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Consumer Track

Chapter 7 and Chapter 13 Conversions

Ariane R. Holtschlag
FactorLaw | Chicago

Hon. Thomas M. Lynch
U.S. Bankruptcy Court (N.D. Ill.) | Rockford

Anthony J. Miller
Osipov & Bigelman, P.C. | Southfield, Mich.

Jeffery P. Phillips
Murphy Desmond Lawyers S.C. | Madison, Wis.

CONCURRENT SESSION

2023

Chapter 7/Chapter 13 Conversions

Panelists:

Hon. Thomas Lynch
U.S. Bankruptcy Court (NDIL)

Anthony J. Miller, Esq.
OSIPOV BIGELMAN, P.C.
Southfield, MI

Jeffrey P. Phillips
MURPHY DESMOND S.C.
Madison, WI

Ariane Holtschlag
FACTORLAW
Chicago, IL

Converting from Chapter 7 to Chapter 13

Bob is employed, but has little money left over after he pays his monthly living expenses. He owns his home, which he would like to keep. He thinks, with a little effort, his house could sell for $175,000.00, though he heard that a house a few blocks away, which he believes is comparable to his own, recently sold for only $150,000.00. He is current on his mortgage, which has a remaining principal balance of about $140,000.00. Bob has consulted with a bankruptcy attorney, who advised Bob of the risks of liquidation in Chapter 7 and the protections available in Chapter 13. Bob is worried about his house, but he is also concerned that he won't be able to afford the Chapter 13 payments. He tells his attorney he wants to file Chapter 7. He lists his home on Schedule A/B, with a value of $150,000.00. He lists the mortgage on Schedule D. On Schedule C, he claims his real estate equity, $10,000.00, as exempt.

Unfortunately for Bob, the Chapter 7 trustee, after consulting a real estate professional, believes Bob's home will sell for $200,000.00. At that value, the home would have non-exempt value to the estate, even after accounting for costs of sale, and assuming Bob will amend Schedule C to claim the maximum exemption allowed by statute.[1] The trustee informs Bob that he intends to list the home for sale, for the benefit of the bankruptcy estate.

Bob is skeptical about the value the Trustee has alleged for his home, but he's not willing to risk losing it. Though he's still concerned about his ability to afford the plan payments, he files a motion to convert from Chapter 7 to Chapter 13. The Trustee, not wanting to lose out on a potential asset, objects. Whether Bob can convert to Chapter 13 depends on whether the court determines Bob is seeking conversion in *good faith*.

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[1] Assuming, for purposes of this illustration, that the Debtor is limited to the $27,900.00 federal homestead exemption, 11 U.S.C. § 522(d)(1).

11 U.S.C. § 706(a) states, "The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable." This section must be read in conjunction with § 706(d), which states, "Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter."

In *Marrama v. Citizens Bank*, 549 U.S. 365 (2007), the Supreme Court considered the case of a debtor who sought to convert under § 706(a) after the Chapter 7 trustee discovered undisclosed assets. In his dissent, Justice Alito summarized the Court's concern, should the debtor be allowed to "escape" to Chapter 13: "A debtor who is convinced that he or she can successfully conceal assets has a significant incentive to pursue Chapter 7 liquidation in lieu of a Chapter 13 restructuring. If successful, the debtor preserves wealth; if unsuccessful, the debtor can convert to Chapter 13 and land largely where the debtor would have been if he or she had fully disclosed all assets and proceeded in Chapter 13 in the first instance." *Marrama*, at 382-83.

The majority in *Marrama* recognized the problems presented by the debtor's bad faith, and it found a solution in § 706(d): if a debtor's converted Chapter 13 would be subject to immediate dismissal under § 1307 due to the debtor's pre-petition (or pre-conversion) bad faith conduct,[2] then such debtor *may not* be a debtor in Chapter 13, within the meaning of § 706(d). Under such circumstances, § 706 prohibited conversion. The Court also found that § 105(a) authorized bankruptcy judges to deny conversion as a necessary or appropriate action to prevent an abuse of process.

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[2]§ 1307 contains a non-exhaustive list of circumstances that could constitute "cause" for dismissal, which does not include "bad faith." However, the Supreme Court noted that bankruptcy courts have routinely accepted pre-petition bad faith as "cause" to dismiss a Chapter 13.

Following *Marrama*, courts facing motions to convert have turned their focus to the § 1307 standard for dismissal. The Sixth Circuit has acknowledged that determining a debtor's good or bad faith is a fact-specific inquiry. *Alt v. United States (In re Alt)*, 305 F.3d 413, 419 (6th Cir. 2002) ("We have also emphasized that good faith is a fact-specific and flexible determination"). In *Copper v. Copper (In re Copper)*, 426 F.3d 810 (6th Cir. 2005),[3] the Sixth Circuit held that, since a Chapter 13 case could be dismissed for lack of good faith "it is logical to conclude that the conversion from chapter 7 to chapter 13 may also be denied in the absence of good faith." *Id*. at 815 (internal quotation marks and citation omitted). The *Copper* court enumerated factors to consider in determining whether a motion to convert was brought in bad faith, incorporating the "fact-specific and flexible determination" guidelines of *Alt* (*supra*, at 421),[4] and adding additional factors, including: (i) falsification of documents; (ii) failure to disclose assets; (iii) false representations; (iv) abuse of process; (v) pre-petition conduct; (vi) futility; and (vii) the debtor's reason for moving to convert. 426 F.3d at 814-16 (collecting cases).

Likewise, bankruptcy courts in the Seventh Circuit have acknowledged the "'bad faith' exception to the alleged 'absolute right' under § 706(a) to convert a chapter 7 case to a case under chapter 13." *In re Holt*, 589 B.R. 644, 648 (Bankr. S.D. Ind. 2018) and the fact-intensive nature of such a bad faith inquiry. *See Killian v. Germeraad (In re Killian)*, 529 B.R. 257, 263 (C.D. Ill. 2013), quoting *In re Love*, 957 F.2d 1350, 1355 (7th Cir. 1992 (superseded by statute on other grounds) ("bankruptcy courts have been directed to consider the 'totality of circumstances and, thereby, make good faith determinations on a case-by-case basis'"). Post-*Marrama*, bankruptcy

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[3] Though this case was decided prior to *Marrama*, the Supreme Court's decision in *Marrama* ended a circuit split on the issue and confirmed that the decision stands as binding precedent.

[4] An oft-cited 6th Circuit case examining bad faith dismissal under 11 U.S.C. § 1307(c) and incorporating the "good faith" standard for confirmation pursuant to 11 U.S.C. § 1325(a)(3).

courts in the Seventh Circuit have considered the non-exhaustive list of factors set forth in *Love* in analyzing a debtor's good or bad faith: "the nature of the debt, including the question of whether the debt would be nondischargeable in a Chapter 7 proceeding; the timing of the petition; how the debt arose; the debtor's motive in filing the petition; how the debtor's actions affected creditors; the debtor's treatment of creditors both before and after the petition was filed; and whether the debtor has been forthcoming with the bankruptcy court and the creditors." *Love* at 1357.

Given the difficult and fact-specific nature of the bad faith inquiry, it can be a costly and uncertain matter to litigate. Accordingly, conversion motions are frequently resolved by compromise. Such compromises commonly condition conversion upon an agreement that the case may not be subsequently dismissed, but instead would be reconverted to Chapter 7.

It is not clear whether a court could impose such a "reconversion" condition, over a debtor's objection. The *Marrama* court's implication of the bankruptcy court's general powers under § 105 might suggest that bankruptcy courts *could* do so, as a necessary protection against a potential abuse of process. On the other hand, a court could construe *Marrama* more strictly: the *Marrama* Court held (1) that a debtor could not convert to Chapter 13 if he or she did not qualify to be a debtor under such chapter and (2) a debtor's whose Chapter 13 case should be dismissed for bad faith under § 1307 does not qualify for conversion to Chapter 13. It would necessarily follow, then, that in the event a court *granted* a debtor's motion to convert from Chapter 7 to Chapter 13, the court must have necessarily concluded that the debtor had *not* acted in bad faith. What basis, then, could there be to condition such a good-faith debtor's conversion, particularly where §§ 1307(b) and (c) guard against a subsequent automatic dismissal?[5]

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[5] After conversion, a Chapter 13 debtor does not have the right to automatic dismissal (*see* 11 U.S.C. § 1307(b)), but must seek dismissal by motion pursuant to 11 U.S.C. 1307(c), wherein the deciding court may dismiss *or* convert, "*whichever is in the best interests of creditors and the estate*" (emphasis added). Notably, however, the former Chapter

A prospective debtor with an asset of "borderline" value may wish to "try" a Chapter 7 case, to see if the Chapter 7 trustee will take action to administer such asset. All the while, the debtor will be ready to pull the ripcord and parachute safely into Chapter 13, if needed. While this may be an effective strategy in certain circumstances, debtor's counsel must be cautious to evaluate the totality of the circumstances, mindful of the bad-faith factors enumerated by courts post-*Marrama*, and advise their clients of the potential challenges they may face.

7 trustee would likely lack standing to challenge the subsequent request to dismiss the Chapter 13 case. *See* 11 U.S.C. § 348(e) ("Conversion of a case under section 706, 1112, 1208, or 1307 of this title terminates the service of any trustee or examiner that is serving in the case before such conversion"); *Collier on Bankruptcy* ¶ 706.06 (Richard Levin & Henry J. Sommer eds., 16th ed. 2021) ("Conversion terminates the role of the chapter 7 trustee. Thereafter, the trustee no longer has authority to act for the estate or to be compensated for services performed. . . . Once the trustee is removed, he or she no longer has standing to participate in the case, e.g. by moving to convert it back to chapter 7"). Given the Chapter 7 trustee's lack of standing, the debtor's dismissal motion could conceivably pass without opposition.

How do we get paid in converted cases?

Every bankruptcy practitioner knows that something as simple as the collection of our own fees is filled with complications and traps for the unwary. Conversion between chapters brings additional hurdles that need special attention for any consumer practitioner.

Upon conversion from a Chapter 13 to Chapter 7

The statistics vary from district to district, but the general rule of thumb is that approximately 50 percent of Chapter 13 plans will either be dismissed or converted to a Chapter 7. When a debtor opts to convert his case, the Chapter 13 trustee typically will have possession of funds derived from wages that have not been distributed to creditors.

In *Harris v. Viegelahn* (2015), the United States Supreme Court addressed the issue of whether a Chapter 13 debtor who converts his/her bankruptcy case to Chapter 7 is entitled to a refund of the wages paid to (and still held by) the trustee pursuant to the plan before the conversion.

In *Harris*, after the court granted relief to his primary secured creditor, the debtor continued to make his regular Chapter 13 payment. At the point the debtor opted to convert his case to a Chapter 7 a year later, $5,519.22 in wages had accumulated and were held by the Chapter 13 trustee. Ten days after conversion, the trustee paid debtor's counsel $1,200, her own fee of $267.79, and the balance to the debtor's creditors.

The Supreme Court reviewed 11 U.S.C. § 348 to determine the competing rights of a chapter 7 bankruptcy trustee vis-a-viz the debtor to post-petition wages held by a chapter 13 trustee when a chapter 13 case is converted to a chapter 7 liquidation: "Section 348(f), all agree, makes one thing clear: A debtor's postpetition wages, including undisbursed funds in the hands of a trustee, ordinarily do not become part of the Chapter 7 estate created by conversion. Absent a bad-faith conversion, §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. Postpetition wages, by definition, do not fit that bill."

The Supreme Court cited "concealing assets in 'unfair manipulation of the bankruptcy system'" (*In re Siegfried*, 219 B. R. 581, 586 (Bkrtcy. Ct. Colo. 1998) as an example of a bad-faith conversion which would permit the estate to include post-petition wages under 348(f).

What about dismissal of a Chapter 13 case?

"The general rule that can be gleaned from this statute is that, when a confirmed case is dismissed, the funds on hand with a chapter 13 trustee are to be returned to the debtor." See *Viegelahn v. Lopez* (In re Lopez), 897 F.3d 663, 670-72 (5th Cir. 2018); but see Mammay v. Winnecour (In re Mammay), 641 B.R. 569, 574-75 (Bankr. W.D. Pa. 2022) (court may "for cause" order that the wages held by the trustee to distributed otherwise upon dismissal (and presumably conversion) under 349(b)).

Notably, section 349 does not contain the analogous language to 348(f), where wages may be included in the part of the bankruptcy estate.

The "for cause" language cited by the court in Mammay included approving the agreement by debtor's counsel that the funds held by the Chapter 13 trustee should be distributed creditors (including debtor's counsel) upon dismissal.

**The Seventh Circuit will determine whether a Chapter 13 trustee may be paid after dismiss in In re Johnson (22bk4449). Trustee compensation has already been disallowed by the Tenth Circuit *Goodman v. Doll* (*In re Doll*), 57 F.4th 1129 (10th Cir. 2023): "11 U.S.C. § 1326(a), read together with 28 U.S.C.§ 586(e)(2), and considered in light of the different language in 11 U.S.C. §§ 1194(a)(3) and 1226(a)(2), unambiguously require the standing Chapter 13 trustee to return pre-confirmation payments to the debtor without the trustee first deducting his fee, when a proposed Chapter 13 reorganization plan is not confirmed."

Practical implications

Since *Harris*, many courts have expressed concern about the financial risk to debtor's counsel. "We are mindful of the hardship Harris may impose on attorneys representing debtors in Chapter 13 cases, and of the deleterious effect Harris could have on the willingness of attorneys to represent debtors in Chapter 13 cases." *In re Beauregard*, 533 B.R. 826, 832 (Bankr. D.N.M. 2015).

Judge Beth Hanan (EDWI) summarized the problem as such: "[The] Court is bound by the language of the Code, and it is up to Congress to consider a legislative fix to allow Chapter 13 attorneys like the [debtors'] counsel to receive attorneys' fees for work performed in a Chapter 13 case that is converted, or about to be converted, prior to confirmation." *In re Lettie*, 597 B.R. 637, 647 (Bankr. E.D. Wis. 2019).

The court further suggested: "The solution for Chapter 13 debtor's counsel might be to include their engagement letters an assignment of and security interest in the debtor's post-petition wages held by the standing trustee on the date of conversion, to pay allowed unpaid attorney' fees and costs incurred during the Chapter 13 case." *Id.*

When drafting plans, be aware that your fees may be at risk either pre-confirmation and post-confirmation scenarios absent an agreement with the debtor to distribute funds. In these scenarios in may even be advantageous to seek an agreement if the wages will be subject to other collection mechanisms once the automatic stay terminates.

Upon conversion from a Chapter 7 to a Chapter 13

This issue concerns Chapter 7 trustees when debtors choose to convert a case to Chapter 13. Trustees are compensated on a per case basis and then will also receive a fee when they distribute assets of the estate to creditors. But how do trustees get compensated when the case is converted after the trustee works to discover an asset? Courts permit trustees to file an administrative claim, but this likely only includes the trustee's counsel and you should review your local court's rules regarding this issue.

Practically speaking, these issues are typically resolved by agreement with the debtor seeking a conversion, but if not, a trustees may object to a conversion if the bad faith elements of Marrama are met. "Bad faith" is not defined in the bankruptcy code and the courts take a holistic approach of reviewing the debtor's conduct when reviewing a trustee's objection to conversion. See *In re Hale*, 511 B.R. 870 (Bankr. W.D. Mich. 2014); *In re Yarborough*, No. 12-30549, 2012 Bankr. LEXIS 4403 (Bankr. E.D. Tenn. Sep. 24, 2012).

In making the good faith determination, courts generally focus on the following factors (outlined in Soc'y Nat'l Bank v. Barrett (In re Barrett), 964 F.2d 588, 592 (6th Cir. 1992)):

1. the debtor's income;
2. the debtor's living expenses;
3. the debtor's attorney fees;
4. the expected duration of the Chapter 13 plan;
5. the sincerity with which the debtor has petitioned for relief under Chapter 13
6. the debtor's potential for future earning;
7. any special circumstances the debtor may be subject to, such as unusually high medical expenses;
8. the frequency with which the debtor has sought relief before in bankruptcy;
9. the circumstances under which the debt was incurred;
10. the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt;
11. the burden which administration would place on the trustee; and
12. the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

If the trustee is successful with the objection, the responsibility for liquidating the asset will revert to the Chapter 7 trustee.

I. POST-PETITION APPRECIATION AND CONVERSION.

A. Relevant Code Provisions/Rules.

1. 11 U.S.C. § 541

(a) The commencement of a case under section 301 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

…

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

…

2. 11 U.S.C § 1306

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

3. 11 U.S.C. § 348(f).

(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases

under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and

(C) with respect to cases converted from chapter 13—

(i) the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

4. 11 U.S.C. § 1327.

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

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

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

5. Rule 1019(2)(B).

(B) A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless:

(i) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or

(ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.

B. Recent Cases.

1. *In re Goins, 539 B.R. 510 (Bankr. E.D. Va. 2015).*

Debtor filed a chapter 13 bankruptcy petition in October 2011. *Id.* at 511. The Debtor's residence was scheduled with a value of $98,000 subject to a mortgage of approximately $103,000. *Id.* In May 2015, the Debtor's case was converted from a proceeding under chapter 13 to a proceeding under chapter 7. Upon conversion, the chapter 7 trustee filed a motion to retain a broker to sell the Debtor's residence, now valued at $147,500 subject to a reduced mortgage balance of $76,000. *Id.* The Debtor objected to the Trustee's motion to employ broker and filed a motion to compel abandonment of the residence, to which the Trustee likewise objected. *Id.* The Debtor and the Trustee agreed that 1) the $27,000 post-petition mortgage reduction was due to the Debtor's having paid the mortgage while in chapter 13; and 2) that the Debtor was entitled that portion of net value increase. *Id.* The Debtor and the Trustee dispute only whether any additional increase to the net value of the residence, presumably due only to post-petition market appreciation, is property of the chapter 7 estate. *Id.* 511-512. Faced with these stipulated facts, the Court held that it is. *Id.* at 515-516.

The Court began its reasoning with the text of § 348(f)(1), followed by an analysis of the legislative history (adding section (f) in 1994, and revising subsection (f)(1)(B) in 2005). Id. at 512-515. Ultimately, the Court found the post-petition market appreciation is not separate, after-acquired property to be removed from the chapter 7 estate by operation of § 348(f)(1)(A), but rather an inseparable component of the residence itself which was and remained property of the estate under § 541(a)[6]. *Id.* at 515-516.

2. *In re Barrera, 620 B.R. 645 (Bankr. D. Colo. 2020)(aff'd Rodriguez v. Barrera (In re Barrera), 2020 Bankr. LEXIS 2756, 2020 WL 5869458 (B.A.P. 10th Cir. 2020)(aff'd Rodriguez v. Barrera (In re Barrera), 22 F.4th 1217 (10th Cir. 2022)(different reasoning).*

Debtors filed a chapter 13 bankruptcy petition in April 2016. *Id.* at 646. Debtors scheduled value of their residence as $396,606 subject to liens in the amount of $336,209.62 and the Debtors' homestead exemption of $75,000. *Id.* Court confirmed the Debtors' plan in June 2016. *Id.* The Debtors plan provided for all property of the estate to vest in the Debtors at the time of confirmation. *Id.* Two years later, the Debtors sold their residence for $520,000, netting proceeds of $140,250.63. *Id.* Two weeks after the sale, the Debtors converted their case from a proceeding under chapter 13 to a proceeding under chapter 7. *Id.* Upon conversion the Debtors held

[6] Notably, the opinion does not specify whether the Court finds the residence to be property of the estate under § 541(a)(1) or (a)(6).

$100,700 of the sale proceeds. *Id*. Soon thereafter, the chapter 7 trustee filed motion for turnover of the remaining sale proceeds from the Debtors. *Id*. at 647. To remove any factual issues, the Trustee and the Debtors stipulated to the scheduled value as the value of the residence on the petition date. *Id*. The legal question before the Court was therefore whether the proceeds from the sale of the Debtors' residence, presumably due only to post-petition market appreciation, was property of the chapter 7 estate. *Id*. The Court held that it was not.

The Court began its reasoning with the text of § 348(f)(1). The Court notes that:

> [a] strict reading of this subsection might suggest that the Debtors in this case have no obligation to turn over to the Trustee any of the sale proceeds regardless of the home's prepetition value. The home was a prepetition asset but on the date of conversion the Debtors no longer had possession of or control over it because they had sold it.

Id. at 648. But the Court found no other cases utilizing this 'strict reading' and moved forward with the common approach treating the residence and its proceeds as one in the same. *Id*. The Court next reviewed the limited case law on the issue already establishing two schools of thought on whether a post-petition increase in equity during a chapter 13 case becomes property of the chapter 7 estate upon conversion. *Id*. 647-650 (comparing *In re Goins*, 539 B.R. 510 (Bankr. E.D. Va. 2015) and *In re Niles*, 342 B.R. 72 (Bankr. D. Ariz. 2006)). The Court concludes that "these two lines of analysis demonstrate that § 348(f)(1)(A) has a latent ambiguity despite its superficial clarity." *Id*. at 652. After analyzing the legislative history, "one of the leading sources of commentary on chapter 13", as well as public policy implications, the Court finds that the word "property" in § 348(f)(1)(A) should be read as "property as it existed on the petition date…." *Id*. at 652-654. Thus, post-petition market appreciation belongs to the debtor, and is not property of the chapter 7 estate upon conversion. *Id*.

3. In re Cofer (625 B.R. 194 (Bankr. D. Idaho 2021).

Debtor filed a chapter 13 bankruptcy petition in April 2019. *Id*. at 195. Debtor scheduled value of residence as $100,250 subject to a mortgage of $61,073.75. *Id*. On the petition date, Idaho's maximum homestead exemption was $100,000, however, based on the equity that existed in the Debtor's residence at the time, an order was entered by the Court during the chapter 13 limiting the Debtor's exemption to only $32,020.56. *Id*. The Court confirmed the Debtor's plan in September 2019, and the plan provided for all property of the estate to vest in the Debtor upon confirmation. *Id*. The case was converted from chapter 13 to chapter 7 in March 2020. *Id*. upon conversion, the chapter 7 trustee filed motion to confirm Debtor's exemption of $32,020.56. *Id*. Debtor objected. *Id*. at 196. Debtor argues that residence is not property of the chapter 7 estate because it vested in the debtor upon confirmation.

Id. Or, alternatively, that post-petition appreciation belongs to the Debtor and the amount of the homestead exemption is determined based on the date of conversion. *Id*. The Court rejects the Debtor's first argument based on vesting at confirmation under § 1327 because it is contrary to the language of 348 and to read 1327(b)-(c) as preventing operation of 348(f)(1)(A) would create an inconsistency in the code. *Id*. at 196-198. "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." *Id*. at 198.

Alternatively, Debtor wants to claim full $100,000 homestead exemption available under Idaho law and argues that § 348(f)(1)(B) makes valuations of property in the chapter 13 case inapplicable in a case converted to chapter 7. *Id*. at 199. The Court rejects Debtor's argument finding that 348(f)(1)(B) is inapplicable in this situation because exemptions are determined as of the petition date under 522(a)(2). *Id*. "The conversion of this case does not change the value of the [residence] or the exemption against it as they existed at the time of the petition." *Id*. "Thus, Debtor's homestead exemption remains limited to $32,020.56—the amount this Court previously determined Debtor could claim as an exemption based on the date of the petition." *Id*.

Finally, following the reasoning of Barrera and other similar cases relying on the legislative history, the Court finds that post-petition appreciation inures to the Debtor and is not property of the converted chapter 7 estate. *Id*. 200-203. The Court finds that the chapter 7 trustee has recourse to bring post-petition appreciation into the estate in the presence of bad faith under § 348(f)(2). *Id*. at 202.

4. *In re Castleman, 613 B.R. 914 (Bankr. W.D.W.A. June 4, 2021)(aff'd In re Castleman, 2022 U.S Dist. LEXIS 116941, 2022 WL 2392058 (W.D.W.A. July 1, 2022))*.

Debtors filed a chapter 13 bankruptcy petition in June 2019. *Id*. at 915. Debtors scheduled value of their residence as worth $500,000 subject to mortgages in the amount of $375,077 and the Debtors' homestead exemption of $124,923. *Id*. at 916. The Debtors' plan was confirmed in September 2019. *Id*. 915-916. In February 2021, the Debtors' case was converted from chapter 13 to chapter 7. *Id*. at 916. Upon conversion, the chapter 7 trustee asserts that the Debtors' residence is worth $700,000 and seeks a declaration that the residence is property of the converted chapter 7 estate. *Id*. The Court reviews the two established approaches, the first under Barrera and Cofer and the other under Goins. The Court then reviews the legislative history and does not find it conclusive. Ulimately, the Court concludes that the statutory language is clear and its application in this case is likewise clear. *Id*. at 920. "Here, it is undisputed that the [residence] was property of the bankruptcy estate at the petition date, the Debtors were in possession of the [residence] at the date of conversion, and pursuant to Section 348(f)(1), the

[residence] is property of the Chapter 7 estate." Id. at 920. Nothing in § 348(f) indicates that post-petition appreciation should be treated differently in a converted case than over the course of a chapter 7 case. *Id*.

5. In re Adams, 641 B.R. 147 (Bankr. W.D.M.I. June 9, 2022).

Debtors filed a chapter 13 bankruptcy petition in February 2020. *Id*. at 150. In June 2021, the Debtors' case was converted from chapter 13 to chapter 7. *Id*. at 150. During the chapter 13, the Debtors scheduled only a dollar of equity in their residence, however, upon conversion, it there appeared to be approximately $26,000 of equity due in part to debt pay-down during the chapter 13 as well as post-petition appreciation. *Id*. at 150-151. Upon conversion, the chapter 7 trustee asserts that the Debtors' residence is worth $700,000 and seeks a declaration that the residence is property of the converted chapter 7 estate. *Id*. at 150. The Court denies the Debtors' motion following the reasoning of an unpublished decision by the 6th Circuit (Coslow v. Reisz, 811 Fed. App'x 980 (6th Cir. 2020)) and *In re Castleman*, 361 B.R. 914 (Bankr. W.D. Wash. 2021) finding that the chapter 7 trustee may attempt to liquidate the property, including any post-petition appreciation. *Id*. at 151-156.

6. In re Goetz, 647 B.R. 412 (Bankr. W.D.M.O. November 10, 2022).

Debtor filed a chapter 13 bankruptcy petition in August 2020. *Id*. at 414. The Debtor and chapter 7 trustee agree that on the petition date the Debtor's residence was worth $130,000 subject to a mortgage of $107,460.54 and the Debtor's $15,000 homestead exemption. *Id*. The Debtor converted the case from chapter 13 to chapter 7 in April 2022. *Id*. One month after conversion, the Debtor filed a motion to compel abandonment. *Id*. The parties agree that between the petition date and the conversion date, the Debtor's residence increased in value by $75,000. *Id*. Court finds that post-petition equity belongs to converted chapter 7 estate, and denies motion to compel abandonment. *Id.* at 413. Court reasons that equity is not a distinct item of property, but rather one of a property's characteristics. Accordingly, under the plain language of the statute, the residence was property of the estate on the petition date, that remained in the debtor's control on the conversion date, and so is property of the chapter 7 estate. *Id*. at 416-418.

Faculty

Ariane R. Holtschlag is partner with FactorLaw in Chicago and serves as a member of the panel of chapter 7 bankruptcy trustees for the Northern District of Illinois. In her legal practice, she focuses primarily on consumer bankruptcy, representing debtors, trustees and creditors in chapters 7, 11 and 13, as well as in bankruptcy-related litigation. In 2017, Ms. Holtschlag was chosen as one of ABI's inaugural "40 Under 40" award recipients in recognition of her achievements. She also served as a commissioner on ABI's Commission on Consumer Bankruptcy and in 2018 testified before congress on chapter 7 trustee fees. Ms. Holtschlag received her undergraduate degree in 2004 from Illinois Wesleyan University and her J.D. from the University of Iowa in 2007.

Hon. Thomas M. Lynch is a U.S. Bankruptcy Judge for the Northern District of Illinois in Rockford, appointed in January 2013. Prior to his appointment, he practiced law in Chicago. For nearly 30 years he tried cases throughout the U.S., representing clients in business disputes and bankruptcy and commercial matters. Prior to attending law school, Judge Lynch was an economic analyst and executive with state and local government. He is an adjunct faculty member at the Northwestern University Pritzker School of Law, and is a member of the National Conference of Bankruptcy Judges and ABI, among other organizations. Judge Lynch received his undergraduate degree from the University of Dayton, his Master's degree from the University of Chicago and his J.D. from Northwestern University's School of Law, for which he is a member of its adjunct faculty.

Anthony J. Miller is an attorney with Osipov Bigelman, P.C. in Southfield, Mich. Admitted to the Bar in 2008, he represents trustees, debtors, creditors and other parties-in-interest in all aspects of chapter 7, 11 (including subchapter V), 12 and 13 bankruptcy proceedings. Mr. Miller frequently handles complex chapter 7 and 13 matters, as well as individual and corporate reorganizations in chapter 11. He has been admitted to practice in Pennsylvania and in all state and federal courts in Michigan. Mr. Miller received his B.A. from Michigan State University and his J.D. with high honors from Michigan State University College of Law.

Jeffery P. Phillips is an attorney with Murphy Desmond Lawyers S.C. in Madison, Wis., and assists creditors and debtors in bankruptcy, business reorganizations and commercial litigation. His bankruptcy experience includes representing Wisconsin-based clients as debtors and creditors in chapter 7, 11 and 13 cases, including adversary proceedings and related litigation. Mr. Phillips has represented clients including debtors, creditors, receivers and trustees in Wisconsin chapter 128 receivership proceedings, collections, foreclosures, and other commercial and business litigation matters. He has assisted clients across a range of industries, including finance, manufacturing, food/beverage and construction. In addition to debtor and creditor rights matters, Mr. Phillips handles civil litigation matters, including collections, contractual disputes and construction litigation. He also handles business transactional work such as contract drafting, negotiating and disputes. Mr. Phillips is admitted to practice in Illinois and Wisconsin, and was listed as a *Wisconsin Super Lawyers* "Rising Star" from 2013-21. He received his B.A. in film/cinema/video studies in 2003 from the University of Michigan and his J.D. in 2006 from the University of Wisconsin Law School.