No. 23-0115

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE EUGENE CLEGG, DEBTOR

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER

v.

EUGENE CLEGG, RESPONDENT.

On Writ of Certiorari to
the United States Court of Appeals
for the Thirteenth Circuit

BRIEF FOR PETITIONER

JANUARY 18, 2024

TEAM NUMBER 43
COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

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

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

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The Bankruptcy Court for the District of Moot, the United States District Court for the District of Moot, and the United States Court of Appeals for the Thirteenth Circuit all decided in favor of the Respondent on both issues. The Thirteenth Circuit's decision is available at No. 22-0359 and reprinted in the Record at 3.

JURISDICTION STATEMENT

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 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; and
> >
> > (B) valuations of property and of allowed secured claims in the chapter 13 case shall apply in the converted case, with allowed secured claims reduced to the extent that they have been paid in accordance with the chapter 13 plan.

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

> **(f)(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 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) 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.

(2) If notification is required under subsection (a) of section 7A of the Clayton Act in the case of a transaction under this subsection, then—

> (A) notwithstanding subsection (a) of such section, the notification required by such subsection to be given by the debtor shall be given by the trustee; and
>
> (B) notwithstanding subsection (b) of such section, the required waiting period shall end on the 15th day after the date of the receipt, by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, of the notification required under such subsection (a), unless such waiting period is extended—
>
> > (i) pursuant to subsection (e)(2) of such section, in the same manner as such subsection (e)(2) applies to a cash tender offer;
> >
> > (ii) pursuant to subsection (g)(2) of such section; or
> >
> > (iii) by the court after notice and a hearing.

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

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

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

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

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

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

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

(b) Except as provided in subsections (c) and (i) of this section, the trustee may 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.

The relevant portion of 11 U.S.C. § 704 provides:

The trustee shall-

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

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with

responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires; and

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee.

The relevant portion of 11 U.S.C. § 1306 provides:

(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 f 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 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.

STATEMENT OF THE FACTS

I. Factual History

Cpl. Eugene Clegg (ret.) (the "Debtor") acquired 100% membership interest in The Final Cut, LLC ("Final Cut") that owned and operated a single-screen movie theater in the City of Moot. (R. 5). Final Cut had no liabilities at the time of interest transference. (R. 5).

In 2016, the Debtor caused Final Cut to borrow $850,000 (the "Loan") from Eclipse Credit Union ("Eclipse") for the purpose of theater renovations. (R. 5). Eclipse was granted first priority liens on Final Cut's real and personal property, along with the Debtor's unconditional, unsecured personal guaranty in an unlimited amount. (R. 5). Final Cut reduced labor costs with the help of local veterans volunteering to assist in the renovations. (R. 5). As a result of their generosity, the Debtor caused Final Cut to donate the remaining proceeds of the Loan to Veterans of Foreign Wars (the "VFW") in 2017, which approximated to be $75,000. (R. 5).

Due to the COVID-19 pandemic, the Governor for the State of Moot declared a public health emergency, rendering the theater inoperable. (R. 6). Although the Debtor borrowed $50,000 from his mother, Emily "Pink" Clegg ("Pink"), and the theater reopened in February 2021, cash flow failed to rebound to pre-pandemic levels. (R. 6). In response, the Debtor forfeited his salary, leading to the Debtor falling behind on his mortgage serviced by Another Brick in the Wall Financial Corporation (the "Servicer"). (R. 6). After the Debtor failed to make mortgage payments, the Servicer commenced foreclosure proceedings. (R. 6).

II. Procedural History

A. Chapter 13

The Debtor sought relief under chapter 13 of the Bankruptcy Code on 8 December 2021 (the "Petition Date"). (R. 6). The Debtor claimed: a valuation of the Debtor's home in the amount of $350,000 based on an appraisal prior to the Petition Date; a non-contingent, liquidated and undisputed secured debt to the Servicer in the amount of $320,000; a contingent and unliquidated unsecured debt to Eclipse in an unknown amount; a state law homestead exemption in the amount of $30,000; and payments made to Pink prior to the Petition Date in the aggregate amount of $20,000. (R. 6-7).

The chapter 13 plan proposed that the Debtor make payments to creditors over a three-year period with funding solely through future earnings derived from Final Cut. *See* 11 U.S.C. § 1325(a)(6). (R. 7). The plan also stated that the Debtor maintained no equity in his home prior to the Petition Date. (R. 7). An additional agreement was reached and approved by the bankruptcy court, in which Eclipse acquired an estimated claim in the amount of $150,000, of which $25,000 was non-dischargeable in event of a conversion. (R. 8).

On 12 February 2022, the bankruptcy court approved the plan and provided that all property of the estate vested in the Debtor. *See* 11 U.S.C. § 1327(b). (R. 8). After Eclipse was forced to commence foreclosure proceedings against Final Cut in October 2022, the Debtor could no longer make payments under his plan and chose in good faith to convert to chapter 7. *See* 11 U.S.C. §§ 348, 1307. (R. 8).

B. Chapter 7

The bankruptcy court entered a generic order converting the case to chapter 7. (R. 8). Vera Lynn Floyd ("Trustee") was appointed as the chapter 7 trustee to administer the Debtor's estate. (R. 9). The Debtor's conversion documents stated: the $350,000 valuation of the Debtor's home; the $20,000 preferential transfers to Pink; an indebtedness to Eclipse in the approximate amount of $200,000 due to a deficiency with respect to the guaranty of the Loan after foreclosure, which

Eclipse completed post-conversion; and a statement of intention of the Debtor to reaffirm the mortgage debt owed to the Servicer and remain in his home. *See* 11 U.S.C. § 524(c). (R. 9).

Subsequent to a nationwide increase in home values following the COVID-19 pandemic, Trustee commissioned an appraisal of the Debtor's home, which confirmed that the non-exempt equity had increased by $100,000 since the Petition Date. (R. 9). Consistent with Trustee's duty, she marketed the home for sale. (R. 9). Trustee and Eclipse came to an agreement that Eclipse would purchase the home and the alleged preference claim against Pink for a total of $470,000. (R. 9).

The Debtor objected to the motion of sale on the ground that (1) any post-petition, pre-conversion increase in the equity of his home should inure to his benefit, and (2) Trustee's statutory ability to avoid and recover transfers under sections 547 and 550 cannot be sold. (R. 10). The bankruptcy court, district court, and circuit court ruled in favor of the Debtor on both objections and denied the motion of sale. (R. 10).

STANDARD OF REVIEW

Because the parties do not dispute the facts therein, the issues in this appeal address questions of law, and thus this Court's standard of review is *de novo*. *See, e.g.*, *Fox v. Hathaway (In re Chicago Mgmt. Consulting Grp.)*, 929 F.3d 804, 809 (7th Cir. 2019). Therefore, this Court decides an issue as if it were the original trial court in the matter. *See, e.g.*, *Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996) (quotation omitted).

SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the Thirteenth Circuit Court of Appeals because the home appreciation, constituting estate property, should inure to the chapter 7 estate and because preference actions constitute property of the estate under the Bankruptcy Code and case law.

A plain reading of the Code elucidates that the Debtor's post-petition pre-conversion home appreciation should inure to the chapter 7 estate. The language of various provisions of section 541 clarifies that equity of a home is property of the estate, and section 541 specifically expresses exceptions to what constitutes estate property and clearly does not include home appreciation. Reading section 541 in conjunction with section 348 constitutes that appreciation of a home is property of the estate from the date of filing, and remains part of the estate upon conversion from chapter 13 to chapter 7.

Even if language in the Code renders the inclusion of post-petition equity of a home in the estate ambiguous, case law supports otherwise. Circuits have held that post-petition equity is an inseparable property interest from the home, does not qualify as exempt personal earnings, and, if unliquidated, remains part of the estate upon conversion.

The Thirteenth Circuit incorrectly argues that section 348(f)(2) would render the distinction between good faith and bad faith conversions inconsequential, as other forms of new property can be acquired post-petition and pre-conversion to continue to punish bad faith converters. Also, as home appreciation is highly subject to externalities, including such in a converted estate would not punish a good faith converter.

Allowing the $100,000 of home appreciation to inure to the Debtor would defy bankruptcy policy that seeks to balance a "fresh start" for a debtor while seeking to repay creditors, leaving the Debtor with unearned income, and creditors such as Eclipse, empty-handed.

Furthermore, with court approval, pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee can sell property of the estate, as they are attempting to do in this matter. Using 11 U.S.C. § 541(a)(1)'s broad language with regards to property of the estate, and relying on the strong Circuit split in favor of such, avoidance actions should be held out as property of the estate. Treating chapter 5 causes of action as property of the estate ensures the chapter 7 trustee can maximize the value of the estate while acting in the best interest of both the debtor and the creditors. This duty to maximize the value of the estate was laid out by the Court in *Commodity Futures Trading Com v. Weintraub*.

While the Debtor is attempting to pay their mother as a preferential creditor prior to the petition date, 11 U.S.C. § 547(b) allows for the ability to avoid such a transfer, as to protect the other creditors involved. Using the same intent from *Whiting Pools, Inc.*, this Court should not deprive the Trustee from the tools to maximize the value of the estate.

The Thirteenth Circuit's reliance on *Cybergenics*, while ignoring *Wilton Armetale, Inc.*, would be an unjust precedent for this court to follow. Attempting to fulfill their duty under 11 U.S.C. § 704, the Trustee should be permitted to sell avoidance actions as property of the estate. Such an action is for the good of all parties involved. This Court should follow the ruling in *Silverman* and *Pitman Farms*, as well as many of their sister courts, and allow the Trustee to continue in this action. Such strong policy support, paired with the Code and case law support, pushes to the natural conclusion that the actions by the Trustee in this matter were lawful, and displayed a great effort safeguarding their fiduciary duty to all parties involved.

ARGUMENT

I. A post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7.

Upon filing bankruptcy, individual debtors may petition for relief under the Bankruptcy Code under chapter 7 or chapter 13. *Harris v. Viegelahn*, 575 U.S. 510, 513-14, (2015). Under chapter 7, a debtor's assets are immediately liquidated to pay creditors, followed by a prompt discharge of debts. *See id.* at 510. Under chapter 13, a debtor can retain his property, but only upon confirmation by the court of a repayment plan to creditors from personal earnings that spans a three-to-five-year period. *Id.* at 514 (citing 11 U.S.C. §§ 1306(b), 1322, 1327(b)).

All bankruptcy chapter filings are subject to chapter 5, which generally defines "property of the estate." *See* 11 U.S.C. § 541. However, this chapter is modified by the respective specific chapters—chapter 13 incorporates property specified in section 541 ("all legal and equitable interests"), but appends the estate property to include "earnings from services performed by the debtor after the commencement of the case but before the case is . . . converted to a case under chapter 7. . . ." *See* 11 U.S.C. § 1306. Similarly, under chapter 7, the debtor's assets become part of the bankruptcy estate. *Harris*, 575 U.S. at 511 (citing 11 U.S.C. § 348(f)(1)(A)). However, a chapter 7 estate *excepts* the wages a debtor earns or the assets he acquires after the bankruptcy filing. *Id.* at 510; 11 U.S.C. § 541(a)(1).

A plain reading of the Code, case law, and policy support that post-petition appreciation of a debtor's home inures to the bankruptcy estate upon converting from chapter 13 to chapter 7. The relevant sections of the Code unambiguously support that equity constitutes property of the estate from the date of filing through conversion. The Thirteenth Circuit's arguments in support of the ambiguous term, "property of the estate," are countered by specific statutory provisions of the code and case law. Finally, bankruptcy's policy goal of "[b]alancing a debtor's right to a fresh start against the rights of the debtor's creditors to collect on pre-petition debts," is best met through allowing home appreciation to inure to the estate. *In Re Morell*, 394 B.R. 405, 409 (Bankr. N.D.W. Va. 2008).

A. The Code's plain language dictates that the post-petition appreciation in the value of estate property belongs to the bankruptcy estate upon conversion to chapter 7.

A plain reading of the relevant sections of the Code supports that equity of the home inures to the estate upon conversion. Proper analysis of this issue begins and ends with the statutory text. *United States v. Ron Pair Enters., Inc.,* 489 U.S. 235, 241 (1989) ("The task of resolving the dispute . . . begins where all such inquiries must begin: with the language of the statute itself . . . [I]t is also where the inquiry should end, for where . . . the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'").

Starting with the generally applicable section 541(a)(1), the filing of a bankruptcy petition creates an estate which includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Upon conversion to chapter 7, section 348(f)(1)(a) mandates that the converted property "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 debtor on the date of conversion." 11 U.S.C. § 348(f)(1)(a).

Chapter 13 provides: "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." 11 U.S.C. § 1327(b). The plain language of section 1306 defines "property of the estate" by incorporating section 541's definition, while adding "earnings from personal services." *See* 11 U.S.C. § 1306. Pursuant to chapter 13, confirmation of a plan "vests" all the property of the estate in the debtor, and renders the property "free and clear of any claim or interest of any creditor provided for in the plan." 11 U.S.C. § 1327. However, upon conversion to chapter 7, only provisions of such chapter apply, thereby making any chapter 13 provision and the order confirming Debtor's plan irrelevant. *See* 11 U.S.C. §§ 103(b), 103(j). Chapter 7, lacking a specific statute that uniquely defines estate property, is subject to the generally applicable chapters of 3 and 5, including "any legal or equitable interests" and, upon conversion, "any [property of the estate as of the date of filing] that remains in the possession of or is under the control of debtor on the date of conversion." 11 U.S.C. §§ 348(f)(1)(a); 541(a)(1).

Pursuant to section 541(a)(1), the Debtor's home became part of the estate because it unambiguously was a legal interest on the date of filing. Upon the chapter 13 filing, the Debtor's plan was confirmed, thus vesting the estate property in the Debtor.[1] *See* 11 U.S.C. § 1327(b). (R. 8). At the time of conversion to chapter 7, while the Debtor thus had "possession and control" of his home, it remained part of the estate. *See* 11 U.S.C. § 1306(b). Pursuant to section 348(a), the "date of filing" remains the date of filing for chapter 13 bankruptcy ("Conversion of a case . . . except as provided subsections (b) and (c) . . . does not affect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.") *See* 11 U.S.C. § 348(a).

Therefore, the legal analysis here shall begin and end with the plain meaning of the statute, which unambiguously states that any property of the estate, from the time of the initial filing, that remains in the debtor's possession at the time of conversion to chapter 7 becomes estate property, including any changes in value. *Castleman v. Burman (In re Castleman),* 75 F.4th 1052, 1058 (9th Cir. 2023).

B. Assuming arguendo that the 11 U.S.C. § 348(f)(1) is ambiguous, the case law makes clear that post-petition appreciation in the value of estate property belongs to the bankruptcy estate upon a chapter 7 conversion.

Although the Thirteenth Circuit has construed section 348(f)(1) as ambiguous due to the term, "property of the estate," the court baselessly did so by presuming a post-petition, pre-conversion increase in home equity as a separate property interest from the home. It then used the ambiguity argument for inurement of the equity to the Debtor. (R. 13). But equity is an "attribute or incident of the property, not a separate interest in the property." *See In re Adams,* 641 B.R. 147, 151-52 (Bankr. W.D. Mich. 2022); *see also Goetz v. Weber (In re Goetz),* 651 B.R. 292, 298 (B.A.P. 8th Cir. 2023).

[1] The record is silent as to any specification in the plan that the home was not vested in the Debtor.

Even if equity was deemed a separate property interest such that the plain language of section 348(f)(1)(A) was ambiguous as to the inclusion of the Debtor's home equity in the chapter 7 estate, further statutory support of equity as estate property is found in section 541(a)(6). *See* 11 U.S.C. § 541(a)(6) (stating that a bankruptcy estate consists of "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.").

Courts have held that "any post-petition increase in the property's equity" qualifies as "proceeds, product, offspring, rents or profits" of the estate's original property, thus qualifying as property of the converted bankruptcy estate. *See In re Potter*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999) ("Section 541(a)(6) specifically includes as part of the estate all 'proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case'. . . . post-petition appreciation in the value of property accrues for the benefit of the trustee."); *see also In re Peter*, 309 B.R. 792, 794-95 (Bankr. D. Or. 2004) (citing *Schwaber v. Reed (In re Reed*), 940 F.2d 1317 (9th Cir. 1991)).

Furthermore, the Ninth Circuit has ruled that post-petition pre-conversion home appreciation qualifies as property of the estate, and thus inures to the estate upon conversion. The facts of *In re Castleman* mirror the case here: debtors filed for chapter 13 bankruptcy, listed their home among their assets (a $500,000 value at the time with an outstanding mortgage of $375,077), claimed a homestead exemption, and ultimately converted to chapter 7 upon failure to complete their chapter 13 plan. *See In re Castleman,* 75 F.4th at 1059. In *Castleman,* after twenty months (1.75 years), one of the debtors encountered job loss and illness such that the debtors could no longer make their required chapter 13 payments. *Id.* at 1054. They converted to chapter 7 at the time their home had risen $200,000 in value, and sought to claim this appreciation. *Id.* The court, presented with whether this appreciation inured to the debtors or the estate trustee, started their analysis by looking at the plain language of the 348(f)(1) and the surrounding definition of property in the Code. *Id.* at 1055. As a result, the court determined that "property of the estate" was unambiguous. *Id.* at 1062. Likewise, "equity is inseparable from the real estate" and that the broad definition of "property of the estate" in section 541(a) "captures the debtor's entire ownership interest in each asset that exists on the petition date without fixing the estate's interest to the precise characteristics of the asset on that date." *Id.* at 1056. The court, referencing prior case law, ultimately held that the post-petition pre-conversion equity increase in the home inured to the trustee of the estate for the benefit of the creditors. *Id.* at 1055.

The Thirteenth Circuit majority, relying on *Rodriquez v. Barrera* in multiple instances to support its argument that post-petition, pre-conversion equity in a home inures to the Debtor, disregards the factual distinction between *Rodriquez,* ruling that pre-conversion *sales proceeds* from a home may inure to the Debtor, and the facts here, in which the pre-conversion home appreciation remains an illiquid attribute of the real property. In *Barrera,* a couple filed for bankruptcy under chapter 13, listing their jointly owned real property with a value on the filing date of $396,606. *Rodriguez v. Barrera (In re Barrera),* 22 F.4th 1217,1221 (10th Cir. 2022). The liens on the property amounted to $336,209.62, and the exempt equity from a maximum $75,000 homestead exemption amounted to $60,396.38, essentially "wiping out" the date of filing equity in the home. *See id.* Two weeks prior to converting to chapter 7, the debtors sold their home, pocketing $140,251 in sales proceeds and spending approximately $40,000 of the proceeds prior to the conversion date. *Id.* at 1221-1224. The Tenth Circuit held that the sales proceeds inured to the debtors. *Id.* at 1222. The court reasoned that, based on the plain language of section

348(f)(1)(a), the home sale proceeds were a *distinct* property interest from the physical house from which they derived, and therefore do not enter the converted chapter 7 estate. *Id.* at 1223.

The Tenth Circuit implies, or at least fails to attempt to repudiate, that unliquidated equity in a home on the date of conversion is a part of the property that inures to the chapter 7 estate. In *Barrera*, the chapter 7 trustee put forth cases that supported that "proceeds" or "appreciation" in the value of the property gained post-petition, pre-conversion was property of the estate. *Id.* at 1222. The court did not refute these cases, but depended on the different factual circumstances of the case at hand—that proceeds from the sale of the property are distinct from the underlying property the debtor possessed on the chapter 13 petition date—to distinguish the trustee's cases. *Id.* The Tenth Circuit noted that the sales proceeds were, strictly speaking, after-acquired property. "The physical house was not 'in the possession of or . . . under the control of the [D]ebtor[s] on the date of conversion'—they had sold it." *Id.* at 1223 (citing 11 U.S.C. § 348(f)(1)(A)). Therefore, the court reasoned the proceeds could not have "remained" in the possession of or under the control of the debtor so as to qualify as property of the chapter 7 estate pursuant to section 348(f)(1).

Here, like in *Castleman*, the Debtor, also suffering unfortunate events that prevented him from completing his chapter 13 payment plan, sought to claim a significant appreciation in his home between the time of filing under chapter 13 and converting to chapter 7. (R. 10). This equity, as an inseparable attribute of the home that constitutes estate property on the original date of filing, should become part of the chapter 7 estate per the plain language of section 348(f)(1) and be reserved for creditors to allow them their due share of payment.

Furthermore, here, there is no physical separation that has occurred between the Debtor's house and its attendant equity. The house has not been sold. In *Barrera*, there was an alchemical change from the home sale that resulted in the debtors possessing tangible cash, a legally and physically distinct property interest from the home. A portion of the resultant cash (approximately $40,000) was even disbursed to others prior to actually converting to chapter 7—the home was obviously no longer in the possession of the debtors on the date of conversion. *In re Barrera,* 22 F.4th at 1224. This pre-conversion liquidation allowed the Tenth Circuit to except pre-conversion sales from property of the chapter 7 estate because there was a clear, physical separation of the property interest, enabling the court to find that the physical house itself did not "remain" in the possession of the debtors at the time of conversion. The construction of section 348(f)(1) with the *Barrera* set of facts is obvious. However, the Tenth Circuit would likely agree that this "pre-conversion sales proceeds" exception does not apply here, where the Debtor's house and its attendant equity clearly remained in the possession of the Debtor on the date of conversion.

Moreover, reference to another provision of section 541 also supprots that post-conversion appreciation inures to the Trustee. Section 541(a)(6) specifically *only* excluded "earnings from personal services performed by an individual debtor after the commencement of the case" from estate property. "The general rule of statutory construction is that the enumeration of specific exclusions from the operation of a statute is an indication that the statute should apply to all cases not specifically excluded." *Cranberry Growers Coop. v. Layng*, 930 F.3d 844, 852 (7th Cir. 2019) (quoting *Cash Currency Exch., Inc. v. Shine (In re Cash Currency Exch., Inc.)* 762 F.2d 542, 552 (7th Cir. 1985). Under this rule of statutory construction, the appreciation of the home equity should only be excluded from the bankruptcy estate if it qualifies as earnings from *personal services performed by the individual debtor.*

Home appreciation, particularly in this case, is not attributable to earnings from personal services performed by the debtor. In *Manchester v. Annis*, the debtor claimed a right to a post-petition tax refund claiming "earnings" pursuant to section 541(a)(6). 232 F.3d 749, 749 (10th Cir.

2000). The Tenth Circuit recognized the logical appeal of the argument that the money was not a "tax", but mere withholding, and that the money remained the debtor's wages at all times. *Id.* at 752. However, the Tenth Circuit held that once the wages were withheld as "tax" they lost their character as "wages". *Id.* at 752. The court reasoned that the debtor's suggestion that the term "earnings" broadly includes assets which are *derived* from wages stretches the meaning of "earnings from personal services" beyond the "ordinary, common, and contemporary meaning of that phrase." *Id.* at 753. The Tenth Circuit even used the hyperbolic example, "a person who used their wages to purchase a home could assert that the house constitutes 'earnings form personal services,'" to illustrate the intended narrow interpretation of section 541(a)(6). This Court has ruled that "earnings . . . [are] limited to periodic payments of compensation and [do] not pertain to every asset that is traceable in some way to such compensation." *Kokoszka v. Belford*, 417 U.S. 642, 651 (1974).

Here, the "earnings" at issue is the appreciation in the Debtor's home value. Even if wages were used to make payments toward the home, this Court and the Tenth Circuit make clear that such an argument is clearly outside the bounds of "earnings from personal services," as even a tax refund, at least arguably traceable to wages, was deemed beyond the limits of the statute. Therefore, the Debtor's home appreciation clearly does not fall within the singular statutory exception as to what does not constitute property of the estate.

Furthermore, the Thirteenth Circuit attempts to support their argument that 348(f)(1)'s phrase, "property of the estate," is ambiguous by arguing that, if property of the estate were to include post-petition appreciation, 348(f)(2) would render "inconsequential" the difference between "good faith" and "bad faith" conversions. (R. 13). The latter half of section 348(f) mandates that if a debtor converts a cause under chapter 13 in "bad faith," the property of the estate in the converted case "shall consist of property of the estate as of the date of conversion." *See* 11 U.S.C. § 348(f)(2). (R. 13).

The Thirteenth Circuit majority incorrectly concluded that Congress would "not have needed" to enact section 348(f)(2) if "Congress had truly intended to include post-petition, pre-conversion interests in property—such as the increase in equity in the Debtor's home—as property of the estate. . . ." (R. 13). The Thirteenth Circuit based this on a presumption that the equity of a home is a separate property interest from the home itself, which has been rebutted above. Also, section 348(f)(2) need not only apply to post-petition property appreciation, but could apply to unambiguously separate property interests, such as entirely new inheritances of property that were acquired post-petition and pre-conversion, having no relation or attachment to any other property that existed on the Petition Date; section 348(f)(2) can still appropriately "punish" debtors for converting in bad faith without including home appreciation as "property on the date of conversion" debtor. Likewise, "good faith" conversions by debtors would not be punished, as home appreciation often results from "the happenstance of market conditions," (*In re Castleman*, 75 F.4th at 1058.) not personal efforts of the debtor, which is also an important policy consideration.

C. Bankruptcy policy supports that the Debtor's home appreciation should inure to the chapter 7 estate.

Furthermore, exempting personal earnings from the chapter 7 estate is consistent with bankruptcy policy that allows debtors to make a "fresh start" by shielding from creditors his post-petition earnings and acquisitions." *Harris,* 575 U.S. at 514. Circuits have rewarded debtors for financial responsibility and effort by awarding post-petition equity that was derived from a debtor's payments to the estate trustee.

The factual circumstances in *Sargente* resemble the facts in this case—the debtors in *Sargente* filed for bankruptcy relief under chapter 13, but listed two automobiles on their Schedule B instead of a home. *In re Sargente*, 202 B.R. 1023, 1024 (Bankr. S.D. Fla. 1996). Neither automobile had any equity on the original Petition Date. *Id.* The debtors' chapter 13 plan was confirmed, and they continued making payments on the vehicles; one vehicle's payments occurred within the plan and one vehicle without. *Id.* Three years later, the debtors filed to convert their case to chapter 7. *Id.* At the time of conversion, the debtors "had equity in the automobiles, by virtue of the payments made in and outside of the chapter 13 plan." *Id.* The court held that the debtors could "retain the equity that resulted from paying down their car loans after the Filing Date." *Id.* at 1026. The court reasoned that to allow the equity to be realized by the trustee upon conversion three years after they filed chapter 13 would be "unfair and contrary to the purpose of encouraging [C]hapter 13 filings." *Id.*

Here, however, presumptively only $10,000 of the Debtor's payments were made toward the home during the course of the chapter 13 plan; the $100,000 appreciation of the home was obviously disproportionately attributable, not to the Debtor's payments, but the "nationwide increase in home values . . . following the COVID-19 pandemic." (R. 8-9). Likewise, these payments were made over a period of eight months. (R. 8). Unlike in *Sargente,* where the sole equity in a depreciating asset such as a vehicle was attributable to the debtor's payments over a period of three years, the minimum period for a chapter 13 payment plan, here the appreciation occurred mostly due to real estate market conditions. (R. 13.) Also, the Debtor's plan was attempted for but approximately a quarter (eight months), at the most, of the minimum required time for a chapter 13 payment plan to be completed. *See* 11 U.S.C. § 1325(b)(4)(A). It can hardly be considered "unfair" to the Debtor to deny him the fortuitous appreciation of his home through no efforts of his own. The chapter 13 policy of incentivizing debtors to demonstrate financial responsibility by continuing to use their earnings toward payments, while a factor in *Sargente,* is inapplicable here. If anything, allowing home appreciation of a chapter 13 debtor to inure to a debtor upon conversion to chapter 7 could simply allow the Debtor to unfairly benefit from appreciation of a typically appreciating asset such as a house by "buying time" before inevitably converting to chapter 7 after a failed chapter 13 payment plan. Perhaps the Debtor should have filed for chapter 7 in the first place.

In this case, allowing the Debtor to retain the home appreciation would violate the policy of "[b]alancing a debtor's right to a fresh start against the rights of the debtor's creditors to collect on pre-petition debts" *In Re Morell,* 394 B.R. 405, 409 (Bankr. N.D.W. Va. 2008). First, the Debtor failed to substantially complete a payment plan under chapter 13, as the Debtor made payments for only eight months, and only $10,000 (less than 4% of the loan balance) of that was submitted to a creditor, the "Servicer". (R. 8-9). Meanwhile, the personal guaranty deficiency due Eclipse was $200,000, while the outstanding mortgage following the chapter 13 trustee's payments to the Servicer was $310,000. (R. 9). It can hardly be said that "each party [would] receiv[e] a benefit" as is expected under a chapter 13 plan. *In re Michael*¸699 F. 3d 305, 320 (3d Cir. 2012).

To allow the $100,000 in equity to inure to the Debtor would leave Eclipse, as an unsecured creditor, without any repayment. Considering the home appreciation did not result from the Debtor's efforts, it is unfair and unbalanced to allow him to retain the appreciation while leaving creditors, particularly Eclipse, empty-handed. Therefore, the $100,000 of post-petition home appreciation should inure to the chapter 7 Trustee.

II. Preference actions under chapter 5 constitute property of the estate, which a chapter 7 Trustee may sell, subject to court approval.

Under the chapter 5 preference actions available to the chapter 7 trustee, both statutory language and case law support the notion that preference actions constitute property of the estate. To affirm the Thirteenth Circuit's decision would remove certain statutory abilities of the trustee and complicate the role of the chapter 7 trustee, all while harming the estate. The language of the Code, case law, and policy all support the argument that preference actions, and specifically avoidance actions, "belong[]to the estate." *Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC),* 78 F.4th 1006, 1008 (8th Cir. 2023). An avoidance action is for the trustee to "grab that cash with both hands" back for the benefit of the estate.[2] Therefore, this Court should reverse the Thirteenth Circuit Court's decision.

A. Statutory language supports that preference actions are property of the estate.

With the initiation of a chapter 7 bankruptcy claim comes certain powers to the chapter 7 trustee, all of which the Code has provided to empower the trustee "to exercise the remedies available to a hypothetical judicial lien creditor to augment the bankruptcy estate." *Pettine v. Direct Biologist, LLC (In re Pettine)*, 655 B.R. 196 (B.A.P. 10th Cir. 2023). Included within those powers are preference actions. 11 U.S.C. § 547. As such, the statute provides that, "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." 11 U.S.C. § 547(b). These transfers can only be avoided if the transfer was made "on or within ninety days before the date of the filing of the petition," or "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." *Id*. 11 U.S.C. § 101(31) provides that an insider includes a "relative of the debtor." "Avoidance actions are claims to avoid a transfer of property by the

[2] Pink Floyd, Money (Harvest 1973).

debtor that was made voidable by the Bankruptcy Code." *In re Simply Essentials, LLC*, 78 F.4th at 1008. Avoidance actions include preferential transfers, such as in this case here. *Id*.

The Debtor, in this case, transferred in aggregate $20,000 to his mother, Pink, in an effort to pay off debts he owed to her prior to the petition date. (R. 9). Pink, according to section 101(31), qualifies as an "insider." 11 U.S.C.S. § 101(31). Therefore, chapter 5 of the Code provides that a trustee is well within their right to take a preference action to avoid such transfers in the interest of the estate. 11 U.S.C.S. § 547(b). The purpose behind this action is that without such avoidance, the payments by a debtor "would 'enable a creditor to receive payment of a greater percentage of his claim against the debtor than he would have received if the transfer had not been made and he had participated in the distribution of the assets of the bankrupt estate.'" *Begier v. IRS*, 496 U.S. 53, 57 (1990) (quoting H. R. Rep. No. 95-595, p. 177 (1977)).

Because Eclipse is the largest creditor in this matter, its interest is of great importance in the bankruptcy proceeding. (R. 26). Eclipse, in an effort to amend the debts, offered to purchase the home of the Debtor, along with the alleged preference claim against Pink. (R. 9). Instead of taking the avoidance action on her own, the Trustee came to an agreement to sell the action as property of the estate. (R. 9). While section 547(b) provides the ability for the chapter 7 Trustee to make the action, section 541(a)(1) provides the definition for property of the estate. Along with section 541(a)(1), section 363(b) affords that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Therefore, because the avoidance action constitutes property of the estate according to the Code, it would be well within the right of Trustee to sell that action to Eclipse, subject to court approval.[3]

[3] Which he obtained. (R. 31, FN 22).

As the Code supports, avoidance actions fall well within the statutory language for "property of the estate," as "[section] 541(a)(1)'s scope is broad." *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 (1983) (quoting S. Rep. No. 95-989, p. 82 (1978)). It is well established that section 541(a)(1) outlines that "property of the estate" pertains to "all legal or equitable interests of the debtor in property as of the commencement of the case." *See* 11 U.S.C. § 541(a)(1). As the Sixth Circuit has stated, "causes of action that belong to the debtor constitute property of the estate under [section] 541(a)(1)." *Parker v. Goodman (In re Parker)*, 499 F.3d 616, 624 (6th Cir. 2007) (citing *In re Cannon*, 277 F.3d 838, 853 (6th Cir. 2002)). Further, when considering the "legislative history of [section] 541(a) in both the House and Senate," it specifies that "[t]he scope of this paragraph is broad. It includes all kinds of property, including tangible or intangible property, causes of action, and all other forms of property currently specified. . . ." *In re Yonikus*, 974 F.2d 901, 904-05 (7th Cir. 1992) (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess., 367 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6323; S. Rep. No. 989, 95th Cong., 2nd Sess., 82 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5869).

Finally, to properly interpret the statutory language of the Code, this Court must ultimately consider the duty of the chapter 7 Trustee. According to section 704, the Trustee must "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest." 11 U.S.C. § 704. It must be contemplated that the "[t]rustee is not simply the successor in interest to the Debtor: he represents the interests of all creditors of the [d]ebtor's bankruptcy estate." *In re Montgomery Ward, LLC*, 634 F.3d 732, 738 (3d Cir. 2011) (quoting *In re WorldCom, Inc.*, 401 B.R. 637, 646 (Bankr. S.D.N.Y. 2009). The chapter 7 Trustee retains a "fiduciary duty to maximize distribution to creditors." *In re Mims*, 355 B.R. 324, 326 (Bankr. M.D. Ala. 2006) (citing *United States v.*

Aldrich (In re Rigden), 795 F.2d 727, 730 (9th Cir. 1986)). Trustees have a “duty to maximize the value of the estate.” *Commodity Futures Trading Com v. Weintraub*, 471 U.S. 343, 352 (1985). In an effort to “maximize the value of the estate” and to “represent the interest of all creditors,” the Trustee here is acting within his abilities to sell an avoidance action as property of the estate. A plain reading of the Code clearly establishes that preference actions constitute property of the estate, and the sale of the property in interest is lawful here.

B. Case precedent supports that preference actions are property of the estate.

While a plain reading of the Code alone satisfies the understanding that preference actions constitute property of the estate, case law in many of the federal circuit courts also support this view. To affirm the Thirteenth Circuit's decision would remove certain statutory abilities of the Trustee and prevent them from fulfilling their duty to the estate under 11 U.S.C. § 704.

In *Pitman Farms*, when Simply Essentials fell into business troubles, their creditors “filed an involuntary petition under chapter 7 of the Bankruptcy Code.” *In re Simply Essentials*, LLC, 78 F.4th at 1007. The chapter 7 trustee in that matter, upon deciding that the estate lacked funds to pursue any avoidance actions, decided to sell the actions, and took bids for such. *Id*. at 1007-1008. After receiving the bids, the trustee, following their chapter 7 duty, concluded that the estate should sell the avoidance actions to ARKK and asked the court to approve the sale. *Id*. at 1008. The bankruptcy court approved the motion to sell, while the other bidder, who was another creditor, appealed the decision. *Id*. The Eighth Circuit, after analyzing the Code’s statutory language, determined that, "[c]auses of action are interests in property and are therefore included in the estate[.]" *Id*. (quoting *In re Senior Cottages of Am., LLC,* 482 F.3d 997, 1001 (8th Cir. 2007)). Ultimately, the court ruled that avoidance actions, whether “brought by the trustee or by a creditor,” are “brought for the benefit of the estate and therefore belong [] to the estate.” *Id.*

The Eighth Circuit also pointed to their decision in *Racing Services, Inc.*, where they "held that while trustees have the first opportunity to bring avoidance actions, other creditors may seek permission to obtain derivative standing to bring the avoidance actions on behalf of the estate when a trustee is "unable or unwilling" to do so." *In re Simply Essentials*, LLC, 78 F.4th at 1008. (quoting *In re Racing Services*, 540 F.3d 892, 898 (8th Cir. 2008)). In addition to *In re Racing Services, Inc.*, the Eighth Circuit in *Whetzal v. Alderson*, indicated that property of the estate was so broad as to include "causes of action." *In re Simply Essentials*, LLC, 78 F.4th at 1008 (quoting *Whetzal v. Alderson*, 32 F.3d 1302, 1303 (8th Cir. 1994)).

Similarly, the Ninth Circuit Court of Appeals has also affirmed the lower court's approval for the Trustee to sell avoidance powers. *See Silverman v. Birdsell*, 796 F. App'x 935, 936 (9th Cir. 2020). The court in *Silverman* affirmed the lower court's approval for the trustee to sell avoidance powers to KCI Acquisitions (KCI). *Id.* In *Silverman*, the trustee represented Sky Financial Investments, and through his chapter 7 duties, decided to sell KCI some avoidance actions available to him. *Id*. The trustee moved for bankruptcy court approval of the sale, which was appropriately granted. *Id*. Once affirmed by the district court, the debtor appealed to the Ninth Circuit. *Id*. In affirming the lower court's ruling, the Ninth Circuit reasoned that "a bankruptcy trustee may sell an estate's avoidance claims to a creditor when 'the creditor is pursuing interests common to all creditors' and 'allowing the creditor to exercise those powers will benefit the remaining creditors.'" *Id.* at 937 (quoting *Duckor Spradling & Metzger v. Baum Tr. (In re P.R.T.C., Inc.)*, 177 F.3d 774, 782 (9th Cir. 1999)). Ultimately, the court held that a trustee's ability in avoidance powers "may be transferred for a sum certain." *Id*. at 937 (quoting *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288 (B.A.P. 9th Cir. 2005)).

In *Morley v. Ontos, Inc.*, the First Circuit ruled that a claim for fraudulent conveyance constitutes property of the estate. 478 F.3d 427, 431 (1st Cir. 2007). The First Circuit indicated that "[t]he Bankruptcy Code broadly defines the property of the estate," and that "the right to recoup a fraudulent conveyance . . . is property of the estate. . . ." *Id.* This Court has also echoed this broad view of property for the estate, in *Segal v. Rochelle*, when it stated that a property "interest," when considered in relation to the goal to "secure for creditors everything of value," is not withheld from them just "because it is novel or contingent or because enjoyment must be postponed." *Segal v. Rochelle*, 382 U.S. 375, 379 (1966).

Furthermore, the Fifth Circuit followed its sister circuits in *Cadle Co. v. Mims (In re Moore)* holding that "fraudulent-conveyance actions are property of the estate under [section] 541(a)(1) that the trustee may sell. . . ." 608 F.3d 253, 259 (5th Cir. 2010). The court there reasoned that "the trustee's avoidance powers, allow the trustee to enlarge the property of the estate after commencement of the case." *Id*. at 260. As a policy comparison, the Fifth Circuit related such a sale of avoidance powers to a similar power in chapter 11 cases where "a party other than the debtor or the trustee may be authorized by a plan of reorganization to exercise avoidance powers." *Id.* at 261 (quoting *McFarland v. Leyh (In re Tex. Gen. Petroleum Corp.)*, 52 F.3d 1330, 1335 (5th Cir. 1995)). It also stated it is comparable to its case law which "recogniz[es] that a single creditor may bring a chapter 5 avoidance action on behalf of the trustee after court approval." *In re Moore*, 608 F.3d at 262. Following these policy considerations, the court affirmed that a chapter 7 trustee could see a fraudulent conveyance to an estate's largest creditor. *Id.* at 259.

Analogous to *Silverman* and *Pitman Farms*, in this case, Trustee has a duty to maximize the value for the estate by means of selling the avoidance action to a creditor in interest. The Trustee obtained approval of such property from the bankruptcy court and followed through on his duty in an appropriate manner, just as the sales in Silverman and Pitman Farms were processed, and pursuant to section 363(b). (R. 31, FN 22). Furthermore, the sale was found to be in good faith, and for fair value, all of which satisfy his duty as a trustee. (R. 4). Due to Trustee upholding his duty to maximize the value of the estate and creditors' interests by selling the avoidance action with sufficient court approval, this Court should find, in accordance with *Silverman* and *Pitman Farms*, that Trustee has the statutory ability to sell the action.

Lastly, the majority in the Thirteenth Circuit inappropriately relies on *Cybergenics* as its authority for holding that avoidance actions are not property of the estate. The Third Circuit made clear that "property of estate" and "Cybergenics assets" were to be viewed separately and maintained separate definitions. *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 246 (3d Cir. 2000). Subsequently, the Third Circuit then clarified that "Cybergenics does not hold that trustees cannot transfer causes of action," thereby plundering the Thirteenth Circuit's reasoning. *In re Wilton Armetale, Inc.*, 968 F.3d 273, 285 (3d Cir. 2020). When deciding this matter, if this Court were to hold that preference actions did not constitute property of the estate, and followed the majority's reliance on *Cybergenics*, it would also be improperly reading the Third Circuit's ruling and setting a harmful precedent with regards to the abilities of the chapter 7 Trustee and the benefits to the estate.

C. Sound public policy supports that preference actions are property of the estate.

Lastly, policy reasons support the notion that preference actions constitute property of the estate, and further support what the Code and case law make clear.

Under the trustee's duty to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest," any reasonable tool or action should be supported by policy that follows the

Code, is supported by case law, and results in a quick closure of the estate "with the best interests of the parties." 11 U.S.C. § 704. Because the duties of the chapter 7 trustee are extensive and time consuming, "selling causes of action, including chapter 5 causes of action, allows for the speediest and most beneficial return to creditors." Garrett A. Anderson & Danielle Mashburn-Myrick, *In This Issue: Straight & Narrow, Are Chapter 5 Claims Assets of the Estate that a Trustee Can Sell?*, 43-1 ABIJ 68 (2024).

As part of the Court's efforts to not deprive the bankruptcy estate of all of the necessary tools to rehabilitate the estate, treating causes of action, and specifically preference actions, as property of the estate, is sound public policy. *Whiting Pools, Inc.*, 462 U.S. at 208. A policy which strongly supports the fiduciary duty of the chapter 7 trustee would amplify the number of tools available to the trustee. As the court in *Pitman Farms* stated: "[o]ur interpretation of the Bankruptcy Code—in a way that allows the Trustee to sell avoidance actions—is consistent with the congressional intent behind including a fiduciary duty to maximize the value of the estate." *In re Simply Essentials*, LLC, 78 F.4th at 1010. Following such intent benefits all parties involved.

In addition, chapter 5 causes of action cannot be simply "statutory powers granted to a trustee," (R. 35) which the majority indicates, "as avoidance actions are not exclusive to the trustee because most courts permit creditors to pursue them for the benefit of the estate through derivative standing." Kristina M. Stanger, Ehud Barak, & Daniel Desatnik, *In This Issue:, Feature, Estate Avoidance Actions: Stand in the Trustee's Shoes, or Buy Them?*, 42-11 ABIJ 20, 21 (2023). When the goal and intent of the Code is truly for the chapter 7 trustee to "maximize the value of the estate," we see that whomever pursues the avoidance action ultimately ends up benefitting the estate.

It is important to note that the Trustee "did seek approval from the bankruptcy court in order to allow Eclipse to pursue the preference claim, directly benefiting the Debtor's estate through the sale proceeds. (R. 31, FN 22). This approval serves as safeguard to ensure that the sale is "in the best interest of the estate." Stanger, Barak, &. Desatnik, at 56.

Ultimately, "[i]f Congress had wished to exclude avoidance actions from property of the estate, it could have expressly done so by listing them in [section] 541 (b)." *Id*. at 21 (referring to 11 U.S.C. § 541 (b)). A total view of the matter before us leaves this Court with a clear conclusion that the Trustee was acting within and to the fullest extent of his statutory duty to "maximize the value of the estate." *Weintraub*, 471 U.S. at 352.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests this Court to reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit and hold that (I) a post-petition, pre-conversion increase in equity in a debtor's property does not inure to the benefit of the debtor upon conversion of a case from chapter 13 to chapter 7, and (II) a chapter 7 trustee may sell, as property of the bankruptcy estate, the ability to avoid and recover transfers pursuant to sections 547 and 550.

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