NO. 23-0155

IN THE

Supreme Court of the United States

OCTOBER TERM, 2023

IN RE EUGENE CLEGG, DEBTOR,

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE
PETITIONER,

V.

EUGENE CLEGG,
RESPONDENT.

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

BRIEF FOR PETITIONER

TEAM NUMBER 29
COUNSEL FOR PETITIONER

JANUARY 18, 2024

QUESTIONS PRESENTED

1. Whether a post-petition, pre-conversion increase in equity in a debtor's property which resulted from extreme market anomalies inure to the Chapter 7 bankruptcy estate upon good faith conversion?
2. Whether the Chapter 7 Trustee can sell their Chapter 5 preference claims as property of the estate?

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

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

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

> **(f)(1)** Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—
> **(A)** property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;
> **(B)** valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and

The relevant portion of 11 U.S.C. § 541(a)(6) provides:

> **(a)** The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
> **(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.

The relevant portion of 11 U.S.C. § 522(a)(2) provides:

(a) In this section—

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

The relevant portion of 11 U.S.C. § 541(a)(1) provides:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

The relevant portion of 11 U.S.C. § 541(a)(7) provides:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(7) Any interest in property that the estate acquires after the commencement of the case.

STATEMENT OF FACTS

On December 8, 2021, Cpl. Eugene Clegg ("Debtor") filed for bankruptcy under Chapter 13 to save his home after a movie theater solely owned by his entity, Final Cut, failed to rebound due to the COVID-19 pandemic. (R. at 5, 6). At the time of filing, the Debtor had a $850,000 loan from Eclipse Credit Union ("Eclipse") which was used to renovate the theater in 2016; in exchange for the loan, Eclipse was granted first priority perfected liens on Final Cut's property and the Debtor executed a personal guarantee in an unlimited amount. (R. at 5). Because of the Debtor personally doing mostly of the renovation work, Final Cut reduced labor costs and thus did not exhaust the loan. (*Id.*) But rather than returning the additional funds to Eclipse, the Debtor donated the remaining $75,000 without receiving permission from Eclipse. (*Id.*)

After the renovations, the theater remained profitable for 3 years, but due to the pandemic and the State of Moot's stay-at-home order, the theater ceased operations for 1 year. (R. at 5, 6). After the stay at home order was lifted, the theater's attendance never recovered to its pre-pandemic levels. (R. at 6). Without another source of income, the Debtor chose not to take a salary in order to financially aid the theater. (*Id.*)

Pertinent to this litigation, on September 8, 2020, the Debtor borrowed $50,000 from his mother, Pink, on an unsecured basis. (R. at 6). In addition, the Debtor had significant credit card debt, pending home mortgage payments serviced by Another Brick in the Wall Financial Corporation ("Servicer"). (*Id.*) Since the Debtor had no reliable source of income, he began a Chapter 13 bankruptcy proceeding. (*Id.*)

In his filings, the Debtor listed his home's value as $350,000, based on an appraisal completed before he filed the petition. (*Id.*) The Debtor also listed a debt to the Servicer totaling

$320,000, and an unsecured debt in an unknown amount to Eclipse. He also claimed a state law homestead exemption of $30,000–the maximum amount allowed in the State of Moot. (R. at 6, 7). Finally, the Debtor stated that he made payments to Pink within one year of the petition date; these payments totaled $20,000. (R. at 7.) The chapter 13 payment plan proposed to pay back creditors over three years and cure the mortgage payment and make reoccurring monthly payments to the Servicer through the chapter 13 trustee. (*Id.*) The Debtor also stated in the plan that he had zero equity in his home due to the secured indebtedness and the homestead exemption. (*Id.*)

At the meeting of creditors, Eclipse learned for the first time of the Debtor's transfer of the remaining loan to a veterans' foundation. (*Id.*) Due to the Debtor's deception, Eclipse asked the Court to declare the Debtor's debt, in the amount of the donated portion, non-dischargeable. (*Id.*) In addition, the Chapter 13 trustee objected to the plan because under the plan proposed, the creditors would receive less than they would under the chapter 7 liquidation since the preferential transfers to Pink could be recovered and distributed under chapter 7. (*Id.*) In response, the Debtor amended the plan to increase chapter 13 payments by $20,000 over the 3-year period. (*Id.*) The trustee agreed to not attempt to recover the transfer from Pink, and the parties stipulated to this in writing and incorporated it by reference in the bankruptcy plan. (R. at 8.).

Even so, the Debtor's plan faced a secondary objection. (*Id.*) Eclipse argued that the Debtor did not propose the plan in good faith— a requirement for approval. (*Id.*) To save the plan, the parties agreed that Eclipse would be entitled to a $150,000 claim– of which $25,000 would be non-dischargeable even if the case were converted to chapter 7. (*Id.*) In exchange, Eclipse agreed to withdraw its plan objection. (*Id.*) With no additional objections, the bankruptcy court approved the plan and the settlement agreement between Eclipse and the Debtor. (*Id.*)

That said, the Debtor failed to complete his proposed Chapter 13 plan because he stopped working altogether after contracting COVID and the theater permanently closed. (*Id.*) Because the Debtor could no longer afford to make his Chapter 13 payments, the Debtor converted the case to Chapter 7, and Floyd was appointed as the Chapter 7 Trustee. (R. at 8-9.) On the conversion documents, the Debtor once again asserted that the value of the home was $350,000 and that he would reaffirm the debt owed to the Servicer and remain in his home. (R. at 9.) In addition, Debtor also disclosed the preferential transfers to Pink, and stated that his debt to Eclipse totaled, approximately, $200,000. (*Id.*)

Although the trustee initially found that the Debtor was entirely without assets, the Debtor mentioned that home prices in his area were skyrocketing in price purely due to the market after the COVID-19 pandemic. (*Id.*) As a result, the trustee ordered an appraisal of the Debtor's home which revealed that the non-exempt equity in the home had increased by $100,000 since the Debtor filed for chapter 13. (*Id.*) Because of the valuation, the trustee, on behalf of the estate, put the house up for sale, consistent with the duty imposed by the Code to collect money to benefit creditors. (*Id.*) Eclipse then offered to buy both the home and the preference claim against Pink for $450,000, and, finding the offer fair, the trustee filed a motion for sale to Eclipse. (*Id.*)

The Debtor objected to the sale of motion for two reasons. First, the Debtor claimed that the pre-conversion, post-petition increase in equity in the home, based on the increase in value, should inure to his benefit, not the benefit of the estate; accordingly, the estate could not sell the home due to the lack of non-exempt equity in the asset. (R. at 10.) Second, the Debtor argued that the Trustee had no authority under the code to sell their own ability to avoid or recover transfers. Thus, by his argument, the trustee could not sell the right to recover Pink's preferential transfers. (*Id.*) The bankruptcy court rejected this sale motion, and the trustee appealed. (*Id.*) On appeal, the

Thirteenth Circuit affirmed the bankruptcy court's decision. (R. at 24.) Then, the trustee petitioned for a writ of certiorari, which This Court granted. (R. at 2.)

STANDARD OF REVIEW

The standard of review for questions of law, as this case, is de novo. *See Einstein/Noah Bagel Corp. v. Smith (In re BCE W., L.P.)*, 319 F.3d 1166, 1170 (9th Cir. 2003).

SUMMARY OF THE ARGUMENT

This Court should overturn the decision of the Thirteenth Circuit Court of Appeals because post-petition, pre-conversion increases in equity of a debtor's property inure to the bankruptcy estate in a conversion; this position is supported by the express language contained in sections 541(a) and 348(f). Allowing this increase in equity to belong to the Debtor would undermine the policy which shapes bankruptcy law, weaken the relationship between debtors and creditors, and cause delays in bankruptcy proceedings.

The plain language of Section 541 encompasses post-petition, pre-conversion increases of a debtor's asset into the definition of property of the estate. While some courts presume that these increases are removed from the estate by other sections of the Code, including sections 522 and 348(f), neither the explicit language nor the legislative history of the Code supports this view.

Furthermore, this Court should overturn the Thirteenth Circuit's decision because trustees are allowed to sell their preferential claims based on the Code. The trustee's Chapter 5 avoidance actions are causes of action, which constitute property interests. Those causes of action constitute property of the estate under Code section 541(a), which defines property of the estate broadly. In addition, courts have long understood this statute to be nearly all-encompassing. Avoidance actions do not belong to the trustee; instead, the trustee acts as a fiduciary for the estate to pursue those actions for the benefit of the estate. Here, the trustee acted well within her duty and properly maximized the value of the estate by selling the preference avoidance action to Eclipse.

Under Section 541(a)(1), all property interests that the Debtor had as of the commencement of the case are property of the estate. This includes Chapter 5 avoidance actions, as the Debtor has an inchoate or contingent interest in those actions prior to filing a petition for bankruptcy. Alternatively, under Section 541(a)(7), all property interests acquired by the estate after the commencement of the estate are property of the estate. This also includes Chapter 5 avoidance actions, which accrue after the Debtor has filed a petition for bankruptcy. The respondent attempts to preclude avoidance actions from the estate's property by arguing that the actions arise in a fictitious third period of time, at the exact moment the bankruptcy petition is filed. This argument, however, ignores the plain language of section 541(a) and frustrates the purpose of section: to broadly define property of the estate.

Further, it does not violate the canon against surplusage to hold that Sections 541(a)(1) or (7) include avoidance actions as property of the estate because it creates no redundancy or superfluity. Nor does it violate section 550(a), as the trustee created an ex ante benefit to the estate by selling the avoidance action to a creditor; there need not be a secondary benefit to satisfy section 550(a).

ARGUMENT

This Court should reverse the Thirteenth Circuit Court's decision because post-petition, pre-conversion increases in equity in a debtor's property inure to the bankruptcy estate under the Code. This Court should further reverse the circuit court's decision because the preferential claims of a Chapter 7 trustee are considered property of the estate under Section 541, and thus the trustee is allowed to sell their preferential claims to creditors.

I. A post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the bankruptcy estate, not the debtor, upon conversion of a case from chapter 13 to chapter 7.

The notion that post-petition, pre-conversion increases in equity of a debtor's property inures to the bankruptcy estate in a conversion is supported by the language contained in sections 541(a) and 348(f), as well as the equitable principles surrounding the Bankruptcy Code. A decision affirming the Thirteenth Circuit would not only run contrary to the language of the Code and the intentions of the drafters, but also cause absurd results in liquidation cases when an asset's value increases merely due to market forces. While this decision might be beneficial for debtors by providing a fresh start, creditors would lose the protection that the Code currently affords.

A. The increase in equity inures to the bankruptcy estate because, according to the plain language of § 348(f)(1)(A) of the Bankruptcy Code, property of the estate at the time of filing remains property of the estate upon conversion.

When a debtor converts a chapter 13 case to a chapter 7 case, barring any changes in control or ownership, the property of the estate remains unchanged. Often, debtors pursuing a chapter 13 case fail to make the regular payments required, and the bankruptcy case is thus converted to a chapter 7 liquidation. In the past, it was unclear what constituted the property of the estate under a chapter 7 liquidation in a converted case. Thus, in response, congress enacted § 348(f) in 1994 to remedy any confusion. 11 U.S.C. § 348(f).

Under § 348(f)(1)(A), property of the estate for the purposes of a chapter 7 liquidation consists of all the 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 Code clearly states that, in most cases, the property of the estate for chapter 7 references back to the property of the estate in the chapter 13 case.

Plain-meaning is the starting point for any statutory interpretation, but as the Thirteenth Circuit noted, in the case of an entire legislative body of law, a court should analyze the whole of Congress's legislative scheme to understand the statute at issue. (R. at 12) (citing *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991)). Thus, in the context of any ambiguities from the plain meaning, the entirety of the Bankruptcy Code informs the meaning of § 348(f)(1)(A).

If ambiguities remain after reviewing the Code at large, a court may look to other sources, such as the drafters' intent, to help remedy any lingering confusion. However, when the plain-meaning, informed by the Code at large, can be clearly understood, a court need not analyze any other sources of information. In effect, as long as the court understands the plain language after sufficient review, the analysis may cease there. In fact, the Supreme Court has encouraged this type of stringent review in the bankruptcy world. For instance, in *Lamie v. U.S. Trustee*, this Court "preferr[ed] the plain meaning since that approach respects the words of Congress. In this manner [the Court] avoid[s] the pitfalls that plague too quick a turn to the more controversial realm of legislative history." 540 U.S. 526, 536 (2004). Of course, a court may, if it so chooses, analyze additional sources to strengthen their interpretation beyond the language of the statute; however, the words alone are binding unless some severe ambiguity exists. See *Id.* at 539.

In accordance with the plain-meaning of § 348(f)(1)(A), the increase of a home value inures to the benefit of the estate. As the Ninth Circuit in *In re Castleman* noted, the language of this statute is particularly clear. 75 F.4th 1052, 1058 (9th Cir. 2023). There, the court addressed whether a post-petition, pre-conversion increase in the market value of a home inures to the benefit of the debtor or the estate. *Id.* The court found that because the plain meaning of the statute, informed by the rest of the code, was not ambiguous, the legislative history was not relevant. *Id.* at 1057. Thus, relying on the plain meaning of the statute and other provisions of the code, the court concluded that upon conversion, the property of the estate remains unchanged as of the filing date of the chapter 13 case. *Id.* at 1058. Thus, any change in value of an asset of the estate also becomes part of the estate. *Id.*

Further, assuming a court did want to analyze legislative intent, the lack of an exception for pre-conversion increases in equity in § 348(f) signifies that the drafters purposefully left the statute broad. If the drafters wanted to legislate only for a specific scenario, that specific scenario would have likely made itself into the language of that statute. (R. at 29) ("If Congress had intended to exclude post-petition appreciation from being property of the estate in a converted case, it could easily have said that . . .").

Moreover, while some may argue that changes in valuation of the property should alter the reading of the statute, § 348(f)(1)(B) clearly states that the valuation of the property in chapter 13 does not carry over to chapter 7. In other words, according to the plain meaning of § 348(f)(1), the property of the estate on the date of filing of chapter 13 remains property of the estate upon conversion, even if the valuation changes; this plain meaning adheres to other provisions of the code, such as 11 U.S.C. § 541.

In order to claim that this valuation does not carry over, the Thirteenth Circuit incorrectly deemed § 348(f)(1)(B) irrelevant to the analysis because the purpose for which it was enacted does not match the facts of this case. (R. at 13, n. 13).

However, as mentioned above, the drafters' reason for enacting a statute is irrelevant unless the statute is sufficiently ambiguous. Thus, because the provision in question is not ambiguous, we can conclude that valuation calculations for the purposes of property of the estate upon conversion from 13 to 7 are not binding.

Here, the Debtor's home, which became property of the estate upon the filing of the chapter 13 case, remains property of the estate upon conversion. As in *In re Castleman*, the increase in equity in the Debtor's home arose from an increase in market value. 75 F.4th at 1058. An increase in value for an asset that is indisputably property of the estate does not suddenly inure to the benefit of the debtor; rather, as an asset of the estate upon filing, any changes in its value remain property of the estate upon conversion. *Id.* at 1058. Accordingly, because the language is clear, the court need not look to additional sources to determine that this increase in interest in the home inures to the estate.

B. Pursuant to § 541, the property of the estate includes any future increases arising in that same property.

However, as acknowledged previously, if a court believes the plain language is not sufficiently clear, it may look to the other provisions in the code to help inform its analysis. Here, given that the provision in question references property of the estate, the court should look to the definition of property of estate in 11 U.S.C. § 541. Section 541(a) is particularly broad; under this provision, property of the estate includes "'all legal or equitable interests of the debtor in property as of the commencement of the case,''wherever located and by whomever held.'" *In re Goins*, 539 B.R. 510, 515 (Bankr. E.D. Va. 2015) (*citing* 11 U.S.C. §§ 541(a), 541(a)(1)).

In particular, § 541(a)(6) explains that property of the estate includes "[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); see also *In re Potter*, 228 B.R. 422, 424 (8th Cir. B.A.P 1999). Thus, under § 541(a)(6), any appreciation of the property of the estate automatically becomes part of the estate unless the profits or proceeds stemmed from the efforts of the debtor. *See Goins*, 539 B.R. at 515. As the Bankruptcy Appellate Panel for the Eighth Circuit asserted, "[n]othing in Section 541 suggests that the estate's interest is anything less than the entire asset, including any changes in its value which might occur after the date of filing." *Potter*, 228 B.R. at 424. Thus, if we are to read a bankruptcy statute in the context of the Code in general, as the court below correctly established, then any pre-conversion increase of value of an asset previously deemed to be property of the estate must inure to the estate.

Courts have similarly concluded that, in accordance with the plain meaning of § 541, increases in value are included in the property of the estate. For example, in *In re Goins*, the bankruptcy court held that the estate was entitled to the post-petition, pre-conversion appreciation of a real estate interest under § 348(f)(1)(A) because the real estate was always property of the estate under § 541(a). 539 B.R. at 515. There, the court, relying on precedents from its circuit and other circuits, reasoned that the debtor's equity or appreciation in the value of the property is not a separate, after-acquired property that is not part of the bankruptcy estate. *Id.* at 516. Instead, it is inseparable from the property itself, and because the real estate was property of the estate at the time the petition was filed under chapter 13, its "proceeds" under § 541(a)(6) include the increase in value. *Id.* at 515-16. Across the country, various courts have similarly concluded that a post-petition increase in value of property of the estate must also be considered property of the estate, not the debtor. *See, e.g.*, *In re Moyer*, 421 B.R. 587, 594 (S.D. Ga. 2007) ("The stock is property of the estate and any increase in its value is property of the estate as profits or proceeds from property of the estate under § 541(a)(6)."); *see also In re Shipman*, 344 B.R. 493, 495 (Bankr. N.D.W.Va. 2006).

Here, the appreciation of the property in question automatically becomes property of the estate. At the time of filing, the Debtor had an interest in the home. Thus, it was automatically property of the estate under § 541(a). Likewise, under § 541(a)(6) the proceeds of the property in question automatically become part of the estate. Like in *Goins*, the increase in value of real estate is simply proceeds of that property. 539 B.R. at 515. Thus, because the home was property of the estate upon filing, any increase in value, as proceeds, automatically becomes part of the estate- inseparable from the real estate itself. *Id.*

Further, because the increase in value did not come from the efforts of the Debtor, but rather arose simply from a change in the market, these proceeds will not be severed from the property. Accordingly, the increase in value of the property automatically becomes property of the estate and thus cannot inure to the benefit of the Debtor upon conversion to Chapter 7 in accordance with the definition of property of estate under § 541.

C. The Thirteenth Circuit erred in not applying §348(f)(1)(B) as there is no statutory conflict between §522 and §348(f).

While subsection (1)(A) encompasses all property of the estate, as of the date of filing of the chapter 13 case, § 348(f)(1)(B) plainly excludes any valuations of that property made during a Chapter 13 case. 11 U.S.C. § 348(f)(1)(B). The language explicitly states that "valuations of property…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**." 11 U.S.C. § 348(f)(1)(B) (emphasis added). Disregarding the application of section 348(f)(1)(B) as proposed by the Thirteen Circuit would make the provision moot. (R. at 13). As Justice Scalia explained "a cardinal rule of statutory interpretation [is] that no provision should be construed to be entirely redundant." *Kungys v. United States*, 458 U.S. 759, 778 (1988). Here, the text of § 348(f)(1)(B) excludes property valuations made from Chapter 13 to carry over to Chapter 7 conversions, and the language is "plain and ambiguous." *See In re Airhart*, 473 B.R. 178, 182 (Bankr. S.D. Tex. 2012). Given that Congress chose to apply Chapter 13 valuations to Chapter 11 and 12 conversions, undeniably their exclusion of Chapter 7 is no mistake. Therefore, this Court should enforce section 348(f)(1)(B) according to that plain language.

Moreover, the Thirteen Circuit's statutory interpretation is flawed, as section 348(f)(1)(B) contains no ambiguity. (R. at 13.) As this Court emphasized, a court may consider a statute's structure, such as the use of semicolons, conjunctions and line breaks, to "clarif[y] any ambiguity inherent in its literal language." *Castillo v. United States*, 530 U.S. 120, 125 (2000). In addition, traditional statutory construction canons must be used to interpret a statute before rendering the language ambiguous. *See Shular v. United States*, 140 S. Ct. 779, 787 (2020). The conjunctive/disjunction canon instructs that when there is a multi-element construction with an and between the last two elements only, all the elements apply to the preceding sentence. *See* A. Scalia & B. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 221-224 (2012). Here, the preceding sentence of § 348(f)(1)(B) plainly states: "when a case under chapter 13. . . is converted to a case under another chapter…", meaning clauses that follow apply to all cases converted from chapter 13 to another chapter. 11 U.S.C. § 348(f)(1). The use of semicolons between (A), (B), and (C) also indicates that while these provisions operate separately, all apply to cases converted from chapter 13. 11 U.S.C. § 348(f)(1).

The language of section 348(f), which governs conversion of a chapter 13 case to a case under another chapter under the Bankruptcy Code, does not reference section 522. *See* 11 U.S.C. § 348(f)(1); 11 U.S.C. § 522(a)(2). And it would be erroneous to impute Congress' use of "valuation" in Section 348(f)(1)(B) as a reference to the timeframe prescribed in Section 522. In drafting the Bankruptcy Code, Congress refers to specific timeframes which govern each distinct section such as the confirmation of a Chapter 11 plan. *See* 11 U.S.C. § 1129(a)(7)(A)(ii) ("as of the effective date of the plan . . ."). The absence of any reference to Section 522 in Section 348 is critical considering Congress could have included a cross-reference to Section 522, as it did over fifteen times throughout the Code. (R. at 19). Moreover, it would be erroneous to assume that the use of "value" alludes to Section 522 as there are other references to value in the Code with no specified date. *See* 11 U.S.C. § 506(b) (discussing the value of a secured claim with no mention of a time frame). As such, Congress did not intend to limit a timeframe regarding the valuation of an asset when a conversion from one chapter to another has occurred. 11 U.S.C. § 348(f)(1)(B). Therefore, the applicable date of Section 522 is irrelevant to interpreting Section 348(f)(1)(B), and the later valuation applies.

The Thirteenth Circuit held that due to the statutory conflict between Sections 522 and 348(f), the Debtor's home value was fixed as of the original filing date per the snapshot rule, disregarding Section 348(f)(1)(B). (R. at 12-13.) A main feature of the snapshot rule is how it freezes the facts of the case and the law at time the petition is filed. *In Re Williams*, 515 B.R. 385, 401 (Bankr. D. Mass. 2014). Although the snapshot rule freezes a debtor's exemptions and the value that a debtor is entitled to claim in their exemptions, it does not freeze the value of the assets itself. *See White v. Stump*, 266 U.S. 310, 313 (1924); *see also Gebhard v. Gaughan* (*In re Gebhard*), 621 F.3d 1206, 1211 (9th. Cir. 2010). As such, if this Court does apply the snapshot rule, the value of the Debtor's home would be the amount reflected in the later valuation, and what would be frozen is the Debtor's exemption of the home. (R. at 9). This outcome is supported by the Code as in a chapter 7, neither the Debtor nor the trustee could sell property for less than its market value, so current market value should be used when determining assets of a converted estate. *In re Paolella*, 85 B.R. 974, 977 (Bankr. E.D. Pa. 1988).

While the Thirteen Circuit cited *In re Rockwell* to support its position, it failed to note the First Circuit, in the same opinion, stated that the snapshot can be edited, especially when "the right circumstances could later alter the status of that asset relative to the bankruptcy estate." *Rockwell v. Hull* (*In re Rockwell*), 968 F.3d 12, 18 (1st. Cir. 2020). Refusing to edit the snapshot would render the Code nonsensical as there are other provisions in the Code which state that after filing, property acquired by a debtor becomes part of the estate. *See, e.g.,* 11 U.S.C. § 541(a)(5) ((requiring that any property the debtor acquires within 180 days after filing through inheritance, divorce, or a life insurance policy becomes part of the bankruptcy estate)).

Even if the post-petition pre-conversion increase in equity is considered after-acquired property, here, the Debtor failed to take the adequate steps to retain it. The language of Rule 1007(h), read conjunctively with Section 541(a)(5), plainly states that a debtor who "acquires or becomes entitled to [] any interest in property, . . . shall within 14 days . . . file a supplemental schedule in the chapter 7 liquidation case." Fed. R. Bankr. P. 1007(h). In addition, if the property is exempt, a debtor must claim the exemption in the supplemental scheduled to be filed. *Id.* Here, the Debtor was aware of the increased value of his home since he informed the trustee at the Section 341 meeting that "he…noticed [] homes in his neighborhood were selling at a premium." (R. at 9). Even though the Debtor's comment led to the later appraisal, the record does not show if at any point between the meeting, the later appraisal, or when the marketing the home, did the Debtor take concrete legal steps to retain his interest per rule 1007. (R. at 9). Since the Debtor did not take the concrete legal steps required by the Federal Rules of Bankruptcy Procedure, he no longer has the right to claim the increased equity.

D. This Court Should Adopt the Reasoning of Judge Hawkins' Decision in Castleman.

The Ninth Circuit recently contended with a case with parallel facts and the well-reasoned opinion should be persuasive to this Court. In 2019, the debtors filed for chapter 13 bankruptcy and listed their home with a value of $500,000 and a homestead exemption of $124,923. 75 F.4th at 1054. However, after twenty months, the debtor lost his job due to the pandemic, was diagnosed with Parkinson's Disease, and could no longer make the Chapter 13 payments. *Id.* The debtors converted their case to Chapter 7 and in that time, their home increased approximately $200,000 in value. *Id.* The chapter 7 trustee attempted to sell the debtor's home to recover the value for the creditor but the debtors objected and argued that the increased equity did not belong to the bankruptcy estate per Section § 348(f)(1). *Id.*

The court held that any post-petition, pre-conversion increase in the equity of the home inured to the bankruptcy estate, not the debtor, and, as such, affirmed the bankruptcy court's orders. *Id.* at 1055. In Chapter 7 all property acquired after the petition is excluded from the estate. However, because after-acquired property interest belongs to the estate per § 541(a)(6), "[the Ninth Circuit] has necessarily found that increase equity in a pre-petition asset cannot be a separate, after-acquired property interest." *Id.* at 1056-57. Nor did the court look to the legislative history of § 348(f) since when the language of the statute was read in conjunction with the rest of the Bankruptcy Code, the court found § 348(f) to be unambiguous. *Id.* at 1057.

This Court should look to the reasoning of the *Castleman* court because of the similarity of the facts to the case at bar. Here, the Debtor argues that the increase in equity of the asset inures to them, even though this increase in equity occurred due to extreme market anomalies. (R. at 25). Similarly, in *Castleman*, the increase in the debtor's house was caused by the extreme market anomalies due to the pandemic not due to payments made throughout the plan. 75 F.4th at 1058. Even though the purpose of Chapter 7 is to provide debtors with a fresh start, especially after an earnest attempt to pay back creditors, this Court has held that the rules of the Bankruptcy Court have the final say, even where equity might demand a different result. *Law v. Siegel*, 571 U.S. 415, 426 (2014).

This Court has acknowledged that addressing different outcomes based on public policy concerns "is a task for Congress, not the courts." *Hartford Underwriters Ins. Co. v. Union Planters Bank*, 530 U.S. 1, 2 (2000). Nevertheless, the Petitioner urges this Court to consider the negative ramifications the creditor and debtor relationship would face, as well as the detrimental effect on the bankruptcy scheme if post-petition, pre-conversion increases in equity are not allowed into the Chapter 7 estate.

A strong case can be made that an increase in the debtor's equity due to market factors should stay with the debtor. *See Harris v. Viegelahn*, 575 U.S. 510, 518 (2015). However, if Congress had wanted to exclude post-petition increases in home equity, they would have explicitly done so like they did with post-petition wages. *See id*. Thus, it coincides with the legislative history to limit the scope of § 348(f) to the actual language in the statute. Expounding on this language would give debtors, benefitting from extreme market anomalies, a free ride to protect additional assets than what is typically exempt while benefiting from Chapter 7 and discharging substantial debt. See Morgan Decker and Matthew Barr, ADDRESSING POST-PETITION INCREASES IN EQUITY IN A CASE CONVERTED FROM CHAPTER 13 TO CHAPTER 7: TWO SCHOOLS OF THOUGHT, 2022 Ann. Surv. of Bankr. Law 12, 15 (Oct. 2022).

In terms of a conversion from Chapter 13 to Chapter 7, the original asset values in the debtor's schedules are difficult to rely on since these values are often not subject to the similar level of scrutiny of a Chapter 7 case. *In re Lynch*, 363 B.R. 101, 106 (B.A.P. 9th Cir. 2007). The Ninth Circuit discussed the various hurdles that arise from relying on a Chapter 13 valuation in a conversion to Chapter 7, centered on the debtors, the creditors, and most importantly the courts. *Id.* In a chapter 7 case, it is in the best interest of all parties to scrutinize scheduled values to determine: (1) the amount of equity available for general creditors; (2) whether any homestead exemption applies; and (3) whether other exemptions apply. *See In re Wegner*, 210 B.R. 799, 802 (Bankr. D.N.D 1997), *Aff'd, 162* F.3d 1166 (8th Cir. 1998). In comparison, in a chapter 13 case, the debtors are not motivated to list their assets higher than what is required by a good-faith standard; creditors lack the incentive to challenge this value as their claim will be paid in full regardless. 363 B.R. at 106. In that same vein, the trustees and unsecured creditors tend to be concerned about the debtor's disposable income and the confirmation of the plan. *Id.* Lastly, bankruptcy courts hear an overwhelming amount of Chapter 13 cases per session and as such "cannot be expected to consider and rely…upon the values placed by the debtors on their homes and other assets." *Id.* Thus, it cannot be the intention of Congress that when an asset skyrockets in value and the proper procedure to sell this asset is followed, the Debtor gets to reap the benefit which arose from pure luck.

II. A Chapter 7 trustee may sell, as property of the bankruptcy estate, the ability to avoid and recover transfers pursuant to 11 U.S.C. §§ 547 and 550.

This Court should reverse the Thirteenth Court of Appeals' decision and hold that the trustee is permitted to sell their preferential claims per Sections 547 and 550. Here, Respondent argues that the Code grants avoidance powers to the trustee only, yet the Code lacks any provision prohibiting sales of these claims. In addition, the Code supports this sale as Sections 541(a)(1), or alternatively, 541(a)(7) include preferential claims into the definition of the property of the estate. 11 U.S.C. §§ 541(a)(1), 541(a)(7). Prohibiting the sale of these claims would greatly hinder the estate as funds that could otherwise be available to creditors, would be spent in litigating the claims instead, and thus the sale does not violate Section 550. 11 U.S.C. § 550(a). Lastly, this purported reading of the Code to allow the sale does not violate the canon of surplusage. Thus, this Court should reverse the Thirteenth Circuit's decision.

A. Under 11 U.S.C. § 541(a)(1) A Chapter 7 Trustee May Sell Their Preference Claim as Property of the Estate

The chapter 7 trustee can sell the claim to avoid and recover preferential transfers, chiefly for the benefit of the estate. Moreover, property of the estate includes the inchoate or contingent interests that were held by the debtor prior to the commencement of the bankruptcy proceeding.

Under 11 U.S.C. § 541(a)(1), a chapter 7 trustee may sell their preferential claims as property of the estate. 11 U.S.C. § 541(a). Section 541(a)(1) clearly defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." *Id.* According to *United States v. Whiting Pools Inc.*, the Supreme Court interpreted "property of the estate" broadly, and Section 541(a)(1) "to include in the estate any property made available to the estate by other provisions of the bankruptcy code." 462 U.S. 198, 205 (1983). This Court has also instructed that § 541(a) acts as a definition of what is to be included in property of the estate rather than as a limitation. *Id.* If Congress wished to exclude avoidance actions from property of the estate, it could have done so by expressly listing them in another section of the Code like they did in § 541(b). *See* 11 U.S.C. § 541(b) (listing specific things that are not included in the definition of property of the estate). The inclusion of one type of property should not be read to impliedly exclude another type of property.

In this case, the chapter 7 trustee may sell their right to avoid and recover preferential transfers because they are property of the estate and because such action would benefit both the estate and creditors. The Eight Circuit in *In re Simply Essentials, LLC*, decided that the chapter 7 trustee in that case could sell their avoidance actions as property of the estate. There, the debtor operated a chicken production and processing facility but filed a Chapter 7 petition after falling on hard times financially. 78 F.4th 1006, 1007 (8th Cir. 2023). Once the trustee in *Simply Essentials* determined that the estate lacked sufficient funds to pursue certain avoidance actions, they sought and received bids to sell the actions. The motion was approved by the bankruptcy court, but the debtor appealed. *Id.* at 1008. The Eighth Circuit explained that avoidance actions are causes of action, and causes of action are interests in property which are therefore included in the estate. *See United States v. Nordic Vill. Inc.*, 503 U.S. 30 (1992) and *In re Senior Cottages of Am. LLC*, 482 F.3d 997, 1001 (8th Cir. 2007) ((stating that avoidance actions are causes of action which can be sold as property of the estate)). The court in *Simply Essentials* disagreed with the contention that avoidance actions are not property of the estate and noted that "…while trustees have the first opportunity to obtain derivative standing to bring the avoidance actions on behalf of the estate when a trustee is 'unable or unwilling' to do so." 78 F.4th at 1008. As with the trustee in *Simply Essentials*, the trustee here was willing but unable to bring such preference actions due to the debtor's objections.

When trustees cannot bring avoidance actions, courts have allowed creditors to pursue these actions on behalf of the estate by the process of derivative standing. *See, e.g.*, *In re Racing Servs., Inc.*, 540 F.3d 892 (8th Cir. 2008). Under the *Greenberg* approach, a court may approve the sale of preferential claims if: (1) the trustee consents; and the third party pursuing the claim would be (a) in the best interest of the estate, and (b) necessary and advantageous to the equitable and efficient resolution of the bankruptcy proceeding. *In re Greenberg*, 266 B.R. 45, 50 (Bankr. E.D.N.Y. 2001) ((citing *In re Commodore International Ltd.*, 262 F.3d 96 (2d Cir. 2001)).

Here, the trustee not only consented to the sale, but commenced the proceedings for the benefit of the estate. (R. at 9). Because the estate lacked sufficient assets that would allow it to repay its creditors and make them whole, the trustee's sale of the avoidance actions directly benefits the estate. (R. at 9.) Furthermore, the sale of avoidance actions would maximize the value of assets for the creditors of the estate which is both necessary and advantageous to the equitable and efficient resolution of the bankruptcy estate. (R. at 9). In chapter 7 cases, debtors liquidate their assets and in return are given temporary relief from creditor action; such action benefits the debtor, the creditor and the estate. The *Simply Essentials* court noted that any outcome other than the decision that avoidance actions are property of the estate "would deprive the bankruptcy estate of the assets and property essential to its rehabilitation effort and thereby would frustrate the congressional purpose behind the reorganization provisions." 78 F.4th at 1009 (citing 462 U.S. at 208). Here, the trustee's attempt to sell their chapter 5 avoidance claims falls directly in line with the purpose of chapter 7 bankruptcy.

While other circuits have not address this issue as directly as the Eighth Circuit, other circuits courts have held that causes of actions are considered to be property of the estate. The First and Fifth Circuit have stated that per Section 541(a)(1), claims that could be invoked outside of bankruptcy by a creditor, are considered part of the bankruptcy estate once the case commenced. *In re Ontos*, Inc., 478 F.3d 427, 431 (1st Cir. 2007); *Nat'l Tax Credit Partners, L.P. v. Havlik*, 20 F.3d 705 (7th Cir. 1994) ("[T]he right to recoup a fraudulent conveyance, which outside of bankruptcy may be invoked by a creditor, is property of the estate"). Moreover, the Ninth Circuit has held that the sale of a Chapter 7 trustee's avoidance claims is permitted as long as the value received for the claims is appropriate. See *Silverman v. Birdsell*, 796 F. App'x 935, 937 (9th. Cir. 2020). In our case, the trustee's purported sale to Eclipse amounted to a total of $470,000. (R. at 9). The sale included the house, with an estimated worth of $350,000, making the claim worth $120,000; this Court should find that the value received for claim is appropriate considering that the debtor's debt to Eclipse amounted $200,000 and Pink's remaining claim is merely $30,000. (R. at 6, 9).

Contrary to what the Thirteenth Circuit states, it is irrelevant that Section 547 is not cross-referenced with Section 541(a) as the appropriate section which governs the sale of property of the estate is Section 363. (R. at 19). In its 2010 decision, the Fifth Circuit held that a trustee may sell causes of actions belonging to the estate. *In re Moore*, 608 F.3d 253, 258 (5th. Cir. 2010). Looking at its own precedent, the court explained that the term "all legal and equitable interests of the debtor in property" in § 541(a)(1) was drafted broadly to include rights of actions normally belonging to third parties, such as litigation claims. *Id.* While the preference claim of our case differs from the fraudulent-transfer claim of *In re Moore*, the reasoning of the Fifth Circuit's decision still applies. *Id.*; (R. at 9). The Fifth Circuit attributed the grant of the sale to be within the trustee's powers because of the trustee's duty to maximize value for creditors in a Chapter 7 case. *Id.* at 261; *see also Matter of Boerne Hills Leasing Corp.*, 15 F.3d 57, 60 (5th Cir. 1994) ("In appropriate circumstances, [] a creditor may be permitted to initiate [an avoidance claim]. . . on behalf of the trustee").

Finally, the Third Circuit is the only circuit court to conclude that a trustee's avoidance powers are not considered property of the estate, and thus cannot be transferred to a third party. *In re Cybergenics Corp.*, 226 F.3d 237, 245 (3d Cir. 2000). However, as Judge Barrett's dissent explains the Third Circuit recently stated that their *Cybergenics*' decision is not binding and is considered dicta. (R. at 34). In writing for the majority opinion of *In re Wilton Armetale, Inc.*, Judge Bibas discussed how the *Cybergenics*' decision does not prevent a trustee from transferring claims and instead "[the decision] leaves that question open." 968 F.3d 273, 285 (3d Cir. 2020). Furthermore, the court stated that allowing a transfer of claims is reaffirmed by considering that outside of bankruptcy, these types of claims belong to the debtor's creditors. *Id.* Thus, it is no longer the Third Circuit's position that the transfer or sale of claims is expressly prohibited.

In addition, statutory language must be construed in the context of the policy and goals of the Bankruptcy Code which reflect the real-world application that the language portrays. *Textron Lycoming Reciprocating Engine Div. v. United Auto., Aerospace & Agric. Implement Workers*, 523 U.S. 653 (1998). Allowing the trustee to sell their preference claims to third-parties coincides with the overarching purpose of Bankruptcy, which is to make the creditors whole. This sale supports the Code's policy of ensuring that creditors get the maximum amount of their claim, and is essential to protect the interests of debtors. In addition, allowing the sale protects the efficiency of bankruptcy proceedings since due to Eclipse's potential purchase of the claim, the trustee would not have to expend any of the estate's resource to pursue the action; thereby maximize the value available for other creditors. Thus, this Court should find that the Chapter 7 trustee has a right to sell their preference claims.

B. Alternatively, Under 11 U.S.C. § 541(a)(7), the Trustee May Sell Their Preference Claim as Property of the Estate.

i. Preference Avoidance Actions Constitute Property of the Estate Under 11 U.S.C. § 541(a)(7).

Bankruptcy Code section 541(a)(7) defines property of the estate to include "[a]ny interest in property that the estate acquires after the commencement of the case." 11 U.S. C. § 541(a)(7). This section has been interpreted by courts to mean that every property interest acquired by the estate after the case commences is property of estate, including Code §548 fraudulent transfer actions. See *Matter of Wilson*, 694 F.2d 236, 238 (11th Cir. 1982) (holding that § 541(a)(7) brings into the estate every interest in property not covered by a specific statutory provision mandating some other treatment, including §548 actions). Similar to §547(b) preference avoidance actions, §548 grants the trustee the power to avoid transfers which meet certain statutory criteria.

11 U.S.C. § 548(a)(1). It follows that §541(a)(7) therefore includes other chapter 5 causes of action, including §547(b) preference actions, which arise at the same moment as §548 actions.

ii. Preference Avoidance Actions Constitute Property of the Estate Regardless of Whether a Court Considers the Action to Accrue Pre or Post Petition.

Both §§ 541(a)(1) and 541(a)(7) provide that avoidance actions are property of the estate. The main distinction between the two sections for this purpose are the temporal elements: § 541(a)(1) states that interests in property "as of the commencement of the case" are property of the estate, whereas § 541(a)(7) states that interests in property acquired "after the commencement of the case" are property of the estate. 11 U.S.C. §§ 541(a)(1); (7). In other words, § 541(a)(1) covers avoidance claims for prepetition transfers and § 541(a)(7) covers avoidance claims for post-petition transfers. See *In re Murray Metallurgical Coal Holdings, LLC* 623 B.R. 444 (Bankr. S.D. Ohio 2021). The court in *In re Murray Metallurgical Coal Holdings, LLC* held that avoidance actions for prepetition transfers were property of the estate under § 541(a)(1), while avoidance actions for post-petition critical vendor payments were property of the estate under 541(a)(7). *Id.* at 508-512. Here, under the *Murray* court's reasoning, the preferential transfer avoidance action would be property of the estate under § 541(a)(1), as the preferential transfer took place prepetition, and therefore the cause of action existed "as of the commencement of the case." (R. at 7).

However, even if the debtor is not held to have an interest in the preferential transfer avoidance action as of the commencement of the case under § 541(a)(1), § 541(a)(7) provides that the estate has an interest in the preference action created after the commencement of case under § 547(b). 11 U.S.C. § 547(b). In *In re Simply Essentials*, the Eighth Circuit held that Chapter 5 causes of action are property of the estate under § 541(a)(7). 78 F.4th 1006 at 1011. The court reasoned that even if § 541(a)(1) did not include avoidance actions as property of the estate, § 541(a)(7) would include those actions based on the plain language of the provision, as it covers all interests in property gained by the estate after the commencement of the case. *Id*. at 1009. The court disagreed with the appellant's argument that Chapter 5 causes of action accrue neither before nor after the filing of the petition, but at a third point in time, "a time that is equivalent to the moment the bankruptcy proceeding commences" and therefore do not fall under § 541(a)(7) because that provision only covers property interests accrued after the commencement of the case. *Id.* The Eighth Circuit wrote that to hold that this period of time existed "would frustrate the bankruptcy policy of a broad inclusion of property in the estate[.] *Id.* (quoting *Whetzal v. Alderson*, 32 F.3d 1302, 1304 (8th Cir. 1994)).

Here, pursuant to the Eighth Circuit's reasoning in *Simply Essentials*, the preference avoidance action constituted property of the estate under § 541(a)(7). Therefore, under either section 541(a)(1) or (a)(7), an avoidance action is property of the estate.

C. The Trustee's Sale of the Preference Action Did Not Violate 11 U.S.C. § 550(a).

The sale of a § 547(b) preference action to be prosecuted for the benefit of creditors does not violate Code § 550(a). In *Mellon Bank, N.A. v. Dick Corp.*, the bankruptcy court provided adequate protection to prepetition secured creditors who financed the debtor's bankruptcy by granting the creditors superpriority over $30 million worth of the debtor's assets, including the value of preference actions, in the event that the secured creditors' position deteriorated. 351 F.3d 290, 291–92 (7th Cir. 2003). After the sale of the business as a going concern, it became clear that the price recovered for the business was insufficient to pay the new superpriority creditors and the original secured creditors. *Id.* at 292. Creditors then financed the prosecution of the aforementioned preference actions, yielding around $10 million for the benefit of the creditors. *Id*. One creditor, who had been the beneficiary of a prepetition preferential transfer, argued that any avoidance action over it would be ineffective because a creditor pursuing an avoidance action not for the benefit of the estate would violate code § 550(a). *Id*. The Seventh Circuit held that the ex ante benefit to the estate was sufficient to satisfy code § 550(a). *Id*. at 293. In other words, if the estate incurs a benefit by "effectively selling" the avoidance actions and agreeing to forbear from pursuing the actions, then the estate need not incur an additional benefit from the prosecution of the action itself. *Id*.

Here, the same logic applies. The estate already incurred an ex ante benefit to satisfy section 550(a) when the trustee sold the right to pursue the avoidance action to Eclipse. (R. at 9). As the court in Mellon Bank held, the estate need not incur a second benefit from the prosecution of the action itself. 351 F.3d 290 at 293. Moreover, the court in *Mellon Bank* wrote in dicta that the ex ante benefit to the estate would be even more clearly fulfilled "if the secured creditors had purchased" the avoidance actions for their full value rather than providing DIP financing in exchange for the right to pursue the avoidance actions. *Id.* That clearer scenario is exactly what happened here: the trustee sold the avoidance action to Eclipse for $20,000, the full value of the avoidance action, at which point the estate incurred its benefit. (R. at 9). The trustee's sale of the right to pursue the avoidance action did not violate § 550(a).

D. Interpreting the Bankruptcy Code to Allow for the Sale of the Trustee's Preference Avoidance Action Does Not Violate the Canon Against Surplusage.

Holding that Code § 547(b) preferential transfer avoidance actions are property of the estate under §§ 541(a)(1) or 541(a)(7) does not violate the canon against surplusage. Code § 541(a)(3) says that "any interest in property that the trustee recovers under section … 550" is property of the estate. 11 U.S.C. § 541(a)(3). Code § 550 is distinct from § 547(b), however, as § 550 provides that the proceeds of an avoidance action under § 547 are property of the estate. 11 U.S.C. § 550. § 547(b), on the other hand, merely provides for the avoidance action itself. 11 U.S.C. § 547(b).

Therefore, it does not create a statutory redundancy, nor render § 541(a)(3) superfluous, to hold that § 541(a)(1) includes avoidance actions as property of the estate.

The court in *In re Murray Metallurgical Coal Holdings, LLC* agreed with this argument, holding that "[t]here is nothing superfluous about a statute that makes a claim property of the estate while another part of the statute makes the recovery of the claim property of the estate." 623 B.R. 444 at 509. The court went further to write that even if the statute were thought to be made redundant or a provision made superfluous by this interpretation, the "canon against surplusage is not an absolute rule" and has been violated in statutory schemes in the past, meaning that an argument that this interpretation violates the canon against surplusage is not enough to hold that the interpretation is improper. *Id.* (quoting *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013)). Reading §§ 541(a)(1) or 541(a)(7) to include Chapter 5 avoidance actions does not violate the canon against surplusage.

<u>CONCLUSION</u>

This Court should reverse the decision of the Thirteenth Circuit Court of Appeals and hold that (1) post-petition, pre-conversion increases in equity in a debtor's property inure to the bankruptcy estate in accordance with a plain reading of the Code, applicable case law and bankruptcy policy, and (2) the Chapter 7 trustee is allowed to sell preferential claims because they are considered property of the estate under sections 541(a)(1) , (a)(7), or both and this reading of the Code does not violate the canon of surplusage.

APPENDIX A

11 U.S.C. § 348. Effect of Conversion

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

> **(A)** property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;
>
> **(B)** valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and
>
> **(C)** with respect to cases converted from chapter 13—
>
>> **(i)** the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and
>>
>> **(ii)** unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

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

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

11 U.S.C. § 522. Exemptions

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

11 U.S.C. § 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

> **(1)** Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

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

(b) Property of the estate does not include—
(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;
(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;
(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution;
(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—
(A)
(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and
(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or
(B)
(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and
(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title;
(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds—

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(6) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000; 2

(7) any amount—

(A) withheld by an employer from the wages of employees for payment as contributions—

(i) to—

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986; except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

(B) received by an employer from employees for payment as contributions—

(i) to—

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;
(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or
(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or
(ii) to a health insurance plan regulated by State law whether or not subject to such title;

(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

(A) the tangible personal property is in the possession of the pledgee or transferee;
(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and
(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b);

(9) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and
(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor), unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition; or

(10) funds placed in an account of a qualified ABLE program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;
(B) only to the extent that such funds—

(i) are not pledged or promised to any entity in connection with any extension of credit; and
(ii) are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $6,225.2

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

11 U.S.C. § 547. Preferences

(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.

11 U.S.C. § 548. Fraudulent Transfers and Obligations

(a)

> **(1)** The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—
>
>> **(A)** made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
>>
>> **(B)**
>>
>>> **(i)** received less than a reasonably equivalent value in exchange for such transfer or obligation; and
>>>
>>> **(ii)**
>>>
>>>> **(I)** was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—

(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.

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 [1] (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. § 1129. Confirmation of a Plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(7) With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

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(h) Interests Acquired or Arising After Petition. If, as provided by §541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. This duty to file a supplemental schedule continues even after the case is closed, except for property acquired after an order is entered:

(1) confirming a chapter 11 plan (other than one confirmed under § 1191(b)); or

(2) discharging the debtor in a chapter 12 case, a chapter 13 case, or a case under subchapter V of chapter 11 in which the plan is confirmed under § 1191(b).