

No. 23-2491

IN THE UNITED STATES EIGHTH CIRCUIT COURT OF APPEALS

IN RE MACHELE L. GOETZ,
Debtor.

MACHELE L. GOETZ
Debtor-Appellant,

— v. —

VICTOR F. WEBER, Chapter 7 Trustee
Appellee.

On Appeal from the Bankruptcy Appellate Panel for the Eighth Circuit,
Case No. 22-6009

**BRIEF OF AMICI CURIAE NATIONAL ASSOCIATION OF CONSUMER
BANKRUPTCY ATTORNEYS AND NATIONAL CONSUMER
BANKRUPTCY RIGHTS CENTER IN SUPPORT OF APPELLANT AND
SEEKING REVERSAL OF THE BANKRUPTCY COURT’S DECISION**

NATIONAL ASSOC. OF CONSUMER
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August 16, 2023

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Goetz v. Weber, No. 23-2491

Pursuant to FRAP 26.1 and Eighth Circuit Local Rule 26.1A, Amici Curiae, the National Association of Consumer Bankruptcy Attorneys and the National Consumer Bankruptcy Rights Center, make the following disclosure:

- 1) Is party/amicus a publicly held corporation or other publicly held entity? **NO**
- 2) Does party/amicus have any parent corporations? **NO**
- 3) Is 10% or more of the stock of party/amicus owned by a publicly held corporation or other publicly held entity? **NO**
- 4) Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? **NO**

This 16th day of August, 2023.

/s/ James J. Haller

James J. Haller

Attorney for Amicus Curiae

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STATEMENT OF INTEREST OF AMICI CURIAE

The National Consumer Bankruptcy Rights Center (NCBRC) is a nonprofit organization dedicated to preserving the bankruptcy rights of consumer debtors and protecting the bankruptcy system's integrity. The Bankruptcy Code grants financially distressed debtors rights that are critical to the bankruptcy system's operation. Yet consumer debtors with limited financial resources and minimal exposure to that system often are ill-equipped to protect their rights in the appellate process. NCBRC files *amicus curiae* briefs in systemically-important cases to ensure that courts have a full understanding of the applicable bankruptcy law, the case, and its implications for consumer debtors.

The National Association of Consumer Bankruptcy Attorneys (NACBA) is also a nonprofit organization whose members are consumer bankruptcy debtors across the country. NACBA advocates on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors. NACBA has filed *amicus curiae* briefs in various cases seeking to protect the rights of consumer bankruptcy debtors. *See, e.g., Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019); *Harris v. Viegelahn*, 135 S. Ct. 1829 (2015); *Lerbakken v. Sieloff & Assocs., P.A. (In re Lerbakken)*, 949 F.3d 432 (8th Cir. 2020); *Hardy v. Fink (In re Hardy)*, 787 F.3d 1189 (8th Cir. 2015).

NCBRC, NACBA and its membership have a vital interest in the outcome of this case. Each year thousands of bankruptcy debtors file petitions under Chapter 13 committing to long-term repayment plans using future income. Because of the advantages to all parties and in acknowledgment of the burden on debtors' future income, Congress has taken steps to incentivize Chapter 13 over Chapter 7 including providing that a debtor who tries and fails to maintain a Chapter 13 payback plan, may convert his case to Chapter 7 without penalty. Upon conversion, the bankruptcy estate consists of those property interests the debtor had at the petition date and still possesses. If this Court were to adopt the trustee's position here, where no bad faith is alleged, honest but unsuccessful Chapter 13 debtors would be significantly penalized for trying Chapter 13 instead of proceeding directly to Chapter 7. This would contravene Congress's intention to encourage debtors to file under Chapter 13.

CONSENT AND CERTIFICATION OF AUTHORSHIP

This amici curiae brief is being filed with consent of the parties. Pursuant to Fed. R. App. P. 26.1, no counsel for a party authored this brief in whole or in part, and no person/entity other than NACBA, its members, NCBRC, and their counsel made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

In Chapter 7 bankruptcy, a debtor's pre-petition, non-exempt assets are liquidated to pay creditors. In Chapter 13, on the other hand, the debtor commits post-petition income for a period of three to five years to the payment of current debts with creditors receiving at least as much as they would have received had the debtor filed under Chapter 7. Chapter 13 has the advantages that creditors typically receive more than they would under Chapter 7, and debtors are able to retain assets, like a house or car, that would have been liquidated in Chapter 7. For that reason, Congress has incentivized debtors to pursue Chapter 13 by, among other things, giving debtors the non-waivable option to convert from chapter 13 to Chapter 7 if they are unable to meet their Chapter 13 plan obligations.

When a case is converted from Chapter 13 to Chapter 7, the Chapter 7 bankruptcy estate consists of the debtor's legal and equitable interests in property as they existed at the time of the original petition date, so long as they are still in the debtor's possession or control at the time of conversion. 11 U.S.C. § 348(f)(1)(A). Significantly, interests acquired post-petition, including property appreciation due to factors such as pay-down of a mortgage, property improvement, or market forces, are not part of the converted estate. Only when a debtor is found to have converted in bad faith are post-petition legal and

equitable property interests considered part of the converted estate.

Since 11 U.S.C. § 348(f) does not specify when the Debtor's estate should be valued, the Court should look to a sister provision in 11 U.S.C. § 522 in which the value of property in a chapter 7 is determined as of the date of the original petition. This "snapshot" of the value best reconciles the similar language between these sections and is consistent with the legislative history of 11 U.S.C. § 348.

ARGUMENT

I. Statutory Framework

The Bankruptcy Code provides several avenues for people and entities weighed down by debt to repay their creditors to the extent they are able, receive a discharge of most remaining debts, and exit bankruptcy with a clean financial slate. This case involves two options Congress has provided for individual debtors - Chapter 7 and Chapter 13. Chapter 13, the chapter under which Debtor, Machele L. Goetz, originally filed, provides for repayment of debts from his future earnings. Chapter 7, by contrast, provides for repayment of debts by liquidating a debtor's existing non-exempt assets. Because Chapter 13 is often less disruptive to the debtor and can provide greater relief to creditors, Congress has long sought to encourage debtors to take advantage of that option where possible. Among other things, Congress has permitted

debtors who pursue Chapter 13 to later convert to Chapter 7 without penalty.

A. Chapter 7

In a bankruptcy under Chapter 7, debts are paid by liquidating the debtor's non-exempt assets. Filing a bankruptcy petition under any chapter creates an "estate." 11 U.S.C. § 541(a). Subject to certain exceptions listed in 11 U.S.C. § 541(a), the Chapter 7 estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case"- that is, the debtor's pre-petition assets. *Id.* § 541(a)(2). The Debtor may then exempt certain property, thereby removing the asset from the estate. *Id.* § 522(b); *Owen v. Owen*, 500 U.S. 305, 308 (1991) ("An exemption is an interest withdrawn from the estate (and hence from the creditors) for the benefit of the debtor").

However, "Filing under Chapter 7 'allows a debtor to make a clean break from his financial past, but at a steep price: prompt liquidation of the debtor's assets.' *Harris v. Viegelahn*, 575 U.S. 510, 513, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (2015)." *Castleman v. Burman (In re Castleman)*, No. 22-35604, 2023 U.S. App. LEXIS 19470, at 12-13 (9th Cir. July 28, 2023) (Tallman, J., dissenting).

Chapter 7 provides for appointment of a trustee, 11 U.S.C. §§ 701, 702, who collects and sells the *non-exempt* estate property, 11 U.S.C. § 704(a)(1), and distributes the proceeds to creditors in accordance with the priorities set by

the Bankruptcy Code, 11 U.S.C. § 726. Following that, for an individual debtor, most debts are discharged. 11 U.S.C. § 727. Chapter 7 bankruptcy thus gives the debtor a fresh start, but sometimes at the price of losing a home or other non-exempt assets.

B. Chapter 13

Chapter 13 is a debt restructuring program available to certain debtors with regular income. 11 U.S.C. § 109(e). It differs from Chapter 7 in key respects. Most importantly, Chapter 13 permits debtors to repay debts using their "future income," rather than proceeds from the sale of their assets. 11 U.S.C. § 1322(a)(1). The Chapter 13 estate includes, in addition to a debtor's non-exempt assets at the time of filing, post-petition property interests that the debtor acquires or earns "after commencement of the case, but before the case is ... converted to a case under chapter 7..." 11 U.S.C. § 1306(a). It is from the debtor's post-petition earnings that creditors typically are paid.

Under Chapter 13, distributions to creditors are made pursuant to a payment plan the debtor proposes. 11 U.S.C. § 1321. The plan must provide for submission of part of the debtor's "future earnings ... to the supervision and control of the [Chapter 13] trustee"; the trustee, in turn, distributes the money to creditors according to the confirmed plan. 11 U.S.C. §§ 1322(a)(1), 1326(c). To obtain confirmation from the bankruptcy court, the plan must provide for

paying each unsecured creditor at least as much as it would have received under a Chapter 7 liquidation. 11 U.S.C. § 1325(a)(4).

Chapter 13 offers significant advantages over Chapter 7 to debtors and creditors alike. Because creditors are paid out of the debtor's future earnings, the debtor is able to keep possession of existing assets, 11 U.S.C. § 1306(b) — most importantly, a house or car -- and protect those assets from liquidation. Creditors also benefit. By law, the confirmed plan must give them at least as much as they would have received if the debtor had filed a Chapter 7 liquidation. *Id.* § 1325(a)(4), (5). And creditors often receive more under a Chapter 13 repayment plan, particularly where a debtor has regular income but no assets subject to liquidation. In light of those advantages, Congress has expressed a strong policy of encouraging debtors to take advantage of Chapter 13 where possible. *See Perry v. Commerce Loan Co.*, 383 U.S. 392, 395 (1966); H.R. Rep. No. 103-835, at 57 (1994).

C. Conversion from Chapter 13 to Chapter 7

Consistent with its policy of encouraging debtors to choose Chapter 13, Congress has made it easy for debtors to fall back on Chapter 7. The Bankruptcy Code grants a Chapter 13 debtor the non-waivable right to convert

a Chapter 13 case to a Chapter 7 case "at any time." 11 U.S.C. § 1307(a).¹

Conversion "does not commence a new bankruptcy case." *Collier on Bankruptcy*, P. 348.02 (Richard Levin and Henry J. Sommer, eds. 16th ed.) Rather, it *transforms* the debtor's pending case from one under Chapter 13 into one under Chapter 7. See 11 U.S.C. § 348(a) (conversion "does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief"). Conversion significantly changes how the case proceeds thereafter.

First, conversion transforms the estate from a Chapter 13 estate to a Chapter 7 estate. A Chapter 13 estate includes interests in property and earnings acquired post- petition while a Chapter 7 estate generally does not. The statute addresses that incongruity by providing that the "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition," provided that property "remains in the possession of or ... under the control of the debtor on the date of conversion." 11 U.S.C. §348(f)(1)(A). Thus, after conversion, the estate generally consists of the same legal and equitable interests in property that would have been included in the estate had the debtor filed under Chapter 7 so long as the property interest

¹ A Chapter 13 debtor likewise may dismiss the case "at any time." 11 U.S.C. § 1307(b).

remains in possession or under the control of the debtor. It excludes legal and equitable interests in property the debtor acquired after filing the Chapter 13 petition.

Congress created an exception to that general rule for "bad faith" conversions. If the debtor converts in bad faith—e.g., if the debtor "fraudulently conceal[s] significant assets," *Marrama v. Citizens Bank*, 549 U.S. 365, 367 (2007)—the Chapter 7 estate will consist of the debtor's legal and equitable interest in property "as of the date of conversion," 11 U.S.C. § 348(f)(2). Thus, only where a debtor acts in bad faith are post-petition legal and equitable interests in property considered "property of the estate in the converted case" and subject to distribution to creditors after conversion. *Id.*

This statute protects the incentive to file a chapter 13 bankruptcy. Otherwise, the debtor would be in a worse position than if the case was originally filed as a chapter 7 bankruptcy.²

II. The Value of the Debtor's Chapter 7 Estate Should be Determined As Of The Date Of The Filing Of The Petition.

² "This statute removes a potential disincentive to Chapter 13 filings: if all assets acquired after filing of the Chapter 13 petition were available to creditors after conversion, the debtor would be "in a worse position than if the petition had been filed in Chapter 7 initially." *Brown*, 953 F.3d at 620. By limiting the converted estate to the property a debtor had at the time of the initial petition, § 348(f) "put[s] the debtor where he would have been, had he filed in Chapter 7 initially." *Id.* " *Castleman v. Burman (In re Castleman)*, No. 22-35604, 2023 U.S. App. LEXIS 19470, at 14 (9th Cir. July 28, 2023) (Tallman, J., dissenting).

A chief distinction between Chapter 7 and Chapter 13 is that, under Chapter 7, creditors are paid using *pre-petition* assets, if any, while under Chapter 13 creditors are usually paid using *post-petition* income. Congress preserved that distinction in cases that are converted from Chapter 13 to Chapter 7. It provided that the estate property in the converted Chapter 7 case is determined "as of the date of filing of the petition," 11 U.S.C. § 348(f)(1)(A), and that "the date of the filing of the petition" continues to be the date of the original Chapter 13 filing, *Id.* § 348(a).

Accordingly, once a debtor converts his case to Chapter 7, the property of the estate includes only those legal and equitable interests that the debtor had on the date of the petition. *Id.* Interests acquired after the petition date, such as appreciation of the value of the property, regardless of whether it results from pay down of a mortgage, property improvements, or market forces, are excluded from the chapter 7 estate. "By limiting the converted estate to the property a debtor had at the time of the initial petition, § 348(f) "put[s] the debtor where he would have been, had he filed in Chapter 7 initially." *Id.*" *Castleman v. Burman (In re Castleman)*, No. 22-35604, 2023 U.S. App. LEXIS 19470, at 14 (9th Cir. July 28, 2023) (Tallman, J., dissenting).

This is consistent with the valuation of the Debtor's estate under 11

U.S.C. § 522.

The language of 11 U.S.C. § 522(a)(2) determines value in Section 522, pertaining to exemptions “as of the date of the filing of the petition” which is virtually identical to the language in 11 U.S.C. § 348(f)(1)(A) which 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.” (Emphasis added.) This court confirmed in *David G. Waltrip, L.L.C. v. Sawyers (In re Sawyers)*, 2 F.4th 1133, 1138 (8th Cir. 2021), that when evaluating a debtor's 11 U.S.C. § 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."

As *Sawyers* implicitly recognizes the Bankruptcy Code requires that the bankruptcy court apply the "complete snapshot" rule, meaning the court evaluates a debtor's affairs on the day he files for bankruptcy without considering any developments after that date (as if someone took a snapshot of the situation, leaving it frozen in time) to determine if assets are properly exempted from the bankruptcy estate. See *Rockwell v. Hull (In re Rockwell)*, 968 F.3d 12, 17 (1st Cir. 2020) and *In re Gomez*, 646 B.R. 523 (Bankr. D. Colo.

2022)).³

The First Circuit Court of Appeals concluded that the complete snapshot rule applies pursuant to an analysis of the Bankruptcy Code. Property exempted under 11 U.S.C. § 522 is immunized against liability for pre-bankruptcy debts subject to limited exceptions. *Rockwell* at 20. “The Code enumerates those exceptions, where property that is properly exempt on the day of filing (here, the day the snapshot is taken) can be later incorporated into the estate (because the snapshot was only partial and can therefore be edited). See 11 U.S.C. § 522(c).”⁴ *Id.* The court concluded that the complete

³ “In the early 1990s, a circuit split developed on the question of what property should be included in a Chapter 7 estate upon conversion from Chapter 13. Some courts held that “upon conversion, all post-petition earnings and acquisitions became part of the new Chapter 7 estate, thus augmenting the property available for liquidation and distribution to creditors.” *Harris*, 575 U.S. at 517 (citing *Calder v. Job (In re Calder)*, 973 F.2d 862, 865-66 (10th Cir. 1992), and *In re Lybrook*, 951 F.2d 136, 137 (7th Cir. 1992)). However, the Third Circuit had taken the opposite view in *Bobroff v. Continental Bank (In re Bobroff)*, 766 F.2d 797, 802-03 (3d Cir. 1985), and held that a tort claim which accrued during Chapter 13 proceedings was not part of a Chapter 7 estate upon conversion and belonged to the debtor.

Congress resolved this dispute in the Bankruptcy Reform Act of 1994, which added § 348(f) to the Bankruptcy Code.”

Castleman v. Burman (In re Castleman), No. 22-35604, 2023 U.S. App. LEXIS 19470, at *20 (9th Cir. July 28, 2023) (Tallman, J., dissenting).

⁴ “Those exceptions include: (1) debt from certain taxes and customs duties, (2) debt related to domestic support obligations, (3) liens that cannot be avoided or voided, including tax liens, and (4) debts for a breach of fiduciary duty to a federal depository institution.” *In re Cunningham*, 513 F.3d at 323.” *Rockwell v. Hull (In re Rockwell)*, 968 F.3d 12, 20 (1st Cir. 2020).

snapshot rule must apply where no exceptions apply. *Id.*

Congress created one additional narrow exception to that rule, providing that, "if the debtor converts a case under chapter 13 ... in bad faith," the estate property "shall consist of the property of the estate *as of the date of conversion.*" 11 U.S.C. § 348(f)(2) (emphasis added). The result is to punish bad-faith conversions by making otherwise-immune post-petition earnings and other post-petition property interests available for liquidation and distribution to creditors after conversion to Chapter 7.

A cardinal rule of construction is that a statute should be read as a harmonious whole, with its various parts being interpreted within their broader statutory context in a manner that furthers statutory purposes.

Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme — because the same terminology is used elsewhere in a context that makes its meaning clear, (citation omitted) or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law. (Citations omitted.)”

United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 371, 108 S. Ct. 626, 630 (1988).

Consistent with this rule, the Court should use the petition date to

determine the value of the Debtor's estate in both 11 U.S.C. §§ 522, 348.⁵

Section 522 applies in both chapter 13 and chapter 7, 11 U.S.C. § 103(a), and conversion does not commence a new bankruptcy case. Both *Sawyers* and *Rockwell* focus on the property of the estate as of the petition date. To include in the bankruptcy estate the post-petition increase in value in a converted chapter 7 case would create a conflict in the Bankruptcy Code—in Section 522 property would be valued as the date of the original petition and in Section 348 it would be determined upon conversion. It would be strange indeed if the court found that creditor's liens could be voided under 11 U.S.C. § 522(f) to protect the debtor's exemptions by determining a lower value for the property at filing, as the court of appeals held in *Sawyers*, but those same creditors could be paid out of the increased value of the estate at conversion.

This conclusion is supported by preeminent legal treatises on bankruptcy law. *See* 3 Collier on Bankruptcy P 348.07 (16th 2022) ("Exemption valuations

⁵ "The majority decides that because we have held appreciation becomes part of the estate in a Chapter 7 case, the same must be true in Chapter 13. Admittedly, this is a simple resolution to an issue that has vexed bankruptcy courts across the country. But simplicity cannot take precedence over the text of the Bankruptcy Code, and if we read § 348(f) in light of the Code "as a whole"—rather than just § 541(a)—*Wilson* is not dispositive. *See Robinson*, 519 U.S. at 341. The remainder of the Bankruptcy Code clarifies that in Chapter 13 cases, "property of the estate" is defined differently. § 348(f)(1)(A)." *Castleman v. Burman (In re Castleman)*, No. 22-35604, 2023 U.S. App. LEXIS 19470, at 16-17 (9th Cir. July 28, 2023) (Tallman, J. dissenting).

should be determined consistent with 11 U.S.C. § 348(f)(1)(A), which provides that increases in value during the chapter 13 case do not become property of the chapter 7 estate after conversion. The subsection serves judicial efficiency, by preventing relitigation of valuation issues.”); Keith M. Lundin & William H. Brown, Chapter 13 Bankruptcy, § 316.1, at ¶ 26 (4th ed. 2004) (“The spirit of § 348(f)(1)(A) is best captured by a rule that property acquired by the Chapter 13 estate or by the debtor after the Chapter 13 petition does not become property of the Chapter 7 estate at a good-faith conversion. The method of acquisition after the Chapter 13 petition should not matter: post-petition property does not become property of the Chapter 7 estate at conversion, whether acquired with earnings by the debtor, by transfer to the debtor—for example, an inheritance after 180 days after the petition—or by appreciation in the value of a pre-petition asset.”) as cited in *In re Barrera*, 620 B.R. 645, 653 (Bankr. D. Colo. 2020), *aff’d sub nom. Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217 (10th Cir. 2022).

Here, the Trustee has not alleged bad faith. Instead, the Trustee argues that the post-petition appreciation of the property during the chapter 13 must be considered property of the Chapter 7 estate in the converted case. 11 U.S.C. § 348(f) makes clear that post-petition property interests should be distributed to creditors after conversion to Chapter 7 *only if the debtor converted in bad faith*.

The Trustee's argument defies that design and asks this Court to effectively subject the Debtor to the penalty for bad-faith conversion without any finding- or even allegation-of bad faith. That is flatly inconsistent with the framework 11 U.S.C. § 348(f) prescribes, it is inconsistent with 11 U.S.C. § 522, and it will discourage debtors from pursuing Chapter 13, rather than encouraging them as Congress intended.

Valuing the Debtor's property at the time the petition is filed puts creditors in precisely the same position as they would have been had the Debtors never sought to repay their debts in chapter 13. There is no "windfall" to the Debtor. It is not in dispute that if the Debtor had originally filed a chapter 7 case there would have been no equity for a chapter 7 trustee to liquidate. By contrast, the Trustee seeks to penalize the Debtors, by taking what he could not have taken if the case had been originally filed under Chapter 7. In essence, the chapter 7 trustee receives a windfall because the Debtor first tried to restructure her debts in chapter 13.

CONCLUSION

This Court should find that, in the absence of bad faith, upon conversion from chapter 13 to chapter 7, the increased value of the Debtor's property post-filing does not become part of the chapter 7 bankruptcy estate. The Court should reverse the decisions below.

Respectfully submitted,

/s/ James J. Haller

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,424 words, excluding parts exempted by Fed. R. App. P. 32(f).
2. This filing complies with Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 point type.
3. This brief has been scanned for viruses pursuant to Rule 27(h)(2).

/s/ James J. Haller

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Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on August 16, 2023. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ James J. Haller

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