

No. _____

In the
Supreme Court of the United States

MACHELE L. GOETZ,

Petitioner,

v.

VICTOR FELIX WEBER, CHAPTER 7 TRUSTEE,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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June 5, 2024

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QUESTIONS PRESENTED

1. Whether the language in 11 U.S.C. § 541(a)(1) creates a bifurcation of interests in the assets of a bankruptcy estate into pre-petition (*i.e.*, “as of the commencement of the case”) interests and post-petition (*i.e.*, “after commencement of the case”) interests, such that post-petition interests, which might include new equity in assets, are not included in the bankruptcy estate upon conversion from Chapter 13 to Chapter 7.
2. Whether the language of 11 U.S.C. § 348(f)(1)(A), when read in conjunction with 11 U.S.C. § 541(a)(1), is ambiguous such that the legislative history should be consulted to determine Congress’ intent regarding whether post-petition interests in assets are to be included in the Chapter 7 bankruptcy estate upon conversion.

PARTIES TO THE PROCEEDINGS

Petitioner and Debtor-Appellant below

- Machele L. Goetz

Respondent and Appellee below

- Felix Weber, Chapter 7 trustee

CORPORATE DISCLOSURE STATEMENT

There are no corporations involved in this proceeding.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Eighth Circuit.
No. 23-2491.

In Re: Machele L. Goetz, Debtor. *Machele L. Goetz*,
Appellant v. *Victor Felix Weber*, Chapter 7 Trustee,
Appellee.

Opinion filed on March 8, 2024

U.S. Bankruptcy Appellate Panel, Eight Circuit
No. 22-6009

In Re: Machele L. Goetz, Debtor. *Machele L. Goetz*,
Appellant v. *Victor F. Weber*, Chapter 7 Trustee,
Appellee.

Opinion filed on June 1, 2023.

U.S. Bankruptcy Court, Western District of Missouri
No. 20-41493

In Re: Machele L. Goetz, Debtor
Opinion filed on November 10, 2022

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OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Eighth Circuit, *Goetz v. Weber*, No. 23-2491 (8th Cir. 2024), is included in the Appendix (“App.”) at 1a. The opinion of the Bankruptcy Appellate Panel, *In re Goetz*, 651 BR 292 (Bankr. Appellate Panel, 8th Circuit, 2023) is included at App.13a. The memorandum opinion of the Bankruptcy Court, *In re Goetz*, 627 BR 412 (Bankr. Court, WD Missouri, 2022) is included at App.31a



JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on March 8, 2024. (App.1a). This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).



STATUTORY PROVISIONS INVOLVED

11 U.S.C. § 348(f)(1)(A)

(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;

11 U.S.C. § 541(a)(1)-(7)

(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) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
- (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
 - (A) under the sole, equal, or joint management and control of the debtor; or
 - (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.
- (3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.
- (4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.
- (5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

- (A) by bequest, devise, or inheritance;
- (B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or
- (C) as a beneficiary of a life insurance policy or of a death benefit plan.

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



STATEMENT OF THE CASE

The Petitioner, Machele L. Goetz, filed a chapter 13 bankruptcy petition and plan on August 19, 2020. Ms. Goetz' residence was worth \$130,000 and she claimed a \$15,000 homestead exemption under Missouri law. Freedom Mortgage held a \$107,460.54 lien against the residence.

It is undisputed that had the trustee liquidated the residence on the date of the petition, the estate would have received nothing net of the exemption, the lien, and the sale expenses.

The Bankruptcy Court granted Ms. Goetz' motion to convert her case to Chapter 7 on April 5, 2022. The

value of Ms. Goetz' house at the time of conversion was at least \$205,000.

Soon thereafter, the Chapter 7 Trustee, Victor Weber, indicated he was going to list the property for sale given that the value of the house had increased by at least \$75,000 and that a net of at least \$62,000 would be realized after satisfying the loan and Ms. Goetz' homestead exemption and closing costs.

Ms. Goetz filed a Motion to Compel Abandonment shortly thereafter, which was denied by the Bankruptcy Court of the Western District of Missouri on November 10, 2022, on the grounds that the post-petition equity in the homestead was property of the bankruptcy estate and thus was not of inconsequential value to the estate.

The Bankruptcy Court had federal jurisdiction to hear the matter under 28 U.S.C. §§ 1334(b) and 157 (a) and (b). The matter was a statutorily core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O) and was constitutionally core.

Ms. Goetz appealed to the United States Bankruptcy Appellate Panel for the Eighth Circuit which affirmed the Bankruptcy Court's order on June 1, 2023.

Ms. Goetz appealed to the United States Court of Appeals for the Eighth Circuit which affirmed the Bankruptcy Appellate Panel's order on March 8, 2024.



REASONS FOR GRANTING THE PETITION

- I. ***In re Potter* incorrectly interprets 11 U.S.C. § 541(a)(1) and creates an assumption that there can be no such thing as a post-petition interest in an asset.**

In its *Goetz* opinion, the United States Court of Appeals for the Eighth Circuit cited to precedent from *In re Potter*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999) (“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.”).

The facts of *Potter* are that, as of the commencement of his Chapter 13 case on April 22, 1994, the debtor Thomas Potter and his sister each held a contingent interest in a trust that contained \$150,000. Upon the death of their then ninety-one-year-old grandfather, Thomas Potter and his sister would split the corpus of the trust.

Thomas Potter converted his case to Chapter 7 on August 23, 1994, and claimed that the value of the trust was zero. An offer was made to the Chapter 7 trustee for \$17,000 but the trustee rejected that offer and instead filed a motion to close the case, but that he be allowed to reopen the case later to administer the asset upon the contingency occurring. The court granted the motion.

One issue with *Potter* is that the facts of the case do not support the court’s conclusion. The court concluded that appreciation of an asset is not a separate

interest and thus is still part of the bankruptcy estate. However, nowhere in the facts cited in the *Potter* court's opinion is there any mention of any appreciation in value of the corpus of the trust.

It is as though the *Potter* court determined that there was no value in the corpus of the trust as of the conversion of the case, but that once the contingency was to occur and the \$150,000 corpus was to be realized, then that realization was to be considered as "appreciation" of the asset. That is a horribly strained definition of the word "appreciation."

If the corpus of the trust were to increase from \$150,000 upon conversion of the case to \$200,000 upon realization of the contingency, then the \$50,000 increase would meet the definition of appreciation . . . but there were no facts in the court's opinion stating any such appreciation. Thus, the court's conclusion was not based on the facts stated.

Another issue with *Potter* is that the court cited to three Chapter 7 cases that were from before 1994, and those cases are of the type of case that Congress said it was rejecting in the legislative history for the 1994 Amendment to 11 U.S.C. § 348(f)(1)(A).

Congress amended 11 U.S.C. § 348(f) by adding subsection 348(f)(1) as part of the Bankruptcy Reform Act of 1994, enacted on October 22, 1994. In the legislative history, Congress stated:

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 the 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 in 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.

These latter 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 of 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.

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 (3rd 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.

In *Bobroff*, the court stated that if debtors must take the risk that property acquired during the course of an attempt at repayment will have to be liquidated for the benefit of creditors if chapter 13 proves unavailing, the incentive to give chapter 13 – which must be voluntary – a try will be greatly diminished. Conversely, when chapter 13 does prove unavailing “no reason of policy suggests itself why creditors should not be put back in precisely the same position as they would have been had the debtor never sought to repay his debts . . .” *In re Bobroff*, 766 F.2d 797, 803-804 (3rd Cir. 1985) citing *In re Hannan*, 24 B.R. 691, 692 (Bankr. E.D.N.Y. 1982).

The main issue with *Potter* and the other cases that have held in favor of trustees on this issue is that the courts in those cases have created an assumption that there cannot be such a thing as a post-petition (“after commencement of the case”) interest in an asset in bankruptcy.

That assumption is inconsistent with the plain language of 11 U.S.C. § 541(a)(1) which directs that the bankruptcy estate is comprised “of all legal and equitable interests of the debtor in property as of the commencement of the case.” (Emphasis added). Moreover, Congress clearly identified in the legislative history to the 1994 Amendment of 11 U.S.C. § 348(f) (1) how a post-petition equity interest can be created

through paydown on a loan secured by the asset but did not indicate that that is the only way a post-petition equity interest can arise.

The plain language of 11 U.S.C. § 541(a)(1) makes it clear that there is to be a bifurcation of interests into those that exist “as of the commencement of the case” and those that come into existence after the commencement of the case.

Further, when Congress intended interests that come into existence after the commencement of the case to be included in the bankruptcy estate, it knew how to do so, specifically including such interests through 11 U.S.C. §§ 541(a)(5)-(7).

II. It is unjust to allow creditors to benefit from a post-petition “paydown” equity interest and or sweat equity interest created by a debtor.

If the Court of Appeals opinion is allowed to stand, debtors will unjustly lose the post-petition equity interests they have created in their homes, vehicles, and other assets during the pendency of their Chapter 13 through either paydown on the loan(s) and or through sweat equity.

This Court held in *Harris v. Viegelahn*, 575 U.S. 510 (2015) that post-petition wages are not property of the bankruptcy estate upon conversion to Chapter 7.

It would be inconsistent with *Harris* and unjust overall to allow equity interests that have been created during the pendency of a Chapter 13 through payment of post-petition wages into the payment plan to be realized by creditors through liquidation of those assets upon conversion.

The argument is somewhat like a reverse “fruit of the poisonous tree” argument. If post-petition wages are used to pay down on a loan secured by an asset or are used to make improvements to an asset then it would follow that any equity interests created through such pay down or through such sweat equity (*i.e.*, improvements) should also not be part of the estate upon conversion because the post-petition wages are not part of the estate upon conversion pursuant to the holding in *Harris*.

III. It would be inconsistent to recognize some post-petition equity interests and not others.

If the Court were to acknowledge that it is unjust for post-petition “paydown” and sweat equity interests to be liquidated for the benefit of creditors, it would be inconsistent to not also recognize the equity interest created through appreciation due to general market forces as a post-petition interest pursuant to 11 U.S.C. § 541(a)(1).

This is true because the only reason such equity interest is able to accrue during the pendency of a Chapter 13 is due to the debtor using post-petition wages to make the Chapter 13 payments, keeping the case alive long enough for post-petition appreciation to occur.

Also, during the pendency of the Chapter 13, the assets are vested in the debtor pursuant to 11 U.S.C. § 1327(b), “[e]xcept 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.” Thus, any equity interest created by appreciation due to market forces after confirmation should rightly vest with the debtor.

IV. The “Snap Shot” approach is the only approach that is consistent with 11 U.S.C. 541(a)(1) and 11 U.S.C. § 348(f)(1)(A) and Congress’ intent as expressed in the legislative history and Congress’ objective of having more debtors try Chapter 13.

The “Snap Shot” approach, where the interests in assets “as of the commencement of the case” are frozen in the bankruptcy estate, is the only approach that is consistent with Congress’ mandate to bifurcate interests in assets pursuant to 11 U.S.C. § 541(a)(1), and with Congress’ intent, as expressed through the legislative history of 11 U.S.C. § 348(f)(1), that debtors not be made worse off upon conversion from Chapter 13 to Chapter 7 than they would have been if they had simply filed Chapter 7 to begin with and that Creditors not be made better off than they would have been if the debtor had simply file Chapter 7 in the first place.

Furthermore, Congress’ expressed objective is for more debtors to give Chapter 13 a try (*See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 118 (1977), U.S. Code Cong. & Admin. News p. 5904). If debtors are made worse off upon conversion to Chapter 7 than they would have been if they had filed Chapter 7 to begin with then that provides disincentive for debtors to try Chapter 13, thereby thwarting Congress’ objective of having more debtors try Chapter 13.

As identified by Judge Fenimore in the Bankruptcy Court, there are at least four different approaches used by courts that have ruled in favor of trustees on this issue. Having at least four different approaches after each of those courts have held that the plain meaning of 11 U.S.C. § 348(f)(1)(A) is clear from the text itself begs the question of how that part of the

code is not ambiguous. If it was completely clear, then there should not be at least four different approaches.

The only thing that seems clear about 11 U.S.C. § 348(f)(1)(A) is that it is not clear and that reference to the legislative history of 11 U.S.C. § 348(f)(1) should be made to discern Congress' intent regarding disposition of debtors' assets upon conversion from Chapter 13 to Chapter 7.

V. There is a split of authority amongst the circuits and debtors' equity interests in assets are now at risk of liquidation upon conversion from Chapter 13 to Chapter 7 when it's not clear that that is what Congress intended.

The United States Court of Appeals for the Tenth Circuit in *In re Barrera*, 22 F.4th 1217 (10th Cir. 2022) held for the debtor under similar circumstances. But the United States Court of Appeals for the Ninth Circuit in *In re Castleman*, 75 F. 4th (9th Cir. 2023) held more recently for the trustee under similar circumstances.

Debtors' interests in assets are at risk in jurisdictions that have held for the trustee and resolution of this issue should be sought.



CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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