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OPINION, U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT (MARCH 8, 2024)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

IN RE: MACHELE L. GOETZ,

Debtor.

MACHELE L. GOETZ,

Appellant,

v.

VICTOR FELIX WEBER, CHAPTER 7 TRUSTEE,

Appellee.

NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER; NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS,

Amici on Behalf of Appellant(s).

No. 23-2491

Appeal from the United States Bankruptcy Appellate Panel for the Eighth Circuit

Submitted: January 11, 2024
Filed: March 8, 2024

Before: SMITH, Chief Judge, GRUENDER and SHEPHERD, Circuit Judges.

SHEPHERD, Circuit Judge.

In this bankruptcy case, we must decide whether a post-petition, pre-conversion increase in equity in the debtor's residence became property of her converted bankruptcy estate—a question over which "courts are heavily divided." *See In re Castleman*, 75 F.4th 1052, 1055 & n.3 (9th Cir. 2023) (collecting cases), *cert. denied*, 2024 WL 674785 (U.S. Feb. 20, 2024) (No. 23-615). Here, the bankruptcy court[1] held that it did, the Bankruptcy Appellate Panel for the Eighth Circuit (BAP) affirmed, and Goetz now appeals. Having jurisdiction under 28 U.S.C. § 158(d)(1), we affirm.

I

On August 19, 2020, Machele Goetz filed a chapter 13 bankruptcy petition and plan. She owned a residence worth $130,000 and 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.

Later, on April 5, 2022, the bankruptcy court granted Goetz's motion to convert her case from

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[1] The Honorable Brian T. Fenimore, United States Bankruptcy Judge for the Western District of Missouri.

chapter 13 to chapter 7. Between the chapter 13 filing and the date of the conversion order, Goetz's residence had increased in value by $75,000, and she had paid down a further $960.54 on the mortgage. Had the trustee liquidated the residence on the date of conversion, more than $62,000 net of the exemption, the lien, and the sale expenses would have been produced.

After realizing that the trustee might sell the residence given the change in value, Goetz moved for the bankruptcy court to compel the trustee to abandon it. Goetz argued that the residence was of "inconsequential value and benefit to the estate" under 11 U.S.C. § 554(b), asserting that the post-petition, pre-conversion increase in equity must be excluded from the calculation of her residence's value to the estate. The trustee resisted Goetz's motion, arguing that, under 11 U.S.C. § 348(f), the bankruptcy estate in a converted case includes post-petition, pre-conversion increase in equity, meaning Goetz's residence was still of value to the estate.

The parties agreed that abandonment was appropriate unless the post-petition, pre-conversion increase in equity was part of the converted estate. The bankruptcy court concluded that it was. It reasoned that, under the plain text of 11 U.S.C. § 348(f)(1)(A) and § 541, the equity in Goetz's residence was property of her converted estate because it was property of the estate that she owned on the date of her petition and which she retained at conversion. The BAP affirmed, rejecting many of the same arguments that Goetz now urges again on appeal.

II

"On appeal from a decision of the BAP, we act as a second reviewing court of the bankruptcy court's decision, independently applying the same standard of review as the BAP. The relevant facts in this case are undisputed, and we review the bankruptcy court's conclusions of law *de novo*." *In re Lasowski*, 575 F.3d 815, 818 (8th Cir. 2009) (citation omitted). Goetz raises several points of error, but none focus on the text of the relevant Code provisions.

"[W]e start where we always do: with the text of the [Code]." *Bartenwerfer v. Buckley*, 598 U.S. 69, 74 (2023) (first alteration in original) (citation omitted). Where, as here,

> [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)(A). In other words, the property of the estate in Goetz's converted chapter 7 case consists of the property of the estate as of the date she filed her chapter 13 bankruptcy petition (August 19, 2020) that remained in her possession as of the date of conversion from chapter 13 to chapter 7 (April 5, 2022).

"Property of the estate" is itself a term of art defined in the Code. *See id.* § 541.[2] In relevant part,

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[2] We note that 11 U.S.C. § 1306(a)'s definition of property of the

property of the estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case," *id.* § 541(a)(1), and the "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case," *id.* § 541(a)(6).

Goetz's *residence* is property of the converted estate because she held "legal or equitable interest[]" in it as of August 19, 2020, *id.* § 541(a)(1), and because it remained in her possession when she converted her case to chapter 7 on April 5, 2022, *id.* § 348(f)(1)(A). The question is whether the post-petition, pre-conversion increase in equity in that residence is also part of the converted estate. "The plain text of the Bankruptcy Code begins and ends our analysis." *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016). We start with the first half of the definition of property of the converted estate: whether the property in question was "property of the estate, as of the date of filing of the petition." 11 U.S.C. § 348(f)(1)(A).

Property of the estate at "[t]he commencement of a case" includes "[p]roceeds . . . of or from property of the estate." *Id.* § 541(a)(6). A voluntary case in bankruptcy commences when the petition is filed. *Id.* § 301(a); *see also id.* § 348(a) ("Conversion of a case from a case under one chapter of this title to a case under another chapter of this title . . . does not effect

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estate is inapplicable here because that definition is expressly limited to chapter 13 cases, and Goetz's case is a converted case under chapter 7. *See* 11 U.S.C. § 103(j); *see also id.* § 1307(a) (explaining that a "debtor may convert a case under [chapter 13] to a case under chapter 7 of this title at any time").

a change in the date of the filing of the petition [or] the commencement of the case . . . . "). But the Code does not define "proceeds" or "equity," so "we may look to dictionaries . . . to determine the meaning." *Schwab v. Reilly*, 560 U.S. 770, 783 (2010); *see also Franklin Cal. Tax-Free Tr.*, 579 U.S. at 126 (looking to Black's Law Dictionary and the Oxford English Dictionary for the meaning of "define"). Proceeds are "[t]he value of land, goods, or investments when converted into money; the amount of money received from a sale." Proceeds, Black's Law Dictionary (11th ed. 2019). Equity is "[t]he amount by which the value of or an interest in property exceeds secured claims or liens; the difference between the value of the property and all encumbrances on it." Equity, Black's Law Dictionary (11th ed. 2019). An encumbrance is "[a] claim or liability that is attached to property or some other right . . . that may lessen its value, such as a lien or mortgage." Encumbrance, Black's Law Dictionary (11th ed. 2019).

The post-petition, pre-conversion increase in equity in Goetz's residence—*i.e.* the difference between its value and the homestead exemption and lien—is therefore proceeds "*from* property of the estate," 11 U.S.C. § 541(a) (emphasis added), because it is the amount of money that the estate would receive *from* a sale of the residence before sale expenses. *Cf. 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."). Accordingly, the post-petition, pre-conversion increase in equity in Goetz's residence was

property of the estate at "[t]he commencement of [the] case." 11 U.S.C. § 541(a).

Now consider the second half of the definition of property of the converted estate: whether the property in question "remain[ed] in the possession of or [wa]s under the control of the debtor on the date of conversion." *Id.* § 348(f)(1)(A). The equity in Goetz's residence remained in her possession or control on the date of conversion because she still possessed her residence on that date, giving her effective control over the equity therein. *See Harris v. Viegelahn*, 575 U.S. 510, 514 (2015) (describing how, in a chapter 13 plan, a debtor retains their property); *In re Barrera*, 22 F.4th 1217, 1221-22 (10th Cir. 2022) (describing how a chapter 13 debtor sold their home before converting to chapter 7, "pocket[ing]" the equity that had grown since their initial bankruptcy filing). Put differently, by possessing her residence, Goetz controlled the "inseparable" equity. *Castleman*, 75 F.4th at 1055-56 (citation omitted) (concluding that "appreciation in the property value and corresponding increase in equity belongs to the estate upon conversion" from chapter 13 to chapter 7). We therefore conclude that, under the plain text of the Code, the post-petition, pre-conversion increase in equity in Goetz's residence is property of the converted chapter 7 estate.[3]

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[3] At oral argument, counsel for Goetz was asked whether, under his view, a debtor could end up owing the estate the difference if her property *declined* in value, assuming that the converted estate should be valued as if frozen in time at the date of filing. Counsel agreed that this would be an unusual outcome given the low probability of the estate ever recovering that difference in equity from a debtor. This hypothetical bolsters our interpretation of the Code: the debtor is not on the hook for

Goetz urges a different result, but her arguments are unavailing. First, she argues that her *entire* residence was exempted from the bankruptcy estate at the commencement of her chapter 13 case because the trustee agreed there was no liquidation value in the residence as of that date. But that misunderstands the nature of the exemption claimed and the trustee's stipulation. Missouri's homestead exemption allows "[t]he homestead of every person, . . . not exceeding the value of fifteen thousand dollars, . . . [to] be exempt." Mo. Rev. Stat. § 513.475.1. This allows the exemption of the homestead up to a certain dollar amount, not the *in-kind* exemption of the entire residence. Nor did the trustee stipulate to the exemption of the residence in kind: rather, the trustee stipulated that "there would have been no proceeds in excess of those necessary to pay the lien, homestead [exemption], and costs of sale" if the residence was liquidated on the date of filing.

In a similar vein, Goetz argues that her residence "vested" in her upon confirmation of her chapter 13 plan. *See* 11 U.S.C. § 1327(b) ("[T]he confirmation of a plan vests all of the property of the estate in the debtor."). This argument is easily disposed of: "When a debtor exercises his statutory right to convert, the case is placed under Chapter 7's governance, and no

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decreases in equity between filing and conversion, nor does she stand to gain from increases. *See Castleman*, 75 F.4th at 1058 ("In this case, th[e] property increased in value. In other cases, the value might decline, or the value of one asset in the estate might increase while other property depreciates in value. This is simply a happenstance of market conditions, which sometimes will benefit the debtor and sometimes benefit the estate.").

Chapter 13 provision holds sway." *Harris*, 575 U.S. at 520.

The Amici also rely on the "complete snapshot rule" to suggest that Goetz's converted estate should be "evaluate[d] . . . on the day [s]he file[d] for bankruptcy[,] without considering any developments after that date." According to the First Circuit, the snapshot rule states that "[e]xemptions are determined at the time the debtor files for bankruptcy," meaning that "the debtor's financial situation is frozen in time, as if someone had taken a snapshot of it." *In re Rockwell*, 968 F.3d 12, 18 (1st Cir. 2020). The Amici argue that we embraced this principle in *In re Sawyers*, 2 F.4th 1133 (8th Cir. 2021), but we disagree. *Sawyers* merely recognizes that, under 11 U.S.C. § 522(a)(2), the "value" of a home for the purpose of applying an exemption is "based on the property's fair market value as of the petition date." *Id.* at 1137-40 (declining to include the amount of an insurance payout on a fire-damaged home when calculating its fair market value on the debtor's petition date); *see also Castleman*, 75 F.4th at 1058 n.5 (noting that "the debtor's homestead exemption is fixed as of the 'snapshot' value on the date of the original filing"). Moreover, these principles have no bearing on whether the post-petition, pre-conversion increase in equity in Goetz's residence is property of the converted estate: no one disputes the value of Goetz's residence on the date of filing or the date of conversion, and the Code's temporally limited definition of "value" in § 522(a)(2) is expressly confined to that section only. *See* 11 U.S.C § 522(a)(2) (limiting the definition to "this section").

Goetz's appeal to the legislative history of 11 U.S.C. § 348(f)(1) is equally unpersuasive. No amount

of legislative history can defeat the plain text of the Code. "We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, . . . 'judicial inquiry is complete.'" *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (citations omitted) (analyzing interlocutory jurisdiction over bankruptcy appeals). Again, whatever we might say about the legislative history of § 348(f)(1), "[t]he plain text of the Bankruptcy Code begins and ends our analysis." *Franklin Cal. Tax-Free Tr.*, 579 U.S. at 125.

Goetz and the Amici next argue that this result punishes the good-faith debtor who attempts a chapter 13 plan, pays down their mortgage, and then converts to chapter 7. But this argument fares no better. The Code's values are not monolithic. "[It] strikes a balance between the interests of insolvent debtors and their creditors." *Bartenwerfer*, 598 U.S. at 72. "[The Code is not] focused on the unadulterated pursuit of the debtor's interest. . . . [T]he Code, like all statutes, balances multiple, often competing interests." *Id.* at 81. "No statute pursues a single policy at all costs, and we are not free to rewrite this statute (or any other) as if it did." *Id.* While "we are sensitive to the hardship [Goetz] faces," *id.* at 83, "none of [Goetz's] policy arguments can overcome the Code provisions . . . that govern this case," *Schwab*, 560 U.S. at 791.

To the extent that Goetz's brief can be read as arguing that the post-petition, pre-conversion increase in equity in her home is not property of the converted estate because it was contingent or non-existent at the time she filed her petition, we reject the argument. We find no textual support in the Code for the proposition

that "[p]roceeds" of property of the estate must exist at the commencement of the case. 11 U.S.C. § 541(a)(6). First, "[p]roceeds, product, offspring, rents, or profits of or from property of the estate" are not modified by any temporal language in subsection (a)(6), unlike the exception for "earnings from services performed by an individual debtor after the commencement of the case." *Id.* Second, the Code's definition of property of the estate expressly contemplates future, contingent interests. *See, e.g., id.* (offspring); *id.* § 541(a)(7) ("Any interest in property that the estate acquires after the commencement of the case."). Third, "[t]he Supreme Court has interpreted the definition of 'property of the estate' broadly." *In re Simply Essentials, LLC*, 78 F.4th 1006, 1008 (8th Cir. 2023). It "includes property of all descriptions, tangible and intangible, as well as causes of action." *Id.* (citation omitted). There is no requirement "that the debtor hold a possessory interest in the property at the commencement of the reorganization proceedings." *Id.* at 1008-09 (quoting *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 206 (1983)). And "[t]he property of the estate includes inchoate or contingent interests held by the debtor prior to the filing of bankruptcy." *Id.* at 1009.

Finally, to the extent that Goetz and the Amici rely on *In re Barrera*, 22 F.4th 1217 (10th Cir. 2022) to argue for a different result, we reject the argument. *Barrera*_is distinguishable. The *Barrera* debtors *sold* their residence after confirmation of their chapter 13 plan, but before conversion to chapter 7. *Id.* at 1222. And the Tenth Circuit faced a different question than we do today. There, the question was "whether, in a post-confirmation conversion from Chapter 13 to

Chapter 7, proceeds from the post-petition sale of property are identical to the underlying property that the debtor possessed on the Chapter 13 petition date." *Id.* at 1223.

III

For the foregoing reasons, we affirm.

OPINION, BANKRUPTCY APPELLATE PANEL FOR THE EIGHTH CIRCUIT (JUNE 1, 2023)

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE EIGHTH CIRCUIT

IN RE: MACHELE L. GOETZ,

Debtor,

MACHELE L. GOETZ,

Appellant,

v.

VICTOR F. WEBER, CHAPTER 7 TRUSTEE,

Appellee.

No. 22-6009

Appeal from United States Bankruptcy Court for the Western District of Missouri

Submitted: April 18, 2023
Filed: June 1, 2023

Before: SHODEEN, RIDGWAY, AND HASTINGS, Bankruptcy Judges.

Hastings, Bankruptcy Judge.

Debtor/Appellant Machele L. Goetz appeals the bankruptcy court's[1] order denying Goetz's Motion to Compel Trustee to Abandon Real Property of Debtor. For the following reasons, we affirm.

BACKGROUND

Goetz petitioned for bankruptcy relief under Chapter 13 of the Bankruptcy Code on August 19, 2020. She valued her residence at $130,000 at the time, and the parties stipulated that she claimed a $15,000 homestead exemption under section 513.475 of the Missouri Revised Statutes. On the petition date, Freedom Mortgage held a $107,460.54 mortgage lien against the property. The parties agreed that there would have been no proceeds in excess of the debt secured by the mortgage lien, exemption and costs of sale had the Trustee liquidated Goetz's residence on the petition date.

Goetz filed her Chapter 13 Plan on the same date she petitioned for bankruptcy relief. The bankruptcy court confirmed her plan on October 16, 2020. Pursuant to the confirmation order and 11 U.S.C. § 1327(b), property of the estate vested in Goetz on confirmation.

The bankruptcy court granted Goetz's motion to convert from a Chapter 13 case to a Chapter 7 case on April 5, 2022. The parties agreed that the value of Goetz's residence increased from $130,000 to $205,000 between the petition date and the conversion date. Between these dates, Freedom Mortgage's mortgage lien decreased to approximately $106,500. The parties stipulated that sale of Goetz's residence would result

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[1] The Honorable Brian T. Fenimore, United States Bankruptcy Judge for the Western District of Missouri.

in more than $62,000 in proceeds after satisfying the mortgage lien and paying the $15,000 homestead exemption and costs of sale.

Prompted by indications that the Trustee planned to sell her residence, Goetz filed a Motion to Compel Trustee to Abandon Real Property of Debtor. The bankruptcy court denied the motion, finding that the increase in equity acquired between the petition date and the conversion date is property of the Chapter 7 bankruptcy estate and concluding Goetz's residence is worth more than "inconsequential value and benefit to the estate" under 11 U.S.C. § 554. Goetz appealed. With the consent of the parties, Amici Curiae National Association of Consumer Bankruptcy Attorneys and National Consumer Bankruptcy Rights Center filed a brief in support of Appellant, seeking reversal of the bankruptcy court's order.

STANDARD OF REVIEW

We review the bankruptcy court's findings of fact for clear error and its conclusions of law *de novo*. *Ridings v. Casamatta (In re Allen)*, 628 B.R. 641, 642 (B.A.P. 8th Cir. 2021) (citing *In re Zepecki*, 277 F.3d 1041 (8th Cir. 2002)). "Where the bankruptcy court has determined the factual predicates for abandonment are present, we review the court's decision and reverse only in the case of an abuse of discretion." *Kaler v. Nelson (In re Nelson)*, 251 B.R. 857, 859 (B.A.P. 8th Cir. 2000). Under this standard, this Court will not reverse without a definite and firm conviction that the bankruptcy court committed a clear error of judgment in weighing the relevant factors and in reaching its conclusion. *Id*. (citations omitted).

DISCUSSION

The issues Goetz raises on appeal fall within two primary arguments. First, she argues that the bankruptcy court erred in concluding that postpetition preconversion market appreciation and an increase in equity resulting from payments toward the mortgage lien inure to the estate's benefit upon conversion from a Chapter 13 case to a Chapter 7 case. The Amici Curiae join in this argument. Second, she argues that her residence was removed from the bankruptcy estate when the property vested in her on confirmation of her Chapter 13 plan or when she exempted it, and she claims all equity accruing after these events inures to her benefit.

A. The bankruptcy court correctly concluded that postpetition preconversion nonexempt equity resulting from market appreciation and payments toward a mortgage lien accrue for the benefit of the bankruptcy estate upon conversion from a Chapter 13 case to a Chapter 7 case

Section 541 of the Bankruptcy Code defines property of the bankruptcy estate to include all of a debtor's interests both equitable and legal, except those specifically excluded. 11 U.S.C. § 541. Estate property includes "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case," and "[a]ny interest in property that the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(6) and (7).

Upon conversion from one chapter to another, this definition is adjusted. Section 348 qualifies the scope of bankruptcy estate property by clarifying that "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion[.]" 11 U.S.C. § 348(f)(1)(A). If a debtor converts a case under Chapter 13 to a case under another chapter, the property the debtor acquired between the petition date and the conversion date is not property of the converted case, unless the debtor sought to convert the case in bad faith. 11 U.S.C. § 348(f)(2).

On the date Goetz petitioned for relief under Chapter 13, her residence became property of the bankruptcy estate. The record shows no evidence of bad faith. Goetz remained in possession and control of her residence throughout her Chapter 13 case and on the date the bankruptcy court granted her motion to convert to a case under Chapter 7. Her residence is property of the converted bankruptcy estate. The question then becomes whether the increase in non-exempt equity resulting from market appreciation ($75,000) and a reduction in the mortgage lien ($960) is estate property or Goetz's property.

As the bankruptcy court observed, courts are split on the question of whether postpetition preconversion market appreciation or an increase in equity resulting from payments toward a lien inures to a debtor's benefit upon conversion to a Chapter 7 case. Goetz urges this Court to treat the postpetition preconversion increase in the value of her property as a separate interest that she acquired between petition and conversion. This position is supported by some courts,

which find that postpetition appreciation in the value of an asset is a separate interest or "new equity" that inures to a debtor's benefit upon conversion to a Chapter 7 case. *See, e.g., In re Nichols*, 319 B.R. 854, 856–57 (Bankr. S.D. Ohio 2004) (finding that postpetition earnings used to "purchase" "new equity" in existing estate assets are not property of the estate).

Applying a slightly different rationale, some courts find that equity in excess of exemptions should be determined as of the petition date and any equity accruing after that date inures to the debtor.[2] These courts look to the legislative history for section 348 and consider policy-based reasons supporting their conclusion that equity created by a debtor's plan pay-

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[2] *See, e.g.*, *Kendall v. Lynch (In re Lynch)*, 363 B.R. 101, 106 (B.A.P. 9th Cir. 2007) (finding that equity resulting from debtors' postpetition payments on loans secured by their residence and property appreciation inures to the debtors' benefit upon conversion from Chapter 13 to Chapter 7); *In re Barrera*, 620 B.R. 645, 653 (Bankr. D. Colo. 2020), *aff'd* 2020 WL 5869458 (B.A.P. 10th Cir. 2020) (finding that a proper interpretation of "property" under section 348(f)(1)(A) "is the property *as it existed on the petition date*, with all its attributes including the amount of equity that existed on that date." (emphasis in original)); *Leo v. Burt (In re Burt)*, 2009 WL 2386102, at *5 (Bankr. N.D. Ala. July 31, 2009) ("Section 348(f)(1)(A) establishes the original chapter 13 petition date as the date on which a hypothetical inventory is to be conducted to determine what property will be in the estate of the converted case. This Court is of the opinion that the amount of equity remaining after deducting secured claims encumbering such property should also be determined based on the secured claim outstanding on the petition date." (footnote omitted)).

ments or asset appreciation during the course of the Chapter 13 case is not property of the estate.[3]

Similar to the bankruptcy court in this case, other courts find that appreciation is not a distinct asset but rather a characteristic or attribute of property subsumed within a particular asset.[4] If the asset is property of the converted bankruptcy estate, the increase in equity—whether by appreciation or reduction of encumbrances—is also property of the estate,

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[3] *See In re Lynch*, 363 B.R. at 106; *In re Barrera*, 620 B.R. at 653; *In re Burt*, 2009 WL 2386102, at *5; *see also In re Cofer*, 625 B.R. 194, 202 (Bankr. D. Idaho 2021).

[4] *See In re Goetz*, 647 B.R. 412, 416–17 (Bankr. W.D. Mo. 2022); *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." (citation omitted); *In re Castleman*, 631 B.R. 914, 919 (Bankr. W.D. Wash. 2021) ("Post-petition appreciation is not treated as a separate asset from pre-petition property and inures to the bankruptcy estate, not the debtor." (citations omitted), *aff'd* 2022 WL 2392058 (W.D. Wash. 2022)); *see also In re Hayes*, No. 113, Case No. 15-20727, slip op. at 9, 14 (Bankr. D. Colo. Mar. 28, 2019) ("Equity is merely a descriptive term for that portion of a debtor's property which represents value in excess of encumbrances. Thus, the Debtors' legal interest in the Property as of the Petition Date was the physical land and buildings comprising the Property. . . . Because the entirety of the Property is property of the estate, the entirety of the proceeds received from sale of the Property will be property of the estate, including the portion representing an increase in Debtors' equity from appreciation."); *In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015) ("In the Court's view, the cases under Section 541(a)(6) are applicable because the equity attributable to the post-petition appreciation of the property is not separate, after-acquired property, to which we might look to Section 348(f)(1)(A). The equity is inseparable from the real estate, which was always property of the estate under Section 541(a).").

compelling these courts to conclude that postpetition preconversion equity increases inure to the benefit of the estate.[5]

As these courts observed, section 348 does not specify whether postpetition preconversion equity resulting from debt payments or appreciation due to market conditions is property of the estate or property of the debtor. It simply refers to "property of the estate" and provides that "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion." 11 U.S.C. § 348(f)(1)(A). When this statute is read in conjunction with section 541 and case law interpreting it, "property of the estate" includes all debtor's interests, both legal and equitable, with some exceptions not applicable here. *See* 11 U.S.C. § 541 (defining property of the estate). As we have previously observed, "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." *Potter v. Drewes (In re Potter)*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999) (relying on section 541 to conclude that postpetition preconversion equity increases accrue to the benefit of the bankruptcy estate).[6]

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[5] *See In re Adams*, 641 B.R. at 151; *In re Castleman*, 631 B.R. at 919; *In re Hayes*, No. 113, Case No. 15-20727, slip op. at 9, 14; *In re Goins*, 539 B.R. at 516.

[6] This conclusion is consistent with case law interpreting section 541 in the context of a Chapter 7 case that has not been converted. In this context, courts consistently find that an

Goetz and the Amici Curiae insist that section 348(f) is ambiguous. They urge the Court to consider legislative history, which they maintain supports their argument that postpetition preconversion equity increases should benefit debtors. We detect no ambiguity in sections 348(f) and 541. Even if we were to conclude that section 348(f)(1)(A) is ambiguous, the legislative history of this statute does not mandate a different outcome.[7] Section 348(f)(1)(A), as enacted, accomplished the purpose of the legislation as articulated in the legislative history: it eliminated a "serious disincentive to [C]hapter 13 filings" by adopting the reasoning of *In re*

> 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 (and chapter 12), 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

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increase in nonexempt equity inures to the benefit of the bankruptcy estate. *See Coslow v. Reisz*, 811 F. App'x 980, 984 (6th Cir. 2020); *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 1321 (9th Cir. 1992); *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1323 (9th Cir. 1991); *In re Lents*, 644 B.R. 479, 489 (Bankr. D.S.C. 2022); *In re Ostendorf*, 2011 WL 1060992, at *1 (Bankr. D. Neb. Mar. 23, 2011); *In re Moyer*, 421 B.R. 587, 594 (Bankr. S.D. Ga. 2007); *In re Shipman*, 344 B.R. 493, 495 (Bankr. N.D. W. Va. 2006).

[7] The House Judiciary Committee's report on the Bankruptcy Reform Act of 1994 indicates that section 348(f)(1)(A) was enacted to:

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.

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 (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.

Bobroff and specifying that property a debtor acquires postpetition is not property of the converted bankruptcy estate. H.R. Rep. No. 103–835, at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366; *see* 11 U.S.C. § 348(f)(1)(A); *Bobroff v. Continental Bank (In re Bobroff)*, 766 F.2d 797 (3d Cir. 1985). Section 348(f) does not specify that debtors are entitled to retain equity resulting from payments during the Chapter 13 case—the scenario referenced in the House Report. Likewise, the statute does not address whether debtors are entitled to retain postpetition preconversion equity resulting from market appreciation, asset improvements or repairs. To accept Goetz's argument, one must read this clarification into the statute.

The plain meaning of a statute is 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.'" *Waugh v. Internal Revenue Serv. (In re Waugh)*, 109 F.3d 489, 493 (8th Cir. 1997) (quoting *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)). "'In such cases, the intention of the drafters, rather than the strict language, controls.'" *Bank of Mo. v. Fam. Pharmacy (In re Fam. Pharmacy)*, 614 B.R. 58, 66 (B.A.P. 8th Cir. 2020) (quoting *Ron Pair*, 489 U.S. at 242–43). Section 348(f) is clear and consistent with legislative intent. *See* 11 U.S.C. 348(f); *see also In re Castleman*, 631 B.R. 914, 918–20 (Bankr. W.D. Wash.

2021); *In re John*, 352 B.R. 895, 903–04 (Bankr. N.D. Fla. 2006). 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 Goetz's 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.

We also reject Goetz's claim that interpreting section 348(f) to allow the bankruptcy estate to benefit from postpetition preconversion estate property value increases treats Goetz as though she converted her case in bad faith. To the extent Goetz acquired new property after she petitioned for bankruptcy relief under Chapter 13, this property remains her property. In enacting section 348(f), Congress distinguished between property of the estate at the time of conversion that remains in the possession or control of the debtor from property acquired after petition. The former is property of the estate (Goetz's residence), the latter is property of debtor unless she converted in bad faith. The bad faith provision neither hinders nor advances Goetz's claim to the equity increase in her residence. It simply does not apply. Accordingly, the bankruptcy court correctly concluded that postpetition preconversion nonexempt equity accrues for the benefit of the converted Chapter 7 estate.

B. Goetz's claim that she benefits from the increase in equity in her residence because her residence was removed from the bankruptcy estate is also rejected

Goetz claims she is entitled to the equity increase in her residence because the residence was removed from the bankruptcy estate when she exempted it. Alternatively, Goetz argues that her residence and any nonexempt equity in it vested "in the debtor" upon confirmation under 11 U.S.C. § 1327(b) and the confirmation order, removing it from the converted bankruptcy estate. She claims the appreciation in her residence occurred after the property vested and she is entitled to retain this value. Although the bankruptcy court did not specifically address these claims, it implicitly rejected them when it declared, "There can be no question about whether the residence is property of the converted chapter 7 estate—it is. And because the post-petition equity in Goetz's residence is inseparable from the residence itself, the post-petition equity is also property of the chapter 7 estate." *In re Goetz*, 647 B.R. 412, 418 (Bankr. W.D. Mo. 2022). Neither party highlighted the bankruptcy court's failure to specifically address these arguments or requested remand due to this omission. However, Goetz devoted many pages of her brief to them. Because these arguments raise questions of law, we exercise our discretion to address them in the first instance.[8]

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[8] When a trial court neglects to address an issue, but the facts are undisputed, the parties exclusively argue questions of law, and the review is *de novo*, appellate courts may exercise discretion to decide legal issues in the first instance. *See Zaldivar Anzardo v. U.S. Att'y Gen.*, 835 F. App'x 422, 428 (11th Cir. 2020);

Goetz's reliance on section 1327 and the confirmation order to support her claim that her residence is no longer property of the bankruptcy estate is misplaced. While it is true that property vested in Goetz when the bankruptcy court confirmed her Chapter 13 plan, neither section 1327(b) nor the relevant provision of the confirmation order applies in the converted Chapter 7 case. *See* 11 U.S.C. § 103(j) ("Chapter 13 of this title applies only in a case under such chapter."); *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."). Rather, section 348 governs the scope of estate property upon conversion. *See* 11 U.S.C. § 348; *In re Cofer*, 625 B.R. 194, 198 (Bankr. D. Idaho 2021) ("In sum, sound statutory interpretation and the relevant authorities support the conclusion that the plain language of § 348(f)(1)(A) revests in the estate of the converted case all property of the estate of the original filing still in the possession or control of Debtor despite the provisions of § 1327."). Because Goetz's interpretation ignores section 348(f)(A)(1), it is rejected.

Her assertion that she removed her residence from the bankruptcy estate when she claimed the homestead exemption is likewise rejected. Citing to

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Bokenfohr v. Gladen, 828 F. App'x 485, 486, n.3 (9th Cir. 2020); *Kistner v. L. Off. of Michael P. Margelefsky, LLC*, 518 F.3d 433, 438 (6th Cir. 2008); *Hill v. Peoplesoft USA, Inc.*, 412 F.3d 540, 544 n.* (4th Cir. 2005); *Savard v. Rhode Island*, 320 F.3d 34, 38 (1st Cir. 2003), *on reh'g en banc*, 338 F.3d 23 (1st Cir. 2003); *Roberts v. Van Buren Pub. Sch.*, 773 F.2d 949, 955 (8th Cir. 1985); s*ee also Planned Parenthood of Greater Wash. & N. Idaho v. U.S. Dep't of Health & Hum. Servs.*, 946 F.3d 1100, 1112 (9th Cir. 2020).

stipulated facts, Goetz maintains there was no value in her residence available to the bankruptcy estate on the date she petitioned for bankruptcy relief. She asserts that any equity in the residence was "removed" or "withdrawn" from the estate when she claimed her homestead exempt and no interested party objected to the exemption. Citing cases ruling that exempt property is not property of the estate, Goetz insists any increase in equity between the petition date and the conversion date inures to her benefit because the residence is no longer property of the estate.

Goetz's eligibility for the Missouri homestead exemption is determined as of the date of the Chapter 13 petition. *See Alexander v. Jensen-Carter (In re Alexander)*, 236 F.3d 431, 433 (8th Cir. 2001). On the petition date, Goetz valued her residence at $130,000. After deducting the $15,000 homestead exemption and the debt secured by a mortgage lien, there remained $7,539.46 in equity. On the conversion date, the value of the house increased to $205,000 and the debt against the home decreased, leaving approximately $83,000 in equity. We are not convinced that the sum of nonexempt equity in Goetz's residence on the petition date governs whether it is property of the estate or determines the value of the estate's interest in the property at the time she sought to compel abandonment of the property under section 554.

Section 513.475 of the Missouri Revised Statutes entitles Goetz to exempt a house, appurtenances and land "not exceeding the value of fifteen thousand dollars" that is used as a homestead. *See* Mo. Rev. Stat. § 513.475(1). The parties stipulated that Goetz claimed and was entitled to a $15,000 homestead exemption. To the extent the equity in this property is

more than $15,000, it is not exempt. Stated another way, section 513.475 entitles Goetz to "remove" from the estate only a portion of the value of the homestead—equity in the maximum sum of $15,000. It is not an in-kind exemption; it does not entitle Goetz to remove the dwelling house and appurtenances, and the land in its entirety. As explained by the court in *In re Adams*, "In effect, most exemptions which entitle a debtor to a representative value, measured by former ownership of particular property, operate as a charge against that property, much like a lien to secure payment of the specified amount, rather than title to the thing itself." 641 B.R. 147, 153 (Bankr. W.D. Mich. 2022); *see generally Schwab v. Reilly*, 560 U.S. 770, 783–84, 794–95 (2010) (finding that under sections 522(5) and (6), the debtor may claim his aggregate interest in the business equipment he sought to exempt, not the equipment *per se* and explaining that the estate may preserve its right to retain any value in the equipment beyond the value of the exempt interest). Accordingly, Goetz's homestead exemption did not remove the residence from the bankruptcy estate. Further, Goetz's $15,000 homestead exemption was consistent with the Missouri statutory limit and, therefore, facially valid. The Trustee's failure to object to the exemption claim does not preclude him from pursuing the nonexempt equity. *See Schwab*, 560 U.S. at 774 (noting that because the exemption was facially valid, the Trustee was not compelled to object "to preserve the estate's ability to recover value in the asset beyond the dollar value the debtor expressly declared exempt.").

Importantly, this dispute arises in the context of a motion to compel abandonment. 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. *See* 11 U.S.C. § 554(b) ("On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that *is* burdensome to the estate or that *is* of inconsequential value and benefit to the estate.") (emphasis added); *see also Coslow v. Reisz*, 811 F. App'x 980, 984 (6th Cir. 2020); *In re Adams*, 641 B.R. at 152–53. Also, section 554 "says nothing about looking to the 'commencement of the case' to determine value" and "every court confronted with an analogous abandonment dispute has looked to the equity contained in the debtor's property at the time the abandonment motion came before it, rather than at some static moment in the past." *Coslow*, 811 F. App'x at 984 (citation omitted). Consequently, Goetz's claim that her homestead exemption claim limited the estate's interest in her residence to its value on the petition date is not persuasive.

CONCLUSION

For the reasons stated, the bankruptcy court correctly concluded that the postpetition preconversion equity increase in Goetz's residence is property of the bankruptcy estate. The parties stipulated that sale of Goetz's residence would result in more than $62,000 in proceeds after satisfying the mortgage lien and paying the $15,000 homestead exemption and costs of sale. The bankruptcy court's determination that this sum is "of more than inconsequential value and benefit to the estate" was not an abuse of discretion. We affirm the bankruptcy court's decision to deny

Goetz's Motion to Compel Trustee to Abandon Real Property of Debtor.

**MEMORANDUM OPINION,
U.S. BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI
(NOVEMBER 10, 2022)**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI

IN RE: MACHELE L. GOETZ,

Debtor,

Case No. 20-41493

Chapter 7

Before: Brian T. FENIMORE,
United States Bankruptcy Judge.

MEMORANDUM OPINION

The issue in this case has divided courts. The parties ask the court to determine whether the debtor or the chapter 7 estate receives the benefit of non-exempt equity that arises after the date the debtor commences a chapter 13 case but before the date the court converts the case to chapter 7. For the reasons explained below, the court joins the slight minority of courts holding that post-petition increases in non-exempt equity accrue for the benefit of the converted chapter 7 estate.

In this case, debtor Machele Goetz asks the court to compel the chapter 7 trustee to abandon the estate's

interest in her residence, arguing the residence is "of inconsequential value and benefit to the estate" under 11 U.S.C. § 554 because Goetz had no non-exempt equity in the residence on the date she originally commenced her case under chapter 13 of the Bankruptcy Code. But because the court determines the residence's value to the now-converted chapter 7 estate includes significant post-petition non-exempt equity, the residence is of more than "inconsequential value and benefit to the estate" under § 554. Consequently, the court DENIES Goetz's motion to compel abandonment.

JURISDICTION

The court has jurisdiction over this matter under 28 U.S.C. §§ 1334(b) and 157(a) and (b). This matter is a statutorily core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O) and is constitutionally core. No party has contested the court's jurisdiction or its authority to make a final determination. The court, therefore, has authority to hear this matter and make a final determination.

BURDEN OF PROOF

As the party requesting abandonment, Goetz bears the burden of establishing that abandonment is appropriate. *Alexander v. Jensen-Carter (In re Alexander)*, 289 B.R. 711, 715 (B.A.P. 8th Cir. 2003), *aff'd*, 80 F. App'x 540 (8th Cir. 2003).

BACKGROUND

The present dispute comes before the court on debtor Machele Goetz's motion to compel abandonment. The parties have stipulated to the relevant facts.

Goetz commenced this case by filing a chapter 13 bankruptcy petition in August 2020.[1] On the chapter 13 petition date, Goetz owned a residence worth $130,000, Freedom Mortgage held a $107,460.54 lien against the residence, and Goetz claimed a $15,000 homestead exemption in the residence.[2] The parties agree that the estate would have received nothing if the trustee had liquidated the residence on the chapter 13 petition date.[3]

The court granted Goetz's request to convert the case from chapter 13 to chapter 7 in April 2022.[4] It soon became clear that the chapter 7 trustee intended to market and sell Goetz's residence.[5] So approximately one month after conversion, Goetz filed the present motion to compel abandonment.[6] The court held a hearing on the motion to compel abandonment, the parties stipulated to the relevant facts, and the court took the matter under advisement.[7]

The parties agree that between the petition date and the conversion date, Goetz's residence increased

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[1] Stipulations of Fact Relating to Debtor's Mot. to Compel the Trustee to Abandon Real Property of the Debtor, ECF No. 115 ¶ 1.

[2] *Id.* ¶ 3.

[3] *Id.* ¶ 4.

[4] *Id.* ¶ 5.

[5] Trustee's Objection to Motion for Relief from the Automatic Stay, ECF No. 93, May 20, 2022.

[6] ECF No. 98.

[7] ECF Nos. 116, 122.

in value by $75,000 and Goetz reduced Freedom Mortgage's claim by $960.54.[8] Goetz's homestead exemption remained $15,000.[9] Applying those values and factoring in costs of sale, the parties agree that if the trustee had liquidated the residence on the conversion date, the estate would have received more than $62,000 in proceeds, net of sale costs.[10]

Goetz now asks the court to compel abandonment, arguing the residence is of "inconsequential value and benefit to the estate" under 11 U.S.C. § 554 because the court must exclude from its consideration the increase in non-exempt equity that arose between the date Goetz filed her chapter 13 voluntary petition and the date the court converted her case to chapter 7. The chapter 7 trustee asks the court to deny Goetz' motion to compel abandonment, arguing the estate in the converted case includes Goetz's entire interest in the residence under 11 U.S.C. § 348(f) and the post-petition increase in non-exempt equity makes the residence valuable to the estate for purposes of the abandonment analysis under § 554.

Having explained the relevant background information, the court turns to the merits of the present dispute.

DISCUSSION

Section 554(b) governs motions to compel abandonment. It empowers courts to "order the trustee to

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[8] Stipulations of Fact, ECF No. 115 ¶ 6.

[9] *Id.*

[10] *Id.* ¶ 7.

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. § 554(b). At a minimum, property has more than "inconsequential value and benefit to the estate" under § 554(b) if profit from the disposition or use of the property would generate a meaningful distribution to unsecured creditors. *See, e.g.*, *In re Thornton*, 269 B.R. 682, 685 (Bankr. W.D. Mo. 2001) (determining potential 1.7% distribution to unsecured creditors was of inconsequential value under § 554)).

In this case, the parties agree that abandonment is appropriate under § 554 unless the post-petition equity in Goetz's residence became property of Goetz's converted chapter 7 estate. Thus, to decide the present motion to compel abandonment, the court must determine the extent of the chapter 7 estate's interest in Goetz's residence.

Bankruptcy Code § 348(f)(1)(A) describes the scope of property of the estate in a case converted from chapter 13 to chapter 7 in good faith. 11 U.S.C. § 348. Section 348(f)(1)(A) states, "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." *Id.* Thus, under § 348(f)(1)(A), if the debtor owns an item of property on the chapter 13 petition date and retains it on the date of conversion to chapter 7, the property becomes part of the converted chapter 7 estate and may be subject to administration by the chapter 7 trustee. *Harris v. Viegelahn*, 575 U.S. 510, 517 (2015) ("§ 348(f) limits a converted Chapter 7 estate to property belonging to the debtor 'as of the date' the original Chapter 13 petition

was filed."). But absent bad faith, property that the debtor acquires between the petition date and the conversion date does not become property of the converted chapter 7 estate. *See id.* at 517–18 (analyzing exclusion of post-petition wages from the estate); 11 U.S.C. § 348(f)(1)–(2).

Courts disagree about whether post-petition equity increases constitute "new" property that become property of a converted chapter 7 estate under § 348 (f)(1)(A). *Compare Rodriguez v. Barrera (In re Barrera)*, BAP No. 30-003, 2020 WL 5869458, at *3–*5 (B.A.P. 10th Cir. Oct. 2, 2020) (discussing disagreement about whether post-petition appreciation is a separate interest in property), *aff'd on other grounds*, 22 F.4th 1217 (10th Cir. 2022), *with In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015) ("The equity is inseparable from the real estate, which was always property of the estate under § 541(a)."). Some courts hold that § 348(f)(1)(A) gives the converted estate an interest in each specific item of property the debtor owned on the petition date and retained on the conversion date, such that each item of property enters the converted estate with the characteristics it has on the conversion date, including any post-petition increases in non-exempt equity. *See, e.g.*, *In re Castleman*, 631 B.R. 914, 921 (Bankr. W.D. Wash. 2021), *aff'd*, 2022 WL 2392058 (W.D. Wash. July 1, 2022) (holding post-petition appreciation inured to the chapter 7 estate). In contrast, the slight majority of courts hold that post-petition increases in non-exempt equity do not become property of the estate in a converted chapter 7 case because (1) the relevant language in § 348(f)(1)(A) is ambiguous, and (2) the legislative history of § 348(f)(1) suggests Congress intended to exclude

post-petition increases in equity from the converted chapter 7 estate. *See, e.g.*, *In re Cofer*, 625 B.R. 194, 199–202 (Bankr. D. Idaho 2021) (summarizing split in authority and concluding post-petition appreciation inured to the debtor's benefit).

In this case, the court determines the plain language of the Bankruptcy Code controls. Section 348 (f)(1)(A) includes in the converted chapter 7 estate all "property of the estate" the debtor owned on the petition date and retains at conversion. 11 U.S.C. § 348(f)(1)(A). Section 541(a) broadly defines "property of the estate" to include "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). This broad definition 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. *See Potter v. Drewes (In re Potter)*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999) (concluding § 541 captures "the entire asset, including any changes in its value which might occur after the date of filing."). Thus, if the value (and, hence, equity) is one of the "legal and equitable interests of the debtor in property" that comprise each item of property of the estate under § 541, then that value and any equity must become property of the converted estate as a part of the property § 348(f)(1)(A) includes in the converted chapter 7 estate.

Because equity is not a distinct item of property, §§ 348(f)(1) and 541(a)(1) include it in the converted estate. *See, e.g.*, *In re Hayes*, ECF No. 113, Ch. 7 Case No. 15-20727-MER, slip op. at 9–12 (Bankr. D. Colo. Mar. 28, 2019) (explaining that equity is an inseparable characteristic of property of the estate);

In re Adams, 641 B.R. 147, 151 (Bankr. W.D. Mich. 2022) (concluding that treating equity as a separate asset "confuses the value of estate property with the legal or equitable interests in that property, as of the commencement of the case."). Black's law dictionary defines the term "equity," in relevant part, as, "the difference between the value of the property and all encumbrances on it." *Equity*, Black's Law Dictionary (11th ed. 2019). As this definition illustrates, equity is not a separate item of property; it exists only with reference to and as a characteristic of an underlying asset. *In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015) ("equity is inseparable from the real estate"); *In re Larzelere*, 633 B.R. 677, 683 (Bankr. D.N.J. 2021) ("One cannot separately pledge, mortgage, hypothecate or liquidate appreciation. One can only mortgage the entire asset: the real estate."). Equity, therefore, is merely one "legal or equitable interest[] of the debtor" subsumed within each item of property that §§ 348 (f)(1)(A) and 541(a)(1) make property of the converted estate. *In re Hayes*, slip op. at 11. As a result, equity cannot be a separate item of after-acquired property that the Bankruptcy Code excludes from the converted estate under the plain language of those sections. *See, e.g.*, *Property of the estate*, 2 Norton Bankr. L. & Prac. 3d § 39:14 ("Since an increase in equity is inseparable from the real estate, the value of that asset[] should inure to benefit the Chapter 7 estate and not the debtor."); *In re Hayes*, slip op. at 9, 11 (concluding that post-petition equity is a "descriptive term" and is "inseparable from the real estate" that becomes property of the estate under § 541(a)(1)).

Supreme Court precedent supports the court's plain language approach. In *Crane v. Commissioner of*

Internal Rev., 331 U.S. 1, 6 (1947), the Supreme Court determined the term "property" did not "mean the same thing as 'equity'" for the purposes of calculating taxable gain under the Internal Revenue Code. The Supreme Court explained, "'property' is the physical thing which is a subject of ownership, or . . . the aggregate of the owner's rights to control and dispose of that thing." *Id.* In contrast, "'equity' is defined as 'the value of a property above the total of the liens.'" *Id.* at 7. "'Equity' is not given as a synonym [of 'property'], nor do either of the foregoing definitions suggest that it could be correctly so used." *Id.* Accordingly, the *Crane* Court calculated taxable gain using the value of debtor's total interest in a depreciated asset, rather than using the value of the debtor's equity in the asset. *Id.* at 14. The Supreme Court's analysis in *Crane* applies squarely to the court's determination of the scope of the term "property of the estate" under § 348(f)(1)(A). *See In re Hayes*, slip op. at 10–11 (analyzing *Crane*). Just as "equity" was not a separate item of property under the Internal Revenue Code in *Crane*, here, too, equity is not a separate item of after-acquired property that § 348(f)(1)(A) excludes from the converted estate. *Id.*

The Eighth Circuit Bankruptcy Appellate Panel's decision in *Potter v. Drewes (In re Potter)*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999), also supports the court's determination that post-petition equity is not after-acquired property excluded from the converted chapter 7 estate under § 348(f)(1)(A). In *Potter*, the debtor originally filed a chapter 13 case but subsequently converted to 7. *In re Potter*, 228 B.R. at 423. Years later, the debtor sought to limit the chapter 7 estate's interest in trust assets to the value of the

assets on the chapter 13 petition date. *Id.* Relying entirely on § 541(a), the Bankruptcy Appellate Panel stated, "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. . . . post-petition appreciation in the value of property accrues for the benefit of the trustee." *Id.* at 424. Applying that conclusion to this case, the court determines here that because the estate's interest in Goetz's residence includes its value, and hence any equity, the post-petition changes to the residence's equity accrue for the benefit of the chapter 7 estate.[11]

Finally, the court's conclusion in this case is consistent with § 348(f)(1)(B). Section 348(f)(1)(B) makes valuations in a chapter 13 case inapplicable when the case converts to chapter 7. 11 U.S.C. § 348(f)(1)(B). As this court explained in *In re Jackson*, No. 16-42695-DRD7, 2020 WL 536018, at *3 (Bankr. W.D. Mo. Feb. 3, 2020), "the underlying policy [of § 348(f)(1)(B)] is that the parties should be in the same position they

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[11] The Eighth Circuit recently confirmed in *Waltrip v. Sawyers (In re Sawyers)*, 2 F.4th 1133, 1138 (8th Cir. 2021), that when evaluating a debtor's § 522(f) motion to avoid a judicial lien against her homestead, "the value of a debtor's homestead is determined based on the property's fair market value as of the petition date." We must recognize, however, that Congress expressly mandated the petition-date valuation for motions to avoid liens when it enacted § 522(a)(2) ("[i]n this section . . . 'value' means fair market value as of the date of the filing of the petition . . . . "). Section 522(a)(2)'s definition of value does not apply outside the context of § 522 to support Goetz's position that post-petition increases in equity should inure to the debtor's benefit in circumstances of conversion from chapter 13 to chapter 7. In this case, § 348 governs instead.

would be in had the Debtor simply filed a chapter 7 on the date of conversion." By giving the converted estate the benefit of post-petition appreciation, the court's decision in this case likewise puts the parties in the position they would have been if the debtor had filed a chapter 7 case on the conversion date.

The court respectfully disagrees with the courts that have determined the legislative history of § 348(f)(1) compels a different result. *But see, e.g.*, *In re Cofer*, 625 B.R. 194, 199–202 (Bankr. D. Idaho 2021) (summarizing split in authority and concluding post-petition appreciation inured to the benefit of the debtor). Where the plain language of the statutory text is clear, the court's inquiry must begin and end with the statutory text. *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992). Here, the text of the bankruptcy code is clear: §§ 348(f)(1)(A) and 541(a)(1) make post-petition equity increases property of the converted chapter 7 estate. Consequently, the court's inquiry ends with the plain language of the Bankruptcy Code, and the court will not analyze whether the legislative history of § 348(f) might otherwise suggest a different result.

The court also disagrees with the debtor's contention that the court's approach "would have the court disregard" the punishment § 348(f)(2) imposes for bad faith conversions. *But see* Debtor's Suppl. Br. in Supp. of Debtor's Mot. to Compel the Trustee to Abandon Real Property of the Debtor ¶ 18–19, ECF No. 119 (citing *In re Barrera*, No. BAP CO-20-003, 2020 WL 5869458, at *7 (B.A.P. 10th Cir. Oct. 2, 2020), *aff'd on other grounds*, 22 F.4th 1217 (10th Cir. 2022)). Section § 348(f)(2) states, "[i]f the debtor converts a case under chapter 13 . . . 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). Because § 348(f)(1)(A) would otherwise entitle the debtor to property the debtor acquired between the petition date and the conversion date, § 348(f)(2) punishes debtors who convert in bad faith by instead including that after-acquired property in the converted estate. *Harris v. Viegelahn*, 575 U.S. 510, 517–18 (2015). Section 348(f)(2), however, does not affect the converted estate's interest in post-petition changes to the characteristics of property the debtor owned on the petition date. Likewise, because post-petition equity is a characteristic of that property rather than a new item of property, the court's determination that § 348(f)(1)(A) makes post-petition equity an asset of the converted chapter 7 estate does not affect the converted estate's interest in new property under § 348(f)(2). The court's decision, therefore, leaves unaffected the punishment § 348(f)(2) imposes for bad faith conversions.

In summary, despite the split in authority, the court's analysis in this case is simple. Goetz owned the residence on the original petition date and retained it on the conversion date. There can be no question about whether the residence is property of the converted chapter 7 estate—it is. And because the post-petition equity in Goetz's residence is inseparable from the residence itself, the post-petition equity is also property of the chapter 7 estate.[12] As a result, the residence

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[12] The court's analysis in this case applies only when a debtor converts a chapter 13 case to chapter 7. It has no bearing on the estate's interest in post-petition equity while a case remains in chapter 13, s*ee, e.g. In re Larzelere*, 633 B.R. 677 (Bankr. D.N.J.

is of more than "inconsequential value and benefit to the estate" under 11 U.S.C. § 554. Abandonment is inappropriate in this case.

CONCLUSION

For the reasons explained above, the court DENIES Goetz's motion to compel abandonment.

IT IS SO ORDERED.

/s/ Brian T. Fenimore
United States Bankruptcy Judge

Dated: 11/10/2022

2021) (discussing post-petition appreciation absent conversion), or other circumstances that might require a determination of value.