Team 42

No. 23-0115

IN THE

Supreme Court of the United States

October Term, 2023

IN RE EUGENE CLEGG, DEBTOR

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER

V.

EUGENE CLEGG, RESPONDENT.

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

BRIEF FOR RESPONDENT

TEAM NUMBER 42
COUNSEL FOR RESPONDENT

JANUARY 18, 2024

QUESTIONS PRESENTED

I. Under 11 U.S.C. §§ 348 and 541, does any post-petition, pre-conversion increase in equity in a debtor's property inure to the benefit of the debtor or to the bankruptcy estate when the case is converted from chapter 13 to chapter 7?

II. Under 11 U.S.C. §§ 547 and 550, do a chapter 7 trustee's avoidance powers constitute property of the bankruptcy estate that can be sold?

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The Thirteenth Circuit Court of Appeals' 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.

PERTINENT STATUTORY PROVISIONS

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

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

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

The relevant portion of 11. U.S.C. § 348(f)(2) provides:

(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.

The relevant portion of 11. U.S.C. § 363(b)(1) provides:

(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.

The relevant portion of 11. U.S.C. § 506(c) provides:

(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.

The relevant portion of 11. U.S.C. § 510(c) provides:

c) Notwithstanding subsections (a) and (b) of this section, after notice and a hearing, the court may--

(1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or
(2) order that any lien securing such a subordinated claim be transferred to the estate.

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

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

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

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
> (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.

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

(a) In this section--

(1) “inventory” means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

(2) “new value” means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

(3) “receivable” means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

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

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made--

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if--

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(c) The trustee may not avoid under this section a transfer--

(1) to the extent that such transfer was--

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B)(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was--

(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

(B) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the debtor--

(A)(A) to the extent such security interest secures new value that was--

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property; and

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 30 days after the debtor receives possession of such property;

(4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor--

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

(5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of--

(A)(i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or

(ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or

(B) the date on which new value was first given under the security agreement creating such security interest;

(6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title;

(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $600; or

(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $7,575 [originally "$5,000", adjusted effective April 1, 2022].

(d) The trustee may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

(e)

(1) For the purposes of this section--

(A) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and

(B) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made--

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such 30 days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of--

(i) the commencement of the case; or
(ii) 30 days after such transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the debtor has acquired rights in the property transferred.

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.

(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment schedule between the debtor and any creditor of the debtor created by an approved nonprofit budget and credit counseling agency.

(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.

The relevant portion of 11. U.S.C. §550 provides:

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

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

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

(b) The trustee may not recover under section[1] (a)(2) of this section from--

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

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

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

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

(2) was made for the benefit of a creditor that at the time of such transfer was an insider;

the trustee may not recover under subsection (a) from a transferee that is not an insider.

(d) The trustee is entitled to only a single satisfaction under subsection (a) of this section.

(e)(1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of--

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

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

(2) In this subsection, “improvement” includes--

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

(B) repairs to such property;

(C) payment of any tax on such property;

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

(E) preservation of such property.

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

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

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

The relevant portion of 11. U.S.C. § 551 provides:

Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate.

The relevant portion of 11. U.S.C. §554 provides:

(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.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

STATEMENT OF THE FACTS

This appeal arises out of the Trustee's attempt to shift the focus of this bankruptcy proceeding from providing a fresh start for the debtor, Eugene Clegg, to her own financial gain. The actions of the Trustee jeopardize the fundamental principle of bankruptcy, which is to provide relief to the honest debtor, by seeking to capitalize upon Mr. Clegg's financial hardship through demanding the post-petition, pre-conversion equity in his home and by desiring to sell her power to avoid and recover transfers under §§ 547 and 550.

I. FACTUAL HISTORY

Cpl. Eugene Clegg ("Mr. Clegg") is a decorated veteran and small business owner, who like many Americans, endured financial hardship resulting from the COVID-19 health pandemic. R. 4. After Mr. Clegg retired from the United States Army, his mother, Emily "Pink" Clegg ("Pink"), transferred to Mr. Clegg her 100% membership interest in The Final Cut, LLC ("Final Cut"). R. 5. Final Cut owned and operated a historic, single-screen movie theater in the City of Moot. R. 5. In the years following the transfer, Mr. Clegg's entire income was the modest salary he received from Final Cut. R. 5. In 2016, Mr. Clegg caused Final Cut to borrow $850,000 ("the Loan") from Eclipse Credit Union ("Eclipse") to renovate the historic theater's ornate ceiling. R. at 5. Eclipse was granted first priority liens on Final Cut's property and, as additional security, Mr. Clegg executed an unconditional, unsecured personal guaranty in an unlimited amount. R. 5. Several local veterans, including Mr. Clegg, volunteered to perform the restoration work on the theater which meant Final Cut was able to reduce labor costs and not exhaust the Loan's proceeds. R. 5. Ultimately, the remaining proceeds of the Loan, approximately $75,000, were donated to the Veterans of Foreign Wars in 2017. R. 5.

As a result of the COVID-19 pandemic in 2020, the theater was forced to close for nearly a year. R. 6. The shutdown left Mr. Clegg with no income and on September 8, 2020, he was forced to borrow, on an unsecured basis, $50,000 from Pink. R. 6. After the theater reopened in 2021, attendance failed to rebound to pre-pandemic levels, so Mr. Clegg offered to forego his salary to help Final Cut's financial troubles. R. 6. Mr. Clegg was again left with no source of income, forcing him to incur credit card debt and fall behind on his home mortgage, serviced by Another Brick in the Wall Financial Corporation. ("the Servicer") R. 6. Ultimately, the Servicer commenced foreclosure proceedings against Mr. Clegg. R. 6.

On December 8, 2021, Mr. Clegg sought relief under chapter 13 of the Bankruptcy Code to try and save his home. R. 6. He stated in his petition that the value of his home was appraised at $350,000 and that there was a non-contingent, liquidated, and undisputed debt to the Servicer for $320,000. R. 6. The petition also included a contingent and unliquidated unsecured debt in an unknown amount owed to Eclipse. R. 6. Mr. Clegg also properly claimed the maximum homestead exemption in the amount of $320,000. R. 6. He proposed to fund his plan over the course of a three-year period solely through his future earnings from Final Cut. R. 7.

After Eclipse learned of Mr. Clegg's donation to the VFW, it commenced an adversary proceeding with the goal of having his debt related to the Loan deemed non-dischargeable. R. 7. Eclipse also objected to his plan on the grounds that it was not proposed in good faith R. 8. The chapter 13 trustee also objected to the plan, arguing it did not satisfy 11 U.S.C. § 1325(a)(4). R. 7. In response, Mr. Clegg amended his plan to increase payments to creditors by $20,000. R. 7. This settlement was memorialized in a stipulation wherein the chapter 13 trustee agreed she would not seek to avoid and recover the payments made to Pink prior to the Petition date. R. 8. Additionally, Eclipse agreed to withdraw its objection in exchange for an estimated claim for $150,000 of which $25,000 was deemed non-dischargeable. R. 8.

II. PROCEDURAL HISTORY

On February 12, 2022, Mr. Clegg's plan was approved by the bankruptcy court which incorporated the settlement with the chapter 13 case and approved the settlement between the Debtor and Eclipse. R. 8. Mr. Clegg made timely payments under his plan until he contracted long-COVID in September 2022. R. 8. Due to his illness, he was unable to work at the theater which ultimately closed one month later. Eclipse then commenced foreclosure proceedings against Final Cut. R.8.

Without any source of income, Mr. Clegg had no way of making payments under his plan. R. 8. He therefore decided to convert his case to chapter 7, and the bankruptcy court entered a generic order for the conversion. R. 8. The chapter 13 trustee stated that she had distributed $10,000 to the Servicer and that upon conversion, she returned to Clegg the funds held in reserve for Eclipse. R. 8-9.

Vera Lynn Floyd (the "Trustee") was appointed to administer Mr. Clegg's chapter 7 estate. R. 9. The Trustee initially concluded the estate had no assets however, Mr. Clegg believed that his home's value may have increased as he had noticed an increase in the value of homes in his neighborhood in the years following the COVID-19 pandemic. R. 9. The Trustee in turn commissioned an appraisal of the home which revealed it had increased in value by $100,000 from the Petition Date. R. 9.

When the Trustee began marketing Mr. Clegg's home for sale, Eclipse, seeking possible retribution, made an offer to purchase both the home and the alleged preference claim against Pink for $470,000. R. 9. In response to this offer, the Trustee filed a motion to sell (the "Sale Motion") both the home and alleged preference claim to Eclipse under 11 U.S.C. § 363(b). R. 9. Mr. Clegg objected to the Sale Motion on two grounds. R. 10. He first argued that any post-petition, pre-conversion increase in his home's equity should inure to his benefit and because there was no equity for the state on the Petition Date, the Trustee was barred from selling his home. R. 10. Second, he argued that the Trustee's statutory ability to avoid and recover transfers under 11 U.S.C. §§ 547 and 550 cannot be sold. R. 10.

The bankruptcy court ruled in favor of Mr. Clegg on both issues, denying the Sale Motion. R. 10. Specifically, the bankruptcy court first held that any post-petition increase in equity prior to the date of conversion does not constitution property of the chapter 7 estate because it belongs to the debtor under § 348(f)(1) and § 541. R. 4. Second, the bankruptcy court held that the ability of a chapter 7 trustee to avoid and recover preferential transfers under §§ 547 and 550 is not estate property that can be sold but, rather, a statutory power that cannot. R. 4. The Trustee timely appealed to the Thirteenth Circuit which affirmed the bankruptcy court's decision. R. 10, 24.

STANDARD OF REVIEW

The questions presented are based on interpretation of the Bankruptcy Code. The standard of review for issues of law, as in this case, is *de novo*. *See Fed. House. Fin. Agency for Fed. Nat'l Mortg. Ass'n v. Nomura Holding Am., Inc.*, 873 F. 3d 85, 138 n. 54 (2d Cir. 2017).

SUMMARY OF THE ARGUMENT

Beginning with the first issue, any post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the debtor upon conversion from chapter 13 to chapter 7. This Court should affirm the Thirteenth Circuit's holding that any post-petition, pre-conversion increase in equity in Mr. Clegg's property inures to his benefit upon conversion from chapter 13 to chapter 7 for three reasons. First, The Thirteenth Circuit correctly concluded that a reading of the bankruptcy code as a whole affirmatively establishes that 11 U.S.C. § 348 is anything but plain and must be read in the greater context of the Bankruptcy Code. Second, the substantial legislative history of § 348 and prior congressional actions confirms that Congress intended for any post-petition, pre-conversion equity increase in a debtor's property to be retained by the debtor. Third, allowing a trustee to inure the benefit of any post-petition, pre-conversion increase in equity in a debtor's property flies in the face of the equitable purpose and policy behind chapter 13.

First, § 348, when viewed in the context of the entire Bankruptcy Code, verifies that equity accrued in a debtor's property post-petition, pre-conversion does belong to the debtor. While the language of § 348 does not expressly state where post-petition, pre-conversion equity is to go, § 348(f)(2) demonstrates that Congress intended for people like Mr. Clegg to be able to retain post-petition, pre-conversion interests in property, such as the equity of Mr. Clegg's home, by distinguishing between good faith and bad faith conversions. Because Mr. Clegg converted in good faith, he is entitled to the increase in equity. Section 522 of the Bankruptcy Code reinforces that a debtor can retain such interests in property through its focus on the time of filing. The value of Mr. Clegg's property was enumerated in the paperwork when the chapter 13 was filed, and § 522 shows that this number is established at the time of filing and is to be utilized throughout the bankruptcy process, regardless of whether a conversion occurs. Lastly, § 541 aligns with §§ 348 and 522, reaffirming the focus on the date the initial petition was filed. Because the statutory language consistently shows that the date the petition is filed is the nucleus of the bankruptcy proceeding, the equity that accrued in Mr. Clegg's property after the initial petition and prior to the conversion belongs to him as the debtor.

Second, even though the statutory language indicates that any post-petition, pre-conversion increase in equity does inure to the debtor, the lack of specificity in the language does dictate reviewing legislative history to confirm that it is the debtor who is allocated this increase in equity. The legislative history of § 348 reveals that Congress intended for property interests, like Mr. Clegg's post-petition, pre-conversion increase in equity, to inure to debtors. Congress clearly intended to encourage debtors to file under chapter 13 as demonstrated by having § 348 insulate debtors' post-petition net worth increases from the chapter 7 estate, regardless of the source of that increase. Mr. Clegg's present situation is precisely why Congress has construed the Bankruptcy Code in this precise manner – to ensure people like Mr. Clegg are incentivized to file under chapter 13 without the fear of harm or repercussions if a conversion to chapter 7 becomes necessary.

Finally, allowing trustees to inure the benefit of any post-petition, pre-conversion increase in equity in a debtor's property undermines Congress's intent in drafting chapter 13. Chapter 13 focuses on allowing the debtor to retain their property and assets as long as regular payments are made to creditors. This policy provides incentives for choosing to file under chapter 13, including preventing the forfeiture of increases in equity in the home. Because Mr. Clegg chose to file under chapter 13 and faithfully made payments under his plan for almost a year, circumstances that were beyond his control should not cause him to be punished for his efforts while completely counteracting the purpose chapter 13 was intended to serve.

The language of § 348 in the greater context of the entire Bankruptcy Code in addition to its legislative history reveal that post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the debtor upon conversion from chapter 13 to chapter 7. Additionally, the policy goals behind chapter 13 do not align with allowing trustees to inure the benefit of any post-petition, pre-conversion increase in equity in a debtor's property due to chapter 13's emphasis on helping debtors retain their assets and property. Because of these reasons, this Court should affirm the Thirteenth Circuit's holding on issue one.

Turning to the second issue, trustees cannot sell the power to avoid and recover transfers under §§ 547 and 550 of the Bankruptcy Code. This Court should affirm the Thirteenth Circuit's holding that the Trustee is barred from selling this power for three reasons. First, the plain language of §§ 547 and 550 clearly shows that the Trustee cannot sell the power to avoid and recover certain transfers made by Mr. Clegg. Second, the legislative history of §§ 547 and 550 do not support the Trustee's argument that a trustee's power to avoid and recover transfers can be sold. Finally, allowing a trustee to sell her power to avoid and recover transfers would undermine the goals of bankruptcy and consequently be contrary to public policy.

First, § 541, which provides a list of items that constitute property of the estate that can be sold, does not expressly mention the trustee's avoidance powers. Moreover, the plain language of §§ 547 and 550 unambiguously shows that the Trustee cannot sell her power to avoid and recover transfers because the ability to sell the trustee's avoidance powers are not mentioned, or even alluded to, anywhere in the statutory language of the statutes.

Second, the legislative history of §§ 547 and 550 further supports the Thirteenth Circuit's holding that the Trustee cannot sell the power to avoid and recover transfers because in drafting §§ 547 and 550, Congress solely and explicitly empowered the appointed trustee to pursue avoidance claims. In doing so, Congress therefore barred trustees from selling their avoidance powers under §§ 547 and 550. Additionally, pre-Bankruptcy Code practice, which the current Bankruptcy Code is largely modeled after, generally barred trustees from selling their avoidance powers.

Finally, allowing a trustee to sell the power to avoid and recover transfers under §§ 547 and 550 would undermine the goals of bankruptcy by allowing Eclipse to recover for its own benefit, not for the estate and its creditors. Bankruptcy aims to give the honest but unfortunate debtor a new start, as well as ensure equality of distribution among creditors. Therefore, allowing Eclipse to recover for its own benefit would be in conflict with the goals of bankruptcy.

The plain language and legislative history of §§ 547 and 550 unambiguously show that a trustee cannot sell the power to avoid and recover transfers. Allowing such a sale would be inconsistent with the underlying policy goals of the Bankruptcy Code and allow Eclipse to receive the greatest benefit, instead of the estate or Mr. Clegg, which is what is intended by the goals of bankruptcy. Therefore, this Court should affirm the Thirteenth Circuit's holding that a trustee's powers to avoid and recover transfers is not property of the estate, and therefore, cannot be sold.

ARGUMENT

I. The Thirteenth Circuit correctly held that any post-petition, pre-conversion increase in equity in Mr. Clegg's property inures to his benefit upon conversion from chapter 13 to chapter 7.

This Court should affirm the Thirteenth Circuit's holding that the Trustee is entitled to post-petition, pre-conversion equity accrued in his property because the plain language of § 348, when read in the larger context of the entire Bankruptcy Code, and its legislative history grant any post-petition, pre-conversion increase in a debtor's property to the debtor rather than the bankruptcy estate. Further, allowing this increase in equity to inure to the bankruptcy estate instead of the debtor flies in the face of the equitable policies Congress had in mind when drafting chapter 13. Because the statutory language and legislative history of § 348, when analyzed in the context of the Bankruptcy Code as a whole, and public policy considerations demonstrate that any post-petition, pre-conversion equity should inure to the debtor, the Thirteenth Circuit's holding should be affirmed.

A. The Thirteenth Circuit correctly concluded that a reading of the Bankruptcy Code as a whole affirmatively establishes that § 348 is anything but plain.

A fundamental canon of statutory construction requires the Bankruptcy Code "to be read as a whole . . .since the meaning of statutory language, plain or not, depends on context." *King v. St.Vincent's Hosp*., 502 U.S. 215, 221 (1991) (citations omitted); *see also RadLAX Gateway Hotel, LLC v. Amalgamated Bank*,566 U.S. 639, 645 (2012) (citations omitted) ("Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions."). In the instant case, §348(f)(1)(A) must be fully read and analyzed in conjunction with the entirety of the bankruptcy code to fully understand its meaning. The statute's language specifically states, "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."11 U.S.C. § 348(f)(1)(A). Therefore, the Thirteenth Circuit correctly found that § 348(f)(1)(A) must be evaluated within the context of both §§ 348(f)(2) and 522.

i. A reading of §348 as a whole establishes that post-petition, pre-conversion appreciation in the debtor's property belongs to the debtor.

Beginning with § 348(f)(2), it provides that if a debtor converts a chapter 13 case in bad faith, "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. § 348(f)(2). It thus penalizes a chapter 13 debtor for his or her bad faith conduct by requiring the forfeiture of any post-petition, pre-conversion interests in property that he or she would otherwise have been entitled to keep upon a good faith conversion. *See Harris v. Viegelahn*, 575 U.S. 510, 517 (2015); *Rodriquez v. Barrera* (*In re Barrera*), 22 F.

4th 1217,1220-21 (10th Cir. 2022). The Trustee has not contended that Mr. Clegg did not act in good faith when he converted his case to chapter 7. R.8 n. 8. Therefore, because in the instant case, the distinction has been made that Mr. Clegg acted in good faith, § 348(f)(2) aids in identifying the property of his estate.

Congress's enactment of § 348(f)(2) demonstrates that post-petition, pre-conversion interests in property, like the $100,000 increase in equity of Mr. Clegg's home, are not property of the estate. In 1994, Congress amended the Bankruptcy Code, "In an attempt to resolve the conflicting decisions regarding the correct identity of property of the estate in the chapter 7 case upon conversion from chapter 13." *In re Siegfried*, 219 B.R. 581, 584 (Bankr. D. Colo. 1998) 219 B.R. 581. This amendment made it to where "in the typical pre-confirmation conversion from chapter 13 to chapter 7, any property in the hands of the chapter 13 Trustee [would] be returned to the debtor and the debtor [would] be entitled to retain most, if not all, property acquired during the pendency of the chapter 13 case." *In re Siegried,* 219 B.R. at 594. Section 348(f)(2) is an "exception to the general rule that on conversion from chapter 13 to 7, the property of the estate consists only of the property as of the original petition date that remains in the estate as of the conversion date." *In re Perez*, 345 B.R. 137, 140–41 (Bankr. D. Del. 2006). In short, "post-petition, pre-conversion earnings and appreciation of property usually do not become property of the estate in the chapter 7 case." *In re Perez,* 345 B.R. at 140-41.

Congress has attempted to give the debtor who attempts to repay his debts in chapter 13, a sort of guarantee that he will be no worse off for having tried a repayment plan, as long as he converts in good faith. *In re Barrera,* 620 B.R. at 648. This guarantee comes in the form of allowing the debtor to retain his post petition assets, which of course he would never have had to contribute if he had originally filed a chapter 7 case. *In re Harmon*, 2022 WL 20451952, *7 (Bankr.

E. D. La. June 9, 2022). Section 348(f)(2)'s exception for bad-faith conversions is instructive in this regard. If a debtor converts in bad faith—for example, by concealing assets in "unfair manipulation of the bankruptcy system"—the converted chapter 7 estate will "consist of the property of the [chapter 13] estate as of the date of conversion." 11 U.S.C. § 348(f)(2); *see In re Siegfried*, 219 B.R. at 586. Section 348(f)(2) thus penalizes bad-faith debtors by making their post-petition wages available for liquidation and distribution to creditors. Conversely, when the conversion to chapter 7 is made in good faith, no penalty is exacted. *Harris*, 575 U.S. at 518. The Trustee may argue that the pertinent code provisions provide a plain meaning of "property of the estate" that supports a finding that an increase in equity inures to the Trustee herself. However, the Trustee's alleged plain meaning interpretation would therefore render inconsequential the distinction between good faith and bad faith conversions under §§348(f)(1)(A) and 348(f)(2). This distinction is key because Mr. Clegg is a good faith debtor, the exact person Congress intended to protect through the enactment of § 348(f)(2).

ii. Under § 522, the value of the debtor's property is determined at the time of filing and does not change upon conversion.

Turning next to § 522, which is nearly identical to § 348, it establishes, with few inapplicable exceptions, that the petition date is the date upon which property interests are valued for the purpose of a debtor's exemptions. 11 U.S.C. § 522(a)(2). Section 522 is often referred to as the "snapshot" rule, because it freezes a debtor's financial situation, including the value of his assets, in time. *See e.g. In re Rockwell,* 968 F.3d 12, 17 (1st Cir. 2020). Section 522(a)(2) defines value as, "fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate." 11 U.S.C. § 522(a)(2).

Even though Mr. Clegg only claimed $30,000 in his property at the time of filing for bankruptcy, the "snapshot" rule does not prevent him from seeking an exemption in the increased equity in his property. The Trustee mistakenly relies upon the recent *Castleman* decision to assert that there is no difference between post-petition equity and the property from which it is derived. The Thirteenth Circuit correctly rejected the *Castleman* decision and based their reasoning on three points. First, *Castleman* relies upon precedent that predated the enactment of section 348(f)(1)(A) in its current form, thus making it inapposite to the present-day interpretation of the statute. *Castleman v. Burman (In re Castleman)*, 75 F.4th 1052, 1056 (9th Cir. 2023). Second, *Castleman* relies in large part on *Wilson v. Rigby*, a chapter 7 case from the Ninth Circuit where conversion was never at issue. *In re Castleman, 75 F. 4th* at 1056-1061. And third, *Castleman* rests entirely on the alleged plain meaning of § 348(f)(1)(A) without ever considering its complete context with §§348(f)(2) and 522. *Id.* at 1055.

Moreover, the dissent in *Castleman* discussed that in chapter 13, the debtor retains all property and proposes a plan to repay creditors over a period of years. *Id.* at 1061. Thus, upon confirmation of a chapter 13 plan, the debtor is once again the owner of the property. *Id.* It follows that when a chapter 13 plan has been confirmed, appreciation accrues to the debtor. *Id.* Therefore, the Trustee's reliance on *Castleman* is misplaced because *Castleman*, "sacrifices the text of the bankruptcy statutes on the altar of simplicity." *Id.* at 1060 (Tallman, J., dissenting).

At the time of filing the chapter 13, Mr. Clegg stated on Schedule A/B that the value of his home was $350,000 based on an appraisal that he obtained only days before the petition date. This valuation has never been disputed. R. 6. n. 4. The chapter 13 plan provided that the value of Mr. Clegg's home was $350,000, the same amount reflected on Schedule A/B. R. 7. Upon conversion, as § 522 provides, Mr. Clegg's conversion schedules and other documents ascribed, as of the

Petition Date, a value of $350,000 to his home. R. 9. Therefore, because § 522 also points to the date of the initial filing being when a debtor's property interests are valued, the language of § 522 together with §348(f)(1) further supports that the increase in equity inures to Mr. Clegg.

iii. The apparent tension between §§ 348 and 541 is resolved by the language concerning the time the petition was filed present in § 348.

Section 541 also aids in contextualizing § 348 because it details what qualifies as property of the estate. 11 U.S.C.A. § 541. It explains that all legal or equitable interests of the debtor exist at the moment the case commences with the exceptions provided in subsections (b) and (c)(2). *Id.* The apparent tension between §§348 and 541 is that § 541 does not specifically address to whom any post-petition, pre-conversion increase in equity belongs. The Trustee will likely argue that the language of §541 suggests that post-petition appreciation in a property is the "property of the estate." However, according to *In re Black*, "the debtor owns the property outright and … the debtor is entitled to any post-petition appreciation." 609 B.R. 518, 529 (B.A.P. 9th Cir. 2019). The court in *In re Black* said that after confirmation of a chapter 13 plan, a debtor may volunteer to pay creditors from capital assets, and thereby relieve future income from the obligations under the plan, however, a chapter 13 debtor cannot be compelled to do so. *Id.* at 527. This applies post-conversion as well.

The increase in value to a debtor's home between the chapter 13 petition date and conversion to chapter 7, due to appreciation and repayment of a portion of the debt, is not property of the converted chapter 7 case. *In re Niles*, 342 B.R. 72, 75 (Bankr. Az. 2006). Conversion of a case from one chapter to another does not change the date of filing of the petition. *In re Wegner*, 243 B.R. 731, 733 (Bankr. Ne. 2000). Thus, property acquired by a debtor after a chapter 13 case is filed does not constitute property of the successor chapter 7 estate. Additionally, property of the chapter 7 estate is valued as it was in the previous chapter 13 case. *Id.* This clearly establishes that even though § 541 does not explicitly state where post-petition, pre-conversion increases in equity to a debtor's property goes, courts have consistently focused on the reference this section makes to the initial petition date. Mr. Clegg should therefore retain possession of his increase in equity because the language of both §§541 and 348 support that the property of the is firmly established on the date the initial petition is filed.

B. The substantial legislative history of § 348 and prior congressional actions confirms that Congress intended for any post-petition, pre-conversion equity increase in debtor's property to be retained by the debtor.

If a court must go further than the plain language of a statute, the next canons of statutory interpretation require courts to look at the context of the statute and its legislative history. *Newman v. McCrory Corp*., 210 B.R. 934, 937-38 (S.D.N.Y. 1997). This is because, if the statute's language is ambiguous, "the intention of the drafters, rather than the strict language controls." *U.S. v. Ron Pair Enters., Inc*. 489 U.S. 235 (1989). After all, "common sense suggests that inquiry benefits from reviewing additional information rather than ignoring it." *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 610 n.4 (1991). Congress enacted § 348(f) as part of the Bankruptcy Reform Act of 1994. As its legislative history makes clear, the purpose of § 348(f) was to encourage debtors to file under chapter 13 by insulating post-petition increases in a debtor's net worth from the chapter 7 estate, regardless of the source of that increase. H.R. Rep. No. 103-835, Section 311 (1994), as reprinted in 1994 U.S.C.C.A.N. 3340, 3366. Therefore, § 348(f)'s legislative history supports the Thirteenth Circuit's holding that when a debtor converts their case from chapter 13 to chapter 7, any post-petition, pre-conversion appreciation of an asset inures to the debtor.

Section 348(f) was enacted to "clarify the Code to resolve a split in the case law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7." 2022 Ann. Surv. of Bankr.Law 12. Specifically, § 348 was intended to prevent "a debtor's loss of the equity they gained from secured debt payments made during the pendency of a chapter 13 case." H.R. Rep. No. 103-835, Section 311. The House Report for the Bankruptcy Reform Act of 1994 includes this example: A debtor, who has $10,000 in exempt equity on the date their chapter 13 petition is filed, later reduces their mortgage balance by $10,000. *Id.* Under the case law at the time, the debtor would need to be counseled as to the risks involved if they converted their case to one under chapter 7 — it was unclear whether the increase in equity from the debtor's post-petition, pre-conversion secured debt payments became property of the chapter 7 estate. Congress drafted § 348(f) to clarify that the equity a debtor gained from post-petition, pre-conversion payments on secured debt would not become an asset of the chapter 7 bankruptcy estate. 2022 Ann. Surv. of Bankr.Law 12. The second situation Congress aimed to prevent through enacting §348(f) was having a chapter 13 debtor's loss become realized upon conversion to chapter 7, on property acquired after the chapter 13 case was filed. *Id.* The House Report for the Bankruptcy Reform Act of 1994, when discussing § 348(f), cited two cases to illustrate the split Congress was trying to resolve.

The first case Congress cited to illustrate the split § 348(f) was designed to resolve was *In re Lybrook* from the Seventh Circuit. *Matter of Lybrook*, 951 F.2d 136, 22 Bankr. Ct. Dec. (CRR) 649, Bankr. L. Rep. (CCH) P 74372 (7th Cir. 1991). In *In re Lybrook*, a debtor who filed a chapter 13 petition, inherited farmland post-petition and later converted the case to chapter 7. *Id.* The Seventh Circuit held that the chapter 7 estate included the post-petition asset because it was included in the chapter 13 estate." *Id.* Moreover, the second case, *In re Bobroff, involved* a debtor's post-petition, pre-conversion accrual of a tort claim. *In re Bobroff*, 766 F.2d 797, 799 (3d Cir. 1985). The Third Circuit held that the claim was not part of the converted chapter 7 estate because no policy indicates that the creditors should be made better off due to a debtor's inability to fulfill his requirements under the chapter 13 estate. *Id.* In amending § 348(f), Congress specifically overruled *Lybrook* and affirmed *Bobroff*. Congress believed this provided “sufficient guidance on what could and could not be included in a converted estate.” 2022 Ann. Surv. of Bankr.Law 12. These two cases were guidelines with which to evaluate whether certain property belonged to the estate in a converted case, but both cases only provided limited applications because neither addressed property appreciation and to whom it belonged. *Id.*

Congress also knew that enacting § 348(f)(2) would aid their effort to incentivize debtors to file under chapter 13 because it created a distinction between debtor’s acting in good versus bad faith. Even though Congress did not explicitly address post-petition, pre-conversion increases in equity in §348, its legislative history does show that Congress focused on ensuring that debtor’s, especially those who file under chapter 13 and convert to chapter 7 in good faith, are fully protected by the force of law. To take property, such as the increase in equity of Mr. Clegg’s property, and award it to the state would be an injustice Congress clearly sought to avoid. While it is Congress’s job to resolve ambiguities and omissions within the Bankruptcy Code, this Court should strive to protect Mr. Clegg and future debtors who are in the same situation by carrying out what Congress clearly intended as shown by §348(f)’s legislative history.

C. Allowing the Trustee to inure the benefit of any post-petition, pre-conversion increase in equity in Mr. Clegg’s property flies in the face of the equitable purpose and policy behind chapter 13.

The purpose and policy behind chapter 13, is to allow a debtor to retain, without penalty, his home, car, and other property in exchange for regular payments to creditors. *Harris*, 575 U.S. at 514. Chapter 13 is thus intended to incentivize a debtor to repay his debts with assurances that a chapter 7 trustee will not be able to seize any post-petition, pre- conversion equity for the benefit of the estate upon conversion while also removing disincentives from filing such as the debtors’ forfeiture of any increase in equity due to their post-petition, pre-conversion mortgage payments and/or home appreciation. *In re Hodge*s, 518 B.R. 445, 448-50 (E.D. Tenn. 2014); *Kendall v. Lynch* (In re Lynch), 363 B.R. 101, 107 (B.A.P. 9th Cir. 2007); *see also In re Harmon*, 2022 WL at *9. Additionally, bankruptcy aims to "aid the unfortunate debtor by giving him a fresh start in life, free from debts." § 27:13. Fresh start, 2F Bankr. Service L. Ed. § 27:13. Allowing the Trustee to inure the benefit of Mr. Clegg's post-petition, pre-conversion increase in equity essentially punishes him for accepting the grand bargain of chapter 13, ridding him of the fresh start and incentives that Congress intended for chapter 13 proceedings to give to good faith debtors.

The Bankruptcy Code provides diverse courses overburdened debtors may pursue to gain discharge of their financial obligations, and thereby a "fresh start." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007) (*quoting Grogan v. Garner*, 498 U.S. 279, 286, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)). While a chapter 7 debtor must forfeit virtually all his prepetition property, he is able to make a "fresh start" by shielding from creditors his post-petition earnings and acquisitions. *Harris*, 575 U.S. at 514. Alternatively, chapter 13 gives a debtor a fresh start by allowing him to retain his property if he proposes, and gains court confirmation of, a plan to repay his debts over a three- to five-year period. *Id*.

As previously mentioned, one of the ways Congress has incentivized chapter 13 filings is by giving the good faith debtor who attempts to repay his debts, a "sort of guarantee" that he will be no worse off for having tried a repayment plan if he ultimately has to convert to chapter 7 by allowing the debtor to retain his post-petition assets. *In re Barrera*, 620 B.R. at 648; *In re Harmon*, 2022 WL at *7. This guarantee also helps to promote the "fresh start" policy rooted in the entirety of the Bankruptcy Code. Further, in drafting chapter 13, Congress not only hoped to incentivize chapter 13 proceedings instead of chapter 7, but also for there to be a difference between the fundamental bargain in a chapter 7 versus a chapter 13 proceeding. *Id*. at 654; *see also In re Jackson*, 317 B.R. at 516. Chapter 7 is different from chapter 13 in that a chapter 7 debtor trades his non-exempt assets for his discharge. *Id.* In a typical chapter 7 case, the trustee will not have the opportunity to realize significant post-petition increases in home equity due to either prompt closure of the case or the debtor's filing of a timely motion to abandon. Lawrence Ponoroff, at 747. *Allocation of Property Appreciation: A Statutory Approach to the Judicial Dialectic*, 13 Wm. & Mary Bus. L. Rev. 721, 747 (2022). Thus, allowing the debtor to keep the pre-conversion increase in equity does not render the chapter 7 estate worse off; it merely prevents the chapter 7 trustee from reaping a windfall. It allows the fundamental bargains of chapter 7 and 13 to remain in place. *Id*.

Additionally, the Trustee's reliance on the holding from *Castleman*, which states that under the plain language of § 348(f)(1), the increase in value, whatever its cause, becomes part of the chapter 7 estate, is hard to justify from any principled policy orientation. *Id*. The *Castleman* holding "advances neither the congressional bias in favor of chapter 13 over chapter 7, nor the fresh start policy so fundamental in chapter 7." *Id*.

In the instant case, Mr. Clegg accepted the grand bargain of chapter 13 to keep in hopes of being able to keep his property and home while making payments to his creditors. He significantly reduced his debts owed to his creditors by dutifully making payments under his confirmed plan for almost a year. However, through no fault of his own, Mr. Clegg lost his only source of income and was left without any way to satisfy the obligations under his confirmed plan. Rather than dismissing his case outright though, he chose, in good faith, to convert his case to chapter 7. Mr. Clegg's situation is consistent with the very purpose of chapter 13 so he should be left no worse off for attempting to repay his creditors under chapter 13 before being left with no other recourse than a conversion to chapter 7. Mr. Clegg should be rewarded, not punished, for seeking to repay his creditors especially because had he filed for relief under chapter 7 initially, he likely would have been able to keep his home.

In conclusion, allowing the post-petition, pre-conversion increase in equity to inure to the Trustee would contradict Congress's intentions that have been displayed through §§ 348 and 541. Furthermore, the legislative history chapter 13 indicates Congress sought to protect debtors who file under this chapter, especially those who do so in good faith. This was furthered through public policy and shown to continue this protection of debtors, even once their bankruptcy has been converted to chapter 7. Ultimately, the Thirteenth Circuit's holding should be affirmed because the statutory language and legislative history of §§ of 348 and 541, in addition to the public policy considerations, clearly show that any post-petition, pre-conversion increase in equity in Mr. Clegg's property inures to his benefit upon conversion from chapter 13 to chapter 7.

II. The Thirteenth Circuit correctly held that the Trustee cannot sell the power to avoid and recover transfers under §§ 547 and 550 of the Bankruptcy Code.

This Court should affirm the Thirteenth Circuit's holding that the Trustee cannot sell her power to avoid and recover transfers under §§ 547 and 550 of the Bankruptcy Code because both the plain language and legislative history of §§ 547 and 550 noticeably fail to grant the trustee of an estate the ability to sell the power to avoid and recover transfers. Furthermore, allowing a trustee to sell this power would undermine the goals of bankruptcy as a whole. Because the plain language and legislative history of §§ 547 and 550 and public policy considerations demonstrate that a trustee cannot sell their power to avoid and recover preferential transfers, the Thirteenth Circuit's holding should be affirmed.

A. The plain language of §§ 547 and 550 unambiguously shows that the Trustee cannot sell her power to avoid and recover transfers.

The language of §§ 547 and 550 of the Bankruptcy Code is unambiguous; therefore, courts must enforce these statutes according to their terms. Additionally, because the language of both statutes is plain, "the sole function of the courts ... is to enforce [them] according to [their] terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,* 530 U.S. 1, 6 (2000). Section 547 grants the trustee the discretion to avoid, subject to certain defenses, transfers of property a debtor made within ninety days (or, in the case of insiders, one year) prior to the petition date. 11 U.S.C. § 547(b), (c). Section 550 allows the Trustee to actually recover the transferred property that was avoided under §547. 11 U.S.C. § 550. When the plain language of §§ 547 and 550 is applied to the facts of the instant case, it becomes clear that the Trustee is prohibited from selling her power to avoid and recover transfers made by Mr. Clegg.

When interpreting statutes, courts must follow the well-established principles of statutory interpretation. 1 Norton Bankr. L. & Prac. 3d § 2:22. The first principle directs courts to look at the plain language of the controlling statute at issue. *Id.* The purpose of looking to the plain language, along with the other principles of statutory interpretation, is to determine and comport with the congressional intent. *See, e.g., Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004); *In re Mr. Gatti's, Inc.*, 164 B.R. 929, 931 (Bankr. W.D. Tex. 1994). When no ambiguity is found, the language of the statute itself is where the inquiry both begins and ends because the clear language expresses the congressional intent. *Ron Pair Enterprises, Inc.*, 489 U.S. at 235. Courts across the country have adopted differing interpretations of whether a trustee's avoidance powers constitute property of the estate. However, according to the canons of statutory interpretation, this inquiry concerning the trustee's avoidance powers must begin with the plain meaning of the text. *Lamie,* 540 U.S. at 534.

Regarding § 506(c), the United States Supreme Court has held, that when the Bankruptcy Code inserts and uses the word "trustee," it means the trustee and no one else. *Hartford Underwriters Ins. Co,.* 530 U.S. at 6-7 ("Hen House"). Like §506(c), §§ 547 and 550 expressly state, without reference to any other person, that the "trustee," and thus only the trustee, is authorized to exercise the powers of avoidance and recovery. *Id.* at 7. Additionally, § 550(a), which permits a trustee to recover an avoided transfer, contains its own implications for trustees through its language that states an avoided transfer can be recovered "for the benefit of the estate." 11 U.S.C. § 550(a). Therefore, if a trustee's avoidance power could be sold, avoided transfers would not be recovered "for the benefit of the estate;" but instead recovered for the benefit of the purchaser. Therefore, under the *Hen House* analysis, the Trustee is barred from selling her avoidance powers and Eclipse is barred from utilizing them because avoidance powers rest solely with the trustee.

Moreover, § 363 of the Bankruptcy Code only authorizes a trustee to sell "property of the estate." 11 U.S.C. §363(b)(1); *see also, In re Moore*, 608 F.3d 253,258 (5th Cir. 2010) ("a trustee may sell only assets that are property of the estate"); *In re Interiors of Yesterday, LLC*, 2007 WL 419646, at *5 (Bankr. D. Conn. February 2, 2007) (only "property of the estate" may be sold via §363(b)). Property of the estate, which is defined in § 541 of the Bankruptcy Code, consists of all interests of the debtor existing at the commencement of the case that is under the debtor's control, any interest in property that the trustee recovers under certain sections of the Bankruptcy Code, any interest in property which is preserved for the benefit of or ordered transferred to the estate under §§ 510(c) or 551 of the Bankruptcy Code, and 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 filing the petition. 11 U.S.C. §541(a).

Notably, trustees' power to avoid and recover transfers is nowhere to be found in the list of what constitutes property of the estate that trustees are authorized to sell. Here, the Trustee is attempting to sell the right to avoid and recover alleged preferential transfers Mr. Clegg made to his mother, Pink. Because the Trustee's avoidance powers are not listed as property of the estate in § 541(a), the Trustee should not be authorized to sell those powers. Accordingly, this Court should affirm the Thirteenth Circuit's ruling that the Trustee cannot sell her right to avoid and recover preferential transfers made by Mr. Clegg.

The absence of any reference to §547 in §541(a) is also significant. Within the Bankruptcy Code, Congress included at least fifteen sections featuring a cross-reference to § 547. *See* 11 U.S.C. §§ 303, 349, 362, 502, 521, 522, 546, 550, 551, 552, 749, 764, 901, 926, 1521, 1523. Nevertheless, the text of § 541(a) contains no such cross-reference to § 547. Therefore, Congress's omission of any reference to § 547 in § 541(a) was intentional because the fifteen cross-references demonstrate that Congress knows how to reference §541 when it wishes to do so. For that reason, the omission of any reference to § 547 in § 541(a) evinces that Congress did not intend for the trustee's power to avoid a preferential transfer to be considered property of the estate.

The Trustee implores this Court to overlook *Hen House,* as well as the text of § 541(a), which contains the omission of any cross-reference to § 547 that grants a trustee their avoidance powers. Section 541(a)(1) includes as property of the estate "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, the phrase "property as of the commencement of this case" plainly and explicitly means that § 541(a)(1) only considers the estate to consist of claims that existed prior to the petition date, not the avoidance powers granted to a trustee only upon filing for bankruptcy. The Trustee also argues that under *In re Simply Essentials*, wherein the Eighth Circuit concluded that a debtor purportedly retains an inchoate or contingent interest in property transferred prepetition, that a trustee's avoidance powers constitute property of the estate. *In re Simply Essentials, LLC*, 640 B.R. 922 (Bankr. N.D. Iowa 2022), aff'd, 78 F.4th 1006 (8th Cir. 2023). However, the Trustee's reliance upon *In re Simply Essentials*' reasoning is misguided in light of the decision's three inherent flaws. First, Mr. Clegg disposed of the funds he transferred to Pink, meaning that he no longer had any interest in them under § 541(a)(1) and they were no longer estate property. *See, e.g., Beiger v. IRS*, 496 U.S. 53, 58-59 (1990); *100 Lindbergh Boulevard Corp. v. Gurnett Rock, Inc.* (*In re 100 Lindbergh Boulevard Corp.*), 128 B.R. 53, 56-59 (Bankr. E.D.N.Y. 1991) (down payments were not estate property where debtor maintained no prepetition interest) (Duberstein., C.J.); *see also* 11 U.S.C. § 101(54). Second, the relevant inquiry is not, as *In re Simply Essentials* seems to suggest, whether the funds Mr. Clegg transferred to Pink remain property of the estate; rather it is whether the Trustee's avoidance powers themselves are property of the estate. Third, if Mr. Clegg did in fact retain an interest in the funds, there would be no need for recovery under § 550(a), as the Trustee could simply compel turnover under section 542(a). *See United States v. Whiting Pools, Inc.*,462 U.S. 198,207-09 (1983).

Finally, bankruptcy courts across the country have held that a trustee cannot sell the power to avoid and recover preferential transfers made by the debtor. For example, the bankruptcy court for the Northern District of Georgia has stated that "this sale cannot be allowed, as a trustee cannot sell a preference or fraudulent conveyance claim. Absent extraordinary circumstances, a trustee is prohibited from selling, transferring, or assigning the right to assert and maintain an estate's avoidance action to an individual creditor." *In re Carragher*, 249 B.R. 817 (Bankr. N.D. Ga. 2000). Similarly, in *In re Redding,* the court held that a fraudulent transfer "may be avoidable by the trustee and recoverable from the [recipient] under §§ 548 and 550, but that does not make it property of the estate." *In re Redding*, 247 B.R. 474, 477 (Bankr. App. 8th Cir. 2000). The United States Bankruptcy Court for the District of Delaware recognized that absent a few exceptions, property of the estate contains only a debtor's interest in property as of the bankruptcy filing. *In re Pursuit Cap. Mgmt., LLC,* 595 B.R. 631 (Bankr. D. Del. 2018). Citing to § 541, the court recognized that "property of the estate" is a term of art under the Bankruptcy Code. *Id.* In *dicta*, the court stated that if the question were squarely before it, it was certainly possible that the Third Circuit might conclude that state-law based avoidance actions are not property of the estate. *Id.* However, the court noted that the hypothetical conclusion might not answer the question whether avoidance actions, or some aspect of them, may be sold. *Id.* Therefore, the plain language of §§ 547 and 550 of the Bankruptcy Code unambiguously show that the Trustee cannot sell the power to avoid and recover Mr. Clegg's preferential transfers.

B. The legislative history of §§ 547 and 550 further upholds the Thirteenth Circuit's holding that the Trustee cannot sell the power to avoid and recover transfers.

This Court should affirm the Thirteenth Circuit's holding because the legislative history of §§ 547 and 550 clearly demonstrate that Congress did not intend to grant a trustee the ability to sell their power to avoid and recover certain transfers made by a debtor. When interpreting the Bankruptcy Code, its statutory language "cannot be construed in a vacuum" and "must instead be read in context with a view to...the overall statutory scheme." *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012). Additionally, "courts must presume that a legislature says in a statute what it means and means in a statute what it says," *Barnhart v. Sigmon Coal Co.,* 534 U.S. 438, 450, (citing *Robinson v. Shell Oil Co*., 519 U.S. 337, 340 (1997)). Because statutory language is carefully crafted, a statute's purpose can be revealed by examining its legislative history. Therefore, although the plain meaning of § 541(a) renders the inquiry into whether a trustee can sell their avoidance powers complete, the legislative history of §§ 547 and 550 is also instructive in determining whether a trustee cannot sell their avoidance powers. Further, barring a trustee from selling their avoidance powers under §§ 547 and 550 is supported by pre-Bankruptcy Code practice.

i. The legislative history of §§ 547 and 550 shows that the legislature did not intend to grant trustees the ability to sell their avoidance powers.

Section 547 serves two primary purposes. First, "by permitting the trustee to avoid pre bankruptcy transfers that occur within a short period before bankruptcy, creditors are discouraged from racing to the courthouse to dismember the debtor during his slide into bankruptcy." *Union Bank v. Wolas*, 502 U.S. 151, 160-61 (1991). Second, and more importantly, "the preference provisions facilitate the prime bankruptcy policy of equality of distribution among creditors of the debtor. Any creditor receives a greater payment than others of his class is required to disgorge so that all may share equally." *Id.* In 1994, § 547 was amended by the Bankruptcy Reform Act to allow a trustee to avoid any transfer of an interest of a debtor in property made on or within 90 days before the date of the filing of the petition if such creditor at the time of such transfer was an insider. 11 U.S.C.A. § 547 (West). This avoidance is allowed because the transfer the debtor made would enable a creditor to receive more than it would receive if the case was a chapter 7 case or if the transfer had not been made. 11 U.S.C.A. § 547 (West). Moreover, in drafting § 547, Congress explicitly empowered only the trustee to pursue avoidance claims. 22 J. Bankr. L. & Prac. 2 Art. 2. Through this amendment that exclusively mentions the trustee, it is clear that the legislature intended for trustees to be the only people with the power to avoid certain transfers made by the debtor.

Like § 547, § 550 was also amended in 1994 by the Bankruptcy Reform Act. Under this act, § 550 was amended to provide, the "trustee may recover, for the benefit of the estate, the property transferred, or … the value of such property, from the initial transferee of such transfer or the entity for whose benefit such transfer was made; or any immediate or mediate transferee of such initial transferee." 11 U.S.C.A. § 550 (West). Further, under the amended § 550(a)(2), the trustee may not recover from 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 any immediate or mediate good faith transferee of such transferee." *Id.* Thus, where grounds for avoidance are established under §§ 544, 545, 547, 548, 549 and 724(a), the means of actually recovering the property are made possible by § 550, which authorizes the trustee to bring an action to recover the property itself, or its value, from (1) the initial transferee, (2) the entity for whose benefit the transfer was made, or (3) any immediate or mediate transferee of the initial transferee. 92 A.L.R. Fed. 631. Similar to § 547, Congress provided that the sole person with the power to recover from certain transfers, for the benefit of the estate, is the trustee. 11 U.S.C. § 550.

The Trustee's argument renders irreconcilable the relationship and established history between §§ 547, 550, and many other sections of the code. First, the legislative history of §§ 547 and 550 reveals a relationship between a trustee's avoidance powers and § 554. If, as the Trustee contends, a trustee's avoidance powers constitute property of the estate, then § 554 would nonsensically bestow those powers in the debtor upon abandonment. 11 U.S.C. § 554. Additionally, the Trustee's interpretation would render inconsequential, and perhaps incomprehensible, numerous other sections of the Bankruptcy Code. *See*, e.g., 11 U.S.C. §§ 349(b)(1)(B), 502(d), 522(h)(1). The canon against surplusage further corroborates the interpretation that a trustee cannot sell their avoidance powers. *See, e.g., Hibbs v. Winn,* 542 U.S. 88, 101 (2004). Notably, § 541(a)(3) incorporates a cross-reference to § 550. However, the text of that subsection makes it clear that it is not the power to recover under § 550 that constitutes property of the estate. 11 U.S.C. §541(a)(3). Instead, only the "interest in property that the trustee [actually] recovers" becomes property of the estate. *Id*. Thus, § 541(a)(3) would be rendered superfluous if this Court were to determine, as the Trustee argues, that § 541(a)(1) includes a trustee's avoidance powers.

ii. Barring a trustee from selling their avoidance powers is rooted in the history of the Bankruptcy Code.

Under the Bankruptcy Act, which preceded the Bankruptcy Code, courts overwhelmingly adopted the "well-settled principle" that a trustee cannot sell or otherwise assign avoidance powers. *United Capital Corp. v. Sapolin Paints, Inc*. (*In re Sapolin Paints, Inc.*)*,* 11 B.R. 930, 937 (Bankr. E.D.N.Y. 1981). When Congress enacted the Bankruptcy Code in 1978, it did not materially amend the statutory language or otherwise indicate an intent to deviate from this pre-Code practice. *Compare* 11 U.S.C. §§ 547, 550 with Bankruptcy Act of 1898, Ch. 541, sec 50, 30 Stat. 562 (codified as amended at 11 U.S.C. §96 (1958)); *see also* Lamar, Archer & Cofrin, LLP v. Appling,138 S. Ct. 1752, 1762 (2018) ("When Congress used the materially same language in [a section of the Bankruptcy Code], it presumptively was aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning."). Congress is presumed to know and understand existing law when enacting new legislation. *In re Hendrickson*, 274 B.R. 138, 151 (Bankr. W.D. Pa. 2002). Additionally, "This presumption is particularly appropriate when the new legislation invokes and builds off an existing statutory framework." *Internal Revenue Serv. v Murphy*, 892 F.3d 29, 35 (1st Cir. 2018).

Furthermore, cases decided prior to the enactment of the Bankruptcy Code largely support the proposition that the power to avoid certain claims is solely enforceable by the trustee and cannot be sold. 2 J. Bankr. L. & Prac. 2 Art. 2. For example, in *Webster v. Barnes Banking Co.*, the Tenth Circuit held that the right of a trustee in bankruptcy to set aside a conveyance made in fraud of creditors vests in the trustee for the benefit of the creditors and is not assignable. *Webster v. Barnes Banking Co*, 113 F.2d 1003, 1005 (C.C.A. 10th Cir. 1940). In *Texas Consumer Finance Corp. v. First Nat. City Bank*, the Third Circuit held that "section 60(b) of the Bankruptcy Act, provides that preferences may be avoided by the trustee. But he may not assign his claim." *Texas Consumer Finance Corp. v. First Nat. City Bank*, 365 F. Supp. 427, 429-30 (S.D. N.Y. 1973). Additionally, in *Parker v. Hand*, the court stated that "this mere naked right to set aside a fraudulent preference is not assignable by the trustee in bankruptcy and an attempted assignment cannot be enforced." *Parker v. Hand*, 299 Ill. 420, 132 N.E. 467, 469 (1921). Under this pre-Bankruptcy Code precedent, the sale of a debtor's assets does not convey the right to bring and maintain a suit to avoid a preference to the purchaser, even if the purchase agreement states that avoidance claims are included in the sale. 2 J. Bankr. L. & Prac. 2 Art. 2. The rationale for these holdings is that the Bankruptcy Act contained no provision that allowed another party to assert the trustee's avoidance powers. *Id.* Following this reasoning, because the current Bankruptcy Code, which largely mirrors the Bankruptcy Act, does not contain any language that grants the Trustee to sell her avoidance powers, the sale should be prohibited.

C. Allowing a trustee to sell the power to avoid and recover transfers under §§ 547 and 550 would undermine the goals of bankruptcy by allowing Eclipse to recover for its own benefit, not for the benefit of the estate and its creditors.

This Court should affirm the Thirteenth Circuit's decision because allowing the Trustee to sell her power to avoid and recover under §§ 547 and 550 would circumvent the goals of bankruptcy by allowing Eclipse to recover for its own benefit, instead of the benefit of the estate and its creditors. Bankruptcy aims "to give the honest but unfortunate debtor … a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). By allowing Eclipse to recover for its own benefit, the estate and other creditors will be put at a disadvantage, which is what the goals of bankruptcy seek to avoid.

Generally, courts are unwilling to allow the sale of avoidance claims because such a sale would run contrary to two primary policies underlying the Bankruptcy Code: maximizing the value of the estate and ensuring fairness to all creditors. 22 J. Bankr. L. & Prac. 2 Art. 2. For example, in *In re McGuirk*, the court noted that "absent extraordinary circumstances, a trustee cannot sell, transfer, or assign the right to assert and maintain an estate's avoidance action to an individual creditor." 414 B.R. 878 (Bankr. N.D. Ga. 2009). The court noted that the rationale for the decision was sound: "the Bankruptcy Code gives trustees special powers to fulfill their primary duty of marshaling the debtor's assets for the benefit of the estate." *Id.* In *Hartford Underwriters,* which dealt with § 506 of the Bankruptcy Code, the Supreme Court stated that the trustee's unique role in a bankruptcy proceeding "makes it entirely plausible that Congress would provide power to him and not others." *Hartford Underwriters,* 530 U.S. at 7.

Moreover, the drafters of the Bankruptcy Code specifically armed the appointed trustee with the powers of recovery of prepetition transfers of property, and avoidance of certain prepetition liens, security interests, and other encumbrances, for the purpose of implementing the intended balance of rights and remedies and to provide for equitable distribution to all creditors. 112 Am. Jur. Proof of Facts 3d 99. The dominant policy reason for giving a trustee these powers is to provide for equal distribution among creditors. *Id.* Specifically, the intention is that if there is a loss to a class of creditors, the negative impact of that loss would be shared equally by all so that the burden on any one creditor is reduced. *Id.* This conclusion is in line with the goals and policies underlying the Bankruptcy Code. For example, in chapter 7 cases, it is the duty of the trustee to marshal the debtor's assets on behalf of unsecured creditors. 11 U.S.C. § 704 (duties of the trustee). Thus, the trustee's powers to avoid preferences or fraudulent transfers are provided to aid in that process. These avoidance powers are for the benefit of the estate; they were not intended to serve as weapons for secured creditors to battle among themselves for priority.

The Trustee will likely argue that unless a trustee's avoidance powers constitute property of the estate, creditors could be deprived of an otherwise available recovery. However, this argument fails to consider that Congress precisely accounted for such situations by allowing a creditor to derivatively assert a trustee's avoidance powers for the benefit of the estate to ensure that its value is maximized. *See, e.g.*, 11 U.S.C. § 503(b)(3)(B), (b)(4); *Hyundai Translead, Inc. v. Jackson Truck & Trailer Repair, Inc. (In re Trailer Source, Inc.)*, 555 F.3d 231, 238-45 (6th Cir. 2009). In doing so, Congress additionally guaranteed equality of distribution among all creditors in a particular creditor class. *Republic Credit Corp. I v. Boyer* (*In re Boyer*), 372 B.R. 102, 106 (D. Conn. 2007); *see Wolas*, 502 U.S. at 161. In the instant case, the Trustee proposed to sell her powers under §§ 547 and 550, thereby allowing Eclipse to recover for its own benefit, not for the estate and its creditors. If the Trustee believes that Eclipse would be deprived of recovery, Eclipse has the opportunity to derivatively assert a trustee's avoidance powers for the benefit of the estate to ensure that its value is maximized.

These public policy considerations are further supported by the fact that a trustee's power to bring an avoidance action is a power exclusively reserved for the trustee. Therefore, allowing the Trustee to sell certain creditors the right to avoid and recover an alleged preferential transfer Mr.

Clegg made to his mother would attempt to give creditors a power they are not statutorily allowed to have. Moreover, adopting 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 undermines the goals of bankruptcy.

In conclusion, allowing the Trustee to sell her power to avoid and recover certain transfers made by Mr. Clegg would be in direct conflict with the plain language of §§ 547 and 550 because the statute does not provide a basis for a sale of a trustee's avoidance powers. Moreover, the legislative history of §§ 547 and 550 shows that when drafting the Bankruptcy Code, Congress did not intend to grant a trustee the ability to sell her avoidance powers. Finally, allowing the Trustee to sell her avoidance powers would undermine the goals of bankruptcy because the sale would allow Eclipse to recover for its own benefit, not for the estate and its creditors, which is the opposite result that bankruptcy policies seek to achieve. Ultimately, the Thirteenth Circuit's holding, should be affirmed because the statutory language and legislative history of §§ 547 and 550, in addition to public policy considerations, clearly show that that the Trustee does not have the power to sell her power to avoid and recover the preferential transfers that Mr. Clegg made to his mother, Pink.

CONCLUSION

For the aforementioned reasons, the judgment of the United States Court of Appeals for the Thirteenth Circuit should be AFFIRMED.

Respectfully submitted,

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