No. 23-0115

IN THE

Supreme Court of the United States

OCTOBER TERM, 2023

IN RE EUGENE CLEGG, DEBTOR

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER

V.

EUGENE CLEGG, RESPONDENT.

BRIEF FOR PETITIONER

TEAM NUMBER 53

COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

I. Whether the court of appeals erred in holding that, upon conversion of a case from chapter 13 to chapter 7 of the Bankruptcy Code, a post-petition, pre-conversion increase in equity, resulting from market trends and relating to property of the bankruptcy estate, inures to the benefit of the debtor pursuant to 11 U.S.C. §§ 348 and 541.

II. Whether the court of appeals erred in holding that the ability to avoid and recover transfers pursuant to 11 U.S.C. §§ 547 and 550 is not property of the estate that can be sold by a chapter 7 trustee to maximize the value of the estate for creditors.

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OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 22-0359. The bankruptcy court decided in favor of the debtor on both issues. The disputes were certified for direct appeal to The Thirteenth Circuit Court of Appeals. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed on both issues.

STATEMENT OF JURISDICTION

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

STATEMENT OF FACTS

Eugene Clegg (the "Debtor"), a failed small business owner who mismanaged funds from creditors and thus could not withstand the challenges of the COVID-19 pandemic, filed for bankruptcy after defaulting on loans from his creditors. *R.* at 4. The Debtor is one of many individuals who were forced to resort to bankruptcy to pay back their creditors the funds they were rightly due following the pandemic.[1]

In 2016, five years after being granted 100% membership interest in The Final Cut, LLC ("Final Cut") by his mother, the Debtor sought a loan in the amount of $850,000 (the "Loan") from Eclipse Credit Union ("Eclipse"). *R.* at 5. The proceeds of the Loan were used to renovate the movie theater owned and operated by Final Cut. *Id.* Eclipse, a small, community-based financial institution, was granted first priority liens on Final Cut's real and personal property. *Id.* The Debtor executed an unconditional, unsecured personal guaranty in an unlimited amount as additional security for the Loan. *Id.*

The Debtor, a veteran himself, attempted to minimize the costs of the renovation by soliciting the assistance of other local veterans. *Id.* With the labor costs minimized, the Debtor completed renovations without exhausting the proceeds of the Loan. *Id.* Rather than using the remaining proceeds of the Loan to pay back Eclipse, the Debtor fraudulently transferred the remaining funds from the Loan to the local Veterans of Foreign Wars (the "VFW") in early 2017 in the amount of approximately $75,000. *Id.* The Debtor took such action, which violated the terms of the Loan, without notifying or seeking Eclipse's approval. *R.* at 7.

[1] Annual bankruptcy filings in 2021 totaled 413,616 nationwide. In 2020, there were 544,463 bankruptcy cases filed. John R. O'Keefe Jr., Roger P. Poorman, Justin M. Tuskan, *The Post-Covid Decline in Bankruptcy Filings*, Lawyers J., March 25 2022, at 19

Three years after finishing the renovations, the COVID-19 pandemic forced Final Cut to close its doors and cease operations for nearly a year. *R.* at 6. On September 8, 2020, the Debtor borrowed, on an unsecured basis, $50,000 from his mother, Pink, because of his lack of income from Final Cut. *Id.* After the theater reopened, business failed to rebound. *Id.* The Debtor incurred significant credit card debt and fell behind on his home mortgage serviced by Another Brick in the Wall Financial Corporation (the "Servicer"). *Id.* After several months without payment on his mortgage, the Servicer commenced foreclosure proceedings on the Debtor's home. *Id.*

The Debtor sought relief under chapter 13 of the Bankruptcy Code on December 8, 2021 (the "Petition Date"). *Id.* By filing under chapter 13, the Debtor hoped to save his home from being sold during the bankruptcy proceedings. *Id.* The forms filed at the outset of the bankruptcy proceedings disclosed that the Debtor had no equity in his home as of the Petition Date.[2] *R.* at 7. Additionally, the forms disclosed that the Debtor made payments equaling $20,000 to his mother, Pink, within one year of the Petition Date. *Id.* Following the Debtor's filing, he proposed a chapter 13 plan to make payments to creditors over a three-year period funded solely through future earnings derived from Final Cut. *Id.* The Debtor proposed to cure the prepetition arrears and make ongoing, continuing monthly payments to the Servicer with respect to the mortgage loan. *Id.*

It was during the meeting of the creditors that Eclipse first learned of the Debtor's transfer of $75,000 to VFW. *Id.* Its frustration with the Debtor's violation of the terms of the

[2] The Debtor stated the value of his home on Schedule A/B to be $350,000 based on an appraisal obtained before the Petition Date. *R.* at 6. The Debtor also identified a non-contingent, liquidated and undisputed secured debt to the Servicer in the amount of $320,000 on Schedule D. *Id.* Schedule E/F and Schedule H included a contingent and unliquidated unsecured debt in an unknown amount owed to Eclipse. *Id.* The Debtor also claimed a state law homestead exemption of $30,000 on Schedule C. *Id.*

Loan prompted Eclipse to commence an adversary proceeding seeking to have the debt related to the Loan declared non-dischargeable. *Id.*; *See* 11 U.S.C. § 523(a)(2)(A). Eclipse also objected to the plan as not being proposed in good faith but agreed to withdraw its objection in exchange for an estimated claim in the amount of $150,000, of which $25,000 was deemed non-dischargeable even in the event of conversion. *R.* at 8. The Debtor agreed to the terms for Eclipse to withdraw its objection, and the bankruptcy court approved the settlement between the parties. *Id.*

Following a separate objection by the chapter 13 trustee, the Debtor was forced to amend the chapter 13 plan to increase the aggregate payments to creditors by $20,000 over the applicable commitment period. *R.* at 7. The amendment ensured that creditors would not receive less than they would in a chapter 7 liquidation, as is required by 11 U.S.C. § 1325(a), because under chapter 7 proceedings, the preferential transfer of $20,000 to Pink would be recovered and distributed to creditors. *Id.* So long as the amended chapter 13 plan was followed, the trustee agreed not to avoid and recover the payments made to Pink. *R.* at 8; *See* 11 U.S.C. § 547. The bankruptcy court approved the amended plan, including the settlement with the chapter 13 trustee, on February 12, 2022. *Id.*

The Debtor made timely payments under the plan for eight months until the theater was permanently closed in 2022, at which point the Debtor stopped making payments under the chapter 13 plan, exposing the Debtor to outright dismissal of the chapter 13 case. *Id.* After Eclipse commenced foreclosure proceedings against Final Cut, the Debtor chose to convert to chapter 7 proceedings to avoid such dismissal. *Id.* Upon conversion, a chapter 7 trustee ("Trustee") was appointed to administer the estate and the Debtor filed conversion schedules and forms as required by the Code.[3] *R.* at 9.

[3] The Debtor's conversion schedules and other documents ascribed a value of $350,000 to his home, the preferential transfers to Pink, and an indebtedness of approximately $200,000 to Eclipse due to the deficiency with respect to his

Following the meeting of creditors, the Trustee commissioned an appraisal of the Debtor's home which confirmed that the non-exempt equity in it had increased by $100,000 since the Petition Date. *Id.* The Trustee began marketing the home for sale in accordance with their duty to "collect and reduce to money the property of the estate for which such trustee serves." 11 U.S.C. § 704(a)(1); *Id.* Eclipse, seeking to ensure they would receive funds they were owed, offered to purchase the home and avoidance claim against Pink for $470,000. *Id.* The Trustee, understanding that Eclipse's offer maximized the value of the assets for the benefit of the creditors of the estate, filed a motion (the "Sale Motion") to sell both the home and the alleged preference claim to Eclipse under 11 U.S.C. § 363(b). *Id.*

The Debtor objected to the Sale Motion on the grounds that (1) the post-petition, pre-conversion increase in the equity of his home should inure to the Debtor's benefit and not to the estate, and (2) the Trustee's statutory ability to avoid and recover transfers under 11 U.S.C. §§ 547 and 550 cannot be sold. *R.* at 10. The bankruptcy court erred in ruling in favor of the Debtor on both objections and denying the Sale Motion. *Id.* A split panel of the Thirteenth Circuit also erred in affirming the bankruptcy court's ruling. *Id.*

The Trustee timely appealed the court's ruling. *Id.* Upon the request of the parties, the disputes were certified for direct appeal to this court pursuant to 28 U.S.C. § 158(d)(2)(A). *Id.*

STANDARD OF REVIEW

The issue in front of the Court is an issue of law requiring a *de novo* standard of review. *See, e.g.*, *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). A *de novo* standard of review requires the reviewing court to resolve the issue with no deference to the lower court. *See, e.g.*, *Salve Regina Coll. v. Russell*, 499 U.S. 225, 226 (1991).

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guarantee of the Loan after foreclosure. *R.* at 9. The Debtor indicated that he intended to reaffirm the mortgage debt that he owed to the Servicer and reaffirmed his intention to remain in his home. *Id.*, *See* 11 U.S.C. § 524(c).

SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the Thirteenth Circuit Court of Appeals and hold that post-petition, pre-conversion increases in equity inure to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7 because the lower court's ruling is contrary to what the express language of the Bankruptcy Code requires.

The plain language of sections 348(f) and 541(a) mandates that property of the estate includes post-petition, pre-conversion increases in equity, both because of the broad interpretation of "property of the estate" and because a change in equity in the Debtor's property should not be seen as a separate interest from the property itself. Congress did not expressly limit "property of the estate" from including appreciation in the equity of an asset, as it did with many other interests it wanted to exclude from the bankruptcy estate, and therefore such a limitation should not be read in. As further persuasive support for overturning the Thirteenth Circuit's decision, chapter 7 practice requires that post-petition increases in equity inure to the benefit of the bankruptcy estate. Thus, cases converted from chapter 13 to chapter 7 should be treated the same and post-petition, pre-conversion increases in equity should belong to the bankruptcy estate.

A plain meaning interpretation of section 348(f) does not contradict other sections of the Code, nor does it directly conflict with the legislative history on the matter. Section 348(f)(2) addresses separate, after-acquired property and therefore is not rendered inoperative from the express language of section 348(f)(1). Similarly, section 1327(b) applies to cases under chapter 13 and does not address converted cases, and therefore is irrelevant to the issue at hand and does not create an absurd reading of the Code. Although section 522 and the corresponding snapshot rule may create a situation where the same property has different valuations under different

sections of the Code, such a result is not a senseless reading of the Code because differing valuations of property already occur when the circumstances require it. Finally, the legislative history addresses an issue that is admittedly similar, but not directly on point for the issue at hand. Therefore, the history is not persuasive enough to overcome the express language of the Code, which requires that post-petition, pre-conversion increases in equity inure to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7.

The Thirteenth Circuit's holding that avoidance claims are not property of the estate that can be sold by a chapter 7 trustee should also be reversed for the following reasons: property of the estate is intended to be broad and include prepetition interests like avoidance claims, trustees have a statutory duty to maximize the value of the estate while reducing administrative costs, and the Thirteenth Circuit's holding contradicts several other circuit courts across the country.
The ability to avoid and recover preferential transfers pursuant to sections 547 and 550 is property of the estate that can be sold by a chapter 7 trustee. The Thirteenth Circuit's narrow interpretation of the Bankruptcy Code neglects numerous persuasive circuit court decisions that directly contradict its holding. The Supreme Court has repeatedly held that "property of the estate" should be interpreted broadly, and that inchoate and contingent interests, like the avoidance claims before this Court, fall within that broad definition.

The Trustee is well within their rights to sell these avoidance claims to creditors, and doing so is in line with their statutory duty to maximize the value of the estate while minimizing the administrative costs of the bankruptcy proceedings. To hold otherwise would provide debtors with a 'get out of jail free card' when the estate does not have enough resources for trustees to pursue these claims, while depriving creditors from receiving assets they are rightfully entitled to. The Thirteenth Circuit relies on faulty logic while ignoring persuasive precedent from several

circuits across the country. To allow a trustee to sell avoidance claims promotes an effective and efficient bankruptcy process.

ARGUMENT

The Thirteenth Circuit Court's decision should be reversed because the Code and the policy behind it require that any post-petition, pre-conversion appreciation in equity in a debtor's property inure to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7. The Thirteenth Circuit's decision should also be reversed to reflect a growing nationwide consensus that avoidance claims are property of the estate that can be sold by a trustee to creditors to maximize the value of the estate while minimizing administrative costs in the chapter 7 proceeding.

I. The Code and the Policy Behind It Dictate that Any Post-Petition, Pre-Conversion Increase in Equity in a Debtor's Property Inures to the Bankruptcy Estate

The broad definition of "property of the estate," mandates that post-petition, pre-conversion increases in equity accrue to the bankruptcy estate upon conversion from chapter 13 to chapter 7, which is consistent with bankruptcy practice for cases that both start and end in chapter 7. The plain-meaning interpretation does not conflict with other sections of the Code and the legislative history on the matter, and therefore the plain-meaning interpretation should stand, and the Thirteenth Circuit's decision should be reversed.

A. The Plain Language of the Code Requires a Post-petition, Pre-conversion Increase in Equity Belong to the Bankruptcy Estate.

The inquiry into whether post-petition, pre-conversion increases in equity belong to the debtor or the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7, as with any case of statutory construction, must start by examining the Code itself. *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985). Sections 348(f)(1) and 541(a) control what is regarded as

property of the bankruptcy estate when a case is converted from chapter 13 to another chapter under the Code.

Section 348(f)(1) of the Code states that:

> When a case under chapter 13 of this title is converted to a case under another chapter under this title . . . property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion.

11 U.S.C. § 348(f)(1). Section 348(f)(1) must be read in conjunction with section 541(a). *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) ("Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . ."). Section 541(a) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Property of the estate also includes "proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case." 11 U.S.C. § 541(a)(6). It is no question that the Debtor's home was property of the estate as of the date of filing the petition and that the home remained in the Debtor's control on the date of conversion, therefore making it property of the bankruptcy estate in the converted case under these provisions. Similarly, sections 348(f)(1) and 541(a) require that any non-exempt increase in equity of the Debtor's property become property of the bankruptcy estate in a case converted from chapter 13 to chapter 7.[4]

i. The Plain Language of Sections 348(f)(1) and 541(a) Mandates that Property of the Bankruptcy Estate Includes Post-Petition, Pre-Conversion Increases in Equity

[4] The State of Moot permits debtors to claim a homestead exemption pursuant to 11 U.S.C. § 522(b).

An increase in the equity of a home, specifically one that results from market pressures rather than any action of the Debtor, is a "proceed, product, offspring, rent, or profit from property of the estate," 11 U.S.C. § 541(a)(6), and is therefore "property of the estate" under section 348(f)(1). The term "property of the estate" and the clarification of what that includes, namely "proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case," 11 U.S.C. § 541(a)(6), has been construed broadly. *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204 (1983). Under this broad construction, appreciation of an asset during a bankruptcy proceeding is seen as "property of the estate" because it is a proceed or offspring from property of the estate, and therefore inures to the benefit of the bankruptcy estate rather than the debtor upon conversion. 11 U.S.C. § 348(f)(1); *See In re Reed*, 940 F.2d 1317, 1323 (9th Cir. 1991) ("We interpret [section 541(a)(6)] to mean that appreciation [i]nures to the bankruptcy estate, not the debtor."); *In re Paolella*, 85 B.R. 974, 977 (Bankr. E.D. Pa. 1988) (holding that when an estate is sold, proceeds of the property of the estate, which "may include appreciation or be enhanced by other circumstances creating equity which occur prepetition," belongs to the estate); *In re Potter*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999) (holding that the inclusion of section 541(a)(6) in the Code suggests that an estate's interest in an asset includes the entirety of the asset by specifying that "proceeds, product, offspring, rents, or profits of or from property of the estate" are property of the bankruptcy estate) (citations omitted). Thus, in this case, the $100,000 increase in non-exempt equity in the Debtor's home since the petition date would inure to the benefit of the bankruptcy estate after conversion from chapter 13 to chapter 7.

If Congress intended to preclude appreciation in the value of an asset from being a part of the property of the bankruptcy estate, they would have said so explicitly as they did with the

other exceptions. *Matter of Castleman*, 75 F.4th 1052, 1057 (9th Cir. 2023) ("[I]n other instances where Congress wanted to exclude assets or certain interests of the debtor from the bankruptcy estate, it has done so with specificity."). Congress set forth specific exceptions to section 541(a)(1) in sections 541(b) and (c).[5] None of the exceptions set forth by Congress in these sections of the Code are applicable to the facts at hand. Congress also explicitly protected "earnings from services performed by an individual debtor after the commencement of the case" from becoming a part of the bankruptcy estate. 11 U.S.C. § 541(a)(6). This exception is inapplicable because the appreciation in the value of the home occurred solely because of a nationwide increase in home values rather than from any earnings of the Debtor in this case. Not falling under the exception in section 541(a)(6), nor the exceptions under sections 541(b) and (c), the appreciation in the value of the Debtor's property is a "proceed, product, offspring, rent, or profit from property of the estate" and therefore, must be seen as "property of the estate" under section 348(f)(1) and inure to the benefit of the bankruptcy estate upon conversion.

The plain language of the statute makes no mention of the value or equity in the property conveyed to the chapter 7 bankruptcy estate upon conversion of a case from chapter 13, and therefore property of the bankruptcy estate should not be limited in such a way. The Code clearly states that the bankruptcy estate in a converted case should consist of "*property of the estate,* as of the date of filing, that remains in the possession of or is under the control of the debtor on the date of conversion" (emphasis added). 11 U.S.C. § 348(f)(1)(A). The Code is thus silent on the value of or equity in the property of the estate as of the date of filing, and this limitation should not be read in. *In re Peter*, 309 B.R. 792, 795 (Bankr. D. Or. 2004). As further proof that the value of or equity in property should not be read into section 348(f)(1)(A) of the Code, Congress

[5] See Appendix I for the full list of exceptions falling under 11 U.S.C. § 541(b) and (c).

included the consideration of the value of the property in the next section of the Code, section 348(f)(1)(B). The section states, in pertinent part: [V]aluations 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). Congress explicitly restricted the use of property valuations from a chapter 13 case in a case converted to chapter 7. Although value and equity are different in nature, they are often two sides to the same coin, as is the case here (*i.e.*, the increased value in the Debtor's home led to an increase in equity in the home). Congress's silence on the value of or equity in the property of the estate as of the date of filing suggests that section 348(f)(1)(A) should not include such a limitation, and instead, property of the estate should include the entirety of that property, including any post-petition, pre-conversion increase in equity. The plain language of the Code mandates that the post-petition $100,000 increase in non-exempt equity in the Debtor's home be treated as property of the bankruptcy estate after conversion from chapter 13 to chapter 7.

ii. Equity in a Debtor's Property is Not a Separate, After-acquired Property Interest, and Therefore Must Inure to the Benefit of the Bankruptcy Estate Along with the Home Itself.

Regardless of whether the post-petition, pre-conversion appreciation in equity in a debtor's home is considered "proceeds, product, offspring, rents, or profits of or from property of the estate," under section 541(a)(6), courts have repeatedly ruled that the equity of a home cannot be seen as separate, after-acquired property for purposes of the bankruptcy estate. *In re Goins*, 539 B.R. 510 (Bankr. E.D. Va. 2015) ("[T]he equity attributable to the post-petition appreciation of the property is not separate, after-acquired property . . . . The equity is inseparable from the real estate, which was always property of the estate under Section 541(a)."); *In re Adams*, 641 B.R. 147, 151 (Bankr. W.D. Mich. 2022) ("The court regards the value of any

property as an attribute or incident of the property, not a separate right or interest in the property.") (citations omitted); *In re Goetz*, 647 B.R. 412 (Bankr. W.D. Mo. 2022) ("[The] broad definition of 'property of the estate' in § 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 the asset has on that date."); *In re Potter*, 228 B.R. at 424 ("Nothing in Section 541 suggests that the estate's interest is anything less than the entire asset, including any changes in its value which might occur after the date of filing."). Hence, because the Debtor's home in this case is certainly a part of the bankruptcy estate upon conversion from chapter 13 to chapter 7, the $100,000 post-petition increase in equity must also be a part of the bankruptcy estate—the two cannot be separated.

Although courts and scholars have determined that "proceeds" from the sale of a house should be seen as a wholly different property interest from the home itself, these interpretations rest on the fact that the house no longer "remain[ed] in the possession of or [was] under the control of the debtor on the date of conversion." 11 U.S.C. § 348(f)(1); *see In re Barrera*, 22 F.4th 1217, 1223 (10th Cir. 2022); David Gray Carlson, *The Chapter 13 Estate and Its Discontents,* 17 Am. Bankr. Inst. L. Rev. 233 (2009); *contra In re Grein*, 435 B.R. 695, 702 (Bankr. D. Colo. 2010). Therefore, such interpretations do not directly address the case at bar. In fact, the Tenth Circuit in *Barrera* specifically stated that its decision should not be construed as relating to post-petition, pre-conversion appreciation in the value of a house:

> [W]e need not decide whether appreciation in a house still owned by debtors at the time of conversion is property of the debtors or the estate . . . . We are dealing with *proceeds* from the sale of the house, not the house itself. Thus, our conclusion relies only on whether cash remaining from a post-petition, pre-conversion real property sale is included in the Chapter 7 estate upon conversion.

In Re Barrera, 22 F.4th at 1223 n.1 (emphasis in original). Therefore, the fact that proceeds from a sale are often treated as a separate property interest has no bearing on whether post-petition, pre-conversion appreciation should be seen as a separate property interest. Rather, the plain meaning interpretation of Section 348(f)(1) and previous court decisions show that appreciation is not a wholly separate property interest and therefore post-petition, pre-conversion increases in equity should inure to the benefit of the bankruptcy estate.

iii. Chapter 7 Practice, which Requires Post-Petition Appreciation Benefit the Bankruptcy Estate, Should Inform the Interpretation of Chapter 13

The conclusion that post-petition, pre-conversion increases in equity inure to the benefit of the bankruptcy estate in a case converted from chapter 13 to chapter 7 is consistent with the conclusion that has been reached in cases that both started and ended in chapter 7. In the context of chapter 7, a bankruptcy estate is created and consists of all "legal or equitable interests of the debtor in property as of the commencement of the case," 11 U.S.C. § 541(a)(1), which does not include post-petition assets of the debtor. *In re Ludkowski*, 587 B.R. 330, 339 (Bankr. N.D. Ill. 2018). Nevertheless, courts in chapter 7 cases have consistently determined that post-petition appreciation in the equity of a debtor's property inures to the bankruptcy estate. *See, e.g.*, *Wilson v. Rigby*, 909 F.3d 306, 309 (9th Cir. 2018); *Coslow v. Reisz,* 811 F. App'x 980, 983 (6th Cir. 2020); *In re Hyman*, 967 F.2d 1316, 1321 (9th Cir. 1992); *In re Reed*, 940 F.2d 1317, 1323 (9th Cir. 1991). Although these cases do not involve section 348(f)(1) and its operation in converted cases, the conclusion that post-petition appreciation in the equity of a debtor's property inures to the bankruptcy estate is persuasive in the interpretation of section 348(f)(1). Just as post-petition appreciation in the equity of a debtor's property is not seen as a separate post-petition asset in chapter 7 cases, similarly a post-petition, pre-conversion increase in equity should be seen as inseparable from the home itself in chapter 7 cases that are converted from chapter 13. Because

the Debtor's home in this case is inarguably part of the bankruptcy estate, the post-petition, pre-conversion increase in equity also inures to the benefit of the bankruptcy estate because the two are inseparable.

The clarity provided by the Code on the issue at bar makes an inquiry into the legislative history or other practice unnecessary and outside of the authority of the Court. *See United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) ("[The language of the statute itself] is also where the inquiry should end, for where, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms.") (citations omitted). Thus, in accordance with the plain meaning of the Code, the post-petition, pre-conversion increase in equity in the Debtor's home must inure to the bankruptcy estate upon conversion of the case.

B. Other Provisions of the Code Do Not Preclude the Above Interpretation of Section 348(f)(1), so the Plain Meaning Interpretation Should Stand

The Thirteenth Circuit has improperly called on other sections of the Code to invalidate the above interpretation of sections 348(f)(1) and 541(a). While the plain meaning construction of a statute is generally conclusive and where the analysis ends, if such a meaning renders another part of the same statutory scheme absurd, such a construction should not be followed. *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004) ("[W]hen the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms."). This does not apply here because a plain-meaning analysis of sections 348(f)(1) and 541(a) does not create an absurd reading of other sections of the Code.

i. The Existence of Section 348(f)(2) Does Not Conflict with the Plain Meaning of Section 348(f)(1).

Section 348(f)(2) applies to separate, after-acquired property—not equity in property that already exists at the time of the petition—and therefore does not conflict with the plain-meaning interpretation of section 348(f)(1). Section 348(f)(2) differentiates between those debtors who

convert from a chapter 13 case to a chapter 7 case in bad faith from those who do so in good faith. The section states, "If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion." 11 U.S.C. § 348(f)(2). Such a distinction is necessary to show that *separate* property acquired post-petition, but pre-conversion would become a part of the bankruptcy estate only if the debtor acted *in bad faith*. *Matter of Castleman*, 75 F.4th at 1057-58. Because equity should not be seen as separate, after-acquired property for bankruptcy estate purposes, both sections 348(f)(1) and 348(f)(2) are necessary to distinguish between good faith and bad faith conversions. The court in *Goetz* addressed this issue when, following conversion of the bankruptcy case from chapter 13 to chapter 7, the value of the debtor's residence increased in value such that liquidation of the home would have been profitable to the estate. *In re Goetz*, 651 B.R. 292, 295 (B.A.P. 8th Cir. 2023). Prior to the conversion and on the petition date, liquidation of the home would not have produced any proceeds for the bankruptcy estate to distribute to creditors. *Id.* The court held that a post-petition, pre-conversion increase in equity accrued to the bankruptcy estate upon conversion of the case from chapter 13 to chapter 7. *Id.* At 296. In coming to its conclusion, the court noted that the existence of section 348(f)(2) was irrelevant: "The bad faith provision neither hinders nor advances [the debtor's] claim to the equity increase in her residence. It simply does not apply." *Id.* At 299. This Court should follow the reasoning of the *Goetz* court and adopt the plain-meaning interpretation of section 348(1), which does not render inconsequential the distinction between bad faith and good faith conversions under sections 348(f)(1) and 348(f)(2)

ii. Section 1327(b) Does Not Conflict with the Plain Meaning Interpretation of Section 348(f)(1) and a Decision to the Contrary Would Create an Absurd Reading of the Code.

Section 1327(b) of the code does not affect the plain meaning interpretation of section 348(f)(1). Section 1327(b) states, "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). While it is true that under chapter 13, the property of the estate is vested in the debtor after a plan is confirmed by the court, the more specific section of the Code governing conversions (*i.e., s*ection 348(f)(1)) must take precedence over one that addresses property of the estate only as it relates to chapter 13 *(i.e*., section 1327(b)). *Morales v. Trans World Airlines, Inc*., 504 U.S. 374, 384-85 (1992) ("[I]t is a commonplace of statutory construction that the specific governs the general. . . .") (citation omitted). The language of section 348(f)(1) would therefore mandate that the Debtor's property and any increase in equity be property of the bankruptcy estate upon conversion. Additionally, chapter 13 provisions are not relevant once a case is converted to chapter 7. *Harris v. Viegelahn*, 575 U.S. 510, 520 (2015) ("When a debtor exercises his statutory right to convert, the case is placed under Chapter 7's governance, and no Chapter 13 provision holds sway."). Therefore, because section 1327(b) is not relevant once a case is converted to chapter 13 and because methods of statutory construction require that section 348(f)(1) take precedence, the existence of section 1327(b) does not invalidate the above plain-meaning interpretation of section 348(f)(1).

Further, upon conversion, section 348(f)(1) revests to the bankruptcy estate property that would have been vested in the debtor under a chapter 13 case. *See Matter of Castleman*, 75 F.4th at 1058 ("[T]he plain language of § 348(f)(1) dictates that any property of the estate at the time of the original filing that is still in debtor's possession at the time of conversion *once again*

becomes part of the bankruptcy estate, and . . . that any change in the value of such an asset is also part of that estate.") (emphasis added). Because equity in a home is the same property interest as the home itself, and because the home was a part of the bankruptcy estate at the time of the petition, the home would be revested to the estate upon conversion, and therefore any change in equity must then revest as well.

The argument that section 1327(b) changes the interpretation of section 348(f)(1) is further diminished by the confusing rule that would be created from the interpretation that property vested in the debtor under section 1327(b) is not revested in the bankruptcy estate upon conversion. The court in *Matter of Castleman* summarized this perplexity well:

> Under this reasoning, equity increases from the time of the initial filing up until plan confirmation would inure to the estate, then from time of confirmation until conversion would vest in the debtor, and finally upon conversion, any additional post-conversion changes would benefit the estate.

Id. at 1057. It is unlikely that Congress would adopt such a confusing rule without explicitly claiming to do so. Thus, because a reading of section 1327(b) where the property vested in the debtor in a chapter 13 case is absolute and does not revest to the bankruptcy estate upon conversion would lead to an overly complicated rule, such an interpretation should not stand. Rather, a more prudent interpretation is that property and any equity in it that was vested in the debtor under section 1327(b) revests to the bankruptcy estate upon conversion, which can stand in harmony with section 348(f)(1).

iii. The Snapshot Rule Does Not Bar the Plain-Meaning Interpretation of Section 348(f)(1) Because Valuation Under the Code Changes with the Circumstances

The existence of section 522 and the coinciding "snapshot rule" do not hinder the above construction of section 348(f)(1). Section 522(a)(2) states that "'value' means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the

estate after such date, as of the date such property becomes property of the estate."11 U.S.C. § 522(a)(2). The rule specifies that for exemptions, the value of an asset should be frozen in time as of the date of filing the petition or the date that the property becomes a part of the estate. Conversely, a plain-meaning construction of section 348(f)(1) requires post-petition, pre-conversion increases in equity inure to the bankruptcy estate. Although this could result in differing valuations for the same property (*e.g.*, one valuation for the purpose of an exemption and a different valuation for the purpose of conversion), such a result already occurs under the Code. For instance, courts have interpreted section 554 to require a property valuation at the time of an abandonment motion rather than the valuation at the time of the case's commencement. *See In re Goetz*, 651 B.R. at 301 ("The use of present tense in the text of section 554 suggests courts must consider the current value or benefits of the property sought to be abandoned"); *Coslow v. Reisz*, 811 F. App'x at 982. The Code clearly requires a different valuation of property regarding abandonment than it does for exemptions. Such a difference does not render the Code nonsensical, but rather recognizes the need for different valuation practices depending on the circumstances. *In re Adams*, 641 B.R. at 152 ("The Bankruptcy Code addresses the valuation of estate property for various purposes and at different times during a case in sections other than § 541."). Thus, the existence of section 522 and the snapshot rule do not compel a different interpretation of section 348(f)(1) than is mandated by the plain language of the Code.

The plain language of section 348(f)(1) would not lead to an absurd reading of the Code, nor does it conflict with section 348(f)(2), 1327(b), or 522. Thus, the plain language of section 348(f)(1) should be followed. *Lamie v. United States Tr.*, 540 U.S. at 534.

C. The Legislative History is Not Persuasive Because it is Not Contrary to The Plain-Meaning Interpretation of the Code.

If the plain-meaning interpretation of section 348(f)(1) is rejected, legislative history should be reviewed to determine the application of the statute. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. at 242 ("The plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters'") (citations omitted); *Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597, 610 (1991) ("[C]ommon sense suggests that inquiry benefits from reviewing additional information rather than ignoring it."). In this case, however, the legislative history does not persuade a construction of section 348(f)(1) that is contrary to the plain-meaning construction above.

The relevant legislative history reads as follows:

> This amendment would clarify the Code to resolve a split in the case law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7. The problem arises because in chapter 13 . . . , any property acquired after the petition becomes property of the estate, at least until confirmation of a plan. Some courts have held that if the case is converted, all of this after-acquired property becomes part of the estate in the converted chapter 7 case, even though the statutory provisions making it property of the estate do not apply to chapter 7. Other courts have held that the property of the estate in a converted case is the property the debtor had when the original chapter 13 petition was filed.
>
> This amendment overrules the holding in cases such as *Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991) and adopts the reasoning of *In re Bobroff*, 766 F.2d 797 (3d Cir. 1985). However, it also gives the court discretion, in a case in which the debtor has abused the right to convert and converted in bad faith, to order that all property held at the time of conversion shall constitute property of the estate in the converted case.

H.R. REP. NO. 103-835, at 57 (1994), as reprinted in 1994 U.S.C.C.A.N. 3340, 3366.

The legislature clarified the above discussion with an example:

> These later courts have noted that to hold otherwise would create a serious disincentive to chapter 13 filings. For example, a debtor who had $10,000 equity in a home at the beginning of the case, in a State with a $10,000 homestead exemption, would have to be counseled concerning the risk that after he or she paid off a

> $10,000 second mortgage in the chapter 13 case, creating $10,000 in equity, there would be a risk that the home could be lost if the case were converted to chapter 7 (which can occur involuntarily). If all the debtor's property at the time of conversion is property of the chapter 7 estate, the trustee would sell the home, to realize the $10,000 in equity for the unsecured creditors and the debtor would lose the home.

Id.

Although the legislative history is informative as to the purpose of enacting the amendment, it does not persuade a different interpretation of section 348(f)(1) because it is not "demonstrably at odds" with the Code. Section 348(f) differentiates between good faith and bad faith conversions, dictating that with a bad faith conversion, post-petition, pre-conversion property inures to the benefit of the bankruptcy estate, whereas such property would inure to the benefit of the debtor when converting in good faith. This differentiation addresses the exact concern discussed in the legislative history: that debtors who filed under chapter 13 would have to forfeit post-petition property to the bankruptcy estate where similarly situated debtors who filed under chapter 7 would not. However, both the Code and the legislative history only apply to separate property acquired post-petition. Since equity is not separate, after-acquired property and should instead be seen as a part of the home itself, the legislative history does not apply to the case at hand. The purpose of adopting the amendment cited in the legislative history and the plain-meaning construction of section 348(f)(1) as it applies in this case can stand in harmony, and therefore the legislative history does not persuade a different outcome.

The example included in the legislative history is not the issue before the Court today, and therefore should not be used to inform the Court's decision on how section 348(f)(1) should be interpreted in this context. The example in the House Reports addresses whether an increase in equity due to a *debtor's payments* during the chapter 13 case inures to the benefit of the debtor. *Id.* Conversely, the case in front of the Court today focuses on an increase in equity from

market conditions and whether such appreciation inures to the benefit of the debtor or the bankruptcy estate. The scenario discussed in the House Reports may be subject to a different interpretation than the issue in front of the Court today, but that is an issue to be decided on another day when it is in front of the Court. *Id.* Additionally, section 348(f)(1) does not address the issue specified in the House Reports, and to read in such an interpretation would be a stretch of the Court's responsibility to enforce the statute as written. *Lamie v. United States Tr.*, 540 U.S. at 534 ("[W]hen a statute's language is plain, the sole function of the courts is to enforce it according to its terms.").

If Congress wanted to include each of the considerations discussed in the legislative history, they could have done so, and their silence on many of the issues is likely a result of the nature of the democratic process. The court in *In re Goetz* summarized this idea well:

> Congress's failure to address the example included in the legislative history does not mean this omission was inadvertent. Recognizing that statutes are often the result of compromise, we decline to accept [the] invitation to assume that Congress intended that debtors may retain postpetition preconversion market appreciation and equity resulting from debt payments without language articulating this intent.

651 B.R. at 299. If the above interpretation is not what Congress intended, they should amend the Code to clarify their intent. However, the only duty of this Court is to enforce the statute as written. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. at 24.

D. A Holding Mandating That Post-Petition, Pre-Conversion Increases in Equity Inure to the Benefit of the Debtor Could Cause Adverse Results in the Bankruptcy System

A decision affirming the holding of the Thirteenth Circuit Court of Appeals would cause unfavorable outcomes in the bankruptcy system for debtors and creditors alike. For debtors, if post-petition, pre-conversion increases in equity of a home benefit the debtor, then the logical implication is that depreciation must also be considered property of the debtor. *In Re Hyman*,

967 F.2d at 1321. This result would be an absurd interpretation of the code. First, debtors would no longer be entitled to their full homestead exemption. *Id.* Second, such a result would be contrary to the purpose of the bankruptcy code: to "grant a 'fresh start' to debtors." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (quoting *Grogan v. Garner*, 498 U.S. 279, 286 (1991)). For creditors, if post-petition, pre-conversion increases in equity inured to the benefit of the debtor, they might be less likely to recover funds they are rightfully entitled to. Such recovery would be less likely because dishonest property appraisals would occur, where a debtor would undervalue their home in a chapter 13 case and wait for a plan to be confirmed before converting to chapter 7, where any increase in equity would be captured by the debtor instead of the bankruptcy estate. *Cf. In re Jackson*, 317 B.R. 511, 516 (Bankr. N.D. Ill. 2004) ("[S]avvy debtors may purposely underestimate the value of real property on their schedules, stay in chapter 13 long enough to confirm a plan, and then convert to chapter 7 to capture the 'appreciation'"). A decision affirming the lower court's holding would be problematic for debtors and creditors, so the plain meaning interpretation should be adopted.

Overall, the plain meaning of the Code dictates that 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. Such an interpretation does not create an absurd result when read with other sections of the Code, and the legislative history does not persuade a result to the contrary. Thus, the plain meaning interpretation should be adopted by this Court.

II. <u>A Practical Interpretation of the Code Dictates That Preference Actions are Property of the Estate Which Can Be Sold by the Trustee to Maximize the Value of the Estate</u>

The Trustee is well within their rights under chapter 7 proceedings to sell Eclipse a preference cause of action against Pink. The Thirteenth Circuit Court of Appeals' narrow interpretation of the Code fails to recognize that preference actions are property of the estate that can be sold by a trustee in chapter 7 proceedings and neglects several other applicable circuit court decisions that contradict its faulty conclusion. The power of a chapter 7 trustee to sell preference actions has a long history in bankruptcy proceedings and promotes an efficient bankruptcy process consistent with the goals of the Bankruptcy Code.

A. The Broad Interpretation of Section 541 Recognizes Preference Actions as Property of the Estate Which Leads to the Conclusion That the Actions Can Be Sold

Under section 547(b), trustees of an estate may avoid any transfer of an interest in property of the debtor made within 90 days, or within one year if the transfer is made to an insider, as is the case here, before the petition date. 11 U.S.C. § 547(b). Also known as "claw back claims" or "preference actions," these actions undo transactions made prior to the filing of a bankruptcy petition and effectively claw back assets into the estate. Correspondingly, section 550 allows a trustee of an estate to "recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property," which can then be shared among creditors. 11 U.S.C. § 550(a). Any actual or potential claims or causes of action arising under sections 547 and 550 of the Bankruptcy Code are considered chapter 5 causes of action. These avoidance claims support the goals of the bankruptcy system by ensuring that no creditors are favored in the distribution of assets, that debtors cannot fraudulently shield assets from the bankruptcy proceedings by transferring to a third party, and to prevent creditors "from racing to the courthouse to dismember the debtor during his slide into bankruptcy." *Union Bank v. Wolas*, 502 U.S. 151, 160 (1991). Section 547(c) provides restrictions on which transactions can be avoided.

Most notably for the case at bar, transfers made in service of a debt incurred in the ordinary course of business of the debtor and transferee may not be avoided. 11 U.S.C. § 547(c)(2).

Here, the Debtor's transfer of $20,000 to his mother was not in the ordinary course of business and could be seen as a fraudulent transfer of funds because it shields the funds from the bankruptcy proceedings. Thus, the funds can be avoided and recovered for the benefit of the bankruptcy estate. This Court should find that the funds transferred to the Debtor's mother are not only avoidable and recoverable by the chapter 7 Trustee, but also by a third party, which in this case was the creditor Eclipse, by allowing the Trustee to sell the avoidance claim to them. To do so, this Court must first determine that preference actions are property of the estate, which the Code then permits a trustee to sell for the benefit of the creditors. *See* 11 U.S.C. § 363. While various courts have adopted differing interpretations on whether preference actions are property of the estate, an increasing consensus is forming that they are property of the estate that can be sold by the trustee. *See In re Simply Essentials, LLC*, 78 F.4th 1006, 1010 (8th Cir. 2023); *Silverman v. Birdsell*, 796 Fed. App'x 935, 937 (9th Cir. 2020); *In re Wilton Armetale Inc.*, 968 F.3d 273, 285 (3rd. Cir. 2020); *In re Pursuit Cap. Mgmt.*, LLC, 595 B.R. 631, 640 (Bankr. D. Del. 2018); *In re Moore*, F.3d 253, 262 (5th Cir. 2010); *In re Ontos, Inc*, 478 F.3d 427, 431 (1st Cir. 2007); *Nat'l Tax Credit Partners LP v. Havlik*, 20 F.3d 705, 707 (7th Cir. 1994). This Court should adopt the consensus of the Eighth, Ninth, Third, Fifth, First, and Seventh Circuits and hold that preference actions are property of the estate and thus can be sold.

i. The Code and Corresponding Interpretations Dictate That Causes of Action, Which Encompasses Preference Actions, Are Property of the Estate

As noted above, section 541(a) includes as property of the estate "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). The Supreme Court has held that property of the estate under 11 U.S.C. § 541(a) should be

interpreted broadly. *See Patterson v. Shumate*, 504 U.S. 753, 757 (1992). Further, the legislative history and reports regarding the adoption of the Code provide that the scope of "property of the estate" is broad. *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204–05 (1983) ("The House and Senate Reports on the Bankruptcy Code indicate that § 541(a)(1)'s scope is broad"); H.R.Rep. No. 95–595, at 549 (1977) (describes the scope of a debtor's estate as "all embracing"). The broad interpretation of section 541(a) lends itself to the inclusion of preference actions as property of the estate.

Various courts have affirmed the inclusion of causes of action, which would include preference actions, in the property of the estate. *See e.g.*, *In re Senior Cottages of Am., LLC*, 482 F.3d 997, 1001 (8th Cir. 2007) (holding that causes of action are interests in property and therefore included in the estate); *Parker v. Goodman*, 499 F.3d 616, 624 (6th Cir. 2007) (citation omitted) (holding that causes of action constitute property of the estate because they are a "legal and equitable interest"). The determination that preference actions are property of the estate is even more clear in light of the fact that the Supreme Court has explicitly stated that chapter 5 avoidance claims are causes of action and would thus fall into property of the estate. *See, e.g.*, *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53–54 (1989) (holding that the right of a trustee to avoid a fraudulent transfer, another type of chapter 5 transfer, is a "statutory cause of action"); *United States v. Nordic Vill. Inc.*, 503 U.S. 30, 37 (1992) (finding that "the right to recover a postpetition transfer under § 550 is clearly a "claim" (defined in § 101(4)(A)) and is "property of the estate" (defined in § 541(a)(3))"). Thus, various interpretations of the Code have mandated that preference actions be considered property of the estate.

Additional support for our position can be found in the Code. Section 926(a) states, "[i]f the debtor refuses to pursue a *cause of action* under section 544, 545, 547, 548, 549(a), or 550 of

this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action" (emphasis added). 11 U.S.C. § 926(a). The Code's unambiguous language refers to the power of avoidance under section 547 as a cause of action, and thus property of the estate. *In re Senior Cottages of Am., LLC*, 482 F.3d 997, 1001 (8th Cir. 2007). Further, section 101(5) defines the term "claim" in bankruptcy proceedings to include the right to payment, "whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5). It follows that any right to payment, such as a preference action, is a claim that falls within the property of the estate. Therefore, the Code dictates that preference actions be considered property of the estate.

ii. A Recent Eighth Circuit Opinion That Addresses the Exact Issue at Bar is Persuasive

The Eighth Circuit recently affirmed a trustee's right to sell preference claims. *In re Simply Essentials LLC.*, 78 F.4th 1006, 1010 (8th Cir. 2023). In that case, the chapter 7 trustee moved to compromise and sell property of the debtor free and clear of liens. The Eighth Circuit reiterated that avoidance actions are property of the estate and built off that assertion by arguing that the trustee has a fiduciary duty to maximize the estate for the creditors, including by selling the avoidance actions. *In re Simply Essentials, LLC*, 78 F.4th at 1010 ("Our 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 *Simply Essentials*, the chapter 7 trustee lacked the funds to pursue the causes of action, and they sought to sell the right to pursue the claims to a creditor with approval of the court. This is in line with a trustee's statutory duty to minimize administrative costs during the bankruptcy proceedings under section 704. *See* 11 U.S.C. § 704(a)(1). The Thirteenth Circuit finds this reasoning of *Simply Essentials* strained for three reasons: the Debtor no longer has interest in the

funds transferred to Pink, the Trustee's avoidance powers themselves are not property of the estate, and the Debtor would not need to use section 550(a) to recover the funds, as the Trustee could compel turnover under section 542(a).

The Thirteenth Circuit's analysis of *Simply Essentials* is flawed. First, the debtor retains interest in the funds because section 541(a) is broad and includes prepetition transfers. The Supreme Court's held that "property of the estate includes inchoate or contingent interests held by the debtor prior to filing of bankruptcy." *Segal v. Rochelle,* 382 U.S. 375, 379 (1966). An avoidance claim is, in its nature, a contingent interest because the prepetition transfer may later be recovered for the benefit of the estate. *See* 11 U.S.C. 547(b). Thus, the Debtor retains a contingent interest in the funds transferred to his mother, which makes them property of the estate.

Second, the Trustee's avoidance powers themselves are property of the estate as other circuits across the country have already held. See *In re Moore*, 608 F.3d 253, 262 (5th Cir. 2010) ("We conclude, therefore, that the fraudulent-transfer claims are property of the estate under § 541(a)(1). . . ."); *In re Ontos, Inc.*, 478 F.3d at 431 ("The Bankruptcy Code broadly defines the property of the estate to be comprised of all 'legal or equitable interests of the debtor in property as of the commencement of the case.' It is well established that a claim for fraudulent conveyance is included within this type of property."); *In re Moore,* 608 F.3d 253, 259 (5th Cir. 2010) ("Thus, under our precedent, the Texas fraudulent-conveyance actions are property of the estate under § 541(a)(1) that the trustee may sell to Cradle."). These Circuits have agreed that section 541(a) was intended to be interpreted broadly to include causes of action related to prepetition interests, including avoidance claims.

Third, section 542(a) is not be the proper avenue to recover the prepetition transfer of funds, as the Thirteenth Circuit asserts, because section 542(a) deals with property that belongs to the estate separate from avoidance actions. Section 542(a) states:

> [A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. §542(a). Section 550 is fundamentally different from section 542, in that an avoidance action, under the former, is a claim for funds that may potentially bring value to the estate. Section 542(a) pertains to property that is in present control of an individual directly tied to the estate, whereas avoidance actions are causes of action to potentially recover funds that belong to the estate. With an avoidance action, there is an inherent risk in a creditor seeking to purchase the action under section 550 because they are not guaranteed to recover more funds than they otherwise would. The creditor is purchasing the right to pursue the avoidance claim as enumerated in section 550. Since a cause of action is distinct from the property enumerated in section 542(a), section 550 remains the proper avenue for the Trustee to sell the avoidance claim to Eclipse.

iii. An Interpretation That Preference Actions are Property of the Estate is Bolstered by Its Consistency with the Rest of the Code

Preference actions being property of the estate that can be sold is consistent with a trustee's statutory duty to minimize expenses and maximize the value of the estate. A trustee has a 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." 11 U.S.C. § 704(a)(1). To meet the goal of maximizing the value of the estate while reducing costs, trustees have the ability to sell property of the estate with court approval under 11

U.S.C. § 363(b). In determining whether to grant approval, the bankruptcy court will determine whether the action benefits the estate. By combining these sections of the Bankruptcy Code, if preference claims are property of the estate, then trustees have a duty under section 704(a)(1) to reduce the claim to money and is authorized to sell it subject to court approval pursuant to section 363(b)(1). So long as the court holds that the actions benefit the estate, the Trustee's sale of the avoidance claim does not conflict with other sections of the Bankruptcy Code. Therefore, because preference actions are property of the estate, the ability of a trustee to sell the claim is consistent with their overall duty to the estate.

B. The Thirteenth Circuit's Interpretation of the Code is Based on Mistaken Assertions and Should Therefore Be Reversed

The lower court's decision relies on faulty precedent cases and a narrow interpretation of the Code to reach its conclusion. Thus, the argument is unpersuasive, and its holding should be reversed.

i. The Thirteenth Circuit's Narrow Interpretation of the Code is Contrary to Well-Settled Principles of Bankruptcy Law

The Thirteenth Circuit relies on a strict interpretation of 11 U.S.C. § 541, and its silence on preference actions, to argue that preference actions are not property of the estate, however this assertion is incorrect. Although section 541(a) does not include a specific cross reference to section 547, such an omission does not mean Congress intended to omit causes of action from being property of the estate. *United States v. Whiting Pools, Inc.*, 462 U.S. at 203 (holding section 541(a) is a "definition of what is included in the estate, rather than . . . a limitation"). When Congress intended to omit certain interests from being property of the estate, they did so with specificity. *Matter of Castleman*, 75 F.4th at 1057 ("in other instances where Congress wanted to exclude assets or certain interests of the debtor from the bankruptcy estate, it has done

so with specificity"). As was the case with the first issue of this appeal, the exceptions set forth in sections 541(b) and (c) do not apply to the facts at hand, and therefore an additional exception should not be read in to exclude preference actions from being property of the estate.[6]

The Thirteenth Circuit also cites to *Lamie v. United States Trustee*, 540 U.S. at 534 to argue that the plain meaning of the text, and nothing further, should guide this decision, but the passage they cite provides the trap into which the Thirteenth Circuit falls. In *Lamie*, the Court held that "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Id.* Here, to hold that a chapter 7 trustee is unable to transfer avoidance claims would lead to absurd results. Where creditors would be unable to recover debts simply because the estate does not have the funds necessary to pursue these claims or the trustee is unwilling to pursue such claims herself, the avoidance claims, even though valid, would not be pursued. This absurd result should not be adopted, and instead section 541(a)(1) should be interpreted broadly to include preference actions as property of the estate.

ii. The Lower Court's Use of Precedent is Flawed and Neglects Persuasive Authorities.

The lower court, relying on *Hartford*, mistakenly argues that preference actions are a legal and equitable interest of the trustee, separate from the property of the estate, and in doing so neglects persuasive authority governing the issue. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). Preference actions are legal and equitable interest of the estate, not the trustee personally. *See In re Simply Essentials, LLC,* 78 F.4th 1006, 1008 (8th Cir. 2023) ("Whether the avoidance action is brought by the trustee or by a creditor, the action is brought for the benefit of the estate and therefore belongs to the estate."); *Canadian Pac. Forest*

[6] See Appendix I for the full list of exceptions falling under 11 U.S.C. § 541(b) and (c).

Prods. Ltd. v. J.D. Irving, Ltd., 66 F.3d 1436, 1442 (6th Cir. 1995) (holding that "a creditor may have standing to file an avoidance action if the bankruptcy court determines that certain conditions exist and certain prerequisites are met," which precludes the interpretation that chapter 5 actions are an interest of the trustee only). The lower court's contention that preference actions are an interest owned by the trustee rather than property of the estate is unsupported by the Code and cases interpreting it.

Further, the majority of the Thirteenth Circuit incorrectly relies on *In re Clements Manufacturing Liquidation Co., LLC*, 521 B.R. 231 (Bankr. E.D. Mich. 2014) and *In re Cybergenics Corp.*, 226 F.3d 237 (3d Cir. 2000) to cast doubt on *In re Simply Essentials, LLC*. A more recent case before the Bankruptcy Court in Delaware, *In re Pursuit Capital Management LLC*, addresses the issues in *Cybergenics*. 595 B.R. 631 (Bankr. D. Del. 2018). Contrary to the lower court's interpretation, the Third Circuit did not determine whether avoidance actions are property of the estate that can be sold. *Id. at 656* ("As set forth above, *Cybergenics I* did not decide either of these matters as the agreement at issue did not purport to sell either."); *see also In re Wilton Armetale, Inc.*, 968 F.3d 273, 285 (3d Cir. 2020) ("In any event, the value of *Cybergenics* in the present setting is undercut by a subsequent Third Circuit opinion which stressed '*Cybergenics* does not hold that trustees cannot transfer causes of action."). The court in *Clements* addressed a separate issue of whether a chapter 7 trustee could win at summary judgment on a fraudulent transfer claim for a series of complex corporate transactions. *In re Clements Mfg. Liquidation Co., LLC*, 521 B.R. at 244. Here, the Debtor did not receive any additional value from his transfer to Pink, nor is the trustee seeking a summary judgment motion. Therefore, *Clements* should not be held to be persuasive to the issues at hand.

iii. The Thirteenth Circuit Misinterprets Hartford Underwriters by Arguing That the Trustee is the Only Party Who Can Pursue Avoidance Claims.

The lower court errs by arguing that the trustee is the only party who can pursue these claims based on the Supreme Court's holding in *Hartford Underwriters*, and therefore the trustee cannot sell her avoidance powers because Eclipse would not be able to use them. 530 U.S. at 6 ("The question thus becomes whether it is a proper inference that the trustee is the only party empowered to invoke the provision. We have little difficulty answering yes."). However, the Third Circuit cast doubt on the Supreme Court's holding that the trustee alone can pursue these claims. *In re Pursuit Cap. Mgmt. LLC*, 595 B.R. at 640 ("The import of *Cybergenics II* is that *Hartford Underwriters* is not a per se constraint on the ability of a nontrustee to act in instances where the Bankruptcy Code identifies the trustee as the actor as long as the nontrustee does not act unilaterally."). Thus, the key holding from *Hartford* is not that the trustee alone can pursue these claims, but that creditors could not unilaterally pursue them without approval from the trustee and the court. Here, so long as the Trustee chooses to sell the avoidance actions, and the bankruptcy court agrees that the sale is in the best interest of the estate, then there would be no conflict with *Hartford.*

Critically, when a trustee refuses to bring an action for an avoidance claim, the bankruptcy court can invoke its equitable powers to affect the result that the Bankruptcy Code was designed to obtain. *In re Pursuit Cap. Mgmt. LLC*, 595 B.R. at 659. The court in *Pursuit Capital Management* notes that "chapter 7 cases often have no liquid assets, consequently, chapter 7 trustees decline to pursue meritorious and/or sizeable claims simply because there are no funds to pursue them, in these instances, the fundamental bankruptcy goal of maximizing the estate, and thus recoveries for creditors, is jeopardized." *Id.* at 660. Therefore, it follows that the equitable remedy for the bankruptcy court would be to approve a sale of the avoidance actions to a creditor with more resources to pursue the claims. This result is not only practical but also

aligns with the goals of the Bankruptcy Code. *In re Simply Essentials*, 640 B.R. at 930 ("To allow parties otherwise facing meritorious Chapter 5 avoidance claims to escape those claims because the Trustee cannot afford to pursue them and they cannot be sold or transferred would be an absurd result.").

The Thirteenth Circuit erred in holding that preference claims are not property of the bankruptcy estate. The lower court mistakenly asserted that including preference actions as property of the estate would unilaterally expand section 541(a)(1). However, the language of the Code and the interpretations of the Code from various courts mandate such a reading of section 541(a)(1). Thus, we are merely seeking consistency with the other circuits that have already addressed the issue at hand. This Court should hold that preference actions, as enumerated in section 547, fall within the scope of section 541(a)(1) and are therefore property of the estate.

iv. Derivative Standing Should Be Considered Separate from Creditors Purchasing and Pursuing Avoidance Claims

The Thirteenth Circuit argues that there is no need to purchase an avoidance claim from the trustee because creditors can pursue them derivatively. However, a creditor has less incentive to pursue these claims derivatively because a substantial portion of the proceeds would go to administrative and priority claimants. Kristina M. Stanger et. al., *Estate Avoidance Actions: Stand in the Trustee's Shoes, or Buy Them?*, Am. Bankr. Inst. J. 56 (2023). For instance, in *Simply Essentials*, by purchasing the avoidance action, the purchaser and creditor "dramatically improved the creditor's prospects of recovery, since it was no longer limited to its *pro rata* share of estate proceeds, whereas creditors typically have to watch from the sidelines and hope the trustee investigates and prosecutes avoidance actions, as ownership of the claims provides the acquirer with control over their prosecution, recovery, and settlement." *In re Simply Essentials*,

640 B.R. at 930. This option also allows the debtor the opportunity to outbid the prospective purchaser and therefore avoid potential litigation.

The Thirteenth Circuit also errs in its insistence that since section 550(a) provides that an avoided transfer can be recovered "for the benefit of the estate," the sale of an avoided transfer would be recovered for the benefit of the purchaser and is therefore invalid. 11 U.S.C. § 550(a). This interpretation withers under scrutiny because the sale of an avoidance claim must still be approved by the bankruptcy court as being in the best interests of the estate. Stanger, *supra* at 56. As previously noted, limiting the trustee's ability to sell avoidance claims could exponentially increase administrative costs and limit the recovery of creditors, which is contrary to the goals of the Code.

In summary, the trustee's ability to sell avoidance claims under section 547 and section 550 is rooted in the Bankruptcy Code, supported by caselaw, and promotes the effective administration of the Bankruptcy Code. The Thirteenth Circuit erred in its interpretation of sections 547 and 550 and ignored persuasive decisions from several circuit courts around the country. We ask this Court to hold that the chapter 7 Trustee is well within her rights to sell to Eclipse the preference cause of action against Pink.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests this Court reverse the Thirteenth Circuit's decision and find that (1) post-petition, pre-conversion increases in equity in a debtor's property inure to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7 and (2) the trustee is within her rights to sell avoidance claims to a third party under 11 U.S.C. § 547 and § 550.

Respectfully submitted,

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Team #53

APPENDIX I

The case at bar implicates the following provisions, in relevant part, of Title 11 of the United States Code and the construction thereof:

11 U.S.C. § 101(5) provides:

> **(5)** The term "claim" means—
>
> > **(A)** right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
> >
> > **(B)** right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 348(f) provides:

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

11 U.S.C. § 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, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement

of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

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

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

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

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

11 U.S.C. § 522(a)(2) provides:

(a) In this section—

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

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.

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.

11 U.S.C. § 541(b) provides:

(b) Property of the estate does not include—

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the

commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.),[1] or any accreditation status or State licensure of the debtor as an educational institution;

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

(A)

(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or

(B)

(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title;

(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds—

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000; [2]

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(6) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000; 2

(7) any amount—

(A) withheld by an employer from the wages of employees for payment as contributions—

(i) to—

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

(B) received by an employer from employees for payment as contributions—

(i) to—

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title;

(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

(A) the tangible personal property is in the possession of the pledgee or transferee;

(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b);

(9) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor),

unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition; or

(10) funds placed in an account of a qualified ABLE program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds—

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $6,225.2

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

11 U.S.C. § 541(c) provides:

(c)

(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law—

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

11 U.S.C. § 542(a) provides:

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

11 U.S.C. § 547(b) provides:

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

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

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

(3) made while the debtor was insolvent;

(4) made—

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

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

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

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

(B) the transfer had not been made; and

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

11 U.S.C. § 547(c)(2) provides:

(c) The trustee may not avoid under this section a transfer—
(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—
(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or
(B) made according to ordinary business terms;

11 U.S.C. § 550(a) provides:

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—
(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
(2) any immediate or mediate transferee of such initial transferee.

11 U.S.C. § 554(a) provides:

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

11 U.S.C. § 704(a)(1) provides:

(a) 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;

11 U.S.C. § 1327(b) provides:

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