No. 23-0115

IN THE

Supreme Court of the United States

IN RE EUGENE CLEGG, DEBTOR,

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER

v.

EUGENE CLEGG, RESPONDENT

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

BRIEF FOR PETITIONER

TEAM NUMBER 51
COUNSEL FOR PETITIONER

JANUARY 18, 2024

QUESTIONS PRESENTED

I. Does the post-petition, pre-conversion appreciation in the value of the Debtor's home become the property of the debtor or the property of the bankruptcy estate upon the conversion of a case from chapter 13 to chapter 7, pursuant to 11 U.S.C. §§ 348 and 541?

II. Does 11 U.S.C. § 541(a) include, as property of the bankruptcy estate, a bankruptcy trustee's powers to avoid and recover transfers pursuant to 11 U.S.C. §§ 547 and 550, thus allowing the powers to be sold for the benefit of the estate?

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OPINIONS BELOW

The Bankruptcy Court decided in favor of Eugene Clegg, Debtor. On direct appeal, the Thirteenth Circuit Court of Appeals affirmed in favor of Eugene Clegg, Debtor. The Thirteenth Circuit Court of Appeals' decision is available at No. 22-0359.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

This case requires statutory interpretation 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;

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.
>
> **(3)** Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.
>
> **(7)** Any interest in property that the estate acquires after the commencement of the case.

STATEMENT OF THE CASE

I. FACTUAL HISTORY

In 2011, the Debtor received a 100% membership interest from his mother, Pink, in a movie theater called the Final Cut, LLC (the "Final Cut"). R. at 5. The Debtor's sole source of income was from proceeds generated by Final Cut. *Id*. In 2016, the Debtor borrowed $850,000 from Eclipse Credit Union ("Eclipse") to renovate the theater. *Id*. In 2017, the Debtor donated $75,000 of the loan to the Veterans of Foreign Wars (the "VFW") without notifying Eclipse. *Id*. After renovations were complete Final Cut experienced financial success for three years. *Id* at 6. However, when the COVID pandemic hit in 2020 individuals were no longer able to attend movie theaters, and Final Cut was unable to operate for approximately one year. *Id*.

Since the Debtor relied entirely on Final Cut for income, the Debtor borrowed, unsecured, $50,000 from his mother. *Id*. Final Cut was finally able to reopen in 2021 but did not generate the same profits as before the pandemic. *Id*. In an attempt to compensate for Final Cut's cash flow problems, the Debtor forwent his salary, but without income, the Debtor incurred significant debt and fell behind on his mortgage. *Id*. After several months of failing to pay his mortgage, the Debtor's mortgage servicer, Another Brick in the Wall Financial Corporation ("Servicer") initiated foreclosure proceedings on the Debtor's home. *Id*.

The Debtor subsequently filed for chapter 13 bankruptcy on December 8, 2021. *Id*. At this time, the home was valued at $350,000 on Schedule A/B, and the Debtor owed his Servicer a non-contingent, liquidated, undisputed secured debt of $320,000 per Schedule D. *Id*. The Debtor properly claimed a state law homestead exemption on Schedule C in the amount of $30,000. *Id*. On Schedules E/F and H, the Debtor included a contingent, unliquidated unsecured debt of an

unknown amount to Eclipse. *Id*. On the Debtor's Statement of Financial Affairs, he disclosed payments that were made to Pink over the previous year; these payments totaled $20,000. *Id* at 7.

The Debtor's filed plan proposed creditor payments over three years. *Id*. The plan provided that the Debtor had no equity in his home as of the petition date due to the secured indebtedness and homestead exemption. *Id*. During the meeting of creditors, Eclipse learned that the Debtor had donated to the VFW and commenced an adversary proceeding to have the Debtor's loan debt deemed non-dischargeable as a result. *Id*.

The chapter 13 Trustee objected to the Debtor's proposed plan, contending that the alleged preferential transfers to Pink would be recovered and distributed in a chapter 7 liquidation, and thus in the Debtor's proposed plan, creditors were going to receive less. *Id*. To compensate, the Debtor amended the plan to increase the aggregate amount paid to creditors over the three-year period by $20,000. *Id*. This was memorialized in a stipulation where the chapter 13 Trustee agreed not to avoid and recover the pre-petition payments made to Pink. *Id* at 8.

Eclipse contended the Debtor's plan was not proposed in good faith, but negotiations eventually led to Eclipse withdrawing its objection in exchange for an estimated $150,000 claim. *Id*. $25,000 of the claim was deemed non-dischargeable, even in the event of conversion. *Id*. On February 12, 2022, the bankruptcy court confirmed the Debtor's proposed plan and approved the settlement with Eclipse. *Id*.

The Debtor made timely payments for eight months, but in October 2022, Final Cut closed permanently. *Id*. Accordingly, Eclipse commenced foreclosure proceedings. *Id*. The Debtor converted his bankruptcy case to chapter 7, and a trustee was appointed. *Id* at 8-9. The Debtor's conversion schedules valued his home at $350,000 and provided a debt owed to Eclipse

for approximately $200,000. *Id* at 9. The Debtor intended to reaffirm his mortgage debt and remain in his home. *Id*.

The chapter 7 Trustee determined the Debtor's bankruptcy estate was mostly free of any assets. *Id*. However, the Trustee appraised the Debtor's home, which showed that the non-exempt equity in the home had increased by $100,000. *Id*. The Trustee began marketing the home for sale, and Eclipse offered to buy both the home and the alleged preferential transfer to Pink for $470,000. *Id*. The Trustee believed Eclipse's offer maximized the value of the estate for the benefit of creditors, and accordingly filed a motion to sell the home and preference claim under section 363(b). *Id*.

The Debtor objected to the sale, contended any post-petition, pre-conversion equity increase belonged to him, and since that would leave no equity in the home for the bankruptcy estate, the Trustee could not sell the home. *Id* at 10. The Debtor further argued that the Trustee's ability to avoid and recover preferential transfers cannot be sold. *Id*.

II. PROCEDURAL HISTORY

The bankruptcy court denied the Trustee's motion under section 363(b) to sell both the home and the preference claim to Eclipse and instead ruled in favor of the Debtor. *Id*. The bankruptcy court held that the post-petition, pre-conversion increase in equity of the Debtor's home belongs to the Debtor rather than the Chapter 7 bankruptcy estate. *Id*. The bankruptcy court further held that the Trustee could not sell the avoidance claim against Pink to Eclipse because the action was not property of the bankruptcy estate. *Id*. On direct appeal, the Thirteenth Circuit Court of Appeals affirmed the bankruptcy court on both issues. *Id* at 24.

STANDARD OF REVIEW

The issues raised in the appeal pertain solely to legal questions based on statutory interpretation. Thus, the appropriate standard of review is *de novo*. *Fox v. Hathaway* (*In Re Chicago Mgmt. Consulting Grp.*), 929 F.3d 804, 809 (7th Cir. 2019).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit incorrectly held that post-petition, pre-conversion appreciation in a debtor's home should inure to the Debtors benefit. The plain language of 541(a)(1) and 348(f)(1)(A), indicate that the increase in value of the home becomes part of the chapter 7 estate upon conversion. Because applying the plain meaning of this statute does not result in outcomes contrary to the legislature's goals, is consistent with the legislative history behind enacting 348(f)(1)(A), and aligns with the Bankruptcy Code's policy goals, the Court must apply the statute strictly according to its terms.

Section 541(a)(1) provides that once the Debtor filed his bankruptcy petition the home became property of the chapter 13 bankruptcy estate, regardless of the homestead exemption he claimed. Courts have consistently held that claiming a homestead exemption does not remove the Debtors home from the bankruptcy estate. Upon conversion to chapter 7, the home became part of the chapter 7 bankruptcy estate under 348(f)(1)(A) because the Debtor was still in possession of the home. The post-petition, pre-conversion increase in the value of the home is an interest that cannot be separated from the home itself. Therefore, this increase in equity of the home is also part of the chapter 7 bankruptcy estate. This argument is strengthened by section 103(j) and 348(f)(1)(B) that indicate that once a case is converted to chapter 7, chapter 13 valuations and provisions no longer apply.

The court does not need to consider legislative history because allowing the estate to benefit from the post-petition, pre-conversion equity increases in the Debtor's home does not run contrary to section 348(f)(1)(A)'s purpose. The purpose behind section 348(f)(1)(A) was to prevent individuals from being disincentivized to file chapter 13 out of concern that any of the property acquired post-petition might become part of the converted bankruptcy estate. However, the Debtors home was not after-acquired property as the Debtor was in possession of the home upon filing his initial chapter 13 case. Further, congressional intent supports our interpretation. If Congress intended to exclude post-petition appreciation from being considered part of the property of the estate in a converted case, they could have explicitly stated so in section 541.

Lastly, this interpretation does not discourage Debtors from filing chapter 13. Chapter 13 still is the best avenue for Debtors who want to keep possession of their assets. This interpretation does not always benefit the bankruptcy estate because the property can depreciate in value. Moreover, by ensuring that the appreciation in home value belongs to the bankruptcy estate, it aligns with the bankruptcy codes policy goals to maximize the distribution of property to creditors.

The Thirteenth Circuit incorrectly held that a Trustee's avoidance and recovery powers are not property of the bankruptcy estate under section 541(a) and therefore cannot be sold for the benefit of the estate. Because section 541(a) does not reference a Trustee's avoidance and recovery powers, and because the phrase "as of the commencement of the case" in section 541(a)(1) is ambiguous, this Court must review the context of the section within the Bankruptcy Code, as well as the legislative history.

Reading section 541(a) in context shows that this definition is intended to be broad and encompass a variety of interests within the bankruptcy estate. Section 541(a) enumerates

multiple types of property that are included in the bankruptcy estate, including interests that arise as of commencement of a bankruptcy case and after commencement of the case. Viewing the statute in context, it would be contrary to the intent of Congress to read "as of the commencement of the case" as excluding a Trustee's avoidance and recovery powers simply because they arose at some novel time not enumerated in the statute.

This Court has previously stated a Trustee's recovery power under section 550 is a claim that is property of the estate, and it logically follows that the pre-condition to recovery, i.e., avoidance, is also a claim that is property of the estate. Further, a Trustee's avoidance and recovery powers have been deemed causes of action, and these causes of action have been held to be property of the estate, including those causes of action arising on the petition date.

Section 541(b) enumerates specific property types that are not included in the bankruptcy estate, and notably, a Trustee's avoidance and recovery powers are not mentioned as exclusions. Had Congress intended to exclude a Trustee's avoidance and recovery powers from bankruptcy estate property, Congress could have specifically written this exclusion into the Bankruptcy Code. Because section 541(a) is intended to be a broad definition, and because section 541(b) specifically fails to mention excluding a Trustee's avoidance and recovery powers, it would be contrary to Congress' intent to interpret section 541(a) as not encompassing these powers.

Finally, allowing a Trustee to sell avoidance and recovery powers are property of the bankruptcy estate furthers the Bankruptcy Code's policy goal of maximizing creditor payouts while ensuring equity in such distributions. Selling these powers, subject to court approval, brings more assets into the bankruptcy estate that can then be distributed to creditors. Even if the purchaser of the powers were to receive a distribution in addition to recovery of a claim, the distribution from the bankruptcy estate would still be equal among creditors. The Trustee would

also be complying with their statutory duty to reduce the estate property to money as soon as possible.

This Court should REVERSE on both issues.

ARGUMENT

This Court should reverse the Thirteenth Circuit's decision and grant the Trustee authority to sell the Debtor's home for the benefit of the estate and its creditors. This Court should also reverse the Thirteenth Circuit's decision that a Trustee's avoidance and recovery powers are not property of the bankruptcy estate under section 541(a) that can be sold.

I. THE THIRTEENTH CIRCUIT INCORRECTLY HELD THAT POST-PETITION, PRE-CONVERSION APPRECIATION IN THE EQUITY IN A DEBTOR'S PROPERTY IS NOT PROPERTY OF THE BANKRUPTCY ESTATE.

Once a Debtor files a bankruptcy case, a bankruptcy estate is created, encompassing all legal and equitable interests held by the Debtor at the commencement of the case. 11 U.S.C. § 541(a)(1). In a chapter 7 case, all the non-exempt property of the bankruptcy estate is vested in the trustee to distribute among creditors. 11 U.S.C. § 701; 11 U.S.C. § 704. In chapter 13 case, the property in the bankruptcy estate is vested in the Debtor because the Debtor has established a plan to pay off creditors to retain possession of their assets. 11 U.S.C. § 1322 (a)(1); 11 U.S.C. § 1327(b).

Recognizing the challenges many debtors face in meeting the obligations of a chapter 13 case, 11 U.S.C. § 1307(a) gives debtors a non-waivable right to convert their chapter 13 case to a chapter 7 case. 11 U.S.C. § 1307(a). If a Debtor does exercise this right, the bankruptcy estate will consist of assets remaining in the Debtor's possession or control as of the original chapter 13 filing date. *See* 11 U.S.C. § 348(f)(1)(A); *Harris v. Viegelahn*, 575 U.S. 510 (2015). Therefore,

once the case is converted, property initially vested in the Debtor under chapter 13 and still within their possession becomes vested in the Trustee for distribution among creditors. *See Id*.

During a debtor's chapter 13 bankruptcy, their assets, especially their homes, may experience an increase in value, especially given the booming housing market. *See In re Adams*, 641 B.R. 147 (Bankr. W.D. Mich. 2022) at 150. When a Debtor converts from chapter 13 to chapter 7, this raises many concerns regarding whether the Trustee or the Debtor should benefit from this home equity increase. *Id* at 150.

One of the approaches some circuits have taken is that post-petition, pre-conversion appreciation belongs to the debtors, aligning with the legislative intent to encourage chapter 13 filings without subjecting debtors to an unfair outcome upon conversion to chapter 7. *See In re Barrera*, 620 B.R. 645 (Bankr. D. Colo. 2020); *In re Cofer*, 625 B.R. 194 (Bankr. D. Idaho 2021); *In re Lynch*, 363 B.R. 101 (B.A.P. 9th Cir. 2007); *In re Niles*, 342 B.R. 72 (Bankr. D. Ariz. 2006). However, other courts have rejected arguments relying on legislative history and emphasize that the plain language of sections 348(f)(1)(A) and 541(a)(1) indicates that any property of the estate at the time of the original filing, still in the Debtor's possession at the time of conversion, becomes part of the bankruptcy estate again. *See In re Adams*, 641 B.R. 147; *In re Castleman*, 631 B.R. 914 (Bankr. W.D. Wash. 2021), aff'd, 2:21-CV-00829-JHC, 2022 WL 2392058 (W.D. Wash. July 1, 2022), aff'd sub nom. *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023); *In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015); *In re Peter*, 309 B.R. 792, 795 (Bankr. D. Or. 2004).

In this case, the plain language of sections 341(f)(1) and 541(a)(1) indicates that the appreciation in the Debtor's home belongs to the chapter 7 bankruptcy estate. Upon filing the bankruptcy petition, under 11 U.S.C. 541(a)(1), the Debtor's home became part of the bankruptcy

estate, encompassing the entire home and any changes in value. 11 U.S.C. § 348(f)(1)(A); 11 U.S.C. § 541(a)(1); *See also In re Goetz*, 651 B.R. 292, 298 (B.A.P. 8th Cir. 2023). Therefore, any post-petition increases in value remained within the estate. Further, chapter 13 provisions and valuations of the property no longer apply once the case converts to chapter 7, so the home initially vested in the Debtor now belongs to the chapter 7 bankruptcy estate. *See In re Goetz,* 651 B.R. 292 at 300. This interpretation of 11 U.S.C. 348(f)(1)(A) is consistent with congressional intent and legislative history. *See* H.R. Rep. No. 103-835 at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366; *In re Castleman*, 631 B.R. 914 at 920. This interpretation does not run contrary to the public policy behind chapter 13. It aligns with the overarching purpose of the Bankruptcy Code, which is to allocate all of a Debtor's property to the maximum extent possible for the benefit of creditors. *See In re Adams*, 641 B.R. 147 at 151.

A. The relevant statutory provisions indicate that the increase in a debtor's home value becomes part of the chapter 7 estate upon filing the petition, irrespective of changes in value.

In interpreting a statute, the Court first considers its plain language. *See In re Castleman*, 631 B.R. 914 at 918. If the language is clear, the Court concludes its analysis and upholds the statute. *Id.* In the context of sections 341(f)(1)(A) and 541(a)(1), the plain language suggests that the appreciation in the Debtor's home belongs to the chapter 7 bankruptcy estate, as the home becomes part of the estate upon filing the petition and the Debtor retained possession of the home during the conversion to chapter 7. 11 U.S.C. § 348(f)(1)(A); 11 U.S.C. § 541(a)(1). Because the appreciation of the Debtor’s home value cannot constitute a distinct interest indistinguishable from the home itself, the property of the estate encompasses the entire home, regardless of changes in value. *See* 11 U.S.C. § 541(a)(1); 11 U.S.C. § 541(a)(6); *In re Adams*, 641 B.R. 147; *In re Goetz*, 651 B.R. 292; *In re Peter*, 309 B.R. 792; *In re Potter*, 228 B.R. 422 (B.A.P. 8th Cir.

1999); *Matter of Castleman*, 75 F.4th 1052 (9th Cir. 2023). Furthermore, converting the case to chapter 7 rendered chapter 13 provisions and valuations obsolete. *See* 11 U.S.C. § 103(j); 11 U.S.C. § 348(f)(1)(B); *Harris v. Viegelahn*, 575 U.S. 510; *In re Goetz,* 651 B.R. 292; *In re Lang*, 437 B.R. 70 (Bankr. W.D.N.Y. 2010).

i. The home is part of the chapter 7 bankruptcy estate because it became the property of the estate upon filing the petition, and the Debtor retained possession of the home during the conversion to chapter 7.

The plain language of section 541(a)(1) and section 348(f)(1)(A) indicates that the Debtor's home qualifies as property of the estate. Section 541(a)(1) provides that filing a bankruptcy petition creates an estate comprising all the Debtor's legal or equitable interests as of the case's commencement. 11 U.S.C. § 541(a)(1). Once a Debtor converts their chapter 13 case to chapter 7, section 348(f)(1)(A) slightly modifies the bankruptcy estate to include assets as of the original chapter 13 filing date that remain in the Debtor's possession or control. 11 U.S.C. § 348(f)(1)(A). The Debtor's home was the property of the estate when he filed his chapter 13 petition. Upon conversion, the Debtor retained possession and control of the home, so the property is part of the chapter 7 bankruptcy estate.

Additionally, the Debtor's home was not removed from the bankruptcy estate when the Debtor claimed a homestead exemption. *See Schwab v. Reilly,* 560 U.S. 770 (2010). The Supreme Court has consistently ruled that when a Debtor claims an exemption in estate property, they merely assert an interest in that property, limited to a specified dollar amount. *Id.* at 783. Despite the provision in Federal Rules of Bankruptcy Procedure 4003(b), which, by default, excludes property claimed as exempt from the bankruptcy estate unless contested within 30 days, trustees do not have to object to exemptions to preserve the estate's right to value in the property beyond the exemption claimed by the Debtor. *Id.* at 774. The definition in sections 522(d)(5) and (6)

reinforces that the property claimed as exempt is an interest in the specific asset, a distinction from the asset itself. 11 U.S.C. § 522(d)(5); 11 U.S.C. § 522(d)(6); s*ee also In re Adams*, 641 B.R. 147 at 153 (“Mr. Adams's exemption under § 522(d)(1) entitles him only to a portion of the value of the Property -- his aggregate interest not to exceed a specified amount -- not the Property itself. 11 U.S.C. § 522(d)(1).”).

ii. There is no distinction between a home's post-petition value increase and the home itself, as the estate encompasses the entire asset, including changes in value.

When interpreting section 348(f)(1)(A) alongside sections 541(a)(1) and 541(a)(6), it indicates that the market appreciation on the home during the chapter 13 case is also considered property of the estate. 11 U.S.C. § 348(f)(1)(A); 11 U.S.C. § 541(a)(1); 11 U.S.C. § 541(a)(6); *See In re Goetz*, 651 B.R. 292 at 298. While section 348(f)(1)(A) does not explicitly define "property of the estate," it alludes to the definition outlined in section 541(a)(1). *See Id*. Section 541(a)(1) broadly characterizes the property of the estate to encompass "all legal or equitable interests of the debtor in property." 11 U.S.C. § 541(a)(1); s*ee also In re Potter*, 228 B.R. 422 at 424. Since the Debtor's home is property of the estate, the post-petition appreciation in a home is also the property of the estate because it is an interest that cannot be separated from the home itself, as the value of any property is regarded "...as an attribute or incident of the property." *See In re Adams*, 641 B.R. 147 at 152.

Additionally, there is no indication in section 541 that the estate’s interest in the home should not be the complete asset. 11 U.S.C. § 541(a)(1); 11 U.S.C. § 541(a)(6) ; *See also In re Potter*, 228 B.R. 422 at 424. Furthermore, section 541(a)(6) asserts that the property of the estate encompasses "Proceeds, product, offspring, rents, or profits of or from the property of the estate," unless earned from the Debtor's services. 11 U.S.C. § 541(a)(6); *see also In re Adams*, 641 B.R. 147 at 152. The phrase "or from the property of the estate" indicates that any economic

benefit arising directly from the property belongs to the property of the estate. *See In re Potter*, 228 B.R. 422 at 424; *In re Peter*, 309 B.R. 792 at 794-95; *Matter of Castleman*, 75 F.4th 1052 at 1056. An increase in the value of a home is a form of profit derived from the property itself. *See In re Peter*, 309 B.R. 792 at 794-95. Therefore, because the home was initially part of the estate's property, any post-appreciation in the property automatically joined the bankruptcy estate upon filing the petition. *Id.* at 794 (citations omitted) ("The ninth circuit has held that if an asset increases in value during the case, under § 541(a)(6), the appreciation inures to the estate. This is true regardless of whether there was equity beyond liens and exemptions when the case was filed.")

The majority erroneously argues that allowing the home's appreciation in value to become part of the bankruptcy estate would create ambiguity by conflicting with the snapshot rule. R. at 13. However, the Court cannot create ambiguity that does not exist. *See Lamie v. U.S. Tr.,* 540 U.S. 526 (2004) at 535-37. The Court's only role is to interpret and apply the plain meaning of the statute, and sections 541(a)(1) and 541(a)(6) state that upon conversion, the property of the estate's value includes any conditions affecting the equity of the estate such as post-petition appreciation. *Id.*; *See also In re Peter*, 309 B.R. 792 at 794-95.

Lastly, the majority's argument that allowing post-petition appreciation in the value of the home belonging to the chapter 7 bankruptcy estate treats the Debtor as though they have converted their case in bad faith is flawed. R. at 13. The argument overlooks the legislative intent behind Congress's enactment of section 348(f)(2), which aims to penalize debtors who, in bad faith, acquire or manipulate assets during bankruptcy, specifically removing assets that would have belonged to the Debtor after conversion. 11 U.S.C. § 348(f)(2); s*ee also In re Goetz,* 651 B.R. 292 at 299. The Debtor's home was the property of the estate when the Debtor filed the

petition. 11 U.S.C. § 348(f)(1)(A). This distinguishes the Debtor's home from after-acquired property that was not obtained when filing the petition but remained under the possession or control of the Debtor upon conversion. *In re Goetz*, 651 B.R. 292 at 296 (“The property the Debtor acquired between the petition date and conversion date is not property of the converted case, unless the debtor sought to convert the case in bad faith”). Since the post-petition appreciation increase in the home's value is not an interest that can be separated from the home itself, section 348(f)(2) is not applicable in this case.

iii. Chapter 13 provisions and valuations no longer apply once a case is converted to chapter 7.

Upon the case's conversion to chapter 7, the plain language of both section 103(j) and section 348(f)(1)(A) indicate that chapter 7 provisions govern the estate property. *In re Goetz,* 651 B.R. 292 at 300 ("...Neither section 1327 nor the relevant provision of the confirmation order applies in the converted chapter 7 case"). The unambiguous language of section 103(j) indicates that chapter 13 provisions only apply when the case is actively in chapter 13. 11 U.S.C. § 103(j) ("Chapter 13 of this title applies only in a case under such chapter”).

While it is true that section 1327 (b) vested the home in the Debtor upon confirmation of the repayment plan under chapter 13, once the Debtor converted to chapter 7, the home became vested in the estate under chapter 7 provisions. *See Harris v. Viegelahn*, 575 U.S. 510 at 521. This is because once a Debtor exercises their statutory right to convert, the case becomes governed by chapter 7 provisions and section 348 (f)(1)(A). *Id.* at 520. Therefore, despite the initial vesting of the home in the Debtor through section 1327(b) and the chapter 13 confirmation order, upon conversion of the case, section 348(f)(1)(A) and chapter 7 provisions governed the

estate property. Under 107(j), chapter 13 provisions only apply when the bankruptcy case is in chapter 13. Therefore, chapter 13 provisions no longer apply once the case is converted.

The plain language of 11 U.S.C. 348(f)(1)(A) and 11 U.S.C. 348(f)(1)(B) further indicates that the "existing case continues along another track, Chapter 7 instead of Chapter 13." *Harris v. Viegelahn*, 575 U.S. 510 at 515. Specifically, these provisions state that valuation determinations made in chapter 13 cases do not apply once a case is converted to chapter 7. *Id.* Prior to the amendments under the Bankruptcy Abuse and Prevention Act ("B.A.P.C.P.A."), section 348(f)(1)(B) stated that " valuations of property and of allowed secured claims in the chapter 13 case shall apply in the converted case." 11 U.S.C. § 348(f)(1)(B). Pre-BAPCPA, some courts embraced the "implicit finding of value" approach and asserted that the valuation date for 348(f)(1)(B) is the time chapter 13 case was filed. *See In re Goins*, 539 B.R. 510 at 513. This approach allowed courts to hold that the chapter 7 bankruptcy estate was only entitled to the equity that existed upon filing the petition with any appreciation after the chapter 13 case benefiting the Debtor. *Id.*

However, B.A.P.C.P.A. amended 348 (f)(1)(B) and now states that "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". 11 U.S.C. § 348(f)(1)(B). Stating that valuations of property from the chapter 13 cases do not become part of the chapter 7 estate section 348(f)(1)(B) removed the implicit valuation approach. *See In Re Goins*, 539 B.R. 510 (2015) at 515 quoting H.R. Rep. No. 109-31(1) at 73 (2005), *as reprinted* in 2005 U.S.C.C.A.N. 88, 140 ("Section 309(a) of the Act amends Bankruptcy Code section 348(f)(1)(B) to provide that valuations of property and allowed secured claims in a chapter 13 case only apply if the case is converted to one under chapter 11 or 12. If the chapter is

converted to one under chapter 7, then the creditor holding security as of the petition date shall continue to be secured…").

Contrary to the majority's assertion, the purpose of section 348(f)(1)(B) was not to resolve the problem with "implicit valuation." R. at 13*; See also In Re Goins*, 539 B.R. 510 at 512. Its purpose was to instruct the courts not to rely on valuation determinations made in chapter 13 cases, later converted to chapter 7. *Id.*

Moreover, 11 U.S.C. 542(a) also states that the relevant valuation point is the value upon conversion to chapter 7, not the chapter 13 petition date. *See In re Lang*, 437 B.R. 70 at 73. Section 542(a) states that a party in "possession, custody, or control" shall deliver to the trustee the property or the value of the property unless the property has inconsequential value or benefit to the estate. 11 U.S.C. § 542(a). In chapter 7 cases, once the trustee is appointed, the Debtor must deliver the property or value of the property to the trustee. *See In re Lang*, 437 B.R. 70 at 73. Therefore, since the chapter 7 trustee replaces the chapter 13 trustee upon conversion, the relevant value is the conversion. 11 U.S.C. § 348(e). If the relevant value were the value of a property upon the chapter 13 petition date, it "would render meaningless the proviso that no delivery need occur when the property has inconsequential value or benefit to the estate." *In re Lang*, 437 B.R. 70 at 73.

B. Congressional intent and legislative history indicate that allowing the estate to benefit from pre-conversion equity aligns with section 348(f)(1)(A)'s purpose.

The majority erroneously centers its entire argument on the legislative history of 348(f)(1)(A). R. at 13-17. However, given the unambiguous language of the statute and the absence of a contradictory outcome when applying the plain meaning, the Court is obligated to interpret and apply the statute strictly according to its terms. *See Lamie v. U.S. Tr.,* 540 U.S. 526

at 535-37. Additionally, the majority's attempt to rely on legislative history to find a more just outcome is a "task for Congress, not the courts." R at 17; *See also In re Adams*, 641 B.R. 147 at 156. Furthermore, Congress's decision to include broad language when defining property of the estate in 541(a)(1) and not exempting post-petition appreciation from property of the estate in 541(a)(6), reinforces the need to apply the plain language of 348(f)(1)(A). *Id.;* 11 U.S.C. § 541(a)(6). Therefore, the Court must apply the plain language that the post-appreciation value of the Debtor's home rightfully belongs to the chapter 7 bankruptcy estate.

i. Applying the statute's plain meaning does not result in an outcome contrary to the legislature's goals.

It is only necessary to consider legislative history if applying the statute's plain meaning would result in outcomes contrary to the legislators' intended goals. *In re Castleman*, 631 B.R. 914 at 919. Allowing the estate to benefit from the post-petition, pre-conversion equity increases in the Debtor's home does not run contrary to the legislative intent behind section 348(f)(1)(A). *See In re Goetz*, 651 B.R. 292 at 299-300.

According to the House Report, 11 U.S.C. 348(f) was added to the bankruptcy code to prevent individuals from being discouraged from filing chapter 13 bankruptcy cases out of concern that any of the property acquired post-petition might become part of the converted bankruptcy estate. See H.R. Rep. No. 103-835 at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366; *In re Castleman*, 631 B.R. 914 at 920. The House Report illustrates this scenario by describing a situation where, prior to the enactment of section 348(f), bankruptcy attorneys would advise debtors that any mortgage payments the Debtor made towards their home after filing the Debtor’s chapter 13 case would likely become part of the chapter 7 estate upon conversion. *See* H.R. Rep. No. 103-835 at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366. Therefore, a

debtor who diligently paid off a second mortgage during chapter 13, thereby creating equity in their home, faced the risk that this new equity could be lost if the case converted to chapter 7. *Id.*

The addition of 348(f)(1)(A) addresses this concern, ensuring that property of the estate in converted cases is specifically defined as "...property of the estate, as of the date of filing the petition..." 11 U.S.C. § 348(f)(1)(A); *See also In re Castleman*, 631 B.R. 914 at 920. The House Report's omission of a scenario in which 348(f) would help prevent the Debtor's appreciation of value in pre-petition assets from becoming a part of the bankruptcy estate upon conversion was a deliberate attempt to show that the primary purpose of 348(f) was not to prevent pre-petition assets from becoming a part of the bankruptcy estate. *See Id; In re Goetz*, 651 B.R. 292 at 299. This is especially true given the common occurrence of pre-petition assets affecting Debtors when they convert their case from chapter 13 to chapter 7. R. at 24.

ii. Congress could have included a provision in 11 U.S.C. 541(a)(1) and (a)(6) that excludes post-petition appreciation from becoming part of the bankruptcy estate.

If Congress intended to exclude post-petition appreciation from being considered part of the property of the estate in a converted case, it could have explicitly stated so in section 541. Section 541(a)(1) does not limit the interests included in the estate. It neither specifies that only pre-petition interests are covered nor creates a distinction between the Debtor's interests before and after the petition date. 11 U.S.C. § 541(a)(1). It could have employed narrower language if Congress intended a more restrictive interpretation.

Moreover, Congress demonstrated its capacity to address distinctions within section 541 by incorporating an exemption in section 541(a)(6). 11 U.S.C. § 541(a)(6); *See also In re Potter*, 228 B.R. 422 at 424. This exemption excludes explicitly post-petition earnings by a debtor from being considered part of the property of the estate. *Id*. This inclusion of an exemption suggests

that Congress was attentive to such considerations and could have similarly exempted post-petition appreciation if it had intended to do so.

In conclusion, since the drafters neglected to specify the exclusion of post-petition appreciation from being exempted from the property of the estate, the majority's view would result "not [in] a construction of [the] statute, but, in effect, an enlargement of it by the court, so that what was omitted…may be included within its scope." *Lamie v. U.S. Tr.,* 540 U.S. 526 at 538.

C. This interpretation of is consistent with the bankruptcy code's policy goals to encourage chapter 13 filings and maximize distribution to creditors.

Chapter 13 is still the best way for Debtors to retain their property, irrespective of this interpretation. *See In re Adams*, 641 B.R. 147 at 153. This interpretation also does not disincentivize Debtors from declaring chapter 13 bankruptcy, as Debtors still have a non-waivable right to convert to chapter 7, and all other chapter 13 provisions remain unaffected. *Id.*; *See also In re Peter*, 309 B.R. 792, 795 at 796. Additionally, section 348(f)(1)(A) has already mitigated any disincentive to file for chapter 13 concerning the risk of losing assets acquired between the petition date and conversion to chapter 7. *See Matter of Castleman*, 75 F.4th 1052 at 1057.

It is essential to note that while this interpretation allows any change in the property's value to be part of the chapter 7 bankruptcy estate, it may not always be advantageous, especially if the property depreciates. *Id.* at 1058.

Moreover, this interpretation aligns with the overarching purpose of the Bankruptcy Code, which aims to allocate all a Debtor's property to the maximum extent possible for the benefit of creditors. *See In re Adams*, 641 B.R. 147 at 153. By permitting the appreciation in home value to contribute to the bankruptcy estate, it optimizes the distribution of property to creditors. *Id.*

II. THE THIRTEENTH CIRCUIT INCORRECTLY HELD THAT A TRUSTEE'S AVOIDANCE AND RECOVERY POWERS UNDER 11 U.S.C. §§ 547 AND 550 ARE NOT PROPERTY OF THE BANKRUPTCY ESTATE UNDER 11 U.S.C. § 541(A) AND THEREFORE CANNOT BE SOLD.

Voluntary bankruptcy cases are commenced by filing a petition, and upon commencement, a bankruptcy estate is created which includes certain property "wherever located and by whomever held." 11 U.S.C. § 301; 11 U.S.C. § 541(a). While section 541(a) enumerates specific property included in the bankruptcy estate, this section is intended to act "as a definition of what is included in the estate, rather than as a limitation." *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983). A bankruptcy trustee is appointed to act as "the representative of the estate." 11 U.S.C. § 323(a).

Bankruptcy trustees have "avoidance powers" which allow certain pre-bankruptcy transfers made by the debtor to be avoided and recovered for the benefit of the bankruptcy estate. *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1663 (2019). Section 547 lists certain transfers a trustee can avoid, provided there are no applicable defenses to the transfer. 11 U.S.C. § 547(b); 11 U.S.C. § 547(c). The rationale behind avoiding certain transfers is to ensure no one creditor is preferred over another creditor. *Begier v. IRS*, 496 U.S. 53, 58 (1990). Once a transfer is avoided, section 550 allows the trustee to recover the transferred property "for the benefit of the estate." 11 U.S.C. § 550(a).

Courts are split on whether a bankruptcy trustee's avoidance and recovery powers are property of the bankruptcy estate and can thus be sold for the benefit of the estate. In this case, the Thirteenth Circuit held that a bankruptcy trustee's avoidance and recovery powers are not property of the bankruptcy estate and therefore cannot be sold. This Court should overrule the Thirteenth Circuit's holding in this case and instead decide that a bankruptcy trustee's avoidance and recovery powers are properly includable in the bankruptcy estate and can thus be sold for the

benefit of the estate. Because the statutory text of section 541(a)(1) is ambiguous, the statutory construction, context, legislative history, and policy goals of the Bankruptcy Code must be analyzed, all of which favor a finding that a trustee's avoidance and recovery powers are property of the estate that can be sold for the benefit of the estate.

A. The plain language of section 541(a) is ambiguous because the statute is silent regarding whether a trustee's avoidance and recovery powers are included in the bankruptcy estate and is unclear on whether the phrase "as of the commencement of the case" encompasses only those legal and equitable interests that arose prior to commencement of the case or also those legal and equitable interests that arose upon commencement of the case.

Ambiguous statutes are those susceptible to more than one interpretation. *Chickasaw Nation v. U.S.*, 534 U.S. 84, 90 (2001). If a statute is unambiguous and susceptible to only one interpretation, courts must "enforce it according to its terms." *Lamie*, 540 U.S. at 534. However, "the plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Ceco Concrete Const., LLC v. Centennial State Carpenters Pension Tr.*, 821 F.3d 1250, 1258 (10th Cir. 2016) (citations omitted); *see also In re Geneva Steel Co.*, 281 F.3d 1173, 1178 (10th Cir. 2002) (guidance can come from the statute's legislative history and the purpose of the statute).

Section 541(a) is silent, and therefore ambiguous, as to whether a bankruptcy trustee's avoidance and recovery powers are includable as property of the bankruptcy estate. While the section provides that commencing a bankruptcy case creates a bankruptcy estate comprised of certain property "wherever located and by whomever held," the enumerated subsections do not reference a bankruptcy trustee's avoidance and recovery powers. 11 U.S.C. § 541(a)(1)-(7); R. at 19. Further, the phrase "as of the commencement of the case" is ambiguous because it is susceptible to be interpreted to either mean those interests that arose prior to commencement of

the case or upon commencement of the case. *Compare, e.g.*, 11 U.S.C. § 541(a)(1) and R. at 20 *with Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, 460 B.R. 106, 114 (Bankr. S.D.N.Y. 2011) (stating property of the bankruptcy estate includes avoidance actions created on the petition date).

Further, various courts have interpreted the language of 541(a), and thus whether a trustee's avoidance powers are property of the bankruptcy estate, differently. *See, e.g., Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC)*, 78 F.4th 1006 (8th Cir. 2023); *Parker v. Goodman (In re Parker)*, 499 F.3d 616 (6th Cir. 2007); *Official Comm. Of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237 (3d Cir. 2000); *In re Clements Mfg. Liquidation Co., LLC*, 558 B.R. 187 (Bankr. E.D. Mich. 2016).[1]

Because section 541(a) contains ambiguities that cannot be resolved by relying solely on the statutory text, additional statutory interpretation bases must be analyzed, including the statute's context, legislative history, and the policy goals of the Bankruptcy Code.

B. The context of section 541(a) within the Bankruptcy Code, coupled with the statute's legislative history and canons of construction, evidence that Congress intended a bankruptcy trustee's avoidance and recovery powers to be considered property of the bankruptcy estate.

Statutory construction requires a statute "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 Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012) (citation omitted) (stating "statutory language … 'cannot be construed in a vacuum'" but rather should be viewed in context "to … the overall statutory scheme."). This Court has previously

[1] Note that the Third Circuit has described its statements in *Cybergenics* as dicta. *See Artesanias Hacienda Real S.A. de. C.V. v. North Mill Capital LLC (In re Wilton Armetale, Inc.)*, 968 F.3d 273, 285 (3d Cir. 2020) ("*Cybergenics* does not hold that trustees cannot transfer causes of action.").

held that property of the bankruptcy estate encompasses "any property made available to the estate by other provisions of the Bankruptcy Code," which includes "property in which the debtor did not have a possessory interest at the time the bankruptcy proceedings commenced." *Whiting Pools, Inc.*, 462 U.S. at 205. Further, this Court has said section 541(a) is intended to be broad and act "as a definition … rather than as a limitation." *Id* at 203; *see also Patterson v. Shumate*, 504 U.S. 753, 757 (1992).

Section 541(a) enumerates seven different types of property that are included in the bankruptcy estate. 11 U.S.C. § 541(a)(1)-(7). The bankruptcy estate 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). This Court has previously described the avoidance power provided for in chapter 5 as a "statutory cause of action." *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53-54 (1989); 11 U.S.C. § 547(b); *see also* 11 U.S.C. § 926(a) (providing "a cause of action under section … 547 …"). Property of the bankruptcy estate also includes "any interest in property that the trustee recovers under section … 550 …." 11 U.S.C. § 541(a)(3). This Court has also previously stated the recovery power "under § 550 is clearly a 'claim' … and is 'property of the estate ….'" *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 37 (1992).[2] Because a trustee's recovery power is property of the bankruptcy estate, it logically follows that the precursor to recovery, i.e., avoidance, is also property of the bankruptcy estate. Thus, "property of the estate therefore includes any cause of action the debtor had on the petition date, as well as avoidance actions created on the petition date." *Sec. Inv'r Prot. Corp*, 460 B.R. at 114. Section 541(a)(7) also

[2] Although *Nordic Village* was superseded by the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106, the significant amendments related to section 550 came from section 202, which provided who a trustee could recover from in the case of a preferential transfer to an insider. Robin E. Phelan, et al., *1994 Consumer Bankruptcy Developments: The Bankruptcy Reform Act of 1994*, The Business Lawyer, Vol. 50, No. 3, 1198 (May 1995).

includes "any interest in property that the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(7).

Based on the context of section 541(a), a trustee's avoidance and recovery powers are clearly causes of action that constitute property of the bankruptcy estate. While section 541(a) does not explicitly reference a trustee's powers, section 541(a)(1) includes "all legal or equitable interests … as of the commencement of the case." 11 U.S.C. § 541(a)(1). As a bankruptcy case is commenced, the trustee is granted statutory powers, including those in sections 547 and 550. These powers, described as causes of action, are legal interests in property that was transferred by the debtor. Therefore, under section 541(a)(1), the trustee's avoidance and recovery powers are property of the bankruptcy estate that arise as of the commencement of the case.

However, even if these powers are not understood to arise as of the commencement of the case under section 541(a)(1), section 541(a)(7) encompasses interests "the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(7).[3] This section, coupled with section 541(a)(1), captures interests arising as of the commencement of the case and after commencement of the case. Between these sections, Congress clearly intended to capture interests arising at all times during the bankruptcy proceeding; to assume that a trustee's avoidance and recovery powers occur at some novel time not included would be contrary to Congress's intent.

Last year, the Eighth Circuit Court of Appeals held a trustee's cause of action under chapter 5 of the Bankruptcy Code is part of the bankruptcy estate. *In re Simply Essentials, LLC*,

[3] The majority below takes the approach that the Bankruptcy Code only grants "rights and powers" to the trustee, which are not interests. R. at 21. However, the majority fails to note that said rights and powers under section 547(b) can be transformed into an interest in property if a preferential transfer is found. 11 U.S.C. § 547(b). The majority also states the trustee's rights and powers are not acquired, but rather are created. R. at 21. Regardless of the semantics the majority uses, once the powers are created, the trustee acquires them.

78 F.4th at 1011. In that case, because there were insufficient funds to pursue the cause of action, the trustee sought to sell the cause of action. *Id* at 1007-08. Relying on previous case law, the court ultimately held that, because "the debtor has an inchoate interest in the avoidance actions prior to … the bankruptcy proceedings," the trustee's avoidance power could be sold as property of the estate. *Id* at 1008-09; *see also Whiting Pools Inc.*, 462 U.S. at 205 *and Segal v. Rochelle*, 382 U.S. 375, 379 (1966). Further, other circuits have similarly held a trustee's avoidance powers are causes of action that are property of the bankruptcy estate. *See, e.g., Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 262 (5th Cir. 2010); *Morley v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427, 431 (1st Cir. 2007).

The majority below dismisses *In re Simply Essentials* by concluding the Debtor had no interest in the funds he transferred to Pink. R. at 20. However, in that case, the Eighth Circuit held the debtor did have an inchoate interest in the property transferred pre-petition. Inchoate is defined as "partially completed or imperfectly formed; just begun." *Inchoate*, Black's Law Dictionary (11th ed. 2019). When a debtor transfers property prior to commencing a bankruptcy proceeding, the debtor's interest in the transferred property is clearly inchoate; the interest is partially completed and will not be fully completed if and until the actual filing of a bankruptcy petition. Once a bankruptcy case is commenced, the debtor's inchoate interest in the property becomes complete. Thus, the interest in the avoidance action against the transferred property arose prior to commencement of the case and should be included in the bankruptcy estate.

Section 541(b) enumerates ten different types of property that are not included in the bankruptcy estate. 11 U.S.C. § 541(b). Notably, no provision of section 541(b) references a trustee's avoidance and recovery powers. 11 U.S.C. § 541(b)(1)-(10). As this Court has previously stated, "in any inquiry respecting the likely or probable intent of Congress, the silence

of Congress is relevant." *Ziglar v. Abbasi*, 582 U.S. 120, 145 (2017). Had Congress intended to exclude a trustee's avoidance and recovery powers from the bankruptcy estate's property, Congress would have expressly done so in section 541(b). R. at 32. Between sections 541(a)(1) and 541(a)(7) capturing interests arising as of commencement of a case and interests acquired after commencement of a case, and section 541(b)'s omission of a trustee's avoidance and recovery powers, Congress clearly intended for these powers to be encompassed in the bankruptcy estate's property.

Additionally, the legislative history of section 541(a) evidences that "section 541(a) is an all-embracing definition" for determining what property is included in the bankruptcy estate. H.R. Rep. No. 95-595, at 549 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6455. This definition was intended to encompass "tangible or intangible property, causes of action, and all other forms of property currently specified in section 70a of the Bankruptcy Code." *Whiting Pools Inc.*, 462 U.S. at 204-05, n.9. Although Congress made no material amendments to the Bankruptcy Act when enacting the Bankruptcy Code, courts must "be sensitive to the possibility a statutory term that means one thing today or in one context might have meant something else at the time of its adoption or might mean something different in another context." R. at 21; *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1750 (2020).

The context and legislative history of section 541(a) evidence Congress's intent to include a trustee's avoidance and recovery powers as property of the bankruptcy estate. However, reviewing the policy goals of the Bankruptcy Code provides additional background for Congress's intent.

C. *Allowing a bankruptcy trustee to sell their avoidance and recovery powers, subject to court approval, is consistent with the Bankruptcy Code's policy goal of maximizing distributions to creditors.*

The Bankruptcy Code provides a trustee with avoidance and recovery powers "to maximize the funds available for, and ensure equity in, the distribution to creditors in a bankruptcy proceeding." *Merit Mgmt. Group, LP v. FTI Consulting, Inc.*, 583 U.S. 366, 369 (2018). Further, section 547(b)'s "preference provisions facilitate the prime bankruptcy policy of equality of *distribution* among creditors of the debtor." *Union Bank v. Wolas*, 502 U.S. 151, 160-61 (1991) (emphasis added). A bankruptcy trustee has a statutory duty to "collect and reduce to money the property of the estate … and close such estate as expeditiously as is compatible with the best interests of parties in interest." 11 U.S.C. § 704(a)(1). Coupled with this statutory duty is the trustee's ability to sell property of the estate with court approval. 11 U.S.C. § 363(b)(1).

The Bankruptcy Code's main policy goal is to maximize creditor distributions while maintaining equality amongst creditors. In the present case, allowing the Trustee to sell avoidance and recovery powers would increase the amount of equity available for distributions to creditors. Should the Trustee be unable to sell these powers, the equity available for distribution would be significantly less, due to the loss of equity from selling powers and the incurred expenses used to pursue avoidance and recovery. Allowing the trustee to sell these powers also results in closing an estate expeditiously, as pursuing these claims can take years and delay creditor distributions. For highly encumbered estates, a trustee's avoidance and recovery powers may be the only unencumbered bankruptcy estate asset. Further, the policy goal is to ensure equal *distributions* among creditors. Even though Eclipse could still receive a distribution from the estate if the powers were sold, the distribution among the various creditors would remain equal because the money, if any, Eclipse recovered from the sale of the powers would not

be part of the bankruptcy estate's *distribution*. Further, allowing the sale of the Trustee's powers would comport with a trustee's statutory duty of reducing property of the estate (as previously analyzed, the avoidance and recovery actions) to money. Importantly, this sale would still be subject to court approval, and if terms were unfavorable, the court could deny the sale of the trustee's powers.

The trustee's fiduciary role has been described as a "unique role." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 7 (2000). This Court has previously held that the use of the word "trustee" in the Bankruptcy Code means the trustee only. *Id* at 6-7. However, this premise is countered by a creditor's ability to "derivatively assert a trustee's avoidance powers for the benefit of the estate to ensure that its value is maximized." R. at 23 (citing 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 the trustee's unique fiduciary role, they may determine whether selling avoidance and recovery powers is appropriate, subject to court approval. However, because the ultimate inquiry is whether the bankruptcy estate will benefit, restricting avoidance and recovery powers to only the trustee would go against the policy goals of the Bankruptcy Code.

CONCLUSION

The post-appreciation, pre-conversion appreciation in the value of the Debtors home is property of the chapter 7 bankruptcy estate because the home was property of the estate at the time of the original chapter 13 filing and was still in the Debtor's possession at the time of conversion. As such, the court should grant the Trustee authority to sell the Debtor's home for the benefit of the estate and its creditors.

A Trustee's avoidance and recovery powers are properly deemed as property of the bankruptcy estate because they are causes of action arising on the petition date. As such, these powers should be subject to sale by the Trustee, with court approval, so the bankruptcy estate can expeditiously be reduced to money and equal distributions can be made to creditors.

For the foregoing reasons, we ask that this Court REVERSE.