Team 40

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

BRIEF FOR RESPONDENT

JANUARY 18, 2024

TEAM NUMBER 40
COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

I. Does post-petition, pre-conversion increases in home equity inure to the benefit of the debtor upon good faith conversion, given that the debtor's home had zero equity as of his original petition date, and 11 U.S.C. § 348(f)(1)(A)'s legislative history and pre-Code policy suggests that such equity should inure to his benefit?

II. May the chapter 7 Trustee sell her power to avoid and recover preferential transfers to a self-interested creditor given that 11 U.S.C. §§ 547, 550's plain and unambiguous language grants the trustee alone standing to bring avoidance actions and this Court's recognition that a chapter 7 Trustee has unique, neutral responsibilities to the fair distribution of the bankruptcy estate?

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

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

This action implicates statutory construction of certain provisions of Title 11 of the United States Code. The relevant statutory provisions are reprinted in the Appendix starting on page 36.

STATEMENT OF FACTS

This appeal arises from Eugene Clegg's valiant attempt to restore the Final Cut Theatre to the heart of the City of Moot. After incurring substantial financial difficulty following the COVID-19 pandemic, Mr. Clegg sought relief through the Bankruptcy Code to merely save his home—an action that proffered the questions presented to this Court for this appeal. Petitioner's appeal, however, endangers the Bankruptcy Code's policy behind a debtor's good faith conversion and the neutral role a chapter 7 trustee has in the administration of the estate. The following facts are not in dispute. R. at 5 n.2.

I. FACTUAL HISTORY

A Retired Veteran Takes on a New Mission. Less than a year after retiring from the United States Army, Mr. Clegg received the opportunity of a lifetime: to singlehandedly own and restore the "Final Cut" a historic, single-screen movie theater located in the City of Moot. R. at 5. However, the Final Cut, while profitable, needed substantial renovations and thus, four years after acquiring the theater, Mr. Clegg borrowed $850,000 from Eclipse Credit Union (Eclipse Loan)—a local financial institution with little experience in commercial lending. R. at 5. Confident in his business and community, Mr. Clegg personally guaranteed the Eclipse Loan on an unlimited, unsecured, and unconditional basis. R. at 5. Renovations ended up cheaper than expected, with Mr. Clegg himself and other local veterans taking on the majority of the labor. R. at 5. Overcome by the generosity of his community, Mr. Clegg selflessly donated the remaining Eclipse Loan proceeds—$75,000—to the Veterans of Foreign Wars (VFW). R. at 5.

COVID-19 Forces a Curtain Call. A little over a year later, Final Cut reopened, receiving immense praise and support from the local community. R. at 5–6. However, only three years after its initial success, the COVID-19 pandemic hit, leading Final Cut to close its doors for nearly a year in compliance with Moot's stay-at-home order. R. at 6. Like many Americans, Mr. Clegg struggled to stay afloat during the pandemic; however, his mother, Pink, generously advanced an unsecured loan of $50,000 to Mr. Clegg during this time. R. at 6. Finally, nearly a year later, Final Cut reopened with a promising local media campaign: "The Show Must Go On!" R. at 6. Unfortunately, the theater ultimately failed to return to pre-pandemic attendance levels, and Mr. Clegg made the difficult decision to forego his salary in an attempt to save Final Cut. R. at 6. Forced to incur credit card debt and falling behind on his home mortgage payments to Servicer, Mr. Clegg quickly found himself in trouble and his home in foreclosure. R. at 6.

Mr. Clegg Files for Chapter 13. On December 8, 2021 (Petition Date), Mr. Clegg filed his petition for chapter 13 bankruptcy relief in an attempt to save his home. R. at 6. Most pertinent to this litigation, Mr. Clegg disclosed the following: *Schedule A/B*: The undisputed value of Mr. Clegg's Home as of the Petition Date was $350,000; *Schedule C*: Mr. Clegg claimed a state law homestead exemption of $30,000—the maximum amount in the State of Moot; *Schedule D*: An undisputed non-contingent, liquidated secured debt to Servicer for $320,000; *Statement of Financial Affairs*: A $20,000 payment to Pink made within one-year prior to filing for bankruptcy. R. at 6–7. Thus, Mr. Clegg filed his Chapter 13 Plan, proposing to pay his creditors over a three-year period and cure his mortgage loan to Servicer, funded solely through his Final Cut future earnings that were optimistically returning to profitability. R. at 7. Importantly, the Plan valued Mr. Clegg's home at $350,000—the same amount as *Schedule A/B*—and expressly stated that Mr. Clegg maintained *no equity* in his home as of the Petition Date. R. at 7.

Mr. Clegg's Chapter 13 Plan Faces Several Objections. However, upon learning of Mr. Clegg's generous donation to the local VFW, Eclipse "was livid, to say the least," immediately commencing an adversary proceeding against Mr. Clegg to declare the Eclipse Loan non-dischargeable under the Bankruptcy Code. R. at 7. Eclipse did not stop there, further objecting that Mr. Clegg's plan was not in good faith. R. at 8. Ultimately, Eclipse withdrew all objections after Mr. Clegg agreed to a claim amount of $150,000, of which, $25,000 was deemed non-dischargeable even in the event of conversion. R. at 8. Additionally, the chapter 13 trustee objected to Mr. Clegg's proposed plan for failing to meet § 1325(a)(4)'s requirement that each creditor—due to the alleged preferential transfers to Pink—receive no less than it would otherwise receive in a hypothetical liquidation under chapter 7. R. at 7. To remedy this, Mr. Clegg amended his plan: increasing the aggregate payments to creditors by $20,000, and the chapter 13 trustee stipulated she would not seek avoidance and recovery of the preferential transfer. R. at 7–8. Ultimately, fourteen months after Mr. Clegg filed for chapter 13 relief, the bankruptcy court confirmed Mr. Clegg's plan, expressly providing that all property of the estate vested in Mr. Clegg, and approving of the settlement between Mr. Clegg and Eclipse. R. at 8.

The Conversion. Mr. Clegg timely made plan payments for eight months, until long-COVID forced him out of work in September 2022. R. at 8. One month later, Final Cut closed its doors for good and Eclipse began foreclosure proceedings against the theater. R. at 8. Faced with the Hobson's choice between outright dismissal or conversion, Mr. Clegg ultimately chose to convert in good faith to chapter 7. R. at 8. The bankruptcy court appointed Vera Lynn Floyd as chapter 7 trustee (Trustee), who affirmed the value of Mr. Clegg's home was $350,000 and stated that $200,000 was owed to Eclipse due to Final Cut's foreclosure. R. at 9. Mr. Clegg chose to reaffirm his mortgage debt to Servicer and remain in his home. R. at 9. However, during the creditor's meeting Mr. Clegg mentioned that homes in his neighborhood were selling for high prices, peaking the Trustee's interest. R. at 9. The Trustee commissioned an appraisal of Mr. Clegg's home that confirmed that the non-exempt equity had increased by $100,000 since the Petition Date. R. at 9.

Then, consistent with her duties, the Trustee began marketing Mr. Clegg's home for sale. R. at 9. However, Eclipse emerged and for an unknown reason, offered to purchase both the home and the preference claims against Pink for $470,000—an offer the Trustee was content with. R. at 9. Thus, the Trustee filed a sale motion to sell both the home and preference claims to Eclipse. R. at 9.

II. Procedural History

After the Trustee filed the sale motion, Mr. Clegg objected to its validity before the United States Bankruptcy Court for the District of Moot on two grounds. R. at 10. First, Mr. Clegg argued that any increase in post-petition, pre-conversion home equity inured to *his* benefit, not the bankruptcy estate, precluding the Trustee's ability to sell his home to Eclipse. R. at 10. Second, Mr. Clegg argued that the Trustee could not sell her statutory ability to avoid and recover preferential transfers to Eclipse under 11 U.S.C. §§ 547, 550. R. at 10. The bankruptcy court agreed with Mr. Clegg on both issues and denied the Trustee's sale motion. R. at 10. The Trustee timely appealed; however, the Thirteenth Circuit Court of Appeals likewise agreed with Mr. Clegg, affirming the bankruptcy court's decision on both issues. R. at 24. The Honorable Judge Barrett dissented as to both issues, and this appeal followed. R. at 24.

STANDARD OF REVIEW

Both questions presented to this Court solely concern questions of law under the Bankruptcy Code[1] and thus, the standard of review for this appeal is *de novo*. *See Fox v. Hathaway (In re Chi. Mgmt. Consulting Grp.)*, 929 F.3d 804, 809 (7th Cir. 2019). Therefore, under *de novo* review, the Court decides an issue as though it were the original bankruptcy court in the matter. *See Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996).

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[1] The Bankruptcy Code is set forth in 11 U.S.C. §§ 101 *et seq*. Specific sections of the Bankruptcy Code are identified herein as "§ ___."

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit Court of Appeals correctly ruled in favor of Mr. Clegg on both issues. First, post-petition, pre-conversion increases in home equity inure to the benefit of the debtor, not the converted estate. Second, the Trustee may not sell her statutorily granted power to avoid and recover preferential transfers as part of a § 363(b) sale. We respectfully ask this Court to affirm the decision of the Thirteenth Circuit as to both issues.

I

To begin, § 348(f)(1)(A) defines what property is included within the converted estate; however, no section of the Code specifically addresses post-petition, pre-conversion increases in equity, leading courts to disagree on § 348(f)'s proper scope—rendering it ambiguous. The more reasonable viewpoint amongst courts is that Congress intended § 348(f)(1)(A) to fill the converted estate with only property as it existed on the original petition date, including the amount of equity in existence at that time. Because of this ambiguity, this Court is not confined to analyzing only its plain text; instead, this Court may consider principles of statutory interpretation, the legislative record, and prior bankruptcy practice—all of which support Mr. Clegg's reading of § 348(f)(1)(A) and go largely ignored by contrary court opinions.

Much like proceeds from a sale, post-petition increases in equity are an after-acquired property interest, separate from its anchor, that do not inure to the chapter 7 estate. This is evidenced by the legislative record, which suggests that Congress intended § 348(f)(1)(A) to operate like § 522's "snapshot rule." Much like this historically recognized rule, § 348(f)(1)(A) freezes the value and character of the debtor's assets as of the original petition date and remains unchanged by post-petition events including appreciation of assets. This is the only reading that does not conflict with other Code sections. First, the Trustee's reading would produce absurd results under § 522 because it would force the bankruptcy court to unfreeze the value of Mr. Clegg's homestead to include after-acquired equity in violation of the snapshot rule. Second, the Trustee's reading would likewise render § 348(f)(2) superfluous and inconsequential by removing any meaningful distinction between good and bad faith converters.

The legislative record and policy behind conversion support's the conclusion that post-petition, pre-conversion equity inures to the benefit of the debtor, not the estate. Many countervailing opinions ignore the legislative history outright and therefore lose the wealth of context found within. Congress wrote § 348(f)(1)(A) to ensure that a good faith debtor would not be thrust into a worse position than had he originally filed for chapter 7. Furthermore, chapter 13 rarely produces successful results and it would violate the policy behind nonwaivable conversion to allow a chapter 7 trustee to claim post-petition, pre-conversion equity as property of the estate leading to a debtor losing his home.

II

Unlike the ambiguous nature of embodied in issue 1, the issue of whether the chapter 7 trustee can sell her power to avoid and recover preferential transfers under 11 U.S.C. §§ 547, 550 is resolved by the Code's plain and unambiguous language: such powers are not property of the estate and therefore cannot be sold as part of a § 363(b) sale. While § 541(a) broadly defines property of the estate to include causes of action, a trustee's chapter 5 avoidance powers are entirely distinguishable. The plain language of the Code expressly provides that only the trustee may seek and recover preferential transfers for the benefit of the estate. This is consistent with the chapter 7 trustee's position as an independent fiduciary and the pre-Code practice of prohibiting the trustee's assignment of avoidance actions.

The Code does not dictate that a trustee's avoidance powers are property of the estate that may be sold or otherwise transferred and are noticeably absent from § 541(a) by either express mention or cross-reference. Preference actions do not exist before the commencement of bankruptcy and are not debtor-derived, instead they are unique statutory powers given to the trustee to vindicate creditor's interests. While the *proceeds* of an avoidance action may be property of the estate, the power to bring the action is not because a chapter 7 creditor cannot vindicate preference actions on behalf of the estate. The Code grants the trustee exclusive standing to recover a preferential transfer for the benefit of the estate, and where the Code confers power upon only the trustee and no one else, this Court restricts the power to the trustee alone. While courts have recognized derivative standing in chapter 11 cases, the realities of a chapter 7 case are entirely distinguishable, and Eclipse is not attempting to recover a preference action on behalf of the estate, but for its own benefit as an interested creditor.

While this Court need not look beyond the Code's plain text, the policy of chapter 7 provides additional support that a chapter 7 trustee may not sell her statutory power to avoid and recover preferential transfers. These are unique statutory powers granted to the trustee in their role as an independent fiduciary; in a chapter 7 case, only the trustee has the training and qualifications necessary to exercise discretion in determining which actions to bring. Moreover, unlike a creditor, the trustee lacks substantial conflicts of interest with the debtor allowing them to exercise independent judgment, untainted by prior dealings with the debtor. This is consistent with pre-Code practice; bankruptcy courts have refused to allow the sale, transfer, or assignment of the chapter 7 trustee's avoidance rights for over a century. Congress did not intend to overrule this long-standing practice, evidenced by its choice to grant chapter 5 avoidance powers exclusively to the trustee—a choice we urge this Court to continue to follow.

ARGUMENT

This Court should affirm the Thirteenth Circuit Court of Appeal's decision that the increase in post-petition, pre-conversion equity in Mr. Clegg's home inures to the benefit of Mr. Clegg upon conversion under § 348(f)(1)(A). Further, this Court should likewise affirm the Thirteenth Circuit's holding that the Trustee may not sell her power to avoid and recover preferential transfers under §§ 547, 550 because these statutory powers are not property of the estate.

I. The Thirteenth Circuit correctly held that post-petition, pre-conversion increases in home equity inure to the benefit of the debtor upon a good faith conversion, barring the chapter 7 trustee's attempt to sell the debtor's home as property of the estate.

The Code does not, expressly or impliedly, include post-petition, pre-conversion earnings and acquisitions in a debtor's home within the chapter 7 estate upon a good faith conversion; rather, such equity inures to the benefit of the debtor. *See Harris v. Viegelahn*, 575 U.S. 510, 517 (2015) ("[I]n a case converted from Chapter 13, a debtor's postpetition earnings and acquisitions do not become part of the new Chapter 7 estate . . . ."). The Code defines *property of the estate* to include "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). However, this definition encompasses different property interests depending on whether the case is chapter 7 or chapter 13. *See In re Brown*, 953 F.3d 617, 620 (9th Cir. 2020) (citing *Harris,* 575 U.S. at 513–14). For example, in chapter 7, the debtor retains all wages earned or property acquired after filing for bankruptcy, but in chapter 13, any property or wages the debtor acquires after filing becomes part of the bankruptcy estate. *See Harris*, 575 U.S. at 513–14. Additionally, debtors in chapter 13 benefit from § 1327(b)'s revesting clause that returns all property of the estate back to the debtor upon plan confirmation. *See* 11 U.S.C. § 1327(b).

Upon conversion, § 348(f)(1)(A) defines the property included within the converted estate as "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." *See* § 348(f)(1)(A); *Castleman v. Burman (In re Castleman*), 75 F.4th 1052, 1059 (9th Cir. 2023) (Tallman, J., dissenting). Importantly, the petition's filing date remains the original chapter 13 filing date, thus any earnings or acquisitions created post-petition but prior to conversion are excluded from the converted estate. *See Harris,* 575 U.S. at 515, 517. Common practice supports such an approach given that bankruptcy courts generally exclude post-petition assets from the chapter 7 estate in the first instance. *See id.* at 513–14. This Court should hold the same here: Mr. Clegg's home increased in value *after* he filed for chapter 13 relief, but prior to his chapter 7 conversion, thus the additional equity gained via the rising market value of his home and payments he made under the chapter 13 plan is not property of the converted estate. R. at 17. The Trustee may not sell Mr. Clegg's home to realize equity that was not in existence on the original petition date. Such a result would transgress § 348(f)(1)(A)'s place in the Code's overall statutory scheme and legislative history, and the Code's distinctive policy behind good faith conversions.

A. Section 348(f)(1)(A) is ambiguous and post-petition, pre-conversion increases in equity inure to the debtor upon conversion under the Code and prior practice.

When interpreting § 348(f)(1)(A), this Court's inquiry begins with the language itself. *Republic of Sudan v. Harrison*, 139 S. Ct. 1048, 1056 (2019). While this marks the beginning of statutory analysis, no single section can be viewed in a vacuum; the Court examines the Code as a whole as the "meaning of statutory language, *plain or not*, depends on context." *See King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) (emphasis added); *RadLAX Gateway Hotel LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). In this way, courts determine the plainness or ambiguity of a statute by reference to its plain language and context in regard to other related code sections, the broader context of the language, and pre-Code practice. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *Cohen v. de la Cruz*, 523 U.S. 213, 221 (1998) (quoting *Pa. Dep't* *of Pub. Welfare v. Davenport*, 495 U.S. 552, 563 (1990)) ("We, however, 'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure'. . . ."). This contextual analysis is especially important for the Code's usage of terms of art like "property of the estate," that only come to life based on interactions and various cross references throughout the broader context of the Code. *See Robinson*, 519 U.S. at 341; *see also* § 348(f)(1)(A) (referencing "property of the estate" as a term of art); § 541 (same); 11 U.S.C. §§ 554(a), 1306(a) (same). And if after completing this analysis, a statute yields ambiguous interpretations, i.e., the statute's plain language produces several reasonable interpretations, this Court may look to Congress's intent to interpret the relevant statute. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004).

This Court should find that § 348(f)(1)(A) is ambiguous because courts may reasonably interpret its meaning in more than one way. *See Nat'l Credit Union Admin. Bd. v. Nomura Home Equity Loan, Inc.,* 764 F.3d 1199, 1226 (10th Cir. 2014). Post-petition, pre-conversion increases in Mr. Clegg's home equity inures to his benefit rather than the chapter 7 estate for two principal reasons: (1) § 348(f)(1)(A)'s plain language and application under the Code in whole, render the section ambiguous; and (2) the equity at issue in this case inuring to the benefit of Mr. Clegg, better aligns with principles of statutory interpretation, § 348(f)(1)'s legislative history, and the policy behind the Code's conversion provisions.

1. This section's plain language and context within the Code has produced several competing interpretations because courts have diverged on whether this section freezes the value of a debtor's home as of the petition date.

For decades, courts have disagreed on a uniform interpretation of § 348(f)(1)(A), questioning whether it includes post-petition, pre-conversion equity created after the bankruptcy petition date. *Compare* R. at 17 (holding that post-petition, pre-conversion increases in equity in a debtor's property inures to the benefit of the debtor), *and Kendall v. Lynch (In re Lynch)*, 363 B.R. 101, 106 (B.A.P. 9th Cir. 2007) (same), *with Goetz v. Weber (In re Goetz)*, 651 B.R. 292, 296–97 (B.A.P. 8th Cir. 2023) (finding that post-petition, pre-conversion increases in equity in a debtor's property accrue for the benefit of the bankruptcy estate). This disagreement has arisen from a judicially proclaimed ambiguity within § 348(f)(1)(A)'s language. *See, e.g.*, *In re Nichols*, 319 B.R. 854, 856 (Bankr. S.D. Ohio 2004) ("We find that there is ambiguity in whether the definition of 'property of the estate' includes equity.").

Aligning with several other circuits, the Thirteenth Circuit correctly held that § 348(f)(1)(A) is ambiguous given the Code's greater context. R. at 17. As the majority correctly noted, the Code's provisions cannot be read in isolation—contrary to the Trustee's argument—because each provision is simply a single part of a "comprehensive scheme" that Congress specifically designed to address specific problems. *See RadLAX*, 566 U.S. at 645; R. at 12–13. Under this scheme, no provision in the Code specifically answers whether post-petition, pre-conversion equity "resulting from debt payments or appreciation due to market conditions" inures to the benefit of the chapter 7 estate. *See In re Goetz*, 651 B.R. at 298. But while courts diverge on whether this answer could be derived from the Code, in accordance with pre-Code practice, Congress likely intended § 348(f)(1)(A) to limit property of the estate to only "property *as it existed on the petition date*, with all its attributes, *including the amount of equity that existed on that date*." *In re Barrera* (*Barrera I*), 620 B.R. 645, 653 (Bankr. D. Colo. 2020) (emphasis added); R. at 13. The Tenth Circuit, for example, recently held that post-petition, pre-conversion home-sale proceeds were a separate, distinct property interest from the home itself, necessitating that these proceeds inured to the debtor upon conversion. *See In re Barrera* (*Barrera III*), 22 F.4th 1217, 1223 (10th Cir. 2022). The court reasoned that the Code would be rendered superfluous if there was no distinction between post-petition proceeds and the "anchor" interest because of § 541(a)(1), (6). *See id.* Thus, post-petition proceeds are after-acquired, separate property not in existence on the petition date and are excluded from the converted estate. *See id.*

Importantly, courts have found that home equity appreciation is similar to proceeds. *In re Castleman*, 75 F.4th at 1056 (citing *Wilson v. Rigby*, 909 F.3d 306, 309 (9th Cir. 2018)). First, post-petition equity is by definition, not in possession or control of the debtor on the petition date—it is after-acquired property, which is supported by the Ninth Circuit's decision to expand § 541(a)(6) to include homestead appreciation. *See id.* Contrary to the dissent, it is immaterial that the home itself remained in Mr. Clegg's possession upon conversion because the increased equity was non-existent on the chapter 13 petition date and § 348(f)(1)(A) only brings in property of the estate as it existed on the original petition date, including the amount of equity. *Barrera III*, 22 F.4th at 1222. Ultimately, as a separate, distinct interest from its anchor property, an increase in home equity is excluded from the "snapshot" taken of Mr. Clegg's property by § 348(f)(1)(A) when he originally filed for chapter 13 relief. *See id.*

The Tenth Circuit's holding in *Barrera III* and the Thirteenth Circuit's opinion below are consistent with this pre-Code practice, known as the "snapshot rule" contained in § 522 that freezes the value of a debtor's assets in time as of the petition date. *Rockwell v. Hull (In re Rockwell)*, 968 F.3d 12, 18 (1st Cir. 2020). Once a debtor's property is frozen on the petition date, the assets will retain whatever status they had on the petition date and cannot change due to later circumstances. *See id.* This rule is a compulsory component of a functional bankruptcy, ensures efficiency and consistency in administering estates, and is exactly the kind of long-standing practice that this Court often presumes Congress was well-aware of when enacting the Code. *See In re Awayda*, 574 B.R. 692, 696 (Bankr. C.D. Ill. 2017); *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 246

(1989); *Dewsnup v. Timm*, 502 U.S. 410, 418 (1992). In fact, commentators have suggested that § 348(f)(1)(A)'s legislative history demonstrates Congress's intent to operate like § 522(a)'s snapshot rule:

> [I]t seems to have been congressional intent to *take a snapshot* of the estate at the filing of the original Chapter 13 petition and, based on that inventory, include in the Chapter 7 estate at conversion only the portion that remains in the possession or control of the debtor. The spirit of § 348(f)(1)(A) is best captured by a rule that property acquired by the Chapter 13 estate or by the debtor after the Chapter 13 petition does not become property of the Chapter 7 estate at a good-faith conversion. *The method of acquisition after the Chapter 13 petition should not matter*: post-petition property does not become property of the Chapter 7 estate at conversion, whether acquired with earnings by the debtor, by transfer to the debtor . . . *or by appreciation in the value of a pre-petition asset*.

See KEITH M. LUNDIN & WILLIAM H. BROWN, CHAPTER 13 BANKRUPTCY § 316.1, at ¶ 26 (4th ed. 2004) (emphasis added).

This suggestion, however, is not just theoretical: like § 522(a), § 348(f)(1)(A) freezes the value of the debtor's assets in time on the petition date.[2] *Compare* § 348(f)(1)(A) (freezing property of the estate upon a good faith conversion as of the petition date), *with* § 522(a)(2) (freezing the value of a debtor's home for homestead exemptions as of the petition date). Under this rule, the $350,000 valuation of Mr. Clegg's home was never disputed; therefore, such a valuation remains frozen in time as of the petition date. R. at 6 n.4. Any post-petition appreciation in the home cannot alter this valuation because it is an after-acquired asset that is excluded from the chapter 7 estate in accordance with the snapshot § 348(f)(1)(A) implements upon a good faith conversion. *See Hawk v. Engelhart (In re Hawk)*, 871 F.3d 287, 296 (5th Cir. 2017). Therefore, the outstanding

[2] Contrary to the dissent, § 348(f)(1)(B) is inapplicable to the facts of the current case. R. at 28 n.20. Congress enacted § 348(f)(1)(B) to address implicit valuation, and arguments that its language resolves the current post-petition, pre-conversion appreciation debate have been discounted by courts, and overall unsuccessful. *See* Lawrence Ponoroff, *Allocation of Property Appreciation: A Statutory Approach to the Judicial Dialectic*, 13 WM. & MARY BUS. L. REV. 721, 741–43 (2022); *In re Castleman*, 631 B.R. 914, 920 (Bankr. W.D. Wash. 2021); *In re Goins*, 539 B.R. 510, 515 (Bankr. E.D. Va. 2015).

$100,000 equity realized post-petition takes the form of a separate property interest, inuring to the benefit of Mr. Clegg and not the estate. *See id.*

Admittedly, several courts have reached an opposite conclusion, reasoning that property of the estate "includ[es] any changes in its value which might occur after the date of filing." *Potter v. Drewes (In re Potter)*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999). However, these courts rely primarily on § 541's language instead of § 348(f)(1)(A). *See In re Goetz*, 651 B.R. at 298. This approach, however, fails on several grounds.

First, the issue depends on the critical question as to whether a home's value is a characteristic or an attribute inseparable from the home itself. R. at 27. Post-petition equity, however, can only be a separate, distinct interest from the property under § 348(f)(1)(A)'s freezing effect. *See In re Nichols*, 319 B.R. at 856–57; R. at 13–14. For the proposition that equity is inseparable, the dissent relies heavily on *In re Castleman*. R. at 14, 25–27. However, the Ninth Circuit itself conceded that, under the standard set by this Court in *Harris*, "if equity is a separate, after-acquired property interest, it would have to inure to the debtor." *In re Castleman*, 75 F. 4th at 1057**.** Importantly, it only concluded that equity was inseparable from its anchor interest because of internal circuit precedent, which relied on the operation of § 541(a)(6) in an unconverted chapter 7 case. *See id.* at 1056–57. The logic of this non-binding precedent is inapplicable to the record here because § 348(f)(1)(A)'s snapshot rule would not be in effect in an unconverted case, and as courts have recognized, § 541(a)(6) operates differently within chapter 13 and chapter 7. *See Black v. Leavitt (In re Black)*, 609 B.R. 518, 528 (B.A.P. 9th Cir. 2019) (explaining the differences in § 541(a)'s operation within chapter 13).

But even if this Court were to adopt *In re Castleman*'s theory that equity is not a separate property interest, further ambiguity is produced when the operation of § 1327 is considered. Under

§ 1327(b)'s revesting clause, the debtor owns all estate property outright upon plan confirmation and is therefore entitled to all post-petition increases in equity. *See In re Black*, 609 B.R. at 529; *Cal. Franchise Tax Bd. v. Jones (In re Jones)*, 420 B.R. 506, 515 (9th Cir. BAP 2009) (holding that the § 1327(b)'s vesting clause means "absolute ownership, not mere possession."). Conversion does not change how § 1327(b) operates, adding to § 348(f)(1)(A)'s overall ambiguity. *See* R. at 11. Thus, even if this Court agrees that post-petition equity is separate from its anchor interest it would only remain in the chapter 13 estate until plan confirmation, upon which it would inure to the benefit of the debtor. *See In re Larzelere*, 633 B.R. 677, 678, 681 (Bankr. D.N.J. 2021). Therefore, this Court should decline to overturn the Thirteenth Circuit's decision in favor of circuit opinions that ignore § 348(f)(1)(A)'s ambiguity and hold contrary to pre-Code practice.

2. Interpreting home equity increases to inure to the benefit of the debtor is the only interpretation of this section that does not produce absurd and superfluous results in the face of other Code provisions.

Additional ambiguity emerges when other Code provisions are taken into consideration against § 348(f)(1)(A), often rendering absurd results and such provisions superfluous. R. at 11. Where a plain reading leads to absurd results, the ambiguity doctrine requires courts treat the text as ambiguous. *See Lamie*, 540 U.S. at 536. Such absurd results must be avoided where there are alternative readings consistent with Congress's intent. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). Further, a basic tenant of this Court is that no statute should be construed in a way that leaves any portion of its text inoperative, void, insignificant, or superfluous. *Corley v. United States*, 556 U.S. 303, 314 (2009); *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998) ("We are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of the same law."). Here, the Trustee's plain reading of § 348(f)(1)(A) is deficient on two separate grounds: (1) it leads to absurd results under § 522's snapshot rule; and (2) it renders

§ 348(f)(2) superfluous and inconsequential to the overall statutory scheme. R. at 13, 14. Therefore, in light of statutory interpretation principles, this Court should analyze § 348(f)(1)(A) in context to other Code provisions to mitigate the absurd, superfluous effect the Trustee's interpretation would have on a debtor's conversion rights, Congress's intent, and bankruptcy practice.

To begin, the First Circuit's decision in *Rockwell v. Hull* is instructive. *See Rockwell*, 968 F.3d at 16, 19–20. There, the First Circuit rejected the chapter 7 trustee's argument that sale proceeds from an exempted homestead lost their protection and became part of the bankruptcy estate upon conversion. *See id.* The circuit reasoned that because the snapshot rule applied, the debtor's assets were frozen in time as of the petition date, and neither the sale nor conversion changed this. *See id.* at 20. This result is consistent with chapter 7 practice that provides that the snapshot rule "permanently immunizes assets from pre-petition debt collection" and post-petition events have no effect on this rule. *See id.* at 21, 22 (citing *In re Cunningham*, 513 F.3d 318, 321 (1st Cir. 2008)). Likewise, when a debtor acquires a "new" post-petition property interest by transforming a previously exempt asset into a non-exempt one, the snapshot rule counsels that this new interest does not become a part of the chapter 7 bankruptcy estate. *See In re Hawk*, 871 F.3d at 296; *In re Williams*, 515 B.R. 395, 401 (Bankr. D. Mass. 2014) (explaining that the snapshot rule "focus[es] on the facts and law as they exist on the petition date"). A contrary holding would violate the fresh start policy the Code prioritizes in chapter 7. *See Rockwell*, 968 F.3d at 21, 22. Thus, the debtor's right to a homestead exemption becomes fixed on the petition date. *See id.* And given that the snapshot rule freezes an asset's value as of the petition date, any post-petition appreciation is immaterial for homestead valuation purposes. *See Wilson*, 909 F.3d at 312.

As the majority correctly notes, the Trustee's reading here would produce absurd results under § 522 because it would retroactively unfreeze the value of Mr. Clegg's home in violation of the snapshot rule. R. at 14. If post-petition appreciation is not considered for homestead valuation purposes—even where the exempt status of the homestead has changed—then it would be absurd to consider it upon conversion where the asset remains exempt and frozen in time. *See* R. at 14. Given this result, under this Court's longstanding policy, the Court will not assent to a plain reading where absurd results are likely and Congressional intent provides a secondary option. *See Griffin*, 458 U.S at 575. And as previously established, Congress intended for § 348(f)(1)(A) to operate as a secondary snapshot rule applicable in converted cases. *See* KEITH & LUNDIN, *supra*, at ¶ 26 (explaining Congress's intent to freeze a debtor's assets as of the petition date upon a good faith conversion under § 348(f)(1)(A)).

Turning to § 348(f)(2), the Trustee's interpretation ignores Congress's distinction between good faith and bad faith conversions, rendering § 348(f)(2) superfluous. *See In re Leon & Elionder Harmon*, No. 18-10579, 2022 WL 20451952, at *6 (Bankr. E.D. La. June 9, 2022). This Court's holding in *Kawaauhau v. Geiger* illustrates the canon against surplusage's operation within the context of the Code. *See* 523 U.S. at 61. There, the Court considered § 523(a)(6)'s discharge exception for debts arising from willful and malicious injury. *Id.* A debtor argued that a medical malpractice debt should be excepted from discharge under (a)(6)'s terms because the act of malpractice was intentional, although the injury was unintended. *Id.* at 61. However, the Court rejected this because the debtor's broad reading would "obviate the need for § 523(a)(9)," which prevents discharge of debts for unintentional death or personal injury stemming from a specific intentional act. *Id.* Therefore, intentional acts causing unintended injury cannot fall under § 523(a)(6) if Congress specifically addressed this concern in another of § 523's sections. *See id.* Here, the Trustee's broad reading falls victim to the same fate because it ignores how § 348(f)(1)(A) interacts with § 348(f)(2). *See In re Leon & Elionder Harmon*, 2022 WL 20451952, at *6.

Like § 523(a)(6), § 348(f)(1)(A) cannot be read in isolation. *See Harris*, 575 U.S. at 518. Subsection 348(f)(2) values property of the estate as of the conversion date when a debtor converts from chapter 13 in bad faith. *Compare* § 348(f)(1)(A) (valuing property of the estate for good faith conversions as of the *petition date*), *with* § 348(f)(2) (valuing property of the estate for bad faith conversions as of the *conversion date*). Congress intended this section to act as a penalty for dishonest debtors, expanding the scope of the converted estate by making post-petition property available for creditor liquidation; however, § 348(f)(1)(A) contains no penalty for the honest yet unfortunate debtor, shielding post-petition assets and allowing the debtor to make a fresh start. *See Harris*, 575 U.S. at 518–19. The temporal classification within § 348(f)(2) changes the date on which the Code values property of the estate upon conversion, leading courts to interpret § 348(f)(1)(A) to exclude equity created by *both* a debtor's post-petition secured home loan payments *and* appreciation of the home via market forces from a good faith converted estate. *See In re Lynch*, 363 B.R. at 106; *Barrera I*, 620 B.R. at 653.

If Congress intended to include post-petition, pre-conversion property in the converted estate for *all debtors* in § 348(f)(1)(A), then it had no reason to specify its inclusion for *bad faith debtors* in § 348(f)(2). *See id.* If this Court adopts the Trustee's reading, it will render Congress's inclusion of § 348(f)(2) superfluous and inconsequential, removing any meaningful distinction between the treatment of debtors who convert in good or bad faith. *See id.* While Mr. Clegg converted in good faith, under the Trustee's reading, future instances involving bad faith debtors would produce the same results as a good faith debtor—a result contrary to Congress's deliberate distinction within § 348(f)'s subsections, no matter the type of property involved. *See id.*; R. at 8 n.8. Therefore, this Court should affirm the numerous other courts that have held § 348(f)(1)(A) to necessarily exclude post-petition, pre-conversion equity from the converted estate to both these avoid absurd applications under the Code and avoid conflict with § 348(f)(2).

B. Section 348(f)(1)(A)'s legislative history and the Code's central conversion policy reveals that increases in post-petition equity shall be excluded from the bankruptcy estate.

Because § 348(f)(1)(A) is ambiguous, this Court should examine statutory intent through the lens of its legislative history. *See Lamie*, 540 U.S. at 534. This is true even if this Court finds this section unambiguous because a law's legislative history can be dispositive if it clearly indicates that Congress meant something other than the plain meaning. *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 543 (1940). This is especially relevant, as is here, where a statute's language is plain but differing interpretations of the text produce absurd results. *See id.*; *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.* (*Hen House*), 530 U.S. 1, 6 (2000).

This Court should consider § 348(f)(1)(A)'s legislative history and fundamental bankruptcy policy to give the proper and intended effect to its language. *See Am. Trucking Ass'ns*, 310 U.S. at 543 (footnote omitted) ("[E]ven when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole,' this Court has followed that purpose, rather than the literal words."). And upon this review, we urge this Court to find that the legislative history and policy behind § 348(f)(1)(A) supports the conclusion that post-petition, pre-conversion equity inures to the benefit of Mr. Clegg.

1. Congress intended post-petition, pre-conversion increases in home equity to inure to the debtor's benefit to avoid thrusting debtors into a worse position than if they had originally filed for chapter 7.

Many of the courts who have included post-petition equity in the converted chapter 7 estate ignore § 348(f)(1)(A)'s legislative history altogether. *See, e.g.*, *In re Goetz*, 647 B.R. 417–18 (Bankr. W.D. Mo 2022) (declining to view § 348(f)(1)(A)'s legislative intent); *In re Castleman*, 75 F.4th at 1057 (concluding that no analysis of legislative history was necessary). But ignoring this provision's legislative history leads to an incomplete picture. *See Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 610 n.4 (1991) ("[C]ommon sense suggests that inquiry benefits from reviewing additional information rather than ignoring it."). This Court should thus give weight to § 348(f)(1)'s legislative history because multiple interpretations have rendered it ambiguous, and the legislative record is instructive in cases of ambiguity, especially as to the question before the Court today. *See id.*

Legislative history explains that Congress enacted § 348(f)(1)(A) to resolve a circuit split on the question of what types of property is included within the converted estate. *See* H.R. REP. NO. 103-835, at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366. Congress expressly adopted the view of the Third Circuit in *Bobroff v. Continental Bank (In re Bobroff)*, which ruled that post-petition, pre-conversion tort claims were not included within the converted estate—rejecting the notion that § 1306(a)(1) applied to converted cases. *See id.* (citations omitted) ("This amendment overrules the holding in cases such as *Matter of Lybrook* and adopts the reasoning of *In re Bobroff*."). In doing so, Congress intended to limit the converted estate to only the property possessed by the debtor on the original chapter 13 petition date. *See In re Castleman*, 75 F.4th at 1059. By limiting the converted estate's valuation to the original petition date, Congress attempted to statutorily ensure that conversion does not thrust the debtor into a worse position than had he initially filed chapter 7. *Id.* (citing *In re Hannan*, 24 B.R. 691, 692 (Bankr. E.D.N.Y. 1982)).

This legislative history shows that Congress was concerned for debtor's to be put in the exact position as Mr. Clegg. *See id.* Using the example of a hypothetical debtor with equity equaling his state's allowable homestead exemption, Congress explained that it would cause a "serious disincentive to chapter 13 filings" if upon conversion, the debtor lost any post-petition increases in equity to the estate because of payments made under the plan. *See id.* Mr. Clegg is this hypothetical debtor. R. at 16 (explaining that the facts of Mr. Clegg's appeal are "similar, if not identical, to the example included in section 348(f)'s legislative history"). His home's appreciation is the result of both market changes and chapter 13 plan payments. R. at 12. He entered in bankruptcy with no equity, but a good faith resolve to repay his debts and start anew. R. at 7. Mr. Clegg attempted to make plan payments to Servicer for nearly a year but like many Americans, Mr. Clegg suffered enduring health conditions due to COVID-19, precluding his ability to maintain his payments through no fault of his own. R. at 8. Faced with conversion or dismissal, Mr. Clegg chose to convert as a last-ditch effort to save his home just as many debtors are forced to do. R. at 8.

Ultimately, Congress did not intend to punish debtors like Mr. Clegg who are honest, yet unfortunate; evidenced by the well-articulated policies and justifications for conversion. Congress chose to offer a solution, evidenced by the specific examples in § 348(f)(1)(A)'s legislative history, allowing debtors like Mr. Clegg to achieve that "'fresh start' the Bankruptcy Code aims to facilitate." *See Harris*, 575 U.S. at 518 (quoting *Marrama v. Citizens Bank*, 549 U.S. 365, 367 (2007)). The Trustee's proffered interpretation ignores this history by referring to the example as "inadvertent" or by simply choosing to ignore it; however, Congress was deliberate in its language to protect people in Mr. Clegg's position. R. at 17. And given § 348(f)(1)(A)'s ambiguity, this legislative history provides the intended interpretation, and we urge this Court to adopt such an interpretation based on principle and the Code's overall policy. *See Harris*, 575 U.S. at 518.

2. By excluding post-petition, pre-conversion equity from the chapter 7 estate, the Code adheres to this Court's and the Code's policy of providing a fresh start to debtors upon a good faith conversion.

Mr. Clegg's situation is unfortunately not unique; thousands of debtors struggle to comply, and ultimately fail to successfully complete a chapter 13 plan. *See, e.g.*, Katherine Porter, *The*

Pretend Solution: An Empirical Study of Bankruptcy Outcomes, 90 TEX. L. REV. 103, 107–08 (2011) (highlighting that debtors seeking chapter 13 relief often fail to complete their respective chapter 13 plans due to chapter 13's stringent financial requirements). In fact, two out of every three debtors fail to comply with their plans, significantly affecting their ability to receive a discharge. *Id.* In an effort to alleviate the effects of a failed chapter 13 plan, Congress afforded debtors a "nonwaivable right to convert" from chapter 13 to chapter 7 "at any time." *See id.*; 11 U.S.C. § 1307(a). Then, Congress amended § 348(f)(1) to incentivize debtors to undergo a payment plan instead of liquidation by "ensuring that debtors [would] be no worse off than they would have been had they filed Chapter 7 at the outset." *See Barrera I*, 620 B.R. at 653; H.R. REP. NO. 103-835, at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366.

While some courts are concerned that allowing a debtor to retain post-petition, pre-conversion equity will result in a windfall to those who made poor financial decisions to the detriment of their creditors, allowing a debtor to reap these benefits actually comports with the policy goals of nonwaivable conversion. *See Barrera I*, 620 B.R. at 653–54. Congress's concurrent enactment of § 348(f)(2) ultimately resolved these fears. *See Harris*, 575 U.S. at 518. In cases where "the debtor has abused the right to convert and converted in bad faith" the bankruptcy court has discretion to enforce § 348(f)(2), bringing in all property held by the debtor on the date of conversion, not the petition. *In re Castleman*, 75 F.4th at 1063 (Tallman, J., dissenting).

For example, take a debtor who pays down her mortgage $200,000 during good market conditions. *Barrera I*, 620 B.R. at 654. If she had the bad faith intent to substantially pay down her mortgage, convert to Chapter 7, and receive the benefit of her equity while leaving creditors high and dry, then § 348(f)(2) will prevent any windfall. *See* § 348(f)(2). However, if this same hypothetical debtor was acting in good faith, a windfall is appropriate given the circumstances of conversion. *See Barrera I*, 620 B.R. at 654. Both chapters are a trade-off: in chapter 7 a debtor trades non-exempt assets for liquidation, but in chapter 13 a debtor trades post-petition assets and income for a discharge. *See id.* However, it would be wildly unfair to converting debtors and would violate general bankruptcy principles "if the chapter 7 trustee were to reap the benefit of both the debtor's non-exempt assets and his post-petition income." *See id.* This would remove any incentive reasonably granted by conversion in the first place. *See id.*

It is undisputed that Mr. Clegg converted in good faith. R. at 8 n.8. As such, he should be allowed to reap the benefits of his plan payments and good market conditions, rather than losing his home—a much worse position than if he had simply filed for liquidation in the first place. R. at 17; *Harris*, 575 U.S. at 518. Therefore, we ask this Court to affirm the decision of the Thirteenth Circuit Court of Appeals that post-petition, pre-conversion equity inures to the benefit of the good faith debtor. R. at 17 ("Consistent with the purpose of chapter 13, the Debtor should be rewarded, not punished, for seeking to repay his creditors.").

II. The Thirteenth Circuit correctly held that the chapter 7 Trustee cannot sell her statutory power to avoid and recover preferential transfers to a self-interested creditor pursuant to a sale under 11 U.S.C. § 363.

This second issue on appeal requires a determination of whether the trustee's avoidance powers are property of the estate, and, if so, whether the trustee may sell them to a creditor outside the ordinary course of business. R. at 2. Generally, these avoidance claims allow a chapter 7 trustee to seek the reversal of preferences that disproportionately benefit a creditor. *See Republic Credit Corp. I v. Boyer* (*In re Boyer*), 372 B.R. 102, 105 (D. Conn. 2007), *aff'd*, 328 Fed. Appx. 711 (2d Cir. 2009). To accomplish this, § 547(b) provides that a trustee may avoid any transfer made by the debtor to an insider within one-year prior to the petition date. 11 U.S.C. § 547(b), (b)(4)(B).

Then, after avoidance, the trustee may "for the benefit of the estate" recover the preferentially transferred property or its value. 11 U.S.C. § 550(a), (c).

The Code also permits the trustee to sell estate property outside of the ordinary course of business, i.e., a "§ 363 sale." 11 U.S.C. § 363(b)(1). Generally, this sale helps maximize the value of the chapter 7 estate and increase creditor recovery. *See Moore v. Mims, (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010). However, only "property of the estate" may be sold under § 363's terms. § 363(b). Therefore, the trustee's avoidance powers may only be sold if they constitute property of the estate. *Id.*; R. at 31.

Property of the estate is defined broadly by § 541(a), encompassing causes of action within its reach. *See* H.R. REP. NO. 95-595, at 549 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6573. But unlike traditional causes of action, a trustee's chapter 5 avoidance actions serve a unique statutory purpose, leading to disagreement among courts about their status as estate property. *Compare In re McGurik*, 414 B.R. 878, 879 (Bankr. N.D. Ga. 2009) (characterizing avoidance actions as "unique statutory powers," not property of the estate), *and In re Feringa*, 376 B.R. 614, 624 (Bankr. W.D. Mich. 2007) (same), *with Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC)*, 78 F.4th 1006, 1008 (8th Cir. 2023) (failing to distinguish avoidance claims from traditional causes of action and finding them property of the estate).

This Court should adopt the view that avoidance actions are not property of the estate and thus the trustee cannot sell them under § 363(b) for two reasons. First, the plain language of the Code expressly provides that the trustee alone may avoid and recover preferential transfers on behalf of the estate through the trustee's statute-created powers—powers that do not vest in the estate or debtor. *See* § 547(b). Second, given the overarching purpose of a chapter 7 trustee's power to avoid preferential transfers as an independent fiduciary and ensuring equality amongst the creditors, allowing a sale to an interested creditor would negate prior dispositive chapter 7 practice prohibiting the trustee from selling or assigning their avoidance powers to such a creditor.

A. Avoidance actions cannot be within property of the estate because the Trustee exclusively has independent standing to recover preferential transfers for the benefit of the estate.

Resolving this issue begins with the plain language of the Code's statutory provisions covering the intersection between avoidance actions and property of the estate. *Ron Pair Enters*, 489 U.S. at 241. This is guided by the principle that Congress "says in a statue what it means and means in a statute what it says there." *Hen House*, 530 U.S. 6 (internal citation omitted). And where the meaning of language is plain, "the sole function of the courts . . . is to enforce it according to its terms," unless as shown in the above issue, such an interpretation leads to absurd results. *Id.* As is the case here: this Court should hold that actions under §§ 547, 550 are not property of the estate for two main reasons: (1) avoidance actions are not property of the estate under the plain meaning of § 541(a); and (2) the plain language of §§ 547, 550 grant *only* the trustee the necessary standing to avoid and recover preferential transfers.

1. Avoidance powers are not property interests of the debtor nor acquirable by the estate because they are statutorily created by operation of law.

Avoidance actions are noticeably absent from the text of § 541(a)'s definition of property of the estate. *See* § 541 (highlighting numerous interests and Code sections that Congress wanted specifically defined as "property of the estate"); R. at 19 ("Congress clearly knew how to include a cross-reference to section 547, as it did so in over fifteen sections."). Nowhere are such actions listed as property of the estate, nor did Congress include a cross-reference to § 547, which it knowledgeably did with over *fifteen* sections of the Code within § 541's language. *See* § 541 (including within its text cross-references to 11 U.S.C. §§ 303, 349, 362, 502, 521, 522, 546, 550, 552, 749, 764, 901, 926, 1521, 1523).

The bankruptcy estate consists broadly of the debtor's interest in certain property at the outset of the case. *See In re Feringa*, 376 B.R. at 619. And as courts have acknowledged, § 541(a)(1) establishes that "the estate cannot possess anything more than the debtor itself did outside bankruptcy." *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1663 (2019). Moreover, its legislative history counsels that, while causes of action are included within § 541(a)(1), this subsection does not operate to expand the debtor's rights beyond what was already in existence upon filing. *See* S. REP. NO. 95-989, at 82 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5868 ("[Section 541(a)] is not intended to expand the debtor's rights against others more than they exist at the commencement of the case.").

A debtor has no pre-petition property interest in preference avoidance actions. *See Off. Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 245 (3d Cir. 2000) (finding the power to avoid prepetition transfers is not an asset of the debtor). This is because federal bankruptcy law creates the preference action itself—a body of law that only becomes applicable upon commencement of the case, not prior thereto. *See In re Fonda Grp., Inc.*, 108 B.R. 962, 966 (Bankr. D.N.J. 1989); Brendan Gage, *Is There a Statutory Basis for Selling Avoidance Actions?*, 22 J. BANKR. L. & PRAC. 3 Art. 1 (2013). Thus, unlike a traditional contract or tort claim, a preference claim is not "debtor-derived;" instead, a preference claim is brought by the trustee to "vindicate the interests of creditors." *Knoll, Inc. v. John Zelinsky & Key Bank, N.A.*, No. 05-cv-1499 (GLS/DRH), 2008 U.S. Dist. LEXIS 133897, at *5 (N.D.N.Y. Apr. 7, 2008).

Courts constant reluctance to hold that pre-petition blanket security interests could attach to preference actions further evidences this principle. *See In re Ludford Fruit Prods., Inc.*, 99 B.R. 18, 24 (Bankr. C.D. Cal. 1989) ("Logically, it is difficult to understand how an avoidance power action that springs into being with the commencement of a bankruptcy case could be the proceed of any form of collateral."). Instead, property of the estate only encompasses property the debtor had "in his own right" such as property listed on a required asset schedule. *See In re Sweetwater*, 55 B.R. 724, 731 (D. Utah 1985), *aff'd in part, rev'd in part*, 884 F.2d 1323 (10th Cir. 1989) (emphasis added) ("This court has yet to see the schedule of assets that lists a debtor in possession's avoiding powers as an asset of the estate. That is because the avoiding powers are not a *prepetition asset* of the estate but only a power to augment the estate.").

In this way, there is an important distinction between the ownership of the cause of action itself and the ownership of the action's proceeds. *See In re Feringa*, 376 B.R at 624. Despite the Trustee's contention, the inquiry is not whether the transferred funds are property of the estate, but whether the Trustee's avoidance powers are. R. at 20. Courts have generally recognized that proceeds from avoidance actions are property of the estate, while holding that the action itself is not. *See In re Feringa*, 376 B.R. at 624 ("Section 541 is quite clear that it is only the property that is actually recovered . . . [by] a successful avoidance action that in fact becomes property of the estate."). And though the Trustee argues that *In re Simply Essentials* suggests the debtor "retains an inchoate or contingent interest in property transferred prepetition," to bring in avoidance actions under § 541(a), such a reading would render § 541(a)(3) inconsequential, as it expressly includes property that the trustee actually recovers under § 550 using the trustee's recovery powers. § 541(a)(3); *In re Simply Essentials*, 78 F.4th at 1009; R. at 20.

Moreover, the dissent's use of *dicta* from *United States v. Whiting Pools, Inc.*, is likewise deficient because avoidance actions are entirely distinguishable from property seized pre-petition. R. at 32–33. There, the IRS seized a chapter 11 debtor's equipment to satisfy a pre-petition tax lien to which the debtor had both legal and equitable title; however, the debtor lacked a possessory interest in the equipment upon the petition date due to its seizure. *See United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 (1989). To resolve this issue, the Court broadly construed § 541(a)(1), defining the estate to include property made available by operation of § 542(a)'s turnover power. *See id.* at 204–06. However, preference actions are not "made available" to the estate by virtue of another Code provision—they are statutory powers created by the Code and granted to the trustee outright, lacking any possessory interest. *See In re Cybergenics Corp.*, 226 F.3d at 244 (showing that an avoidance action is "no more an asset of [the] debtor in possession than it would be a personal asset of a trustee"); *In re Midgard Corp.*, 204 B.R. 764, 771 (B.A.P. 10th Cir. 1997) (characterizing avoidance actions under § 547 as "created by the Code"). Moreover, as a chapter 11 case, *Whiting Pools* focused heavily on the policy behind reorganization—a philosophically different category of relief than liquidation, which often necessitates a broad reading of property of the estate. *In re Ferguson*, 67 B.R. 246, 251–253 (D. Kan. 1986).

Alternatively, the Trustee argues that the preference action becomes property of the estate under § 541(a)(7), which brings in "any interest in property that the estate *acquires* after the commencement of the case." § 541(a)(7) (emphasis added). This argument, however, likewise fails on similar grounds: the estate does not *acquire* avoidance actions, they are created by operation of law. *See In re Schwartz*, 383 B.R. 119, 126 (B.A.P. 8th Cir. 2008). But even more important, avoidance actions are created upon commencement of the case, not at some later time. *In re Fonda Grp.*, 108 B.R. at 966. Therefore, because preference actions are not property of the estate under § 541(a)(1), (7), the Trustee may not sell her power to recover and avoid preferential transfers to Eclipse pursuant to a § 363(b) sale.

2. The Code's plain language exclusively authorizes the Trustee to recover avoidance actions for the benefit of the estate.

Section 550(a) limits the power to recover preferential transfers to the trustee. § 550(a). This Court has clearly held that when the Code expressly uses the word "trustee" it means the trustee alone. *See Hen House*, 530 U.S. at 6–7. Congress says what it means when writing statutes, thus where the plain text only mentions the trustee this Court has not read the section to confer power upon anyone else. *See id.* at 6. The recovery of avoidance actions is no exception.

Courts have recognized that § 550(a) has two separate requirements: (1) the trustee must retain the ability to prosecute avoidance actions; and (2) any recovery must benefit the estate. *Gonzales v. Nabisco Div. of Kraft Foods, Inc. (In re Furrs)*, 294 B.R. 763, 769 (Bankr. D.N.M. 2003). And here, § 550's plain language expressly limits standing to recover preferences. *Id.* This Court's interpretation in *Hen House* of § 506(c)'s identical language is instructive in illustrating this point. *See Hen House*, 530 U.S. at 5. The Court grappled with § 506(c)'s phrase "the trustee may recover property securing an allowed secured claim . . . ." *See* § 506(c). The administrative claimant argued that the plain text did not bar others from recovery, it simply authorized the trustee to seek recovery. *Hen House*, 530 U.S. at 6. However, the Court had "little difficulty" in determining that Congress intended to vest the power in the trustee exclusively on several grounds. *Id.*

First, utilizing the negative-implication canon, which instructs that when a statute names a specific party and grants this party exclusively a right of action, *only* the named party may act, and no implied right of action is implied for unnamed parties. *See id.* at 6-7; BRYAN A. GARNER & ANTONIN SCALIA, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 109 (2012). Second, the trustee's unique role within bankruptcy made it "entirety plausible that Congress would provide a power to him and not to others." *Hen House*, 530 U.S. at 7. Third, in other parts of the Code Congress chose to use the phrase "a party in interest" or "an entity," which the Court contrasted with Congress's explicit choice to use "the trustee" in § 506(c). *Id.* And finally, the Court reasoned that it would be "contrary to common sense and common usage" to hold that Congress impliedly meant to include other parties simply because it did not expressly exclude them. *See id.* at 8. Therefore, the late Justice Scalia, writing for a unanimous Court, held that the plain and natural meaning of § 506(c) was that the trustee, and *only* the trustee, could seek recovery. *Id.* at 2, 12, 14.

Like the Thirteenth Circuit, this Court should once again apply this same reasoning and analysis to §§ 547, 550. R. at 23. Here, like in *Hen House*, the statutes plainly state "the trustee may" take requisite action without reference to any other party. *See* § 547(b) ("[T]he *trustee* may avoid . . . ."); § 550(a) ("[T]he *trustee* may recover . . . ."); § 506(c) ("[T]he *trustee* may recover . . . ."). The plain language is virtually identical, and this Court recognizes a presumption that a word means the same thing throughout the Code. *See Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932) ("Undoubtedly, there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning."). Using this Court's method in *Hen House*, the plain language of the Code dictates that the trustee has exclusive authority to bring an avoidance action, and absent express statutory authorization to the contrary, a creditor may not pursue such an action in chapter 7 especially where such a sale would not benefit the estate. *See In re Cooper*, 405 B.R. 801, 808 (Bankr. N.D. Tex. 2009) (applying *Hen House* analysis to avoidance actions).

Here, Eclipse intends to buy a power it cannot use because chapter 5 avoidance powers are restricted to the trustee in chapter 7 cases. *See In re Higgins*, 270 B.R. 147, 153 (Bankr. S.D.N.Y. 2001). And while the dissent raises the issue of derivative standing, it is inapplicable in chapter 7 for two main reasons. *See In re Cooper*, 405 B.R. at 811–14 (rejecting derivative standing in chapter 7 cases); R. at 32 n.24. First, unlike in chapter 11, a creditor has no independent standing to litigate an avoidance action in chapter 7 proceedings. *See In re Cooper*, 405 B.R. at 803–04. Second, chapter 11 has both textual and equitable support for derivative actions, while the same cannot be said for chapter 7. *Id.* Unlike a debtor-in-possession, the trustee "has a unique role as an independent fiduciary," limiting potential conflicts of interest and garnering no loyalty to a single creditor. *See id.* But Eclipse—a creditor—is not a fiduciary, let alone an independent one. *Id.* Allowing an interested creditor to acquire the trustee's exclusive powers could result in a "hijacking" of the case to benefit a single creditor—an outcome that would defeat the trustee's role in preserving the various interests at stake in a chapter 7 proceeding. *See id.*

However, even if the Court finds creditor derivative actions valid in chapter 7, Eclipse still fails under § 550's second prong because any recovery would be for Eclipse's benefit, not the benefit of the estate. *See In re Dinoto*, 562 B.R. 679, 681 (Bankr. E.D. Mich. 2016). Derivative standing still requires recovery on behalf of the estate, and where a creditor intends to pursue a claim for its *own benefit*, standing is rejected. *See id.* Unlike in chapter 11, a single creditor receiving the benefit of a preference recovery does not sufficiently benefit the estate. *See In re Furrs*, 294 B.R. at 776, 779–80. Consequently, a trustee may not sell or assign her avoidance interest to a buyer-creditor "if the creditor intends to pursue the claims on its own behalf." *In re Boyer*, 372 B.R. at 105. Thus, here, Eclipse is not attempting to assert derivative standing on behalf of the estate; it is seeking to purchase, in its own name and for its own benefit, the trustee's power to seek an avoidance claim. *In re McGuirk*, 414 B.R. at 880; R. at 9. Without derivative standing, any actual recovery by Eclipse is for the benefit of the creditor itself, not the estate, further evidencing the danger such a sale would have on the future of chapter 5 avoidance actions.

B. The policy behind chapter 7 relief and prior bankruptcy practice support the interpretation that the Trustee cannot sell her avoidance powers.

This Court need not look beyond the Code's plain text to determine that a trustee may not sell or otherwise transfer her power to avoid and recover preference actions to a creditor. *See Hen House*, 530 U.S. at 6. However, even if this Court determines that the Code is ambiguous, the policy behind chapter 7 bankruptcy, and the undisturbed pre-Code practice of rejecting the type of sale raised here, warrant the conclusion that the trustee cannot sell her avoidance powers. *Kelly v. Robinson*, 479 U.S. 36, 43 (1986) (quoting *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 222 (1986)) (explaining that the Court to resolve textual discrepancies should "look to the provisions of the whole law, and to its object and policy").

This Court has long recognized that preference actions serve to ensure and uphold the primary policy of bankruptcy—equality of distribution amongst creditors—and to discourage creditors from "racing to the courthouse to dismember the debtor." *See Union Bank v. Wolas*, 502 U.S. 151, 161 (1991). Prohibiting the trustee from selling her interest to an objecting creditor serves these overarching purposes for two reasons: (1) only the chapter 7 trustee neutrally represents the interests of all creditors; and (2) generally, only the trustee alone can ensure equality of distribution amongst creditors because a creditor pursuing a claim on their own behalf may recover more than its fair share of the estate's assets. *See Hen House*, 530 U.S. at 7.

1. If the Trustee could sell her avoidance powers, her unique role as an independent fiduciary would be thwarted by creditors seeking recovery for their own self-interests.

The trustee's power to avoid a preferential transfer is a unique statutory power reserved only for the trustee because it is intended to benefit the entire estate, not a mere single creditor. *In re McGuirk*, 414 B.R. at 879. Creditors lack the training, qualifications, and lack of self-interest needed to exercise the chapter 7 trustee's role as Congress intended—characteristics necessary for the Code to achieve Congress's policy interest of swift, efficient bankruptcy case administration. *See* Elizabeth Warren & Jay L. Westerbrook, *Selling the Trustee's Powers*, AM. BANKR. INST. J., Sept. 2004, at 32 ("The Trustee 'is visibly the court-appointed representative of creditors, but a buyer is just another self-interested party.'"); *Matter of Richman*, 104 F.3d 654, 656–57 (4th Cir. 1997). This has led this Court to recognize that the trustee's unique role is precisely the reason Congress would have wanted to grant an exclusive power. *See Hen House*, 530 U.S. at 7.

As an independent fiduciary, the chapter 7 trustee has a unique perspective on the bankruptcy proceedings and, unlike creditors, lacks substantial conflicting interests in the bankruptcy estate due to a pre-petition relationship with the debtor. *See In re Cooper*, 405 B.R. at 812. This independence is vital for the functioning of a chapter 7 case because the trustee is expected to act as a "gatekeeper" for actions brought against the estate or debtor. *See id.* Only the trustee can exercise the reasonable business judgment necessary to determine what claims are worthwhile to bring, and which are not worth the time and expense of litigation. *See id.* This Court recognized the importance of this gate-keeping function in *Hen House*, reasoning that, to allow a non-trustee the ability to seek recovery would impair both the coordination of proceedings by the bankruptcy court and the trustee's ability to manage the bankruptcy estate. *Hen* House, 530 U.S. at 12–13.

Here, Eclipse is a prime example of a self-interested buyer-creditor seeking to usurp the role of the trustee. *See In re Cooper*, 405 B.R. at 816. The Thirteenth Circuit correctly characterized Eclipse's motivation for the sale as both "retribution and redemption." R. at 9. Why would Eclipse seek retribution? Upon learning that years before bankruptcy Mr. Clegg generously donated the $75,000 of his loan's remaining proceeds to the VFW, Eclipse was "livid, to say the least," even though both Mr. Clegg and the Final Cut remained solvent, fully capitalized, and capable of satisfying debts as they came due. R. at 5 n.5, 7. Eclipse is not looking to recover the preferential transfer for the benefit of the estate, nor to maximize distribution amongst *all* creditors; instead, Eclipse is serving its own self-interest and "hijacking" Mr. Clegg's bankruptcy in a manner that is contrary to Congress's intention. *See In re Cooper*, 405 B.R. at 804.

Furthermore, the purpose of chapter 7 bankruptcy is to provide the honest but unfortunate debtor a fresh start. *Grogan v. Grogan*, 498 U.S. 279, 286–87 (1991). This policy can only be effectuated by providing a procedure by which the debtor can make peace with his creditors. *Id.* There is no peace nor fresh start where the trustee's role is corrupted by self-interest. *See In re Cooper*, 405 B.R. at 812. Allowing a creditor to purchase a claim against the debtor to enact a personal vendetta is akin to "the proverbial fox guarding the henhouse" and cannot be allowed. *See id.*; R. at 23–24 ("We cannot adopt an interpretation that compromises the integrity of the bankruptcy system by allowing creditors like Eclipse to pursue personal vendettas using powers intended to be utilized by a neutral trustee.").

2. Congress did not intend to overrule the well-settled principle that the trustee may not sell or assign avoidance powers.

For over a century, courts have held that a trustee may not transfer her avoidance rights to another. *Belding-Hall Mfg. Co. v. Mercer & Ferdon Lumber Co.*, 175 F. 335, 340 (6th Cir. 1909). Since the enactment of the Code, courts have still been reluctant to permit transfers due to the "well-settled principle that neither a trustee in bankruptcy, nor a debtor-in-possession, can assign, sell, or otherwise transfer the right to maintain a suit to avoid a preference." *See In re Sapolin Paints*, 11 B.R. 930, 937 (E.D.N.Y. 1981). In fact, pre-Code case law authorizing the sale, assignment, or other transfer of preference actions is practically non-existent. Instead, courts routinely forbade such a sale because *only* the trustee could claim statutory authority to bring a preference action. *See, e.g.*, *Belding-Hall*, 175 F. at 340 (finding that only the trustee had statutory authority under § 60-b to maintain a preference action). As noted by the dissent, some authority exists to support the sale of fraudulent transfer actions; however, pre-code courts recognized the inherent differences of preference actions due to their purpose, namely accountability and equality amongst creditors precluding their ability to be transferred. *See* Gage, *supra*, at 3 Art. 1.

As the Thirteenth Circuit correctly noted, this well-settled principle was not materially altered or repealed by Congress. R. at 22. Precluding the transfer of avoidance actions is exactly the type of widespread and well-recognized bankruptcy practice "that [courts presume] Congress was aware of when enacting the Code." *See Hen House*, 530 U.S. at 10. Pre-Code practice supplements and informs this Court's understanding of what Congress wrote in the Code. *Id.* And here, it operates as a confirmation with no express indication to the contrary. Ultimately, Congress never intended to undue one-hundred years of precedent; it intended to act in accordance with it by writing §§ 547, 550 to grant the trustee exclusive powers to avoid and recover preferential transfers that cannot be sold. R. at 22.

CONCLUSION

Therefore, we ask this Court to AFFIRM the decision of the Thirteenth Circuit Court of Appeals as to both issues, and hold that post-petition, pre-conversion equity inures to the benefit of the debtor upon conversion, and that the Trustee may not sell her power to avoid and recover preferential transfers to a self-interested creditor.

APPENDIX

11 U.S.C. § 363. Use, sale, or lease of property.

(b)

(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

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

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

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

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

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

(f)

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

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

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

(C) with respect to cases converted from chapter 13—

(i) the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

11 U.S.C. § 506. Determination of secured status.

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

11 U.S.C. § 522. Exemptions.

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(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.

(b) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

11 U.S.C. § 523. Exceptions to discharge.

(a) A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

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

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

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

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

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

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

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

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

11 U.S.C. § 542. Turnover of property to the estate.

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

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. § 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.

11 U.S.C. § 544. Abandonment of property of the estate.

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

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

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

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

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

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.