No. 23-0115

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE EUGENE CLEGG, DEBTOR,

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER

v.

EUGENE CLEGG, RESPONDENT

ON WRIT OF CERTIORARI FOR THE
UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF IN SUPPORT OF PETITIONER

Team 35
Counsel for Petitioner

QUESTIONS PRESENTED

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

II. Whether a chapter 7 trustee may sell, as property of the bankruptcy estate, preference actions arising under chapter 5 of the Bankruptcy Code.

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JURISDICTION STATEMENT

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

STATEMENT OF FACTS

I. Factual History

After retiring from his military career in 2011, Eugene Clegg ("Debtor") ran Final Cut, LLC ("Final Cut"), a movie theatre in the City of Moot that he received from his mother, Emily "Pink" Clegg ("Pink"). R. at 5. For many years Final Cut generated a profit and provided Debtor with a source of income. *Id.* In 2016, Debtor wanted to renovate the theatre and ultimately caused Final Cut to borrow $850,000 from Eclipse Credit Union ("Eclipse"). *Id.* Debtor performed most of the renovation work himself along with local veterans who volunteered. *Id.*

Due to low labor costs, Final Cut did not utilize all of the loan from Eclipse. R. at 5. Instead of repaying Eclipse, Debtor caused Final Cut to donate the remainder of the loan, about $75,000, to the Veterans of Foreign Wars (the "VFW"). *Id.* Shortly thereafter, Final Cut reopened and for three years it was profitable. R. at 5-6.

In spring of 2020, the COVID-19 pandemic hit, and Final Cut was unable to operate for a year. R. at 6. With no income from the theatre, Debtor borrowed $50,000 from Pink on an unsecured basis on September 8, 2020. *Id.* The theatre reopened to the public five months later in February 2021. *Id.* However, theatre attendance remained low, and Debtor chose to forego his salary to help fix Final Cut's cash flow issues. *Id.* Instead of solving Final Cut's financial problems, Debtor's decision not to take a salary led to more financial troubles. *Id.* Debtor incurred credit card debt and fell behind on his home mortgage serviced by Another Brick in the Wall Financial Corporation (the "Servicer"). *Id.*

On December 8, 2021 (the "Petition Date"), Debtor sought relief under chapter 13 of the Bankruptcy Code. R. at 6. At the time, the value of Debtor's home was $350,000. *Id.* Among other debts, Debtor disclosed that he made payments to Pink within one year prior to the Petition Date totaling $20,000. R. at 7. Debtor filed a chapter 13 plan that outlined a three-year period in which payments would be made to creditors. *Id.* Notably, the plan stated that Debtor maintained no equity in his home as of the Petition Date. *Id.* The plan was supposed to be funded through Debtor's future earnings from Final Cut. *Id.*

Prior to plan confirmation, the parties stipulated that Debtor would increase total payments to creditors by $20,000. R. at 7. In exchange, the chapter 13 trustee agreed that she would not seek to avoid and recover payments made to Pink prior to the Petition Date. R. at 8. Following another objection and further negotiations, Eclipse received an estimated claim of $150,000, of which $25,000 was deemed non-dischargeable even in the event of conversion. *Id.* On February 12, 2022, the bankruptcy court confirmed the Debtor's plan and entered an order approving the settlement between the Debtor and Eclipse. *Id.*

After eight months of payments under the plan, Debtor was no longer able to make payments due to personal health concerns and the closing of Final Cut. R. at 8. Debtor chose to convert his case to chapter 7 and an order was entered to that effect. *Id.* The chapter 13 trustee stated that upon conversion, she returned to Debtor the funds held in reserve for Eclipse. R. at 9.

Vera Lynn Floyd was appointed Trustee of Debtor's chapter 7 estate. R. at 9. Like the chapter 13 case, the conversion schedules listed the value of the home as 350,000 and disclosed the preferential transfers to Pink. *Id.* It was also recognized that Debtor owed Eclipse $200,000. *Id.* Debtor mentioned to Trustee that homes in his neighborhood were selling at a premium which led Trustee to commission an appraisal of Debtor's home. *Id.* This appraisal confirmed that the non-exempt equity in the home had increased by $100,000 since the Petition Date. *Id.*

To fulfill her statutory duties, the Trustee marketed Debtor's home for sale. R. at 9. Eclipse offered to purchase the home and the alleged preference claim against Pink for $470,000. *Id.* Trustee was satisfied that this maximized the value of the assets for the benefit of the creditors of the estate. *Id.* Accordingly, Trustee filed a motion (the "Sale Motion") to sell the home and the preference claim to Eclipse under section 363(b). *Id.*

II. Procedural History

After the Trustee filed the Sale Motion, Debtor objected on two grounds. R. at 10. First, Debtor argued the post-petition, pre-conversion increase in the equity of his home should inure to his benefit. *Id.* Second, Debtor argued that the Trustee's statutory ability to avoid and recover transfers under sections 547 and 550 could not be sold. *Id.* The United States Bankruptcy Court for the District of Moot decided in favor of the Debtor on both objections and denied the Sale Motion. *Id.*

The Trustee timely appealed the bankruptcy court's ruling and the Thirteenth Circuit ultimately affirmed. R. at 4. However, the detailed dissent by Judge Barrett recognized that the applicable statutory text and realities of bankruptcy practice should have resulted in a finding for the Trustee on both issues. R. at 24-35. The Thirteenth Circuit's decision is available at No. 22-0359 and reprinted in the Record at 3.

III. Standard of Review

The parties do not dispute the facts presented on appeal. Rather, this Court is tasked with interpreting the Bankruptcy Code's statutory scheme. Because this appeal presents questions of law, the appropriate standard of review is *de novo*. *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 393 (2018). Under a *de novo* standard of review, no deference is given to the opinions of the lower courts. *See id.*

SUMMARY OF THE ARGUMENT

This Court should reverse the Court of Appeals for the Thirteenth Circuit because the post-petition, pre-conversion equity in a debtor's home and chapter 5 preference actions are property of the estate and therefore saleable. For many individuals, bankruptcy provides the opportunity to start anew and work to repay their creditors. Generally, a debtor may choose to proceed with a chapter 13 plan which can benefit both the debtor and creditors. *In re Barrera*, 22 F.4th 1217 (10th Cir. 2022). However, many debtors fail to complete a chapter 13 plan and convert their case to a chapter 7 liquidation. When conversion to chapter 7 occurs, it is necessary to identify what constitutes property of the estate. To facilitate this, Congress enacted 11 U.S.C. § 348(f)(1); the plain language of this section alone indicates that any post-petition, pre-conversion increase in equity belongs to the estate. *See* 11 U.S.C. § 348(f)(1). Even if this section was ambiguous, other parts of the Bankruptcy Code lead to a similar result. First, property of the estate is a term of art under the Code and identifies what property should be included in a chapter 7 estate post-conversion. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023). Second, the language of 11 U.S.C. § 348(f)(2) supports the idea that property acquired post-petition but pre-conversion, is to be included in a chapter 7 estate. *In re Goetz*, 651 B.R. 292 (8th Cir. 2023). Moreover, property must remain in possession or be under the control of the debtor on the date of conversion to be part of the chapter 7 estate. *In re Barrera*, 22 F.4th 1217 (10th Cir. 2022). In the present case, the home at issue was controlled by the debtor at the date of conversion.

The congressional history behind 11 U.S.C § 348(f) also makes clear than an increase in equity post-conversion is property of the estate. Using the congressional history behind this section, courts have recognized that an increase in equity is not a newly acquired asset, but rather just a change in value. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023). Moreover, adhering to a single factual scenario considered by Congress would misconstrue the language of the section and set a dangerous precedent. *In re Goetz*, 651 B.R. 292 (8th Cir. 2023). And finally, Congress identified certain assets in the Code that should not be considered part of the estate; noticeably absent from the list is a post-petition, pre-conversion increase in equity which was certainly intentional. *Id.* Ultimately, a reading of section 348(f)(1) leads to the conclusion that any post-petition, pre-conversion increase in equity in a debtor's property belongs to the chapter 7 estate.

Likewise, a Trustee's ability to avoid and recover transfers under Section 547 and 550 is property of the estate and thus, saleable. A chapter 7 trustee is statutorily required to liquidate the bankruptcy estate in a way that is compatible with the interests of both debtors and creditors. 11 U.S.C. § 704(a)(1). One task a chapter 7 trustee might undertake is bringing causes of action to recover transfers made by the debtors. *In re Simply Essentials, LLC*, 78 F.4th 1006, 1008 (8th Cir. 2023). A cause of action commonly entrusted to a trustee is the preference action which allows trustees to "claw back" certain payments made by the debtor. *See* 11 U.S.C. § 547(b). However, trying to get these payments back can be expensive and time consuming; thus, a trustee can maximize the property of the estate, streamline the bankruptcy process, and fulfill their fiduciary duty by selling the claims rather than letting them expire.

A plain reading of Bankruptcy Code section 541 supports the idea that avoidance actions are property of the estate. Property of the estate is defined as all legal and equitable interests of the debtor in property at the commencement of the case. 11 U.S.C. § 541(a)(1). In interpreting this section of the Bankruptcy Code, Courts have adopted a broad, all-encompassing view of what constitutes property of the estate. Accordingly, both causes of action and rights and powers of trustees have been found to be interests in property. *Moratzka v. Morris (In re Senior Cottages of Am., LLC)*, 482 F.3d 997, 1001 (8th Cir. 2007); *Harstad v. First Am. Bank*, 39 F.3d 898, 902 (8th Cir. 1994). Similarly, an estate includes "any interest in property that the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(7). Under this section, Chapter 5 avoidances are property of the estate because they do not accrue until after a petition is filed and a trustee is appointed.

Beyond the text of the Bankruptcy Code, the majority of circuits support defining causes of action as property of the estate. *See e.g., Pitman Farms v. ARKK Food Co.* (*In re Simply Essentials, LLC)*, 78 F.4th 1006, 1008–09 (8th Cir. 2023); *Silverman v. Birdsell*,796 F. App'x 935, 937 (9th Cir. 2020); *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 262 (5th Cir. 2010); *Morley v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427, 431 (1st Cir. 2007). The only circuit to stand in opposition has merely held that fraudulent transfer claims under state law were not assets of the debtor. *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 243 (3d Cir. 2000). However, this same circuit recently explained that the *Cybergenics* decision did not hold that trustees cannot transfer causes of action. *See Artesanias Hacienda Real S.A. de C.V. v. N. Mill Capital, LLC (In re Wilton Armetale, Inc.)*, 968 F.3d 273, 285 (3d Cir. 2020).

Lastly, from a policy perspective, holding avoidance actions to be saleable supports the goals of bankruptcy proceedings. Ruling this way ensures trustees can maximize the value of a bankruptcy estate while fulfilling their statutory duties. Moreover, holding chapter 5 causes of action to be saleable would not impact long standing practices exercised under other chapters of the Bankruptcy Code. Thus, this Court should reverse the Thirteenth Circuit and find for the petitioner on the two issues present in this appeal.

ARGUMENT

I. Post-Petition, Pre-Conversion appreciation in the equity in a debtor's property belongs to the Chapter 7 Bankruptcy estate because the plain language reading of § 348(f)(1) when read together with § 541(a) inures appreciation to the Chapter 7 Bankruptcy estate.

Non-exempt post-petition, pre-conversion equity appreciation in a debtors home belongs to the chapter 7 estate. A bankruptcy provides "a fresh financial start to the honest, but unfortunate debtor." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). A debtor has two common paths to discharge their debts: a chapter 7 liquidation or a chapter 13 reorganization. *In re Barrera*, 22 F.4th 1217 (10th Cir. 2022). In a chapter 7 bankruptcy, a debtor gives up their property that is not entitled to an exemption in exchange for a discharge of their debts. *Id.* A chapter 7 trustee liquidates the debtor's pre-petition, non-exempt property and distributes the proceeds to the creditors. *Id.* In exchange for selling their property, a debtor receives an immediate discharge, and the debtor is entitled to keep all future income and assets acquired post-discharge. *Id.* This Court has recognized the "steep price" of the benefit chapter 7's immediate discharge, where a debtor forfeits all his prepetition property. *Harris v. Viegelahn*, 575 U.S. 510 (2015).

In a chapter 13 bankruptcy, a debtor reorganizes their finances and commits future earnings to the repayment of creditors. *Id.* The benefit for the creditor is that they are likely to receive more repayment than under a chapter 7 bankruptcy, and the debtor benefits by not having to liquidate their existing assets. *Id.* A discharge is granted only after the debtor has completed their reorganization plan. *Id.* Because there are more benefits for both the debtor and the creditor in a chapter 13 reorganization, Congress has passed statutes to incentivize debtors to opt-into chapter 13 reorganization. *Id.* One of those incentives is the non-waivable right of debtors to convert a chapter 13 reorganization into another chapter at any time. *Id.* However, because most debtors fail to successfully complete a chapter 13 repayment plan, Congress also passed § 348(f) to explain what happens to property in a chapter 7 estate when converted from a chapter 13 estate. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023).

A plain reading of § 348(f)(1) defines property of a chapter 7 estate to include all property within the chapter 13 estate pre-conversion that is not explicitly excluded in the bankruptcy code. Property that is converted from a chapter 13 to a chapter 7 estate is defined in the code under § 348(f) which provides that "when a case under chapter 13 of this title is converted to a case under another chapter under this title- property of the estate in the converted case shall consist of property of the estate, as of the date 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). The first step in interpreting the Bankruptcy Code begins with the language of the statute itself. *U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989). The interpretation also ends at the Bankruptcy Code's reading when the language of the statute itself is unambiguous. *Id.* If the plain meaning is unambiguous, it controls. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023). The sole function of the courts is to enforce the code according to its terms. *U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989).

There are three parts of § 348(f), when read in conjunction with the remainder of the Bankruptcy Code that ultimately lead to a plain unambiguous reading where an equity increase in chapter 13 pre-conversion, post-petition property is included in a chapter 7 estate post-conversion. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023). Statutory construction is a holistic endeavor and § 348(f) could seem ambiguous in isolation but is clarified by the remainder of the Bankruptcy Code. *Id.* First, "property of the estate" is a term of art that is defined throughout the Bankruptcy Code which clarifies what property should be included in a chapter 7 estate post-conversion. *Id.* Second, § 348(f)(2) explains that when a debtor converts to another chapter from a chapter 13 in bad-faith, property that is acquired post-petition but pre-conversion, is to be included in a chapter 7 estate. *In re Goetz*, 651 B.R. 292 (8th Cir. 2023). Lastly, the property must remain in possession or be under the control of the debtor on the date of conversion to be considered part of the chapter 7 estate. *In re Barrera*, 22 F.4th 1217 (10th Cir. 2022).

§ 348(f) does not define the word "property" or "property of the estate," but these are terms of art which appear throughout the bankruptcy code and are defined to include a debtor's interests both equitable and legal, except those specifically excluded. *In re Goetz*, 651 B.R. 292 (8th Cir. 2023). Under § 541(a)(1), when a debtor files a bankruptcy petition, the debtor creates an estate which includes all legal property as of the commencement of the case. 11 U.S.C. § 541(a)(1). There is "nothing in Section 541 that 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." *In re Goetz*, 651 B.R. 292 (8th Cir. 2023). The property of the estate includes all "proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case." 11 U.S.C. § 541(a)(6). Therefore, any post-petition increase in a property's equity is "proceeds or profits" of the estate's original property under § 541(a)(6), and so the equity is part of the estate when the case commenced. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023). Furthermore, under § 1327, all property in a chapter 13 estate is vested in the debtor when the chapter 13 reorganization is confirmed. 11 U.S.C. § 1327(b). However, pursuant to the unambiguous language of § 348(f)(1), property in the estate of a chapter 13 becomes property of the chapter 7 estate upon conversion and is no longer vested in the debtor. 11 U.S.C. § 348(f)(1).

An increase in an existing chapter 13 estate property's equity is not the same as property acquired post-petition, and § 348(f)(2) only codifies the conversion of property that was acquired between the petition date and the conversion date to the new chapter's estate when the chapter 13 conversion was in bad faith. 11 U.S.C. § 348(f)(2). § 348(f)(2) is not surplusage because the statute makes no ruling on post-petition, pre-conversion equity increases, but rather just new estate property that was not under the original chapter 13 estate. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023). In enacting § 348(f), Congress distinguished between property of the estate at the time of conversion that remains in the possession of the debtor from the property acquired after petition. *In re Goetz*, 651 B.R. 292 (8th Cir. 2023). Property of the estate at the time of conversion that remains in the possession of the debtor is property of the estate. *Id.* Property acquired after petition is property of the debtor unless the debtor converts in bad faith. *Id.* Because Section 541 says that the estate's interest is the entire asset, property of the estate, no matter its equity change, that remains in the possession of the debtor is property of the converted chapter's estate. 11 U.S.C. § 541(a)(1).

Property must remain in possession or be under the control of the debtor on the date of conversion to be part of the chapter 7 estate. *In re Barrera*, 22 F.4th 1217 (10th Cir. 2022). Property of a chapter 7 estate consists of "property of the estate as of the date of filing the petition, that remains in the possession of or under the control of the debtor on the date of conversion." *In re Peter*, 309 B.R. 792 (Bankr. D. Or. 2004). So long as the debtor has possession or control of those interests of the property from the prior estate at conversion, it is as if the debtor had originally filed that property under a chapter 7. *Id.* Further, it is well settled in this Court that in a chapter 7 case, all property that the debtor acquires post-petition is excluded from the estate. *Harris v. Viegelahn*, 575 U.S. 510 (2015). Appreciation of property within a bankruptcy estate, however, is not a separate, after-acquired property interest, and therefore the holding in *Harris* does not apply. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023).

Section 348(f)(1) is unambiguous, and a look into the legislative history does not create a different reading of the statute. *Id.* In 1994, Congress sought to overrule an interpretation by some courts who held that when a debtor acquires property during a chapter 13 case, it then becomes property of a chapter 7 estate upon conversion. H.R. Rep. No. 103-835, at 57 (1994). This Court, in *Harris*, affirmed such a shift when it held that all property that the debtor acquires post-petition is excluded from a chapter 7 estate upon conversion. *Harris v. Viegelahn*, 575 U.S. 510 (2015). An increase in equity in property that is already part of the chapter 13 estate is not newly acquired property post-petition. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023). It is simply a change in value of property that could increase or decrease in value by the time a debtor decides to convert to a chapter 7. *Id.* An increase in equity would be more advantageous to the creditors and a decrease in equity would be advantageous to the debtor, but § 348(f) is unambiguous in the nature of equity of property in a chapter 13 being included in a chapter 7 estate upon conversion. *Id.*

Included in the House Report is a factual scenario where a home's value appreciates during a chapter 13 case that was omitted from the final version of the code. H.R. Rep. No. 103-835, at 57 (1994). Because Congress failed to address the example in its final version of the code, does not mean that the omission was inadvertent. *In re Goetz*, 651 B.R. 292 (8th Cir. 2023). Statutes are often constructs of compromise, and assuming that Congress intended that debtors may retain post-petition, pre-conversion appreciation without articulating such intent within the statute would lead the court to drafting law from the bench that likely was not the intent of Congress. *Id.* Furthermore, § 348(f) does not specify that debtors are entitled to retain equity resulting from payments during the chapter 13 case. *Id.* To accept the factual scenario as part of the statute, one must read such clarification into the statute, no longer accepting the plain meaning of the code. *Id.*

Finally, the fact that Congress has excluded other assets from a bankruptcy estate with specificity, shows that omitting appreciated equity from a converted to chapter 7 estate from the Bankruptcy code was an intentional act by Congress. *In re Goetz*, 651 B.R. 292 (8th Cir. 2023). For example, in § 541(a)(6), the code excludes post-petition earnings by a debtor from the definition of property of the estate. 11 U.S.C. § 541(a)(6). If Congress intended to exclude post-petition, pre-conversion appreciation from being property of the chapter 7 estate, it would have done so. *In re Goetz*, 651 B.R. 292 (8th Cir. 2023). Because Congress did not do so, the legislative history suggests that such an exclusion of appreciation was not intended. *Id.*

When a debtor has control of their chapter 13 estate property at the time of conversion to chapter 7, any appreciation of that property becomes property of the chapter 7 estate. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023). For example, in *Castleman*, debtors John and Kimberly Castleman initially filed a chapter 13 bankruptcy. On their petition, the Castleman's listed their home at the value of $500,000. *Id.* Twenty months later, after the couple was no longer able to make their chapter 13 payments, the Castleman's exercised their right to convert to a chapter 7. *Id.* The home had risen in value by an estimated $200,000 during the twenty-month period. *Id.* The chapter 7 trustee filed a motion to sell the Castleman's' home to recover the additional value for the creditors. *Id.* The court held that the increase in home equity belonged to the chapter 7 estate and therefore the trustee could sell the home and disperse the additional value amongst the creditors. *Id.* The court reasoned that the plain language of § 348(f)(1)(A), read in conjunction with the interpretation of § 541(a), compelled the conclusion that any appreciation in property value and corresponding increase in equity belongs to the estate upon conversion. *Id.* Additionally, if Congress wanted to exclude assets or certain interest of the debtor from the bankruptcy estate, it would have done so with specificity, as it had done previously, excluding post-petition earnings by an individual in a chapter 7 case. *Id.*

When a debtor sells their chapter 13 estate property in good faith prior to conversion to a chapter 7, any appreciation of that property belongs to the debtor. *In re Barrera*, 22 F.4th 1217 (10th Cir. 2022). For example, in *In re Barrera*, the debtors filed for a chapter 13 reorganization plan that included real property in the chapter 13 estate valued at approximately $396,000 on the petition date. *Id.* After some time had passed, and the value of the home increased, the debtors still complying with their chapter 13 plan, sold the house for $520,000. *Id.* After all fees and taxes were paid, the debtors pocketed $140,251 in sale proceeds. Two weeks later the debtors filed for a voluntary conversion to chapter 7. *Id.* The court held that the sale proceeds were property of the debtor. Under § 541(a)(6), only proceeds "of or from property of the estate" become property of the bankruptcy estate. *Id.* Because the physical house was not "in the possession of or … under the control of the debtor on the date of conversion" the property did not meet the § 348(f)(1) standard for property for a chapter 7 estate when converted from a chapter 13 bankruptcy. *Id.* However, if the property remained in the possession of or was under the control of the debtor at the time of conversion, the property would be converted to the chapter 7 estate. *Id.* The concern for potential bad faith sales or chapter 13 reorganization plans is addressed in § 348(f)(2). *Id.* A bad faith chapter 13 plan would also ensure that property sold pre-conversion would be included in a chapter 7 estate to ensure there is no work around for debtors trying to avoid paying creditors through a loophole in the code. *Id.*

An increase in post-petition, pre-conversion equity is part of a chapter 7 estate upon conversion. § 541(a)(1) includes all legal property in a bankruptcy estate at the commencement of the case. Then, under § 348(f)(1), when a case is converted from a chapter 13 reorganization to a chapter 7 bankruptcy, all "property of an estate" is converted from the former chapter 13 estate to the chapter 7 estate, unless specifically excluded. Here, the debtor's home is undisputed to be part of the original chapter 13 estate upon petition filing of the reorganization. The only change in the property from the time of filing the petition and conversion was an increase in the debtor's home equity. There is no codified exclusion for a home or an increase in equity in a home. Therefore, the plain reading of § 348(f)(1) includes the debtor's home within the "property" of the converted to chapter 7 estate.

The bad-faith exception under § 348(f)(2) is clear to only apply to "property" that was acquired in-between the post-petition, and pre-conversion date. When Congress implemented § 348(f)(2), Congress could have also included an exception for an increase in equity for property of the original chapter 13 estate. Congress chose not to do so, therefore distinguishing between newly acquired property pre-conversion, and an equity increase to existing chapter 13 estate property pre-conversion. Further, § 541 says that the debtor's estate interest is the entire asset, property of the estate, no matter its equity change. Here, the debtor had an increase in equity, with no split to the asset. Even though the bad-faith exception would not apply because the debtor showed no evidence of bad faith in his conversion, the debtor's equity increase in his home would not be part of the § 348(f)(2) exception. Because an increase in equity was not specifically excluded, this makes the plain reading of § 348(f) to include the increase in equity as part of the § 348(f)(1) "property of the estate" upon conversion.

The debtor remained in possession of his home upon the date of conversion from a chapter 13 to a chapter 7. § 348(f)(1) says that a debtor must remain in possession or be under the control of the property on the date of conversion. Here, the debtor owned his home on the date of his conversion and had full legal control. For example, in *Castleman*, debtors John and Kimberly Castleman maintained control of their home, and upon conversion to a chapter 7, the home became part of the chapter 7 estate. On the other hand, in *In re Barrera*, the debtors sold their property in good faith prior to conversion, and so the profits that remained after all fees were paid, were not part of the chapter 7 estate. The profits belonged to the debtors. Again, in this case, the debtors did not sell their property prior to conversion, and the debtors had full legal control of their home at the time of conversion. Therefore, their home, and the equity increase with it under § 348(f)(1) will be part of the chapter 7 estate.

The legislative history of § 348(f) shows that Congress did not see an equity change as an additional property for the debtor post-petition, but rather a change in value to already existing estate property. In this case, such an increase in equity is more advantageous to the creditors upon sale by the chapter 7 trustee. However, when the equity of an estate's property decreases, leading to smaller payouts to creditors for the same reward of full discharge of debt under a chapter 7 bankruptcy, the equity being included in the estate is more advantageous to the debtor. Nevertheless, § 348(f) is unambiguous, and its plain reading leads to the conclusion that equity change is included in the property that is converted from a chapter 13 to a chapter 7. Ultimately, because of the plain language of § 348(f)(1), which dictates that post-petition appreciation in a property belongs to the bankruptcy estate upon conversion to a chapter 7, the debtor's home is rightfully included in the chapter 7 estate and can be sold by the trustee under her statutory duty.

II. Preference Actions Arising Under Chapter 5 of the Bankruptcy Code are Property of the Estate and can be sold by the Trustee.

The 13th Circuit erred in its decision when it defined preference actions as a power of the Bankruptcy Trustee rather than property of the estate under the meaning of 11 U.S.C. § 541(a). Chapter 5 causes of action are property of the estate and, therefore, saleable under 11 U.S.C. § 363 for three reasons. First, the plain language of 11 U.S.C. § 541(a) clearly states that estate property is all-encompassing and includes all of the debtor's pre-petition contingent interests, and includes any property acquired by the estate after the commencement of the Bankruptcy proceeding. Second, Supreme Court precedent defines property of the estate broadly during Bankruptcy proceedings, and virtually all other Circuit Courts consider causes of actions as property of the estate. Lastly, to define Chapter 5 causes of action as not property of the estate would throw into chaos the practice of Bankruptcy in this country. Accordingly, this court should categorize Chapter 5 avoidance actions as property of the estate and allow the Trustee to exercise their fiduciary duty and sell the interest to Eclipse.

A. The Trustee has the statutory duty to maximize the value of the estate during Chapter 7 Bankruptcy.

The chapter 5 avoidance cause of action in this matter is property of the estate under the plain reading of the Bankruptcy Code, and thus the Trustee can sell this claim to Eclipse under 11 U.S.C. § 363(b)(1). Upon the filing of a Chapter 7 bankruptcy petition, a chapter 7 trustee is appointed to manage the proceedings and liquidate the bankruptcy estate as expeditiously as it is compatible with the best interests of the debtors and creditors involved. 11 U.S.C. § 704(a)(1). The chapter 7 trustee has a fiduciary duty to collect and reduce property of the estate and maximize this value to the creditors of the estate. *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). To achieve this goal, the trustee may get court approval to sell the property of the estate. 11 U.S.C. § 363(b)(1). Generally speaking, the chapter 7 trustee has a duty to provide and orderly and fair bankruptcy process.

At the beginning of the bankruptcy process, one of the powers the bankruptcy trustee is entrusted with is the ability to bring chapter 5 causes of action to recover wrongful transfers made by the debtors. *In re Simply Essentials, LLC*, 78 F.4th 1006, 1008 (8th Cir. 2023). One of the more common causes of actions entrusted to the Trustee, are preference actions. These preference actions allow the trustee to void a transfer of interest in the debtor's property, made within 90 days, or one year if the transfer is to an insider, before the petition date. 11 U.S.C. § 547(b). Once the transfer is voided under 547(b), the trustee can then "claw back" the payment under 550(a) and distribute the funds proportionally among the creditors. The rationale behind the preference action is to ensure that one creditor's recovery in bankruptcy is not greater than similarly situated creditors. Jackson, *Avoiding Powers in Bankruptcy*, 36 STAN. L. REV. 725, 776 (1984). Avoidance actions prevent the debtor from playing favorites by paying favorable parties prior to filing bankruptcy, and then leaving the remaining creditors without reimbursement.

However, these avoidance actions are sometimes cost prohibitive, which may prevent the trustee from pursuing them. If the litigation surrounding the avoidance action is too costly, trustees often release avoidance claims, abandon them, or let them expire. *In re Racing Servs., Inc.*, 540 F.3d 892, 899 (8th Cir. 2008). However, as mentioned previously, a trustee can reduce property of the estate to cash to help facilitate the chapter 7 process. *Weintraub*, 471 U.S. at 352. Thus, if these chapter 5 avoidance actions are property of the estate, then the trustee may also sell them to third party. The debtor in this case does not dispute that they wrongfully transferred funds to Pink within a year of the chapter 7 petition. Instead, the debtor erroneously contends that these preference actions do not constitute property of the bankruptcy estate. The preference action at issue in this case, and all chapter 5 avoidance actions, are most certainty property of the bankruptcy estate due to the statutory text of the bankruptcy code, existing case law that supports this conclusion, and the practical considerations surrounding the bankruptcy practice.

B. Under a Plain Reading of the Bankruptcy Code, Avoidance Actions under both 11 U.S.C. § 541(a)(1) and (7) are property of the estate.

11 U.S.C. § 541(a)(1) defines property of the estate as all legal and equitable interests of the debtor in property at the commencement of the case. Therefore, there are two criteria that makes the avoidance action saleable under 541(a)(1): the avoidance actions must be property and the debtor must have a legal and equitable interest in that property at the time of the petition date. The avoidance of the money given to Pink satisfies both criteria, thus the avoidance action is saleable. Additionally, the avoidance action also qualifies as property of the estate under 11 U.S.C. 541(a)(7), which states that the estate includes any interest in the property that the estate acquires after the commencement of the bankruptcy petition. Because these avoidance actions only accrue after the petition is filed and a trustee is appointed, these actions are property of the estate as well.

1. Chapter 5 Avoidance Actions are property of the estate under 11 U.S.C. 541(a)(1).

The Chapter 5 avoidance action is property of the estate, and the debtor had a legal and equitable interest in the avoidance action. Existing case law has firmly established that causes of action are property interests, which means these causes of action are included in the estate. *Moratzka v. Morris (In re Senior Cottages of Am., LLC)*, 482 F.3d 997, 1001 (8th Cir. 2007). What courts consider property of the estate is expansive and includes property of all descriptions, tangible and intangible, as well as causes of action. *Ramsay v. Dowden (In re Cent. Ark. Broad.*

Co.), 68 F.3d 213, 214 (8th Cir. 1995); *see also* H.R. Rep. No. 95-595, at 549 (stating that causes of action are property interests under 11 U.S.C. § 541(a)). The Supreme Court has interpreted property of the estate broadly to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code. *United States v. Whiting Pools Inc.*, 462 U.S. 198, 205 (1983).

Additionally, the Bankruptcy Code establishes that avoidance powers are causes of action. Under section 926, if the debtor in a municipal bankruptcy "refuses to pursue a cause of action under section 544, 545, 547, 548, [or] 549(a)" - case - a court "may appoint a trustee to pursue such cause of action." 11 U.S.C. § 926(a). This principle is supported by a plethora of case law. See, *e.g., Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53 (1989) (describing the "right to recover a fraudulent conveyance" under § 548(a)(2) as a "statutory cause of action"); *Kelley v. Boosalis*, 974 F.3d 884, 903 (8th Cir. 2020) (avoidance action under § 544(b)(1) is "a federal cause of action"). Avoidance actions, like the one at issue in this case, are property because avoidance actions are causes of action, and causes of action are property.

While it is true that Chapter 5 refers to avoidance actions as rights and powers of the trustee, courts have consistently found rights and powers in bankruptcy to be interests in property. *Harstad v. First Am. Bank*, 39 F.3d 898, 902 (8th Cir. 1994). A claim, defined as a right to payment or an equitable remedy that gives the right to payment is undoubtedly a form of property in the bankruptcy process. *United States v. Nordic Vill. Inc.*, 503 U.S. 30, 36 (1992); *see also Murray v. Guillot (In re Guillot)*, 250 B.R. 570, 599 (Bankr. M.D. La. 2000) (holding that ""The only way to interpret the 'rights and powers' clause of § 544(a) is as a statute that creates a property interest."). Additionally, stating that causes of action are not property of the estate runs contrary to 11 U.S.C. § 541(b)(1). 541(b)(1) excludes from property of the estate any power that the debtor may exercise solely for the benefit of an entity other than the debtor. *Id.* The fact that the Bankruptcy Code excludes specific powers from property of the estate shows that causes of action and powers generally are estate property interests.

The fact that chapter 5 avoidance actions are not expressly mentioned under § 541(a) does not mean they are excluded as property of the estate. 541(a) broadly defines property of the estate and includes "every conceivable" property interest unless it is expressly excluded from the estate in § 541(b) or § 541(c)(2). *Grassmueck v. Am. Shorthorn Ass'n*, 402 F.3d 833, 836 (8th Cir. 2005). Congress could not anticipate and list every type of property interest that could conceivably be included in the estate. *Id.* Instead, they enumerated certain types of property that should not be included in the estate. *Id.* 541 (b) does exclude specific powers granted to the trustee but makes no mention of avoidance actions. *Marrama v. Degiacomo (In re Marrama)*, 316 B.R. 418, 422-23 (B.A.P. 1st Cir. 2004). This implies that estate property includes powers not expressly prohibited.

Furthermore, the debtor is not required to have a present possessory interest in the avoidance action prior to the bankruptcy filing. In *Whitling Pools*, the Supreme Court held that § 541(a)(1) "grants the estate a possessory interest in certain property of the debtor that was not held by the debtor at the commencement of reorganization proceedings." *Whiting Pools*, 462 U.S. at 204-05. § 541(a)(1) "includes all conditional, future, speculative, and equitable interests of the debtor." *United States ex rel. Gebert v. Transp. Admin. Servs.*, 260 F.3d 909, 913 (8th Cir. 2001). Thus, debtors have an equitable interest in property that was wrongfully transferred to another party before the bankruptcy proceedings started. *Rine & Rine Auctioneers, Inc. v. Douglas Cnty. Bank & Trust Co. (In re Rine & Rine Auctioneers, Inc.)*, 74 F.3d 854, 861 (8th Cir. 1996) (holding that debtor had an equitable interest in money transferred).

2. Chapter 5 Avoidance Actions are property of the estate under 11 U.S.C. § 541(a)(7).

Chapter 5 Avoidance Actions are property under 11. U.S.C. § 541(a)(7) as well because the estate acquired the avoidance action after the commencement of the Chapter 7 Bankruptcy proceedings. 541(a)(7) stipulates that the estate includes "any interest in property that the estate acquires after the commencement of the case" and encompasses any property interest that arises post-petition, including property interests that are "traceable to or arise out of any prepetition interest included in the bankruptcy estate." *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.),* 764 F.3d 512, 525 (5th Cir. 2014). Congress enacted § 541(a)(7) to clarify its intention that property under § 541 is an "all-embracing definition and to ensure that property interests created with or by property of the estate are themselves property of the estate." *McLain v. Newhouse (In re McLain),* 516 F.3d 301, 312 (5th Cir. 2008). Thus, the definition of property is broad under the Bankruptcy Code.

A cause of action that accrues post-petition is property of the estate under § 541(a)(7) if it relates to property that is already part of the estate. *Spenlinhauer v. O'Donnell*, 261 F.3d 113, 118 n.5 (1st Cir. 2001). Accordingly, causes of actions and avoidances are property of the estate under § 541(a)(7) because they seek to vindicate the debtor's pre-petition equitable interest in the transferred property, which is made part of the bankruptcy estate under § 541(a)(1).

Additionally, to say that an avoidance action is acquired upon commencement of the case, so they are not property under 541(a)(7) is incorrect and nonsensical. First, it is highly improbable that Congress intended to exclude property that was acquired at the exact time of the bankruptcy petition while including property that was acquired one second after the petition was filed. This type of reasoning would lead to absurd and arbitrary results. As stated previously, Congress intended the definition of property in 541(a) in the broadest possible manner and would not limit the definition of property due to a miniscule difference in the time the property was acquired. H.R. Rep. No. 95-595, at 549 (1977). Also, avoidance actions do not actually accrue until the bankruptcy commences and a trustee is appointed. *In re Raynor*, 617 F.3d 1065, 1069 (8th Cir. 2010). Oftentimes, a petition is filed, and a trustee is not appointed for several months after. Thus, avoidance actions accrue until an order of relief is entered before a trustee, because the trustee is the only person that can pursue the action. Thus, chapter 5 actions are property under 541(a)(7) because they are acquired after the bankruptcy petition began.

3. *Treating Avoidance Actions as Property under § 541 is not Surplusage.*

Treating avoidance actions as estate property would not render other sections of § 541(a) superfluous because courts have consistently held that the definition of property under this section should be broad and all encompassing. Congress intended § 541 to encompass a wide variety of property, so they used general and broad terms to describe property. *Patterson v. Shumate*, 504 U.S. at 757. These broad terms will often create redundancies in the code, but redundancies do not automatically make a statute superfluous. *Piazza v. Nueterra Healthcare Physical Therapy, LLC (In re Piazza)*, 719 F.3d 1253, 1266 (11th Cir. 2013). § 541(a)(6) uses the terms proceeds, profits, rents, or product. Just because these terms overlap with one another, does not create surplusage. Instead, this indicates Congress' intent to capture as many different types of property as possible. *Whiting Pools*, 462 U.S. at 203. Furthermore, the doctrine against surplusage is not an absolute or inflexible rule. *Marx v. Gen. Revenue Corp.,* 568 U.S 371, 385 (2013). Treating the avoidance actions as property does not create a surplusage, and instead follows Congressional intent. Accordingly, the statutory construction of both 541(a)(1) and 541(a)(7) supports the fact that avoidance actions are estate property.

C. Both Supreme Court Precedent and the overwhelming majority of the Circuit Courts define causes of actions as property of the Estate.

Virtually all Circuits that have addressed whether Chapter 5 causes of action are property have concluded that causes of action are property of the estate. *See e.g., Pitman Farms v. ARKK Food Co.* (*In re Simply Essentials, LLC)*, 78 F.4th 1006, 1008–09 (8th Cir. 2023); *Silverman v. Birdsell*, 796 F. App'x 935, 937 (9th Cir. 2020); *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 262 (5th Cir. 2010); *Morley v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427, 431 (1st Cir. 2007). In the recent Eighth Circuit decision in *Simply Essentials*, the Circuit held that chapter 5 causes of action are property of the estate the trustee can sell during chapter 7 bankruptcy proceedings. *Pitman Farms v. ARKK Food Co.* (*In re Simply Essentials, LLC)*, 78 F.4th 1006, 1008–09 (8th Cir. 2023). The case involved a chapter 7 trustee who had an avoidance action but lacked the funds to carry out and litigate the cause of action. *Id.* Because the trustee lacked the resources, the trustee attempted to sell the avoidance action to a creditor. *Id.* The Eighth Circuit allowed the trustee to sell the avoidance action to the creditor reasoning. They reasoned that avoidance actions are property of the estate because the debtor has a contingent interest in avoidance actions prior to the bankruptcy proceedings. *Id.*

Likewise, a multitude of other lower courts have reached the same conclusion as the Eighth Circuit. *See e.g., Silverman v. Birdsell*, 796 F. App'x 935, 937 (9th Cir. 2020) (holding that a "bankruptcy trustee may sell an estate's avoidance claims"); *Cadle Co. v. Mims (In re Moore),* 608 F.3d 253, 259-62 (5th Cir. 2010) (stating that "fraudulent-transfer claims are property of the estate."); *Morley v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427, 431 (1st Cir. 2007) (reasoning "It is well established that a claim for fraudulent conveyance is included within estate property."); *Nat'l Tax Credit Partners, L.P. v. Havlik*, 20 F.3d 705, 708-09 (7th Cir. 1994); *Delgado Oil Co., Inc. v. Torres*, 785 F.2d 857, 861(10th Cir. 1986) (preference actions can most properly be thought of as 'belonging' to the estate); In *re Murray Metallurgical Coal Holdings*, LLC, 623 B.R. 444, 513 (Bankr. S.D. Ohio 2021) (holding that "avoidance actions are not mere statutory powers. Rather, they constitute claims or causes of action" that the trustee can sell). This deluge of Circuit Court decisions supports the claims that preference actions are the property of the estate, which allows the trustee to sell these claims.

The only Circuit that seemingly points in the opposite direction is the Third Circuit, where they held that fraudulent transfer claims under state law were not assets of the debtor. *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 243 (3d Cir. 2000). However, the Third Circuit has walked back this decision in more recent cases and explained their discussion of estate property in *Cybergenics* was merely dicta. *See Artesanias Hacienda Real S.A. de C.V. v. N. Mill Capital, LLC (In re Wilton Armetale, Inc.)*, 968 F.3d 273, 285 (3d Cir. 2020). The Third Circuit explained that the *Cybergenics* decision did not hold that trustees cannot transfer causes of action. *Id.* In fact, courts in the Third Circuit routinely approve the sale of avoidance actions, which shows the *Cybergenics* decision is not binding or persuasive. *See, e.g., In re Alpha Entm't LLC*, No. 20-10940, Doc. 358 (Bankr. D. Del. Aug. 7, 2020); *In re Sugarfina Inc.*, No. 19-11973, Doc. 318 (Bankr. D. Del. Oct. 28, 2019); *In re Loot Crate, Inc.*, No. 19-11791, Doc. 147 (Bankr. D. Del. Sept. 11, 2019). Thus, practically speaking, there are zero Circuits that prevent the sale of the type of avoidance actions at issue in this case.

Additionally, courts have treated causes of actions like property when trustees take other approaches other than the sale of the actions. Trustees often release avoidance claims, abandon them, let them expire, or litigate them before the court. *In re Racing Servs., Inc.*, 540 F.3d 892, 899 (8th Cir. 2008). Courts have stated that, "A release from a cause of action constitutes property of value; if a release did not have value, nobody would ever request one." *In re Pullman*

Const. Indus. Inc., 107 B.R. 909, 950-51 (Bankr. N.D. Ill. 1989). If courts treat these other trustee approaches to avoidance claims as property, then it would logically follow that causes of action should be treated as property when the trustee attempts to sell them to a third party.

D. If Causes of Action under Chapter 5 of the Bankruptcy Code are defined as not Property of the Estate, the practice of Bankruptcy will be severely hampered.

A ruling classifying avoidance actions as not property of the estate would disrupt a fundamental aspect of the bankruptcy practice and would be contrary to public policy for three reasons. First, a debtor filing for bankruptcy typically does not have available funds to pursue and litigate avoidance actions. In *Simply Essentials*, the trustee knew the avoidance claims would increase the estate's value if pursued, but the estate lacked the ability to adequately pursue those claims. *In re Simply Essentials, LLC*, 640 B.R. 922, 930 (Bankr. N.D. Iowa 2022) (reasoning "To allow parties otherwise facing meritorious Chapter 5 avoidance claims to escape those claims because the Trustee cannot afford to pursue them, and they cannot be sold or transferred would be an absurd result"). If the trustee can sell avoidance actions, it would help maximize the value of the estate, benefit the creditors of the estate by ensuring equitable distribution, and would allow for the recovery of the debtor's property that was improperly transferred prior to the petition date. *Id.* If avoidance actions are not saleable, then the avoidance actions would expire and benefit neither the estate nor the creditors.

Second, the sale of chapter 5 causes of action are commonly used in chapter 11 bankruptcy actions. *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 506-07 (Bankr. S.D. Ohio 2021). For several reasons, the sale of these avoidance actions in Chapter 11 helps facilitate the bankruptcy process. Buyers of the chapter 5 claims may not intend to pursue the avoidance claims but instead ensure that the estate does not sue important creditors who supply goods or services to the business. The acquisition of these avoidance actions helps the future owners of the business maintain positive relationships going forward after the chapter 11 reorganization process completes. Clinton E. Cutler, *Eighth Circuit Holds Avoidance Actions May be Sold Under § 363*, FREDRIKSON & BYRON (Nov. 13, 2023), https://www.fredlaw.com/the-restructuring-report/eighth-circuit-holds-avoidance-actions-may-be-sold-under-363. Additionally, trustees use avoidance actions as collateral in debtor-in-possession loans to help continue operations during the bankruptcy proceedings. *U.S. Dep't of Treasury v. Off. Comm. of Unsecured Creditors of Motors Liquidation Co.*, 475 B.R. 347, 354 (Bankr. S.D.N.Y. 2012). If avoidance actions are not saleable, then debtors could not use them as collateral to keep their business afloat during bankruptcy. *In re Outboard Marine Corp.*, 2002 WL 571661, at *3 (Bankr. N.D. Ill. Jan. 9, 2002). Therefore, deciding that chapter 5 actions are not saleable under the bankruptcy code would have a severe detrimental impact on existing practices.

Lastly, the sale of chapter 5 causes of action is consistent with the chapter 7 trustee's fiduciary duty to maximize the value of the estate. *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). While the trustee has a duty to try to pursue causes of action and collect as much as possible, the trustee also has a duty to minimize costs associated with the litigation of these causes of action. *In re Taxman Clothing Co.*, 49 F.3d 310, 315 (7th Cir. 1995). It would be contrary to the trustee's fiduciary duty if they were required to pursue cost prohibitive causes of actions, or merely let them expire worthlessly. The ability to sell these causes of action helps maximize the value of the estate and the distribution to the creditors.

Additionally, concerns that the sale of avoidance actions would lack judicial oversight are unfounded. The court would still oversee the litigation of the causes of action even if they are pursued by an individual that is not the trustee. *In re Racing Servs., Inc.*, 540 F.3d 892, 899 (8th

Cir. 2008). In fact, courts have allowed third party creditors to have derivative standing to pursue avoidance actions on a regular basis. *Id* at 898. In summation, the ability to sell avoidance actions and other chapter 5 causes of action would better facilitate the bankruptcy trustee's fiduciary duty to maximize the value of the estate.

Accordingly, due to the proceeding reasons, chapter 5 causes of actions should be classified as property of the estate under both 541(a)(1) and 541(a)(7). These powers are not mere statutory powers granted to the trustee, but valuable property of the bankruptcy estate. Because avoidance actions are property, the trustee should be able to sell these actions under 363(b) to maximize the value of the estate.

E. This Court should allow the Trustee to sell the avoidance cause of action which would allow them to best exercise their fiduciary duty in maximizing the estate's value.

The avoidance action in this case constitutes estate property because the trustee's ability to pursue the wrongfully transferred funds derives from the debtor's contingent and inchoate interest in the transferred funds. The Bankruptcy Code creates avoidance actions and makes them available to the estate, and the trustee can pursue them for the estate's benefit. While the Debtor did not have a possessory interest in the transfer to Pink before the chapter 7 bankruptcy proceedings, *Whiting Pools* established that property in which the debtor has contingent interest in can be made available to the estate. 462 U.S. at 205 n.10. Additionally, this should benefit the debtor as well. The funds from the sale of the preference action will be added to the estate and help expeditiously close the bankruptcy process.

Fears that Eclipse will use this avoidance action to enact revenge on the debtor are unfounded. The debtor wrongfully made this transfer, so the funds should belong to the estate regardless. Additionally, the court will still oversee any litigation of the avoidance action, so there will be oversight that will prevent any malicious action. Thus, this court should classify chapter 5 causes of actions, including this avoidance action as property of the estate, and allow the trustee to sell it to Eclipse.

CONCLUSION

For the reasons listed above, this Court should reverse the decision of the Court of Appeals for the Thirteenth Circuit and find in favor of the petitioner, Vera Lynn Floyd.

Respectfully Submitted,

Team 35
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