tr. v. Taylor (In re Taylor)*, 899 F.3d 1126, 1129 (10th Cir. 2018) (quoting *Keller Tank Servs. II v. Comm'r*, 854 F.3d 1178, 1196 (10th Cir. 2017)).

Thus, pursuant to the plain meaning of section 541(a), this Court should find that a trustee's ability to avoid and recover transfers is not property of the bankruptcy estate because such an ability does not fit any of the subsections found in section 541(a). 11 U.S.C. § 541(a). Moreover, Congress's use of the word "trustee" in other sections of the Code means that only the trustee may use her ability to avoid and recover transfers.

1. The Plain Language of Section 541(a) Does Not Include a Trustee's Ability to Avoid and Recover Transfers as Property of the Bankruptcy Estate.

Section 541(a) sets out what property is included in the bankruptcy estate. *Id.* As a general rule, "[t]he estate cannot possess anything more than the debtor itself did outside bankruptcy." *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1663 (2019); *see also Board of Trade of Chicago v. Johnson*, 264 U.S. 1, 15 (1924) (establishing the rule).

While Congress has expressed that section 541(a) is meant to be read broadly, it is confined to seven enumerated subsections. 11 U.S.C. § 541(a). Thus, a broad reading should not be confused with a reading contrary to the plain meaning of the text. *See Bracewell v. Kelley (In re Bracewell)*, 454 F.3d 1234, 1240 (11th Cir. 2006) ("A broad reading is one thing; a reading contrary to the plain meaning of clear statutory language is another.").

Only two out of section 541(a)'s seven subsections are at the forefront of this issue. *See Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC)*, 78 F.4th 1006, 1008 (8th Cir. 2023) (focusing on sections 541(a)(1) and 541(a)(7)). This Court should find that the plain text of both subsections does not support the conclusion that the trustee's ability to sell and recover transfers is property of the estate.

a. Section 541(a)(1).

Under section 541(a)(1), "all legal or equitable interests of the debtor in property as of the commencement of the case" are considered property of the estate. 11 U.S.C. § 541(a)(1).

Legal interest is defined as "[a]n interest that has its origin in the principles, standards, and rules developed by courts of law . . . ." *Legal Interest*, BLACK'S LAW DICTIONARY (11th ed. 2019). Similarly, legal title is defined as "[a] title that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest." *Legal Title*, BLACK'S LAW DICTIONARY (11th ed. 2019). Additionally, an equitable interest is defined as "[a]n interest held by virtue of an equitable title or claimed on equitable grounds, such as the interest held by a trust beneficiary." *Equitable Interest*, BLACK'S LAW DICTIONARY, (11th ed. 2019). An equitable title is defined as "[a] title that indicates a beneficial interest in property and that gives the holder the right to acquire formal legal title." *Equitable Title*, BLACK'S LAW DICTIONARY, (11th ed. 2019).

In the present case, accounting for the plain meaning of the phrases "legal interest" and "equitable interest," Debtor does not have either in Trustee's ability to avoid and recover transfers. *Legal Interest*, BLACK'S LAW DICTIONARY, (11th ed. 2019); *Equitable Interest*, BLACK'S LAW DICTIONARY, (11th ed. 2019). First, Debtor does not have ownership of Trustee's ability to avoid and recover because only Trustee has the statutory authority to pursue the cause of action. No state or federal law gives Debtor legal interest in this cause of action, thus precluding him from ever pursuing a preference action. Second, Debtor does not have an equitable interest in this cause of action. Any money recovered by Trustee does not inure to the benefit of Debtor, and thus Debtor does not enjoy the benefits of this cause of action.

Opposing counsel may attempt to compare the present case with *Whiting Pools*; however, the two cases are distinguishable in a way that demands this Court to rule to the contrary. *See*

United States v. Whiting Pools, *Inc.*, 462 U.S. 198 (1983). In *Whiting Pools*, when the debtor failed to respond to demands for payment, the IRS attached a lien to all of Whiting's property and eventually seized the property. *Id.* at 199–200. This Court held that Whiting's interest in the property was property of the estate because section 541(a)(1) does not require the debtor to have a possessory right to the property. *Id.* at 205–06. Instead, Whiting's right to redemption, created by section 542, satisfied section 541(a)(1). *Id.*

Here, Debtor has no non-possessory interest in Trustee's avoidance power analogous to Whiting's "right to redemption" to his property. *See id.* Consider that, while Whiting had a claim to his property outside of bankruptcy, Debtor has never had a claim to Trustee's avoidance power, inside or outside of bankruptcy. Thus, unlike Whiting's property, Trustee's avoidance power was never property of Debtor. *See id.* This is further emphasized by this Court's finding that section 541(a)(1) requires the turnover of "any property of the *debtor* that the trustee can use under § 363." *Id.* at 205 (emphasis added). As established, the preference claim was never property of Debtor.

b. Section 541(a)(7).

Under section 541(a)(7), "[a]ny interest in property that the estate acquires after the commencement of the case" is considered property of the bankruptcy estate. 11 U.S.C. § 541(a)(7). This provision applies only to property acquired by the estate, not by the debtor. *MacKenzie v. Neidorf (In re Neidorf)*, 534 B.R. 369, 371 (B.A.P. 9th Cir. 2015). Again, the relevant inquiry is whether the trustee's avoidance power itself is property of the estate, not whether the preferential transfer is property of the estate.

As a general rule, the trustee is granted certain "rights and powers." *See* 11 U.S.C. § 546 (limitations on avoiding *powers*) (emphasis added). However, looking at its ordinary meaning,

power "'is not property or a property right, even though it concerns property.'" *In re Albion Disposal, Inc.*, 152 B.R. 794, 808 (Bankr. W.D.N.Y. 1993) (quoting 62 Am. Jur. 2d *Powers of Appointment and Alienation* § 7). Rather, power "is a personal privilege or capacity, or a mere authority." *In re Castiglione*, No. 05-54849(MBK), 2007 WL 4300151, at *4 (Bankr. D.N.J. Dec. 4, 2007). This means that when a person is bestowed power, such power is exclusive to that person. *Id.* "A power is a liberty or an authority which operates upon a vested estate or a vested interest, not being derived out of such estate or interest but overreaching or superseding it." *Id.* "Powers are granted." *Id.*

In the present case, Trustee's ability to avoid and recover transfers cannot be property of the estate for two reasons. First, Trustee's ability to avoid and recover falls under her avoidance powers, and powers are not property. 11 U.S.C. § 546; *In re Albion*, 152 B.R. at 808. Powers are granted to parties and are not at liberty to be sold. *In re Albion*, 152 B.R. at 808. Take a public officer such as a governor. A governor has the power to veto bills. However, if this process becomes particularly encumbering, the governor could not sell his power. Instead, it is a personal privilege bestowed upon the individual. *See In re Castiglione*, 2007 WL 4300151, at *4. Therefore, Trustee cannot have any interest in property relating to her avoidance power because powers are not property. 11 U.S.C. § 546; *In re Albion*, 152 B.R. at 808. Second, section 541(a)(7) requires that the estate acquires the interest in property "after the commencement of the case." 11 U.S.C. § 541(a)(7). Any interest that would arise in property from the avoidance power would arise at the moment the petition is filed, not at some time after the case has started. *Id.* Thus, Trustee's argument does not meet section 541(a)(7)'s temporal requirement. *Id.*

2. When Read as a Whole, the Code Prevents a Trustee from Selling Her Power to Avoid and Recover Transfers.

Even if this Court were to find ambiguity in the plain text of section 541(a), such ambiguity is resolved within the context of sections 547 and 550. This Court should find that Congress's use of the phrase "the trustee" therein is intentional, thus exclusively granting a trustee the power to avoid and recover transfers.

"'Where a statute . . . names the parties granted [the] right to invoke its provisions, . . . such parties only may act.'" *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6–7 (2000) (quoting 2A N. Singer, *Sutherland on Statutory Construction* § 47.23, p. 217 (5th ed. 1992)). There are three reasons why this Court should find that only trustees are authorized to exercise the power of avoidance and recovery. *Id.* at 7–9.

First, when a statute calls on a party to act, it is presumed that only that party may take such action. *Id.* at 6–7. In *Hartford Underwriters*, the petitioner argued that section 506(c) entitled it to recover from the property subject to a secured party's security interest. *Id.* This Court read the text of section 506(c) literally and reasoned that since it states, "[t]he trustee may recover," it is presumed that only the trustee may do so. *Id.* at 5. In its analysis, this Court explained that "a situation in which a statute authorizes specific action and designates a particular party empowered to take it is surely among the least appropriate in which to presume nonexclusivity." *Id.* at 6. In other words, when Congress prescribes a certain party the ability to do something, it is unusual to assume that Congress intended for a different party to have the same ability. *See id*.

Second, this Court has recognized that if Congress wanted to authorize a party other than the named party to act, it could add the name of the party to the section. *Duncan v. Walker*, 533 U.S. 167, 173 (2001); *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel.*

Cybergenics Corp. v. Chinery, 330 F.3d 548, 581 (3d Cir. 2003). For example, in section 343, the Code requires the debtor to appear and submit to examination at the meeting of creditors. 11 U.S.C. § 343. This section lists several parties who may examine the debtor: "[c]reditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee." *Id.* This shows that when Congress intends to allow multiple parties to perform an act, it will do so by adding the authorized parties to the section.

Third, the fact that the sole party named—the trustee—has a unique role in bankruptcy proceedings makes it plausible that Congress would provide power to her and not others. *Hartford Underwriters*, 530 U.S. at 8. Accordingly, the Code need not say "only trustee" for the trustee to be the sole party granted the power to avoid and recover. *Id.* at 7–8. Throughout various sections of the Code, the trustee is named without having the word "only" in front. *See, e.g.*, 11 U.S.C. § 363(b)(1) ("[t]he trustee, after notice and a hearing, may use, sell, or lease . . . property of the estate"); 11 U.S.C. § 364(a) (providing that "the trustee" may incur debt on behalf of the bankruptcy estate); 11 U.S.C. § 554(a) (giving "the trustee" power to abandon property of the bankruptcy estate). These provisions of the Code have naturally been read as "only the trustee," despite the absence of the word "only" in the text. This is because the trustee's existence is for the facilitation of the bankruptcy process. Logically, the trustee alone is granted rights and duties that no other party in the proceeding is entitled. These other parties do not exist for the sole function of effectuating the bankruptcy process.

In the present case, this Court should find that Trustee has the exclusive power to avoid and recover transfers because the only party named in sections 547 and 550 is the trustee. *Hartford Underwriters*, 530 U.S. at 6–7; 11 U.S.C. § 547(b) ("*the trustee* may . . . avoid any transfer of an interest of the debtor in property . . .") (emphasis added); 11 U.S.C. § 550 ("*the*

trustee may recover, for the benefit of the estate, the property transferred . . .") (emphasis added). Had Congress written sections 547 and 550 without specifying a party, the Code's text might have been ambiguous; however, this is not the case. 11 U.S.C. §§ 547(b), 550. This Court does not need to predict Congress's intent because it is clear from the text of the Code—only the trustee may avoid and recover. *Id.* Moreover, there is no language in sections 547 and 550 referring to "any party at interest." *Id.* Instead, Congress named the trustee as the sole party who may act. *Id.*

Ultimately, by interpreting the plain meaning of the phrase "the trustee" in sections 547 and 550 and reading it with the Code as a whole, this Court should find that Trustee cannot sell her exclusive power to avoid and recover transfers. *Id.*

B. Adopting Trustee's Argument Would Violate Canons of Statutory Interpretation and Public Policy Considerations.

Not only is Trustee's interpretation refuted by the plain language of the Code, but it is also disfavored by accepted canons of statutory interpretation and the Code's underlying policy considerations.

1. Including a Trustee's Ability to Avoid and Recover Transfers as Property of the Estate Would Create Superfluous Language in the Code.

"The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *City of Chicago, Illinois v. Fulton*, 592 U.S. 154, 159 (2021). "[A] cardinal principle of statutory construction [is] that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). It is the courts' duty "to give effect, if possible, to every clause and word of a statute . . . rather than to emasculate an entire section." *United States v. Menasche*, 348 U.S. 528, 538–39 (1955).

First, if a trustee's ability to avoid and recover transfers was property of the estate under section 541(a)(1) or (a)(7), then section 541(a)(3)'s cross-reference to section 550 would be useless. 11 U.S.C. §§ 541(a)(1), (3), (7), 550. This follows because section 541(a)(6) already calls for proceeds from property of the estate. 11 U.S.C. § 541(a)(6). Naturally, the proceeds of an avoidance action would be the same as the property that section 550 permits recovery of. 11 U.S.C. § 550. Thus, there would be no need for section 541(a)(3) to include property that the trustee recovers if section 541(a)(6) already does this. 11 U.S.C. § 541(a)(3), (6).

Second, if a trustee's ability to avoid and recover transfers was property of the estate, section 550 and 551's "for the benefit of the estate" requirement would be rendered superfluous. 11 U.S.C. §§ 550–551. If the estate owns a trustee's avoidance power, pursuant to it being property, then anything produced from the cause of action would automatically vest in the estate for the benefit of the estate. There would be no need for section 550 and 551's "for the benefit of the estate" requirement. *Id.*

2. The Code's Underlying Policy Considerations Urge this Court to Find that a Trustee May Not Sell Her Avoidance Powers.

Public policy considerations demonstrate that Congress did not intend for a trustee to sell her ability to avoid and recover transfers. Whether or not the buyer of the preference claim is a creditor in the bankruptcy, core policy considerations will be disrupted.

First, keeping a neutral party whose sole existence is for the facilitation of the bankruptcy process is crucial for preference actions. *In re Bargdill*, 238 B.R. 711, 721 (Bankr. N.D. Ohio 1999). Preference actions stem from a lawful payment to a creditor. *Id.* Thus, many creditors feel defrauded when they are forced to return funds received from a lawful payment. *Id.* The only ease provided by the Code is that the party bringing the preference action is a neutral party. *Id.* The trustee is "specifically designated by law to act impartially on behalf of a debtor's

bankruptcy estate." *Id.*; *see Miller v. Stone (In re Waterford Funding, LLC)*, No. 09–22584, 2017 WL 439308, at *3 (Bankr. D. Utah Feb. 1, 2017).

Second, a key underlying policy of the Code is equality of distribution to creditors. This Court has acknowledged that "[i]t is obviously one of the purposes of the Bankrupt[cy] law, that there should be a speedy disposition of the bankruptc[y]'s assets. *This is only second in importance to securing equality of distribution*." *Bailey v. Glover*, 88 U.S. 342, 346 (1874) (emphasis added). Permitting trustees alone to sue on a preference facilitates the prime bankruptcy policy of equality of distribution among creditors. *Republic Credit Corp. I v. Boyer (In re Boyer)*, 372 B.R. 102, 106 (D. Conn. 2007), *aff'd*, 328 Fed. Appx. 711 (2d Cir. 2009). To hold contrary would permit creditors to buy claims from trustees and pursue said claims on their own behalf, allowing creditors to recover more of the estate than is due to them. *Id.*

Here, allowing Trustee to sell her avoidance power would undercut the Code's emphasis on equal distribution to creditors. *Id*. Allowing an interested creditor to buy a trustee's avoidance power would allow him to recover more assets than he would have been entitled to. *Id.* For example, if Eclipse were to buy Trustee's preference claim, Eclipse would recover from the action against Pink and from the distributions received in the bankruptcy proceeding. Consider that Trustee would distribute a portion of the proceeds from Eclipse's purchase back to Eclipse to satisfy its unsecured claim. Thus, not only would Eclipse recover more than it would have under bankruptcy, but it would also be refunded a portion of the claim's purchase price upon Trustee's distribution to creditors.

Opposing counsel may argue that the Code's policy considerations are in favor of Trustee because the ability to sell her avoidance power will maximize the recovery of the bankruptcy estate. However, this will expose Trustee to additional administrative burdens and liability. *See*

Brendan Gage, *Is There a Statutory Basis for Selling Avoidance Actions?*, 22 J. Bankr. L. & Prac. 3 Art. 1 (2013). Trustee will have to devote significant time to valuing the cause of action and negotiating with the buyer. *Id.* This would leave Trustee with less time to fulfill her duties. *Id.* Moreover, if the cause of action were to be meritless, the third party may seek redress from Trustee, creating additional judicial proceedings. *Id.*

C. Alternatively, if this Court Finds that a Trustee May Sell Her Ability to Avoid and Recover Transfers, a Trustee May Still Not Sell to an Adversarial Buyer.

Even if this Court were to find that a trustee's ability to avoid and recover transfers is property of the bankruptcy estate, the lower court did not err in refusing Trustee's sale to Eclipse.

Bankruptcy courts are courts of equity. *Pepper v. Litton*, 308 U.S. 295, 304 (1939). As courts of equity, bankruptcy courts have broad powers to afford complete relief and modify the creditor-debtor relationship. *Id.*; *United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990). Moreover, a trustee may sell property of the estate only with the bankruptcy court's approval. 11 U.S.C. § 363(b)(1).

Even if a trustee's avoidance power is property of the bankruptcy estate, courts have denied sales of avoidance actions to buyers who have a history of hostility towards the potential defendant. *In re Metropolitan Elec. Mfg. Co.*, 295 B.R. 7, 13–14 (Bankr. E.D. N.Y. 2003); *In re Carragher*, 249 B.R. 817, 819–20 (Bankr. N.D. Ga. 2000). For example, in *Metropolitan*, the court denied a chapter 11 trustee's application to sell certain avoidance actions against a shareholder group to a buyer that had been "at odds" with the potential defendant. *In re Metropolitan*, 295 B.R at 16. The buyer offered to purchase the avoidance actions after losing to the shareholder group in a section 363 sale of the closely-held debtor corporation's assets. *Id.* at 10–11. The court took note of the "animosity" between the buyer and the potential defendant. *Id.*

at 14. Thus, the court denied the sale because it "border[ed] on a wish to harass the new owners of the business and some of their suppliers." *Id.*

In the present case, the bankruptcy court did not err in denying the sale of Trustee's avoidance power because Eclipse is an adversarial buyer. *See id.* at 13–14; *In re Carragher*, 249 B.R. at 819–20. The adversity started when Eclipse learned of the Debtor's donation to the VFW and continues as Eclipse actively seeks to buy Trustee's avoidance power. R. 7, 9. Eclipse also objected to Debtor's plan as being proposed in bad faith. R. 8. The Thirteenth Circuit recognized that Eclipse was probably motivated by retribution and redemption when it offered to purchase the alleged preference claim against Pink. R. 9. Like the potential buyer in *Metropolitan* whose purchase stemmed from a wish to harass the potential defendants, Eclipse also seeks to harass Pink in the preference action because of her relationship with the Debtor. *See In re Metropolitan Elec. Mfg. Co.*, 295 B.R at 14; R. 9. Thus, like the *Metropolitan* court, this Court should find that the bankruptcy court did not err in its decision because allowing Trustee to sell her avoidance power to Eclipse would promote Eclipse's retributive agenda. *See In re Metropolitan Elec. Mfg. Co.*, 295 B.R at 14; R. 9.

Ultimately, the Thirteenth Circuit did not err in affirming the Bankruptcy Court's holding that Trustee may not sell, as property of the bankruptcy estate, the ability to avoid and recover transfers pursuant to sections 547 and 550. 11 U.S.C. §§ 547, 550; R. 24. This holding is supported by the plain language of the Code and its underlying public policy. Alternatively, even if a trustee's avoidance power is property of the estate, Trustee may still not sell it to Eclipse, a hostile buyer.

CONCLUSION

This Court should affirm the decision of the Thirteenth Circuit Court of Appeals and hold that (1) any post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the debtor pursuant to sections 348 and 541; and (2) a chapter 7 trustee may not sell, as property of the bankruptcy estate, the ability to avoid and recover transfers pursuant to sections 547 and 550.

APPENDIX

11 U.S.C. § 343. Examination of the Debtor.

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 348. Effect of Conversion.

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

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title--

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

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

(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. § 363. Use, Sale, or Lease of Property.

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally

identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless--

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

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

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

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

11 U.S.C. § 364. Obtaining Credit.

(a) If the trustee is authorized to operate the business of the debtor under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.

11 U.S.C. § 506. Determination of Secured Status.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.

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. § 546. Limitations on Avoiding Powers.

(b)(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that--

(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or

(B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

(2) If--

(A) a law described in paragraph (1) requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an interest in property; and

(B) such property has not been seized or such an action has not been commenced before the date of the filing of the petition;

such interest in such property shall be perfected, or perfection of such interest shall be maintained or continued, by giving notice within the time fixed by such law for such seizure or such commencement.

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 $7,575 [originally "$5,000", adjusted effective April 1, 2022].
(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. § 550. Liability of Transferee of Avoided Transfer.

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

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

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

(b) The trustee may not recover under section (a)(2) of this section from--

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of such transferee.

(c) If a transfer made between 90 days and one year before the filing of the petition--

(1) is avoided under section 547(b) of this title; and

(2) was made for the benefit of a creditor that at the time of such transfer was an insider; the trustee may not recover under subsection (a) from a transferee that is not an insider.
(d) The trustee is entitled to only a single satisfaction under subsection (a) of this section.
(e)(1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of--

(A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and

(B) any increase in the value of such property as a result of such improvement, of the property transferred.

(2) In this subsection, "improvement" includes--

(A) physical additions or changes to the property transferred;

(B) repairs to such property;

(C) payment of any tax on such property;

(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and

(E) preservation of such property.

(f) An action or proceeding under this section may not be commenced after the earlier of--

(1) one year after the avoidance of the transfer on account of which recovery under this section is sought; or

(2) the time the case is closed or dismissed.

11 U.S.C. § 554. Abandonment of Property of the Estate.

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

11 U.S.C. § 704. Duties of Trustee.

(a) The trustee shall--

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

11 U.S.C. § 1306. Property of the Estate.

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

11 U.S.C. § 1307. Conversion or Dismissal.

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

11 U.S.C. § 1327. Effect of Confirmation.

(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.