CHAPTER 13 QUARTERLY NEWSLETTER
JUNE 2026

1. SAVE THE DATE! BANKUPTCY BENCH-BAR RETREAT OCTOBER 23, 2026

The Attorney Constituent Group for the U.S. Bankruptcy Court for the Northern District of Ohio invites you to its twelfth biennial Bench-Bar Retreat on Friday, October 23, 2026. The event will be held at Sawmill Creek by Cedar Point Resorts in Huron, Ohio. Breakout sessions, a judges panel, and town hall meetings will provide opportunities for industry updates, legal education, and engaging exchanges among practitioners and judges.

Unique offerings available to attendees include the purchase of discounted Cedar Point tickets on-site at the Sawmill Creek Front Desk and advance registration and discounted rates for golf course tee times.

Retreat registration will open in late July. Additional information regarding discounted room rates and all retreat details will be provided at that time.

2. SECOND REQUEST FOR TAX RETURNS

Please note that the Chapter 13 office has sent out the second and final request for the 2025 tax returns.

As a reminder, the Chapter 13 office requires tax returns for all debtors in all cases every year that the debtors are in Chapter 13.

The Chapter 13 office appreciates counsel who have worked with their clients who have already supplied their tax returns. For those remaining cases that need to supply their tax returns, the Trustee would further appreciate it if counsel would remind their clients of this important requirement for their Chapter 13 plan.

If counsel need a list of their cases where tax returns have not been provided, please email ehoffert@ch13akron.com.

3. MARK E. DOTTORE VS SCHEIBAL

Many bankruptcy cases in the Northern District of Ohio currently have litigation with the state court receiver for AEM.

Recently, a Court order was entered in Mark E. Dottore, Receiver vs. Scheibal, ADV 25-02012 (S.D. Ohio).

As many cases in the Northern District of Ohio may have similar issues under litigation, a copy of this Court decision is attached to this newsletter for counsel to review.

Please note that this decision may not be a final order as the order allowed the Receiver an opportunity to amend their complaint.

4. MEANS TEST

Recently, the Chapter 13 office has had some questions concerning the means test from counsel.

Please note the following:

If the debtor's income for the prior 6 months is above the state median, the plan must be a 60-month plan. The debtor's income may decrease after filing and that may determine the amount of the monthly payments for 60 months, but the applicable commitment period is 60 months.

If the debtor's income is below the state median for the 6 months prior to filing, the debtor is eligible for a 36-month Chapter 13 plan even if their income increased immediately after filing. The amount of the payments will be based on the debtor's higher monthly income, but the debtor would still be eligible for a 36-month applicable commitment period.

For counsel who would like to review this matter further, please see, Hamilton v. Lanning (In re Lanning), 560 U.S. 505 (U.S. 2010).

5. TAX FORECLOSURES CAN BE AVOIDED AS PREFERENTIAL TRANSFERS

The Sixth Circuit has recently ruled that tax foreclosures can be avoided as preferential transfers.

The case is an appeal from Michigan Bankruptcy Courts.

It is not clear whether the case would apply to property tax foreclosures in Ohio.

The case citation is:

Reinhardt v. Prince (In re Reinhardt), 2026 U.S. App. LEXIS 15108, 2026 LX 202149, 2026 FED App. 0155P (6th Cir.), __ F.4th __, 2026 WL 1481102

A copy of the case is attached to this newsletter for counsel to review.

6. NOTICE OF WAGE BONUS IN PLANS

As most counsel are aware, the Chapter 13 office offers agreed entries with the debtors to turn over one-half of the net amount of future wage bonuses. The other half of the net wage bonus is retained by the debtors.

The Chapter 13 office will continue the practice of entering agreed entries with the debtors to turn over one-half of future wage bonuses.

Some parties have suggested having this language in section 8.1 of the plan would be useful as the agreed entries are often only served on a limited number of parties. Putting all creditors on notice of the turnover of future wage bonuses would be helpful when creditors review the case.

Therefore, the Trustee suggests that counsel include the following language in 8.1 if their client has gotten wage bonuses in the past:

> **Should the debtor receive a future wage bonus, the debtor will turn over one-half of the net amount to their chapter 13 plan to increase the return to non-priority, unsecured creditors.**

7. SPECIAL LANGUAGE IN PLAN – BELOW MEDIAN DEBTORS

Some parties have questioned why a below median debtor should extend their plan to the full 60-month duration.

Therefore, the Trustee suggests the following language in section 8.1 of the plan, when appropriate, for below median debtors:

The debtor is eligible for a 36 month Chapter 13 plan. However, the debtor's finances do not allow a Chapter 13 plan payment to accomplish the provisions of the plan in 36 months. It is the debtor's intention to extend their plan up to a maximum, if necessary, 60 months in order to pay all administrative claims, secured claims, and priority claims in full. Further, the debtor states that all non-priority, unsecured creditors shall receive at a minimum the equity listed in section 5.1 of the plan. The debtor stipulates that the debtor will not receive a discharge in this case until the provisions of this plan are completed.

8. COUNSEL NEED TO REVIEW THEIR EQUITY CALCULATION

The Chapter 13 office has noted that some counsel chose the exemption which states:

100% of fair market value, up to any statutory limit

When this is selected, often software used by counsel picks that amount up as zero and creates equity in the Chapter 13 plan when perhaps there is no equity at all.

To resolve this issue, the Trustee encourages counsel to put the dollar amount of the equity and not to use this option which could cause equity to be reflected in the Chapter 13 plan.

9. PERSONAL FINANCIAL MANAGEMENT COURSE

The Chapter 13 office will continue to sponsor an on-line Personal Financial Management Course through the Trustee Education Network. Information regarding the online program is available on the Chapter 13 website at www.chapter13info.com. There is no charge to take the course online for Chapter 13 debtors who have filed in Akron, Ohio.

Please note: in a joint case, each debtor must take the on-line course separately and use two different e-mails. The software program generates the required certificates of completion partly based on e-mails to keep track of who has taken the required course.

Please find attached to this newsletter a flyer for the on-line course that counsel may share with their clients in Chapter 13 cases.

10. CASE LAW

Goddard v. Burnett, 173 F.4th 550, 2026 U.S. App. LEXIS 12406, 2026 LX 200489, 2026 WL 1140872

Debtor Goddard filed for Chapter 13 bankruptcy in North Carolina. He was married but filed bankruptcy in his name only without his spouse. Goddard earned $12,268 per month gross income, placing him above median income. Goddard owned three luxury vehicles: 2015 Corvette, 2021 GMC Sierra, and 2022 Genesis G70, purchased within 32 months of filing. His total vehicle debt was $137,606 with monthly payments of $3,060 and his total unsecured debt was $84,700. Goddard's proposed plan would pay unsecured creditors only $6,500 (7.7%) over 60 months while paying vehicle loans in full.

The United States Bankruptcy Court for the Eastern District of North Carolina rejected this proposed plan. The court found that, despite technical compliance with the disposable income requirements of 11 U.S.C. § 1325(b), the plan failed the good-faith requirement of § 1325(a)(3). The court determined the plan was structured to allow the debtor to keep luxury items at the expense of unsecured creditors and that he was not making an honest effort to repay those creditors. The United States District Court for the Eastern District of North Carolina affirmed this decision, agreeing that the bankruptcy court properly considered good faith as a separate and independent requirement for plan confirmation.

On appeal, the United States Court of Appeals for the Fourth Circuit affirmed the district court’s judgment. The Fourth Circuit held that compliance with § 1325(b)'s means test does not shield a Chapter 13 plan from review under the good-faith standard of § 1325(a)(3). The court reasoned that BAPCPA's 2005 amendments removing discretion from disposable income calculations did not eliminate the separate good faith requirement. The good faith inquiry examines broader equitable concerns beyond mechanical compliance, preventing Chapter 13 from becoming a haven for debtors seeking discharge without honest repayment efforts. The court emphasized that technical compliance with the means test does not preclude a finding of bad faith if the plan abuses the purposes or spirit of Chapter 13. The court found no clear error in the bankruptcy court’s factual findings and affirmed the denial of plan confirmation.

Mark E. Dottore, Receiver vs. Scheibal, ADV 25-02012
(S.D. Ohio)

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Mina Nami Khorrami
United States Bankruptcy Judge

Dated: May 14, 2026

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	:	Case No. 24-55161
Mary Ann Scheibal	:	Chapter 13
and	:	Judge Mina Nami Khorrami
Heather F. Scheibal,	:	
Debtors.	:	
	:	
	:	
Mark E. Dottore, Receiver,	:	Adv. Pro No. 25-02012
Plaintiff,	:	
v.	:	
Mary Ann Scheibal, *et al.*,	:	
Defendants.	:	

OPINION AND ORDER GRANTING IN PART DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT (DOC. 24) AS TO COUNT V OF THE AMENDED COMPLAINT (DOC. NO. 22)

I. **Introduction**

This case presents the Court with questions regarding the reach of the recent Supreme Court decision in *Bartenwerfer v. Buckley,* 598 U.S. 69, 143 S. Ct. 665, 214 L. Ed. 2d 434 (2023) and its interplay with the Supreme Court's prior decisions in *Husky Int'l Elecs., Inc. v. Ritz*, 578 U.S. 355, 136 S. Ct. 1581, 194 L. Ed. 2d 655 (2016), *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 276, 133 S. Ct. 1754, 185 L. Ed. 2d 922 (2013), and *Neal v. Clark*, 95 U.S. 704, 709, 24 L. Ed. 586 (1878). Here, Plaintiff, Mark E. Dottore (the "Receiver") asserts that *Bartenwerfer* permits a debtor's liability for receiving fraudulent transfers from an alleged Ponzi scheme to be excepted from discharge under 11 U.S.C. § 523(a)(2)(A) even if the debtors knew nothing of the fraud and had no intent to defraud anyone. Indeed, the Receiver is not alleging that the debtors in this case created the fraudulent scheme or that they knew they were receiving money because of it. Instead, the Receiver claims that he is not required to plead and prove scienter of the debtors because *Bartenwerfer* fundamentally changed the interpretation of § 523(a)(2)(A), so that he does not need to allege the debtors' knowledge of the fraud in order to state a claim.

The issue before the Court arises in the context of a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Civil Rules"), made applicable to this adversary proceeding by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules").[1] On January 13, 2026, a hearing (the "Hearing") was held on the Motion and Response where counsel presented oral argument.[2] After the Hearing, the parties were allowed

[1] *Motion of Defendants Mary Ann Scheibal, Heather F. Scheibal, and Scheibal Property Development, LLC to Dismiss Amended Complaint (Doc. No. 22)* (the "Motion"), Dkt. No. 24, together with the *Receiver's Response to the Motion of Defendants Mary Ann Scheibal, Heather F. Scheibal and Scheibal Property Development, LLC to Dismiss Amended Complaint (Doc. No. 24)* (the "Response"), Dkt. No. 26, and *Defendants' Memorandum in Reply to the Response of the Receiver to the Defendants' Motion to Dismiss (Doc. Nos. 24 and 26)* (the "Reply"), Dkt. No. 2.

[2] Scott R. Belhorn and James W. Ehrman appeared on behalf of the Receiver, who was also present. John C. Cannizzaro and Michael A. Cox appeared on behalf of Defendants Mary Ann Scheibal ("Mary"), Heather F. Scheibal ("Heather"), and Scheibal Property Development, LLC ("Scheibal Property"). Mary and Heather will collectively be

to file supplemental briefings of the issue raised by the Court. Supplemental briefing concluded on February 12, 2026, when the Court took the matter under advisement.[3]

For the reasons which follow, the Motion is granted in part with respect to Count V of the *Amended Complaint*, Dkt. No. 22 (the "Amended Complaint"). As to Count V, the Receiver may file a motion for leave to amend within fourteen days of the entry of this Opinion and Order. As to the other counts of the Amended Complaint, the Court is deferring any ruling pending clarification by the Receiver as to whether he is still pursuing any of those claims.

II. Jurisdiction and Venue

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334 and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. Proceedings to determine the dischargeability of particular debts are core proceedings under 28 U.S.C. § 157(b)(2)(B) and (I).[4] Venue properly lies in this Court under 28 U.S.C. §§ 1408 and 1409.

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referred to as the "Debtors," and Mary, Heather, and Scheibal Property will collectively be referred to as the "Defendants." The references to Mary and Heather by their first names are intended for ease of reference and clarity since they have the same last name. No disrespect is intended.

[3] *Defendants' Supplemental Memorandum Regarding Defendants' Motion To Dismiss Amended Complaint (Doc. No. 24)* (the "Defendants' Supplemental Memorandum"), Dkt. No. 33; *Receiver's Supplemental Brief Pursuant To Agreed Scheduling Order Of January 26, 2026 [Doc. No. 31]* (the "Receiver's Supplemental Brief"), Dkt. No. 34. As the Court had requested at the Hearing, the Receiver attached a Proposed Second Amended Complaint (the "PSAC") to the Receiver's Supplemental Brief. Receiver's Supp. Br. Ex. A., Dkt. No. 34.

[4] To the extent that any claim asserted in the Amended Complaint could be construed as noncore, all parties have consented to this Court's entry of a final judgment. Pl.'s Pretrial Statement 2-3, Dkt. No. 19; Defs.' Supp. Mem. 1, Dkt. No. 33.

III. Facts[5]

The Receiver was appointed in 2022[6] by an Ohio state court as a receiver over numerous related entities owned and operated by Mark Dente.[7] Am. Compl. 1 n.1, Dkt. No. 22. The Receivership Order granted the Receiver the authority to pursue property fraudulently transferred from the AEM Entities. Am. Compl. ¶ 3. One such action filed by the Receiver was a lawsuit against the Defendants here, an action styled *Mark E. Dottore, Receiver v. Scheibal Property Development, LLC, et al*, Case No. CV-2024-08-3519. Am. Compl. ¶ 14 and Ex. 4.[8] The Receiver alleged that the Defendants had received fraudulent transfers avoidable under Ohio law and sought to recover them. The State Court Action remained pending when the Debtors filed their chapter 13 petition on December 20, 2024 (the "Petition Date"). Am. Compl. ¶ 115.[9]

The Defendants invested money into, and received money from, the AEM Entities. In particular, Mary received a total of $1,842,819.43 in transfers from the AEM Entities, $1,500 from Landmark Property Development, and $134,000.00 from Mark and Sharon Dente between July 12, 2017, and January 19, 2021. Am. Compl. ¶ 22.[10] Between August 30, 2018, and March 26, 2021, the AEM Entities transferred a total of $662,195.00 to Heather. Am Compl. ¶ 68. Between

[5] "As this matter comes before the Court on a motion to dismiss, the Court must accept the well-pleaded allegations in the Complaint as true. *Bassett v. Nat'l Collegiate Ath. Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008). But in reporting the background here based on those allegations, the Court reminds the reader that they are just that—allegations." *Shanghai Weston Trading Co. v. Tedia Co., LLC*, 707 F. Supp. 3d 737, 741 n.1 (S.D. Ohio 2023).
[6] The Receiver was appointed on June 22, 2022, by the Court of Common Pleas for Summit County, Ohio in an action styled *Christopher Longo v. The AEM Services, LLC, et al.*, Case No. CV-2022-05-1754 (the "Receivership Action"). Am. Compl. ¶ 1, Dkt. No. 22. A copy of the *Second Amended Order Appointing Receiver* (the "Receivership Order") was attached to the Amended Complaint. Am. Compl. Ex. 1.
[7] These entities are The AEM Services, LLC, AEM Investments, LLC, AEM Wholesale, LLC, AEM Productions, LLC, AEM Real Estate Group, LLC, AEM Capital Fund, Ltd., A&J RE Holdings, LLC, and Landmark Property Development. These entities will collectively be referred to as the "AEM Entities."
[8] This action will be referred to as the "State Court Action" and the complaint in that case (which is attached to the Amended Complaint as Exhibit 4) will be referred to as the "State Court Complaint."
[9] The State Court Complaint was attached to and forms the basis for the Receiver's proof of claim filed in the Debtors' main bankruptcy case. Am. Compl. ¶ 117
[10] The Amended Complaint identifies each individual transfer by recipient, means of payment, and the account from which the payment originated. Am. Compl. ¶¶ 23-66 (Transfers to Mary), ¶¶ 69-89 (Transfers to Heather), and ¶¶ 92-110 (Transfers to Scheibal Property). These transfers will collectively be referred to as the "Transfers."

February 22, 2018, and March 9, 2022, the AEM Entities transferred a total of $628,900.68 to Scheibal Development. Am. Compl. ¶ 91. The total amount of the Transfers was $3,133,925.11. Am. Compl. ¶ 137. Further, each of the Transfers was made to or for the benefit of Mary and Heather individually, such that each of them is liable for the full amount of the Transfers, regardless of who received them. Am. Compl. ¶¶ 128-133. The Defendants invested money into the AEM Entities, but no other allegations regarding the dates, amounts, or number of payments are provided. Am. Compl. ¶¶ 20-21.

The Receiver concedes that he "has not alleged that the Defendants created the Dente/AEM Ponzi Scheme or that they knew they was [sic] receiving money as a result of the obvious fraud of it." Resp. 21, Dkt. No. 26. Further, the "Receiver does not impute *scienter* to the Defendants, nor must he do so, since the actual words of section 523(a)(2)(A) nowhere require it." *Id.*. The Receiver's counsel stated at the Hearing that the Receiver had been unable to identify any relationship between the Debtors and Mr. Dente and/or the AEM Entities beyond that of passive investor. ECRO at 1:36:00 – 1:37:00.[11]

The allegations of the Receiver are that at the time of each of the Transfers, Mark Dente was operating the AEM Entities as a Ponzi scheme and therefore made each Transfer with the actual intent to hinder, delay, or defraud its creditors. Am. Compl. ¶ 111-12. The Ohio Department of Commerce had alleged that the AEM Entities were operated as a Ponzi scheme. Am. Compl.

[11] When citing to statements of counsel from the Hearing, the Court will cite the times provided in its Electronic Court Reporting System ("ECRO"). On a motion to dismiss, the Court can consider and rely upon concessions by counsel that clarify the allegations made by the plaintiff. *NicSand, Inc. v. 3M Co.*, 507 F.3d 442, 458 (6th Cir. 2007) (en banc) ("When a party concedes that it is not bringing a claim, however, no purpose of Rule 12(b)(6) is served by overlooking the concession . . . The plaintiff remains the master of its complaint, and when it says that it is not bringing a predatory-pricing claim, we should take it at its word."). Further, although the statements of counsel are generally not evidence, they can nonetheless be binding on that attorney's client as concessions if made in a hearing or in a brief. *JDC Mgmt., LLC v. Reich*, 644 F. Supp. 2d 905, 929 (W.D. Mich. 2009) (citation omitted); *In re Haney*, 284 B.R. 841, 844 (Bankr. N.D. Ohio 2002) ("concessions of counsel in open court are binding judicial admissions") (citing *In re Menell*, 160 B.R. 524, 525 n.3 (Bankr. D.N.J. 1993)).

¶ 10.7. David Linscott ("Mr. Linscott"), an expert witness for the Receiver, concluded in another state court case that the AEM Entities were operated as a Ponzi scheme. Am. Compl. ¶ 12. Mr. Linscott's report from that case (the "Linscott Report") is attached to the Amended Complaint. Am. Compl. Ex. 3.

The Amended Complaint asserts six claims for relief: Count I seeks to avoid the Transfers as fraudulent transfers under the Ohio Uniform Fraudulent Transfers Act ("OUFTA"), Ohio Rev. Code Chapter 1336. Am. Compl. ¶¶ 121-154, Dkt. No. 22. The Amended Complaint asserts that the transfers were made with the actual intent to hinder, delay, or defraud creditors and was therefore fraudulent under Ohio Rev. Code § 1336.04(A)(1), and avoidable under Ohio Rev. Code § 1336.07(A)(1). Am. Compl. ¶ 122. The Receiver further asserts that the Transfers were constructively fraudulent under Ohio Rev. Code § 1336.04(A)(2) and avoidable under Ohio Rev. Code § 1336.07(A)(1). Am. Compl. ¶ 123. Count II seeks as a remedy for Count I a money judgment for the value of the avoided Transfers under Ohio Rev. Code § 1336.08(B)(1). Am. Compl. ¶¶ 125-135. Count III of the Amended Complaint asserts a claim that each of the Defendants is liable to the Receiver on a theory of unjust enrichment in the amount of $3,133,925.11. Am. Compl. ¶¶ 137-140. Count IV seeks to impose a constructive trust on the Transfers to the extent that they remain in the possession of the Defendants. Am. Compl. ¶¶ 142-145. Count V seeks a determination that the Debtors' liability for the Transfers should be excepted from the Debtors' discharge under 11 U.S.C. § 523(a)(2)(A). Am. Compl. ¶¶ 147-151. And Count VI seeks declaratory judgment that "(a) neither Mary nor Heather nor Scheibal Development ever had an equitable interest in the Transfers to the Scheibals and (b) that the equitable interest in the Transfers to the Scheibals is not "property of the estate" as that term is used in 11 U.S.C. § 541." Am. Compl. ¶154.

IV. Procedural Background and Posture

On December 20, 2024 (the "Petition Date"), the Debtors filed a joint petition under chapter 13 of the United States Bankruptcy Code, which was assigned case no. 24-55161. Am. Compl. ¶¶ 19, 115. On February 5, 2025, the Receiver filed a proof of claim asserting a debt of $3,163,918.00 based on the State Court Complaint. Am. Compl. ¶ 117. The Debtors have objected to the Receiver's proof of claim, disputing both liability and the amount of the claim. 2nd Am. Obj. to Proof of Claim (the "Claim Objection"), Case No. 24-55161, Dkt. No. 61.[12] On April 15, 2025, the Debtors filed an amended Chapter 13 Plan (the "Plan"). Chapter 13 Plan, Case No. 24-55161, Dkt. No. 36. On July 23, 2025, the Court confirmed the Plan. Order Confirming Chapter 13 Plan and Awarding Attorney Fees, Case No. 24-55161, Dkt. No. 55.

The Motion represents the second full round of briefing on the adequacy of the Receiver's allegations. On May 7, 2025, the Defendants filed a motion to dismiss the original complaint under Civil Rule 12(b)(6). Defs.' Mot. to Dismiss, Dkt. No. 8. After that motion was fully briefed but before a hearing could be held or any ruling issued, the parties agreed that the Receiver could amend the complaint. The Amended Complaint was filed on September 5, 2025. Am. Compl., Dkt. No. 22. The Amended Complaint mooted the original motion to dismiss, but the Defendants timely filed the Motion on October 3, 2025. Mot., Dkt. No. 24.

After the Hearing, the Receiver filed a Supplemental Brief as noted above. The Receiver's Supplemental Brief contains the PSAC. Receiver's Supp. Br. Ex. A, Dkt. No. 34. The Supplemental Brief explains that the PSAC "removed those claims contained in the *Amended*

[12] At the Hearing, the Court indicated that it would hold the Claim Objection in abeyance pending the Court's decision on the Motion.

Complaint filed on September 5, 2025 that the Receiver did not intend to pursue." Receiver's Supp. Br. 1 n.1, Dkt. No. 34. [13]

The PSAC would significantly modify the Amended Complaint. The PSAC asserts only a single claim for relief under § 523(a)(2)(A). Counts I and II, seeking avoidance of the Transfers and a money judgment for their value under the OUFTA, would be eliminated as standalone claims; their substantive allegations would be incorporated into the § 523(a)(2)(A) claim to establish the debt that the Receiver alleges is nondischargeable. Counts III (unjust enrichment), IV (constructive trust), and VI (declaratory judgment) would be eliminated, as well as the request for attorney's fees in the demand for relief. Scheibal Property would no longer be a defendant in the adversary complaint. The Receiver has implied that he no longer intends to pursue any of the claims removed in the PSAC. Receiver's Supp. Br. 1-2, Dkt. No. 34. Since the Receiver has not explicitly stated that he is abandoning or withdrawing these claims, and he has not formally sought leave to file the PSAC, the Amended Complaint remains the operative pleading in this proceeding and the Court cannot consider the PSAC. But the impact of this filing will be addressed below.

The Court now turns to whether Count V states a claim for relief.

V. <u>Contentions of the Parties</u>

The Defendants assert that the Amended Complaint does not state a valid claim for relief. As to Count V, the Debtors assert that, in the fraudulent transfer setting, nondischargeability under § 523(a)(2)(A) is governed not by *Bartenwerfer* but rather by *Husky*. Mot. ¶¶ 40-47, Dkt. No. 24. And since *Husky* stated that liability for receiving a fraudulent transfer can only be excepted from

[13] At the Hearing, when the Court requested supplemental briefing, it recommended that the Receiver consider preparing a second amended complaint to be submitted as an attachment to the Receiver's Supplemental Brief that would reflect which claims the Receiver did not intend to pursue and would also reflect how he proposed to address the Court's concerns about the Amended Complaint with respect to those claims he did wish to pursue. ECRO 2:15:00 to 2:21:10.

discharge if the debtor acted with fraudulent intent, the Debtors argue that Count V fails because the Receiver does not allege that the Debtors had any intent to defraud. *Id.*

As to Count V, the Receiver argues that *Bartenwerfer* represents a fundamental change in the interpretation of § 523(a)(2)(A). Resp. 4, Dkt. No. 26. In the Receiver's view, *Bartenwerfer* establishes a bright-line rule that the exception from discharge found in § 523(a)(2)(A) only requires that *someone* must have committed actual fraud, but it need not have been the debtor, if the debtor received money or property as a result. Resp. 4, 19-21. Finally, the Receiver requested at the Hearing that the Court allow leave to file an amended complaint if the Court grants the Motion.

VI. Legal Analysis

A. Civil Rule 12(b)(6) Standard Under Civil Rules 8 and 9(b)

A motion to dismiss under Civil Rule 12(b)(6) tests the facial sufficiency of the complaint under Civil Rules 8 and 9(b).[14] *Riverview Health Inst. LLC v. Med. Mut. of Ohio*, 601 F.3d 505, 512 (6th Cir. 2010). Two primary principles guide the Court's review. *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). First, although the allegations of the complaint are generally assumed to be true for purposes of a motion to dismiss, allegations that "are no more than conclusions" are not. *Id*. Further, "a legal conclusion couched as a factual allegation" should not be accepted as true. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Second, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (citing *Twombly*, 550 U.S. at 556). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S.

[14] Civil Rules 8 and 9 are made applicable to this adversary proceeding by Bankruptcy Rules 7008 and 7009, respectively.

at 678 (citation omitted). To survive a motion to dismiss, a complaint must contain "either direct or inferential allegations" plausibly asserting "all material elements to sustain a recovery under some viable legal theory." *Terry v. Tyson Farms, Inc.*, 604 F.3d 272, 275-76 (6th Cir. 2010).

In addition, since Count V asserts a § 523(a)(2)(A) claim based on actual fraud, it "must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). "Rule 9(b) requires that the plaintiff specify the who, what, when, where, and how of the alleged fraud." *New London Tobacco Mkt., Inc. v. Ky. Fuel Corp.*, 44 F.4th 393, 411 (6th Cir. 2022) (citation modified). Civil Rule 9(b) applies to § 523(a)(2)(A) complaints. *Fabian v. Goss (In re Goss)*, 605 B.R. 189, 198 (Bankr. S.D. Ohio 2019) (citing *Bennett v. Lindsey (In re Lindsey)*, 733 F. App'x 190, 192 (5th Cir. 2018)).

B. Count V Fails Because The Receiver Does Not Allege That the Debtors Acted With Intent to Defraud

"The principal purpose of the Bankruptcy Code is to grant a fresh start to the honest but unfortunate debtor." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007) (citation modified). "Chapter 13 of the Code permit[s] an insolvent individual to discharge certain unpaid debts toward that end." *Id.*[15] But the discharge is not unlimited. Section 523(a) sets forth several exceptions to the discharge. These discharge exceptions apply "to circumstances where strong, special policy considerations, such as the presence of fault, argue for preserving the debt, thereby benefiting, for example, a typically more honest creditor." *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 276, 133 S. Ct. 1754, 185 L. Ed. 2d 922 (2013). Exceptions to discharge are "disfavored." *MarketGraphics Rsch. Grp., Inc. v.*

[15] In chapter 13, the discharge is not granted until the debtor completes the chapter 13 plan, unless the Court finds that there is cause to issue a hardship discharge before plan completion. 11 U.S.C. § 1328(a), (b). Neither the regular discharge nor the hardship discharge will discharge a debt of the kind specified in § 523(a)(2). *See* 11 U.S.C. § 1328(a), (c)(2).

Berge (In re Berge), 953 F.3d 907, 920 (6th Cir. 2020). And they are "strictly construed against the creditor." *Pazdzierz v. First Amer. Title Ins. Co. (In re Pazdzierz)*, 718 F.3d 582, 586 (6th Cir. 2013) (quoting *Rembert v. AT&T Universal Card Servs. (In re Rembert)*, 141 F.3d 277, 281 (6th Cir. 1998)). One such exception to the discharge is at issue here – the exception in § 523(a)(2)(A) for "false pretenses, a false representation or actual fraud."

1. The "Actual Fraud" Exception to Discharge under § 523(a)(2)(A)

Section 523(a)(2)(A) excepts from the discharge a debt "(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—(A) false pretenses, a false representation, or actual fraud . . . ." 11 U.S.C. § 523(a)(2)(A). The Receiver appears to be asserting liability under the "actual fraud" portion of § 523(a)(2)(A). The Supreme Court has held that "actual fraud" includes frauds that can be accomplished without a false representation that induced reliance by the creditor. *Husky Int'l Elecs., Inc. v. Ritz*, 578 U.S. 355, 360, 136 S. Ct. 1581, 1586, 194 L. Ed. 2d 655, 662 (2016). "The word 'actual' has a simple meaning in the context of common-law fraud: It denotes any fraud 'that involves moral turpitude or intentional wrong.'" *Id.* (quoting *Neal v. Clark*, 95 U.S. 704, 709, 24 L.Ed. 586 (1878) (citation modified)). "Thus, anything that counts as 'fraud' and is done with wrongful intent is 'actual fraud.'" *Husky*, 578 U.S. at 360.

2. *Husky* Requires That the Debtors Themselves Had Intent to Defraud

One type of "actual fraud" that can be accomplished without a misrepresentation is a fraudulent transfer. *Husky*, 578 U.S. at 364. Under fraudulent transfer law in Ohio, only the transferor's intent determines whether a transfer is fraudulent. Ohio Rev. Code § 1336.04(A)(1); *Profeta v. Lombardo*, 600 N.E. 2d 360, 363 (Ohio Ct. App. 1991); *Bash v. Textron Fin. Corp.*, 524 B.R. 745, 756 (N.D. Ohio 2015). But *Husky* holds that if the recipient of a fraudulent transfer subsequently files for bankruptcy, the dischargeability of the debtor's liability for receiving the transfer is determined by whether the debtor *received* the transfer with fraudulent intent:

> It is of course true that the transferor does not "obtain" debts in a fraudulent conveyance. But the recipient of the transfer—who, with the requisite intent, also commits fraud —can "obtain" assets "by" his or her participation in the fraud. *See*, *e.g.*, *McClellan* v. *Cantrell,* 217 F.3d 890 (C.A.7 2000); *see also supra,* at 1587 – 1588. If that recipient later files for bankruptcy, any debts "traceable to" the fraudulent conveyance . . . will be nondischargeable under § 523(a)(2)(A). Thus, at least sometimes a debt "obtained by" a fraudulent conveyance scheme could be nondischargeable under § 523(a)(2)(A). Such circumstances may be rare because a person who receives fraudulently conveyed assets is not necessarily (or even likely to be) a debtor on the verge of bankruptcy, but they make clear that fraudulent conveyances are not wholly incompatible with the "obtained by" requirement.

578 U.S. at 365 (citation modified). That *Husky* requires that the debtor act with the intent to defraud is confirmed by the two cases on which it relied. *See Husky*, 578 U.S. at 364-65 (citing *Neal*, 95 U.S. at 549, and *McClellan v. Cantrell,* 217 F.3d 890 (7th Cir. 2000)).

Neal established the general rule that the fraud exception to discharge requires that the debtor committed "positive fraud, or fraud in fact, involving moral turpitude or intentional wrong." *Neal*, 95 U.S. at 709. Although *Neal* was decided in 1878, its principles have continued to apply even after the adoption of the Bankruptcy Code in 1978. *See, e.g.*, *Tower Credit, Inc. v. Gauthier (In re Gauthier)*, 349 F. App'x 943, 945 (5th Cir. 2009); *Turney v. Vulaj (In re Vulaj)*, 651 B.R. 310, 315 (Bankr. S.D. Cal. 2023); *McGrath v. McGrath (In re McGrath)*, 166 B.R. 795, 798 (Bankr. E.D.N.Y. 1994). Indeed, in 2013, the Supreme Court unanimously reaffirmed and relied upon *Neal* as the basis for holding that "defalcation" in § 523(a)(4) also requires that the debtor act with a culpable state of mind:

> We base our approach and our answer upon one of this Court's precedents. In 1878, this Court interpreted the related statutory term "fraud" in the portion of the Bankruptcy Code laying out exceptions to discharge. Justice Harlan wrote for the Court:

> "[D]ebts created by 'fraud' are associated directly with debts created by 'embezzlement.' Such association justifies, if it does not imperatively require, the conclusion that the 'fraud' referred to in that section means positive fraud, or fraud in fact, involving moral turpitude or intentional wrong, as does embezzlement; and not implied fraud, or fraud in law, which may exist without the imputation of bad faith or immorality."

Bullock v. BankChampaign, N.A., 569 U.S. 267, 276, 133 S. Ct. 1754, 185 L. Ed. 2d 922 (2013) (quoting *Neal*, 95 U.S. at 709).

In *Strang v. Bradner,* 114 U.S. 555, 561, 5 S. Ct. 1038, 29 L. Ed. 248 (1885), the court ruled that an exception to *Neal* existed when the fraud was committed by a partner of the debtor. *Strang* held that principles of partnership and agency law required the fraud of one partner to be treated as the fraud of all, regardless of whether the debtor had engaged in any wrongdoing. *Id*. Thus, over the following decades, the rule evolved that "a debt may be nondischargeable when the debtor personally commits fraud or when actual fraud is imputed to the debtor under agency principles." *Owens v. Miller (In re Miller)*, 276 F.3d 424, 429 (8th Cir. 2002); *Hoffend v. Villa (In re Villa)*, 261 F.3d 1148, 1152 (11th Cir. 2001); *Tower Credit, Inc. v. Gauthier (In re Gauthier)*, 349 F. App'x 943, 945 (5th Cir. 2009).

In *McClellan*, the other case relied upon by *Husky*, the Seventh Circuit explicitly stated that if the debtor is "innocent—if she had no intention of hindering any creditor," her debt for receiving a fraudulent transfer "would not have been obtained *by her* by actual fraud" and would therefore be dischargeable. 217 F.3d at 894. Conversely, where the debtor has the intent to defraud, such that she was "a full and equal participant in her brother's fraud" when receiving fraudulent transfers, her debt is nondischargeable. *Id*. at 894-95. This point was critical in *McClellan* – it recognized that if the debtor was innocent, the debt was dischargeable. But if the debtor had fraudulent intent, then allowing the debtor to discharge the resulting debt for receiving a fraudulent conveyance would turn "bankruptcy into an engine for fraud." *Id*. at 893. Given that

McClellan placed critical importance on the debtor's own intent to defraud, *Husky's* approving citation to *McClellan* demonstrates that *Husky* requires that the debtor herself had to act with intent to defraud.

Consistent with *Neal* and *McClellan*, in the wake of *Husky*, courts have overwhelmingly found that a § 523(a)(2)(A) action against a debtor who received a fraudulent transfer requires proof that the debtor acted with intent to defraud. One example that is closely on point comes from this district. *Nationwide Judgment Recovery, Inc. v. Holtz (In re Holtz)*, Adv. Pro. No. 20-01043, 2021 WL 5596413, at *7 (Bankr. S.D. Ohio Nov. 17, 2021). Like this case, *Holtz* involved a debtor who was alleged to have received fraudulent transfers from a Ponzi scheme. *Holtz* held that "the Court in *Husky* reiterated that the 'actual fraud' prong of § 523(a)(2)(A) retains the requirement that the debtor act with intent to effectuate the fraud." 2021 WL 5596413, at *7 (citing *Husky*, 578 U.S. at 360). Therefore, in order to prove a § 523(a)(2)(A) claim, "Plaintiff must show more than that Defendant was the recipient of a fraudulent transfer. As clarified in *Husky*, the Plaintiff must also show that the Defendant *committed fraud* in receiving the transfer, and did so with the requisite fraudulent intent." *Holtz*, 2021 WL 5596413, at *7 (citing *Husky*, 578 U.S. at 360).

Many other courts have reached the same conclusion. In addition to the Seventh Circuit in *McLellan*, this includes the First, Eighth, and Ninth Circuits. *Dewitt v. Stewart (In re Stewart)*, 948 F.3d 509, 527 (1st Cir. 2020) ("the claimant must demonstrate that the debtor's underlying conduct involved moral turpitude or intentional wrong") (citation modified); *Lariat Cos. v. Wigley (In re Wigley)*, 15 F.4th 1208, 1212-13 (8th Cir. 2021) ("The transferee's intent must involve moral turpitude or intentional wrong.") (citation modified); *Bonnett v. Moirbia Scottsdale, LLC*, 860 F. App'x 473, 475 (9th Cir. 2021) ("The issue in this proceeding is whether Bonnett received the conveyances with the intent required to commit actual fraud herself."). It Likewise, at least half a dozen other bankruptcy courts considering the same Ponzi scheme as was before the court in *Holtz* have reached the same conclusion.[16] The Receiver has not cited, and the Court could not locate, even a single case holding that *Husky* does not require that the debtor received an avoidable transfer with fraudulent intent when determining the dischargeability of a debt.

Thus, before *Bartenwerfer*, this would have been an easy case: given the Receiver's concession that he does not allege the Debtors had any knowledge of the fraudulent scheme or intent to defraud, and the absence of any allegation of a partnership or agency, Count V does not allege a plausible § 523(a)(2)(A) claim under *Husky*, *Bullock*, *Neal*, and their progeny. The Court now considers the impact of *Bartenwerfer*.

3. *Bartenwerfer* Does Not Alter The Outcome

The Receiver asserts that *Bartenwerfer* "represents a sea change in how courts are required to interpret section 523(a)(2)(A)." Resp. 4, Dkt. No. 26. In the Receiver's view, *Bartenwerfer* "overturned decades of lower court holdings that narrowly construed section 523(a)(2)(A)." Resp. 4, Dkt. No. 26. The Court, however, is not convinced and concludes that the Receiver has overstated *Bartenwerfer's* impact.

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[16] *Holtz* was one of numerous § 523(a)(2)(A) actions brought around the country against investors in what was known as the ZeekRewards Ponzi scheme, where the court overseeing the liquidation of the Ponzi scheme had ruled in a consolidated proceeding that ZeekRewards was a Ponzi scheme, and that all of those who received more than they had invested into the scheme had received fraudulent transfers. *Bell v. Disner*, No. 3:14CV91, 2016 WL 7007522 (W.D.N.C. Nov. 29, 2016), *aff'd*, 731 F. App'x 239 (4th Cir. 2018). Some of the defendants eventually filed for bankruptcy and numerous cases were decided regarding whether the liability under *Bell* was dischargeable under § 523(a)(2)(A). All of them hold that *Husky* requires that it must be proven that the debtor had fraudulent intent. *Holtz*, 2021 WL 5596413, at *7; *Nationwide Judgment Recovery, Inc. v. Sheppard (In re Sheppard)*, Adv. Pro. No. 20-00135-5-DMW, 2022 WL 598323, at *4 (Bankr. E.D.N.C. Feb. 28, 2022); *Nationwide Judgment Recovery, Inc. v. Tyndall (In re Tyndall)*, Nos. 23-02014-5-JNC, 23-00094-5-JNC, 2024 WL 973469, at *11 (Bankr. E.D.N.C. Mar. 6, 2024); *Nationwide Judgment Recovery, Inc. v. Grimaldo (In re Grimaldo)*, Adv. No. 20-1076-t, 2021 WL 3716393, at *4 (Bankr. D.N.M. Aug. 20, 2021); *Nationwide Judgement Recovery, Inc. v. Sorrells (In re Sorrells)*, 644 B.R. 158, 168-69 (Bankr. E.D. Tex. 2022); *Nationwide Judgment Recovery, Inc. v. Reefe (In re Reefe)*, 638 B.R. 834, 844 (Bankr. S.D. Fla. 2022); *Nationwide Judgment Recovery, Inc. v. Geredine (In re Geredine)*, 632 B.R. 502, 506 (Bankr. E.D. Mich. 2021).

Bartenwerfer involved a couple who had formed a legal partnership for the renovation and resale of their home. Prior to the wife's bankruptcy, a state court had found that the husband had defrauded the buyer by concealing known defects, and that the wife was liable for that fraud under principles of partnership law. When the wife filed for bankruptcy, she argued that her debt was dischargeable because she had no intent to defraud and in fact was unaware of the fraud. But the Supreme Court held that since California's law of partnership and agency imputes the fraud of one partner to the other partners, the husband's fraud was sufficient to trigger § 523(a)(2)(A).

Bartenwerfer noted that *Strang* had clarified the imputation question in 1885. "The fraud of one partner, we explained, is the fraud of all because '[e]ach partner was the agent and representative of the firm with reference to all business within the scope of the partnership.'" *Bartenwerfer*, 598 U.S. at 80 (quoting *Strang*, 114 U.S. at 561). Although the debtor in *Bartenwerfer* argued that subsequent evolution of the fraud discharge exception through the Bankruptcy Act of 1898 and the current Bankruptcy Code, adopted in 1978 meant that *Strang* should be discarded, the Supreme Court disagreed. In fact, *Bartenwerfer* stated that the "linchpin" of its analysis was that changes to the fraud discharge provision after *Strang* indicated that Congress approved of *Strang*. 598 U.S. at 80-81.

Bartenwerfer used certain broad statements in the course of rejecting the debtor's arguments. For example, *Bartenwerfer* stated that "§ 523(a)(2)(A) turns on how the money was obtained, not who committed fraud to obtain it." 598 U.S. at 72. And it stated that the "passive voice pulls the actor off the stage." *Id*. at 76. Taken out of context and in isolation, these statements do lend some support to the Receiver's position. The Receiver relies on these statements to support his argument that *Bartenwerfer* "overturns decades of lower court holdings that narrowly construed section 523(a)(2)(A)." Resp. 4, Dkt. No. 26. Viewed in context, however, these statements do not extend *Bartenwerfer* beyond the issue before the Supreme Court, which was to consider the Ninth Circuit's holding that "a debtor who is liable for her partner's fraud cannot discharge that debt in bankruptcy, regardless of her own culpability." *Bartenwerfer*, 598 U.S. at 74. As the Supreme Court noted, the lower courts disagreed that § 523(a)(2)(A) permits fraud to be imputed under principles of agency and partnership. 598 U.S. at 74 n.1 (collecting cases).

Several principles support this conclusion. For one thing, the Supreme Court's "usual practice of deciding no more than is necessary to dispose of the case before us" suggests that *Bartenwerfer's* scope is limited to the partnership and agency context. *United States v. Stauffer Chem. Co.*, 464 U.S. 165, 174, 104 S. Ct. 575, 78 L.Ed.2d 388 (1984). And the Supreme Court "has often cautioned that general language in judicial opinions should be read as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not then considering." *Olivier v. City of Brandon*, 607 U.S. ___, 146 S. Ct. 916, 925-26, 224 L. Ed. 2d 387 (2026). Nothing in *Bartenwerfer* suggests that the Supreme Court was considering anything other than the ongoing validity of *Strang's* imputation of fraud to an innocent partner under partnership and agency principles.

Moreover, other courts considering the scope of *Bartenwerfer* have widely ruled that *Bartenwerfer* applies only where the law of partnership or agency would impute the fraud of one actor to the debtor. *Auction Credit Enters., LLC v. Desouza (In re Desouza)*, 659 B.R. 288, 297-98 (Bankr. E.D. Tex. 2024) ("This Court therefore understands *Bartenwerfer* to require the Court to find some form of partnership or agency under state law in order to hold Defendant responsible for the nondischargeable fraud of another under § 523(a)(2)(A)."); *Kuns Northcoast Sec. Ctr. LLC v. Sharp (In re Sharp)*, Adv. Pro. No. 22-03039, 2024 WL 2819674, at *10-12 (Bankr. N.D. Ohio

June 3, 2024) ("The Kuns Affidavit shows no facts that would make Defendant and Mrs. Sharp partners or agents of one another under Ohio law to bring this case within the rationale of *Bartenwerfer* with respect to Plaintiff's claim under § 523(a)(2)(A)."); *Turney v. Vulaj (In re Vulaj)*, 651 B.R 310, 315 (Bankr. S.D. Cal. 2023).[17]

This limitation on *Bartenwerfer's* scope is consistent with how *Strang* was interpreted before *Bartenwerfer*. Courts interpreting *Neal* and *Strang* found that they were readily compatible: *Neal* stated the general rule that the debtor's own fraud is required, but *Strang* provided an exception. "[A] debt may be nondischargeable when the debtor personally commits fraud or when actual fraud is imputed to the debtor under agency principles." *Owens v. Miller (In re Miller)*, 276 F.3d 424, 429 (8th Cir. 2002); *see also Hoffend v. Villa (In re Villa)*, 261 F.3d 1148, 1152 (11th Cir. 2001); *Tower Credit, Inc. v. Gauthier (In re Gauthier)*, 349 F. App'x 943, 945 (5th Cir. 2009). But courts steadfastly resisted expanding this principle beyond the formal partnership or agency context. *Id.* at 945-46 (collecting cases).; *see also First Am. Title Ins. Co v. Gaskill (In re Gaskill)*, 480 B.R. 291, 304 n.13 (Bankr. W.D. Mich. 2012).

In addition, interpreting *Bartenwerfer* to apply outside the partnership and agency context here would bring it into conflict with *Husky*. Applying *Bartenwerfer* here would require the Court to conclude that *Bartenwerfer* overruled *Husky* by implication, but the Supreme Court did not overturn *Husky* in *Bartenwerfer*. Only the Supreme Court may overrule its own decisions. *Mallory v. Norfolk S. Ry.*, 600 U.S. 122, 136, 143 S. Ct. 2028, 216 L.Ed.2d 815 (2023). *Bartenwerfer* did not expressly overrule, limit, or modify *Husky*, and lower courts are not to

[17] There are many more decisions. *See, e.g., Indus. Dev. Auth. of the Town of Front Royal and the Cnty. of Warren, Va. v. Poe (In re Poe)*, AP No. 21-01032-KHK, 2023 WL 4359972, at *5 (Bankr. E.D. Va. July 5, 2023); *Lavender v. Bortz (In re Bortz)*, Adversary No. 23-3052, 2025 WL 1428161, at *13 (Bankr. S.D. Tex. May 16, 2025); *Mercer v. Lee (In re Lee*), Nos. 22-70367-reg, 22-08045-reg, 2024 WL 1261790, at *12 (Bankr. E.D.N.Y. Mar. 25, 2024); *Commercial Bank v. Colquitt (In re Colquitt)*, Adv. Pro. No. 21-3010-JPS, 2023 WL 2361103, at *8 (Bankr. M.D. Ga. Mar. 2, 2023). These cases undermine the Receiver's assertion at the Hearing that *Bartenwerfer* is such a new decision that there has not been time for decisions supporting his view. ECRO 2:05:00 to 2:06:00.

determine that the Supreme Court overruled a prior precedent by implication. *Agostini v. Felton*, 521 U.S. 203, 207, 117 S. Ct. 1997, 138 L. Ed. 2d 391 (1997). "As this Court has explained: 'If a precedent of this Court has direct application in a case,' . . . a lower court 'should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.'" *Mallory*, 600 U.S. at 136 (quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484, 109 S. Ct. 1917, 104 L. Ed. 2d 526 (1989)). "This is true even if the lower court thinks the precedent is in tension with some other line of decisions." *Mallory*, 600 U.S. at 136 (citation modified). Interpreting this guidance, the Sixth Circuit has made clear how lower courts are to proceed in this situation. "Happily, the Supreme Court has told us what to do in a case like this. We are to leave to that Court the task of ironing out any doctrinal tensions we might perceive and 'follow the case which directly controls.'" *United States v. Sharp*, 40 F.4th 749, 757 (6th Cir. 2022) (quoting *Agostini*, 521 U.S. at 207).

Thus, the Court considers *Husky* to apply. *Husky* tells the Court how to analyze a § 523(a)(2)(A) claim arising out of a debtor's receipt of a fraudulent transfer from a third party – the exact claim asserted in Count V of the Amended Complaint. *Bartenwerfer*, in contrast, tells the Court how to analyze a § 523(a)(2)(A) claim arising in the context of the fraud of a partner or agent of the debtor. *Bartenwerfer* did not overrule, limit, modify, or even mention *Husky*. Since the Amended Complaint presents a § 523(a)(2)(A) claim arising out of the Debtors' receipt of allegedly fraudulent transfers, *Husky* is the case which directly controls here. Thus, the Court must follow *Husky*. And as set forth above, *Husky* requires that the Debtors here had fraudulent intent.

As a fallback argument, the Receiver suggests that *Bartenwerfer* should be viewed as establishing a broad rule that § 523(a)(2)(A) applies anytime nonbankruptcy law would impose liability upon the debtor that is related in some manner to someone else's fraud. 598 U.S. at 82

("It also bears emphasis . . . that § 523(a)(2)(A) does not define the scope of one person's liability for another's fraud. That is the function of the underlying law—here, the law of California."). Thus, the Receiver argues that the OUFTA operates by imputing the transferor's fraud to the transferee just as did California's partnership law in *Bartenwerfer*. The Receiver, however, does not point to anything in the OUFTA that suggests that transferee liability is based upon imputation of the transferor's fraud in the manner of partnership and agency law. The mere fact that a state law imposes liability upon the debtor does not mean that the debt is automatically excepted from discharge. Rather, the debt must fall within the "actual fraud" requirement of § 523(a)(2)(A) for the Receiver to prevail. And only this Court can make that determination. *Long v. Piercy (In re Piercy)*, 21 F.4th 909, 918 (6th Cir. 2021) ("dischargeability is a legal conclusion within the exclusive jurisdiction of the bankruptcy courts.") (citation omitted).

Principles of imputation and vicarious liability act by deeming the conduct of one partner to be the conduct of all partners. "The fraud of one partner . . . is the fraud of all" because each partner is the agent of the other, and therefore each partner is treated as though they had personally committed the fraud. *Bartenwerfer*, 598 U.S. at 82. The same is true under Ohio law. *See, e.g.*, *State ex rel. Sawicki v. Lucas Cnty. Court of Common Pleas*, 931 N.E.2d 1082, 1088 (Ohio 2010) ("the doctrine of *respondeat superior* operates by imputing to the employer the acts of the tortfeasor, not the tortfeasor's liability.") (emphasis added) (citations omitted). The OUFTA contains no suggestion that the liability of a transferee for an avoided transfer works this way. The OUFTA's operative provision, Ohio Rev. Code § 1336.08(B), simply provides that if a transfer is avoided, the court may award a money judgment against the transferee.[18] It says nothing about

[18] Ohio cases interpreting OUFTA have made clear that it is distinct from the common law of fraud. *City of Springfield v. Palco Inv. Co.*, 992 N.E.2d 1194, 1203 (Ohio Ct. App. 2013) ("The Ohio Supreme Court, however, has recognized that claims of fraudulent conveyance and common law fraud are not the same." (citing *Wagner v. Galipo*, 553 N.E.2d

the fraud of the transferor being deemed to be the fraud of the transferee, nor does it create anything like an implied agency or partnership relationship.

Turney v. Vulaj (In re Vulaj), 651 B.R. 310, 314-15 (Bankr. S.D. Cal. 2023), confirms this analysis. It rejected imputation between transferor and transferee under California's version of the Uniform Fraudulent Transfer Act, which is substantially similar to the OUFTA.[19] In *Vulaj*, the

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610, 613 (Ohio 1990))); *Carter-Jones Lumber Co. v. Denune*, 725 N.E.2d 330, 333 (Ohio Ct. App. 1999) ("Comparing the elements of common law fraud with the statutory action of fraudulent transfer, it is immediately apparent that the causes bear very little relation to one another.").

[19] Despite some minor differences in phrasing, the statute imposing liability in *Vulaj*, Cal. Civ. Code § 3439.08(b), does not differ in any material way from Ohio Rev. Code § 1336.08(B). Each provision states that where an avoidable transfer is demonstrated, one remedy available to the plaintiff is a money judgment against the recipient for the value of the property transferred.

Cal. Civ. Code § 3439.08 provides as follows:

> (b) To the extent a transfer is avoidable in an action by a creditor under paragraph (1) of subdivision (a) of Section 3439.07, the following rules apply:
> > (1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subdivision (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against the following:
> > > (A) The first transferee of the asset or the person for whose benefit the transfer was made.
> > > (B) An immediate or mediate transferee of the first transferee, other than either of the following:
> > > > (i) A good faith transferee that took for value.
> > > > (ii) An immediate or mediate good faith transferee of a person described in clause (i).
> >
> > (2) Recovery pursuant to paragraph (1) of subdivision (a), or subdivision (b), or subdivision (c) of Section 3439.07 of or from the asset transferred or its proceeds, or other property of the transferee, as applicable, by levy or otherwise, is available only against a person described in subparagraph (A) or (B) of paragraph (1).
>
> (c) If the judgment under subdivision (b) is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

Ohio Rev. Code § 1336.08 provides as follows:

> (B)(1) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor or a child support enforcement agency under division (A)(1) of section 1336.07 of the Revised Code, the creditor or agency may recover a judgment for the value of the asset transferred, as adjusted under division (B)(2) of this section, or the amount necessary to satisfy the claim of the creditor or agency, whichever is less. The judgment may be entered against either of the following:
> > > (a) The first transferee of the asset or the person for whose benefit the transfer was made;
> > > (b) Any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.
> >
> > (2) If the judgment under division (B)(1) of this section is based upon the value of the asset transferred, the judgment shall be in an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

debtor's husband had transferred significant funds to the debtor. The husband's first wife, who was owed a substantial debt for child support, alleged that this was a fraudulent transfer, and a state court had agreed and entered judgment against the debtor. When the debtor filed chapter 7, the creditor asserted that the debtor's liability for receiving the fraudulent transfer was nondischargeable under § 523(a)(2)(A). The creditor argued that *Bartenwerfer* eliminated the need for the creditor to show that the debtor received the transfer with the intent to defraud. The court held that *Bartenwerfer* did not apply, because the fraudulent transfer liability of the transferee is a distinct and independent liability from the debt of the transferor and is not based upon imputation. "Vulaj is not being held liable for Josh's debt, which was obtained by fraud, but for her own different role in the transfers." *Vulaj*, 651 B.R. at 315. The court concluded that, under California fraudulent transfer law, "Vulaj's liability to Eva is different from that of Josh's liability, regarding both the critical intent element and their different roles in the transaction." *Id.* (citing Cal. Civ. Code § 3439.08(b)). Since the debtor's debt was a "different" debt, the plaintiff had to prove the debtor's wrongful intent to prevent the debt from being discharged. 651 B.R. at 315 (citing *Husky*, 578 U.S. at 365).

Courts considering other statutes imposing liability related to the fraud of another have refused to apply imputation under § 523(a)(2)(A) even when considering statutes that imposed liability "akin to agency liability in some respects." *Hoffend v. Villa (In re Villa)*, 261 F.3d 1148, 1152-53 (11th Cir. 2001); *Owens v. Miller (In re Miller)*, 276 F.3d 424, 429 (8th Cir. 2002). These courts considered whether liability under § 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t(a), which imposes liability upon a "control person" for securities fraud committed by a corporate employee, could be imputed to a debtor under § 523(a)(2)(A). The courts concluded that the statute reached beyond situations where partnership or agency law would apply and therefore declined to apply imputation under *Strang*. *Villa*, 261 F.3d at 1152-53; *Miller*, 276 F.3d at 429 ("We agree with the Eleventh Circuit that *Strang* should not be extended beyond its basis in agency law to include the much broader sweep of § 20(a) liability."). *Miller* and *Villa* involved a statute with a much stronger basis for imputation than the OUFTA, because a transferee's liability under the OUFTA is not "akin to" agency liability. If that statutory liability for the fraud of another was not imputed in *Villa* and *Owens,* there is even less basis to impute fraud here.

As a last resort, the Receiver makes an appeal to equity, asserting that the "real victims" are those who lost money investing in the Dente/AEM Ponzi scheme. Receiver's Supp. Br. 12, Dkt. No. 34 ("Permitting the Debtors to discharge their obligation to repay their net winnings would be inequitable to the Defrauded Losing Investors."). The Court is sympathetic to the victims of the Dente/AEM Ponzi scheme, but the Court does not have the "equitable power to disregard the Code's provisions when they lead to results that seem unfair." *Smith v. U.S. Bank, N.A. (In re Smith)*, 999 F.3d 452, 456 (6th Cir. 2021) (citing *Law v. Siegel*, 571 U.S. 415, 421, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014)). Because § 523(a)(2)(A) does not apply here unless the Debtors committed fraud, and the Receiver disclaims any allegation that the Debtors committed fraud, that is the end of the inquiry.

Therefore, to assert a § 523(a)(2)(A) claim, the Receiver must plausibly allege either that the Debtors received the Transfers with the intent to defraud, or that they were in a partnership or agency relationship with Mr. Dente and/or the AEM Entities such that his intent to defraud could be imputed to them. The Receiver concedes that he "has not alleged that the Defendants created the Dente/AEM Ponzi Scheme or that they knew they was [sic] receiving money as a result of the obvious fraud of it." Resp. 21, Dkt. No. 34. And the Amended Complaint does not allege that the Defendants were in a partnership or agency relationship with Mr. Dente or the AEM Entities such that Mr. Dente's alleged intent to defraud could be imputed to them. Therefore, the Amended Complaint does not plausibly allege a material element under § 523(a)(2)(A), and therefore Count V must be dismissed.

4. The Receiver's Request for Leave to Amend and Proposed Second Amended Complaint

At the Hearing, the Receiver requested that if the Court grants the Motion, that he be allowed leave to amend. The Defendants opposed that request, pointing to the fact that they filed and fully briefed a motion to dismiss the original complaint, such that the Receiver has already had one opportunity to amend in light of the Defendants' arguments. The Receiver attached the PSAC to his Supplemental Brief to allow the Court and the Defendants to evaluate his request for leave to amend. Receiver's Supp. Br. Ex. A, Dkt. No. 34.

Leave to amend after a motion to dismiss is granted should be freely given. *Greer v. Strange Honey Farm, LLC*, 114 F.4th 605, 617 (6th Cir. 2024). Indeed, as the Court stated at the Hearing, its general inclination is to allow leave to amend, although it noted that, given the prior amendment of the complaint, any further amendment would be the last. ECRO 2:15:00 – 2:17:00. But leave to amend may be denied for reasons "such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." *Skatemore, Inc. v. Whitmer*, 40 F.4th 727, 737 (6th Cir. 2022) (citation modified). The Court has the discretion to require a motion for leave together with the proposed amendment. *Islamic Ctr. of Nashville v. Tenn.*, 872 F.3d 377, 387 n.7 (6th Cir. 2017). This is so the Court does not have to "engage in a guessing game" as to how the amendment salvages the dismissed claim. *Id.* (citation modified). Accordingly, should the Receiver still wish to pursue leave to amend regarding Count V of the Amended Complaint, he shall file a motion for leave to file the PSAC as the operative complaint. The Receiver shall address the considerations set forth in *Skatemore*, 40 F.4th at 737 – including, but not limited to, whether the proposed amendment would be futile considering the Court's rulings on the Motion.

And, as noted above, the Receiver's Supplemental Brief suggests that the Receiver has decided not to pursue Counts I and II as standalone claims, and that he has decided not to pursue Counts III, IV, and VI at all. Receiver's Supp. Br. 1-2 and Ex. A. Normally the Court may treat a claim omitted from an amended complaint as abandoned. *Kolling v. Am. Power Conversion Corp.*, 347 F.3d 11, 16 (1st Cir. 2003). But the PSAC is not an operative pleading. The Court is reluctant to treat Counts I-IV and VI of the Amended Complaint as formally abandoned without a definitive statement from the Receiver to that effect. This is particularly true where it is unclear whether those claims would be withdrawn with or without prejudice. Accordingly, to the extent that the Receiver believes that any of the remaining counts of the Complaint remain for adjudication by the Court, he may raise that issue in any motion for leave to amend that he may file (or, if he determines not to file a motion for leave to amend, he may file a motion setting forth what issues he believes are still ripe for the Court to consider). Any such motions shall be filed within the time set forth below.

VII. Conclusion

For all these reasons, the Motion is granted in part with respect to Count V of the Amended Complaint and is otherwise held in abeyance. As to Count V of the Amended Complaint, the Receiver may file a motion for leave to amend to show how the PSAC attached to his Supplemental Brief states a claim for relief. As to Counts I-IV and VI, the Receiver may include in his motion for leave to amend a request for the Court to address the Motion as it pertains to any of those counts which the Receiver still intends to pursue.

Any motions filed under the preceding paragraph shall be filed within fourteen (14) days of the entry of this Opinion and Order.[20] **If no such motions are timely filed, the Court may enter a final judgment of dismissal without further notice or hearing**.

IT IS SO ORDERED.

Copies to:
John C. Cannizzaro
Matthew L. Fornshell
Erica Lynn Arras
Michael A. Cox
Scott R. Belhorn
James Ehrman
Rachel L Steinlage

[20] If any such motions are filed, the Defendants may respond under the briefing schedule set forth in LBR 9013-1(b).

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Goddard v. Burnett, 173 F.4th 550, 2026 U.S. App. LEXIS 12406, 2026 LX 200489, 2026 WL 1140872

Goddard v. Burnett

United States Court of Appeals for the Fourth Circuit

December 10, 2025, Argued; April 28, 2026, Decided

No. 25-1303

Reporter

173 F.4th 550 *; 2026 U.S. App. LEXIS 12406 **; 2026 LX 200489; 2026 WL 1140872

BOBBY EUGENE GODDARD, Debtor - Appellant, v. MICHAEL BRANDON BURNETT, Trustee - Appellee.NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS; NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER, Amici Supporting Appellant.

Prior History: [1]** Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. (5:24-cv-00368-D). James C. Dever III, District Judge.

Disposition: AFFIRMED.

Case Summary

Overview
Key Legal Holdings

- Where a debtor purchased three luxury vehicles ($137,000+ total debt) within 32 months of filing Chapter 13, took personal loans coinciding with vehicle purchases, and proposed a plan paying vehicle loans in full while paying unsecured creditors only 7.7%, the plan was properly rejected for lack of good faith despite compliance with § 1325(b) disposable income requirements.

Material Facts

- Goddard earned $12,268/month gross income, placing him above median income.
- He owned three luxury vehicles: 2015 Corvette, 2021 GMC Sierra, and 2022 Genesis G70, purchased within 32 months of filing.
- Total vehicle debt was $137,606 with monthly payments of $3,060.
- He had $84,700 in unsecured debt, including $35,000 from personal loans taken around vehicle purchase times.
- His proposed plan would pay unsecured creditors only $6,500 (7.7%) over 60 months while paying vehicle loans in full.

Controlling Law

- 11 U.S.C.S. § 1325(a)(3)(good faith requirement for Chapter 13 plan confirmation); 11 U.S.C.S. § 1325(b) (disposable income requirements); Deans v. O'Donnell, 692 F.2d 968, 972 (4th Cir. 1982) (good faith test examines abuse of Chapter's provisions, purpose, or spirit).

Court Rationale

The court reasoned that BAPCPA's 2005 amendments removing discretion from disposable income calculations did not eliminate the separate good faith requirement. The good faith inquiry examines broader equitable concerns beyond mechanical compliance, preventing Chapter 13 from becoming a haven for debtors seeking discharge without honest repayment efforts. The structure of § 1325 requires compliance with all provisions, not just § 1325(b). Goddard's scheme to retain luxury vehicles while discharging substantial unsecured debt demonstrated manipulation of bankruptcy's equitable purposes.

Outcome
Procedural Outcome

The district court's March 13, 2025 judgment, affirming the order of the bankruptcy court rejecting Goddard's Chapter 13 plan, was affirmed.

Counsel: ARGUED: Travis P. Sasser, SASSER LAW FIRM, Cary, North Carolina, for Appellant.

Michael Brandon Burnett, OFFICE OF THE CHAPTER 13 TRUSTEE, Raleigh, North Carolina, for Appellee.

Richard Preston Cook, RICHARD P. COOK, PLLC, Wilmington, North Carolina, for Amici Curiae.

ON BRIEF: Benjamin E. Lovell, OFFICE OF THE

CHAPTER 13 TRUSTEE, Raleigh, North Carolina, for Appellee.

Judges: Before NIEMEYER, THACKER, and BERNER, Circuit Judges.

Opinion by: NIEMEYER

Opinion

[*553] NIEMEYER, Circuit Judge:

Bobby Goddard, Jr., a debtor in a Chapter 13 bankruptcy proceeding, proposed a plan by which the Trustee would pay off loans on his three luxury vehicles but would pay unsecured creditors less than 8 cents on the dollar, thus leaving Goddard at the end of the proceeding with ownership of the vehicles and a discharge of most of his unsecured debt. Although his plan's treatment of the unsecured creditors complied technically with *§ 1325(b) of the Bankruptcy Code*, the bankruptcy court rejected the plan on the ground that it was not proposed "in good faith," as required by *§ 1325(a)(3)*. *See* *11 U.S.C. § 1325(a)(3)*, *(b)*. The court concluded that Goddard's **[**2]** plan was designed to enable him to retain luxuries at the expense of unsecured creditors, such that, in proposing it, Goddard was not making an honest effort to repay his creditors.

Contending that his compliance with *§ 1325(b)* required the bankruptcy court to accept his plan, Goddard appealed to the district court. The district court, however, ruled that the bankruptcy court had "properly construed *11 U.S.C. § 1325* and permissibly rejected Goddard's Chapter 13 Plan . . . in which Goddard sought to retain three luxury vehicles at the expense of his creditors."

Because we conclude that compliance with *§ 1325(b)* did not immunize Goddard's plan from the good-faith requirement of *§ 1325(a)* and that the bankruptcy court permissibly reviewed Goddard's plan for good-faith compliance with the Bankruptcy Code and its purposes, we affirm the judgment of the district court, which affirmed the order of the bankruptcy court rejecting Goddard's plan.

I

In September 2023, Bobby Goddard, Jr., a resident of Garner, North Carolina, filed a Chapter 13 petition in bankruptcy, and Michael B. Burnett was appointed to serve as Trustee. Goddard's wife, who lived with him, did not file for bankruptcy.

At the time Goddard filed his petition, he was earning **[**3]** $7,167 per month from his employment with the Department of Labor, where he was working as a Veteran Employee Specialist. He was also receiving **[*554]** $2,748 per month as retirement income from the U.S. Army and $2,353 in disability benefits from the Department of Veterans Affairs. His gross income was thus $12,268 per month, and his take home income was $9,589. In addition, Goddard's wife earned $4,189 per month, taking home $2,285. Goddard's income placed him in the above-the-median income status for purposes of Chapter 13.

When he filed his petition, Goddard owned three luxury vehicles, which he had purchased during the 32 months prior to filing his petition — a 2015 Chevrolet Corvette, on which he owed $33,865 and was paying $839 per month; a 2021 GMC Sierra 1500, on which he owed $44,811 and was paying $1,080 per month; and a 2022 Genesis G70, on which he owed $58,930 and was paying $1,141 per month. Thus, his monthly payments on the three vehicles totaled roughly $3,060.

In addition, Goddard also had about $84,700 in general unsecured debt, more than $35,000 of which was attributable to four personal loans he took out between December 2021 and November 2022 — that is, around the time **[**4]** he purchased the three luxury vehicles. Indeed, Goddard took out one of the loans the day before he purchased the 2022 Genesis G70.

Because Goddard was an "above-median income debtor" for purposes of *Chapter 13 of the Bankruptcy Code*, he qualified for the use of a statutory formula known as the "means test" to calculate his "disposable income," all of which, should an objection be made, had to be used to pay unsecured creditors under his Chapter 13 plan. *See* *11 U.S.C. § 1325(b)(1)(B)*. To calculate disposable income under this means test, Chapter 13 debtors are required to complete Official Form 122C-2, which directs debtors to add up certain allowable monthly expenses and then subtract that total from their current monthly income. Consistent with the Code, the form calls for debtors to use national and local standards to calculate the amounts that can be deducted from income for certain types of expenses, such as food, clothing, and utilities. It also specifies that amounts owed for secured debt can be deducted in full from the debtor's income. *See id.* *§§ 1325(b)(2)-(3)*, *707(b)(2)(A)(iii)*.

Thus, when calculating his disposable income, Goddard was permitted to deduct from his monthly income his average monthly mortgage payment of $2,543, as well as the *average* monthly payments **[**5]** on his three car loans, which he recorded on Official Form 122C-2 as $625 per month for the 2015 Corvette, $756 per month for the 2021 GMC truck, and $1,140 per month for the 2022 Genesis, for a total of $2,521 per month in car loan payments. When these amounts for the payment of secured debt, together with the other allowable expenses, were deducted from his monthly income, the result was a *negative* $234. Thus, Goddard reported that he had no disposable income to pay unsecured creditors.

After making these calculations, Goddard proposed three Chapter 13 plans for confirmation, amending the original plan twice before the bankruptcy court rejected his third plan. In his fourth plan, which is at issue in this appeal, he proposed a 60-month payment period, during which he would pay directly the amount owed on his mortgage and pay the Trustee $3,070 per month for two months and then $3,700 per month thereafter for other debts. From those sums, the Trustee would pay $2,958 per month to the creditors on the three vehicle loans and then several miscellaneous priority expenses, including a small pre-petition mortgage arrearage, a claim secured by a lawnmower, a priority unsecured claim owed **[**6]** to the IRS, Goddard's base attorneys fees and reimbursement, and Trustee fees. The Trustee would then **[*555]** pay what was left to the general unsecured creditors, whose allowed claims totaled $84,700. The Trustee calculated that over the period of the five-year plan, he would only be able to pay the unsecured creditors roughly $6,500, or 7.7% of their claims.

In short, under Goddard's proposed plan, after 60 months, the secured loans on all Goddard's vehicles would be paid off, giving Goddard unencumbered ownership of the three vehicles, but only 7.7% of the unsecured debt would be paid. The remainder of his unsecured debt — a total of more than $78,000 — would be discharged.

The Trustee objected to Goddard's proposed Chapter 13 plan, arguing that because it provided for such a small disbursement to his general unsecured creditors while permitting him to retain three recently purchased luxury vehicles, the plan had not "been proposed in good faith," within the meaning of *§ 1325(a)(3)*, and therefore that the bankruptcy court should deny confirmation. Goddard argued in response, however — as summarized by the bankruptcy court — that "the good faith analysis of *§ 1325(a)(3)* should not be invoked to challenge a debtor's **[**7]** retention of assets for which expenses are a permitted deduction on the Chapter 13 means test" under *§ 1325(b)*.

Following a hearing, the bankruptcy court agreed with the Trustee. In its memorandum opinion dated June 14, 2024, the court explained that the Trustee was not challenging Goddard's "entitlement under *§ 1325(b)* to claim the deductions related to the [v]ehicles" on the means test or his "calculation that he ha[d] no monthly disposable income" for payment of unsecured creditors, as those calculations complied with "the 'disposable income test' of *§ 1325(b)(1)(B)*." Nonetheless, the court explained that when Congress enacted the *Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA")* in 2005, it "left unaltered the good faith requirement of *§ 1325(a)(3)*," "signif[ying] an intent to maintain the good faith inquiry separate and distinct from the means test and disposable income inquiry." Thus, the court concluded that a debtor's "technical compliance" with *§ 1325(b)* did not, as a matter of law, obviate the court's obligation to "evaluate and determine, pursuant to *§ 1325(a)(3)*, whether the Plan ha[d] been proposed in good faith." And the court understood the good-faith inquiry to be "whether or not under the circumstances of the case **[**8]** there ha[d] been an abuse of the provisions, purpose, or spirit of [the Chapter] in the proposal or plan." (Quoting *Deans v. O'Donnell, 692 F.2d 968, 972 (4th Cir. 1982)*). The court concluded that even where a debtor proposed contributing all of his disposable income to unsecured creditors, as required by *§ 1325(b)*, the plan could still have been proposed "in bad faith if, when viewed in the context of the facts of a particular case, the retention of a luxury item suggest[ed] that the debtor [was] not making an honest effort to repay his or her creditors." (Quoting *In re Broder, 607 B.R. 774, 778 (Bankr. D. Me. 2019)*). And applying that principle to the facts of Goddard's case, the bankruptcy court found that Goddard's proposal to retain three luxury vehicles while paying only "a meager projected dividend to general unsecured creditors" would amount to an abuse of Chapter 13. The court explained that Goddard "did not support the practical need" for retaining the three vehicles and that, instead, his plan was an effort "to improve his financial condition at the expense of his unsecured creditors." It noted that "[u]nder the terms of the Plan, [Goddard] would emerge from bankruptcy with three unencumbered vehicles and the discharge of over $78,000 in unsecured debt." Thus, in the circumstances presented, **[**9]** the court denied Goddard's request to confirm his Chapter 13 plan.

[*556] Goddard filed a motion with the district court for leave to file an interlocutory appeal, which the district court granted. The district court then affirmed the bankruptcy court's order in a memorandum opinion dated March 13, 2025. It concluded that the bankruptcy court had "properly construed *11 U.S.C. § 1325* and permissibly rejected Goddard's Chapter 13 Plan . . . in which Goddard sought to retain three luxury vehicles at the expense of his creditors" as not having been proposed in good faith.

From the district court's judgment dated March 13, 2025, affirming the order of the bankruptcy court, Goddard filed this appeal. We have jurisdiction under *28 U.S.C. § 158(d)(1)*. *See Mort Ranta v. Gorman, 721 F.3d 241, 250 (4th Cir. 2013)*.

II

Goddard contends that the bankruptcy court erred in denying confirmation of his Chapter 13 plan "based on a lack of good faith under § 1325(a)(3)," arguing that it was "an inappropriate application of § 1325(a)(3) where the plan complied with the disposable income requirement of § 1325(b)." He maintains that his retention of the vehicles and minimum payment to unsecured creditors were matters "exclusively governed by the disposable income calculations of § 1325(b)" and therefore that, since he fully complied with § 1325(b), the bankruptcy **[**10]** court "abused its discretion and erred as a matter of law by denying confirmation of the plan." In essence, he maintains that his compliance with § 1325(b) immunized him from the bankruptcy court's consideration of whether he filed his plan in good faith under § 1325(a)(3).

Explaining the rationale for his argument, Goddard points out that, prior to 2005, Chapter 13 debtors were required to devote all their "disposable income" to paying unsecured creditors, but what constituted "disposable income" was determined on a case-by-case basis, giving bankruptcy courts *discretion* over whether expenses were "reasonably necessary" for the support of the debtor. But with the 2005 changes made by BAPCPA, Congress removed that discretion from the determination of whether a debtor's expenses were reasonably necessary and provided "a bright-line statutory test for debtors . . . whose income was above the median." He thus argues that "under BAPCPA's means test, bankruptcy judges *no longer have discretion* to determine which expenses . . . are reasonably necessary." (Emphasis added). And it follows, he contends, that a bankruptcy court cannot find a lack of good faith based on the debtor's decision to retain certain assets, **[**11]** however luxurious they might seem, when the payments for those assets are deemed to be "reasonably necessary" under § 1325(b). He thus concludes that once it is determined that he complied with the terms of § 1325(b), his plan's proposed treatment of assets serving as collateral for several loans and its minimal payment to unsecured creditors cannot, as a matter of law, support a finding under § 1325(a)(3) that his plan was not proposed in good faith.

We conclude that this argument falls short for several reasons.

First, Goddard's logic is flawed. He argues that because *discretion* was removed from the provision calculating disposable income with the means test, the need to consider *good faith* was effectively eliminated. To be sure, when BAPCPA's means test applies, bankruptcy courts no longer assess, on a case-by-case basis, which of the debtor's claimed expenses are reasonable. *See* Ransom v. FIA Card Servs., N.A., 562 U.S. 61, 65, 131 S. Ct. 716, 178 L. Ed. 2d 603 (2011). But taking away that discretion does not ensure that all plans that comply with § 1325(b) were filed **[*557]** in good faith. And it simply does not follow that eliminating discretion in the means-test calculation thereby eliminated the need for a good-faith assessment of a Chapter 13 plan. The scope of the good-faith requirement is much broader than **[**12]** simply reviewing the means-test calculation.

Second and similarly, Goddard construes the good-faith requirement far too narrowly. Its scope is much broader both in geography and in its elements. Foundationally, the entire bankruptcy process is "an equitable procedure that is available to those who employ its benefits in good faith." Herlihy v. DBMP, LLC, 167 F.4th 142, 151 (4th Cir. 2026). Such debtors are given the opportunity for a fresh start through the discharge of what can be a considerable amount of debt, while the interests of secured and unsecured creditors are managed as equitably as possible. Thus, "[w]hen a debtor manipulates the bankruptcy procedure for some other purpose or steps outside the equitable limitations of the Bankruptcy Code, his good faith comes into question, placing in doubt any relief he seeks in bankruptcy." *Id.* Consistent with this, "the requirement of good faith permeates the entire Bankruptcy Code." *Id.* (citing, among other sources, In re Premier Auto. Servs., 492 F.3d 274, 279 (4th Cir. 2007), and Carolin Corp. v. Miller, 886 F.2d 693, 698 (4th Cir. 1989)).

Moreover, the requirement of good faith is explicitly imposed by the text of the Bankruptcy Code in various chapters, including, as relevant here, for all plans filed under Chapter 13. *See* 11 U.S.C. §§ 1321, 1325(a)(3). Specifically, § 1325(a)(3) provides that the court shall confirm the debtor's plan if, among **[**13]** other requirements, it "has been proposed in good faith and not by any means forbidden by law." Thus, a bankruptcy court is required to find that the debtor has proposed the Chapter 13 plan in good faith before it may confirm it.

Third, the concept of good faith is not fulfilled simply through technical compliance with the Bankruptcy Code's provisions. We have long recognized that "the basic inquiry" when assessing whether a plan has been proposed in good faith is "whether or not under the circumstances of the case there has been *an abuse* of the provisions, purpose, or spirit of the Chapter in the proposal or plan." Deans v. O'Donnell, 692 F.2d 968, 972 (4th Cir. 1982) (emphasis added) (cleaned up). Thus, while compliance with the Bankruptcy Code's provisions may be required to show good faith, good faith reaches beyond mere compliance to assess whether a proposed plan, even if in technical compliance, would nonetheless abuse the provision's purposes or violate the spirit of Chapter 13 or the Bankruptcy Code more broadly. For instance, in discussing the good-faith requirement, we have observed that "Congress never intended . . . [for] Chapter 13 [to] serve as a haven for debtors who wish to receive a discharge of unsecured debts *without* ***[**14]*** *making an* *honest effort to pay those debts*." *Id.* (emphasis added). That inquiry is far broader than simply determining whether a debtor complies with the text of a provision, such as § 1325(b).

Fourth, as a matter of statutory interpretation, BAPCPA did not eliminate the requirement that a Chapter 13 plan be proposed in good faith. Rather, the 2005 Act was enacted to confirm a good-faith filing — "to help ensure that debtors who *can* pay creditors *do* pay them." Ransom, 562 U.S. at 64. The good-faith requirement was thus deliberately left in Chapter 13 — despite the elimination of discretion within the means-test provision — as an equitable overlay to preclude, among other things, plans that would serve as a "haven for debtors . . . to **[*558]** receive a discharge of unsecured debts without making an honest effort to pay those debts." Deans, 692 F.2d at 972; 11 U.S.C. § 1325(a)(3).

Fifth, and again as a matter of statutory interpretation, § 1325(a)(1) requires *every* Chapter 13 plan to comply with *all the provisions* of Chapter 13, not only § 1325(b)'s disposable income requirement. *See* 11 U.S.C. § 1325(a)(1) (making "compli[ance] with the provisions of this chapter and with the other applicable provisions of this title" a separate, additional requirement for plan confirmation). This further rebuts any argument **[**15]** that a plan's compliance with § 1325(b) precludes a finding that its proposal was not in good faith under § 1325(a)(3).

Sixth and finally, the structure of the means test itself demonstrates that good faith remains a separate, independent requirement. Specifically, § 1325(b)(3) does not state categorically that the deductions permitted under § 707(b)(2) are to be *deemed* "reasonably necessary" expenses *for all purposes*. Rather, the means test is a tool used to determine the debtor's "disposable income" "*[f]or purposes of this subsection*" — *i.e.*, for purposes of applying § 1325(b), rather than all of § 1325. 11 U.S.C. § 1325(b)(2) (emphasis added). Thus, by its own terms, the fact that § 1325(b)(3) treats all of the debtor's monthly secured debt payments as part of the "[a]mounts reasonably necessary to be expended" when calculating disposable income under § 1325(b) does *not* mean that bankruptcy courts may not question the debtor's decision to retain assets serving as collateral for those secured loans when assessing, under § 1325(a)(3), whether the plan has been proposed in good faith.

This conclusion finds support also in the broader structure of § 707(b), from which § 1325(b) borrows the means test. Specifically, § 707(b)(1) authorizes bankruptcy courts to dismiss a Chapter 7 case or, with the debtor's consent, convert it **[**16]** to one under Chapter 11 or Chapter 13 "if it finds that the granting of relief would be an abuse of the provisions of this chapter." 11 U.S.C. § 707(b)(1). Section 707(b)(2)(A) then provides that "the court *shall presume abuse exists*" based on application of a mechanical test, *id.* § 707(b)(2)(A)(i) (emphasis added), while subparagraph (B) of § 707(b)(2) specifies how that "presumption of abuse may . . . be rebutted," *id.* § 707(b)(2)(B)(i). Both provisions then work in tandem with § 707(b)(3), which provides that when "considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter," either "in a case in which the presumption [of abuse] does not arise" or where that presumption "is rebutted," the bankruptcy court "shall consider" "whether the debtor filed the petition in bad faith" or *whether "the totality of the circumstances . . . of the debtor's financial situation demonstrates abuse*." *Id.* § 707(b)(3) (emphasis added). Accordingly, the fact that the means test of § 707(b)(2) operates in tandem with the broad, holistic test specified in § 707(b)(3) dramatically undercuts Goddard's argument that by incorporating the means-test portion of § 707(b)(2) into § 1325(b), Congress limited the factors that bankruptcy courts may consider when assessing, under § 1325(a)(3), whether the plan has been proposed in good faith. Rather, just **[**17]** as the precise formula in § 707(b)(2) and the broader, equitable analysis in § 707(b)(3) complement each other, so too do § 1325(b) and § 1325(a)(3).

For all these reasons, we reject the legal notion that strict compliance with § 1325(b) somehow precludes the bankruptcy court from considering whether the debtor's Chapter 13 plan was proposed in good faith, as required by § 1325(a)(3). Instead, bankruptcy courts remain charged with considering, under *all the circumstances*, **[*559]** whether the debtor's proposed plan would amount to "an abuse of the provisions, purpose, or spirit of the Chapter." Deans, 692 F.2d at 972 (cleaned up).

By contrast, under Goddard's reading of the Bankruptcy Code, a debtor could, for example, devise a scheme to buy a $100,000 painting for one-third of the price, sticking the other two-thirds to an unsecured creditor by strictly complying with § 1325(b). The debtor would borrow two-thirds of the cost with an unsecured loan and finance one-third with a secured loan. Thereafter, he would rely on § 1325(b) within a Chapter 13 proceeding to pay off the one-third secured loan and lower his "disposable income" to zero, allowing him to discharge the two-thirds unsecured loan. His intent all along would have been to acquire unencumbered ownership of the expensive painting for **[**18]** one-third of its cost. While the debtor would have complied strictly with § 1325(b) to do so, he would have acted in bad faith by taking advantage of § 1325(b) to his own benefit and at the calculated expense of his unsecured creditor. Yet, the Bankruptcy Code was designed for more benign conduct — to give a debtor making a good-faith effort to repay his debt a new start while at the same time protecting his creditors.

Nonetheless, Goddard maintains that the Ninth Circuit's decision in Drummond v. Welsh (In re Welsh), 711 F.3d 1120 (9th Cir. 2013), supports his position, and perhaps it does. Welsh held that a calculation made in compliance with § 1325(b) cannot be challenged because "in the BAPCPA, Congress chose to remove *from the bankruptcy court's discretion* the determination of what is or is not 'reasonably necessary.'" 711 F.3d at 1134 (emphasis added). And the Welsh court concluded further "that Congress's adoption of the BAPCPA forecloses a court's consideration of . . . a debtor's payments to secured creditors as part of the inquiry into good faith under 11 U.S.C. § 1325(a)." Id. at 1135. That conclusion might well support Goddard's suggestion that his calculations made in compliance with § 1325(b) must be accepted and not be subject to a good-faith review. But it does not support his argument that the correct calculation under **[**19]** § 1325(b) somehow immunizes his Chapter 13 plan from any examination under the good-faith standard, as required by § 1325(a)(3). Indeed, the Welsh opinion expressly recognized the distinction between the two inquiries. It pointed out that the good-faith inquiry required under § 1325(a)(3) "focuses on the debtor's motivation and forthrightness with the court in seeking relief," whereas the "disposable income requirement [under § 1325(b)], in contrast, focuses on the amount of funds that Congress expects a debtor to devote to paying off unsecured creditors. *These two inquiries are, indeed, separate and distinct*." Id. at 1132 (emphasis added). While the Welsh court, to be sure, did, on occasion, blur the two concepts in discussion, that does not support an argument that compliance with § 1325(b) somehow immunizes a debtor from the good-faith inquiry required by § 1325(a)(3). We thus cannot agree with Welsh's suggestion that a debtor's decision to retain luxury items "while paying relatively little to unsecured creditors," id. at 1133, is irrelevant to the broader good-faith inquiry. *See* Mort Ranta, 721 F.3d at 253 (observing that even after a debtor complies with § 1325(b), "[t]he debtor's plan . . . still must satisfy every other requirement for confirmation set forth in the Code," including that "the plan must have **[**20]** been proposed in good faith"). Indeed, at oral argument, Goddard conceded, as we believe he should have, that if a debtor has attempted to *abuse* or *manipulate* § 1325(b)'s test for disposable income, then that *can* be the basis for the bankruptcy court to find that the plan was not proposed **[*560]** in good faith, as required by § 1325(a)(3). *See* Oral Arg. 4:20-5:35.

Goddard also points for support to our decision in Bledsoe v. Cook, 70 F.4th 746 (4th Cir. 2023). But Bledsoe did not address the good-faith issue at all. Rather, it observed simply, and unremarkably for here, that Congress cabined a bankruptcy court's discretion when it provided the means test in § 1325(b) for determining what expenses were "reasonably necessary." 70 F.4th at 751 (citing Welsh, 711 F.3d at 1130, 1134).

At bottom, we conclude that while a debtor must comply with the means test in § 1325(b), he must also satisfy the requirement in § 1325(a)(3) that his Chapter 13 petition be proposed in good faith.

III

Having concluded that compliance with § 1325(b) does not immunize a debtor from the requirement of proposing a Chapter 13 plan in good faith, we conclude that in the circumstances presented here, the bankruptcy court did not clearly err in finding a lack of good faith. *See* Cook v. Chapter 13 Trustee (In re Chapter 13 Trustee), __ F.4th __, No. 25-1048, 2026 U.S. App. LEXIS 10491, 2026 WL 981209, at *5 (4th Cir. Apr. 13, 2026); *see also* Trantham v. Tate, 112 F.4th 223, 230 (4th Cir. 2024).

Addressing Goddard's pre-petition conduct, the bankruptcy court found that Goddard purchased **[**21]** the luxury vehicles — costing, in round numbers, $45,700, $61,800, and $57,700, respectively — over a short period of time, taking out both unsecured personal loans and secured loans in connection with their purchase. He then sought to use the bankruptcy procedure to obtain unencumbered ownership of the vehicles by using Trustee disbursements to pay the secured loans and discharging the personal loans. As the bankruptcy court stated:

> Based on the timing of the Debtor's personal loans, it appears that during the 21 months prior to filing his petition, the Debtor may have serviced the debts related to the Vehicles with the very loans he now seeks to discharge. Compliance with 11 U.S.C. § 1325(b)(1)(B) cannot and should not provide cover for such financial indiscretions.

The court also found that the vehicles that Goddard purchased were not necessary items, but luxury items, and, more importantly, that Goddard was attempting to use the Chapter 13 proceeding to obtain unencumbered ownership of the vehicles while ridding himself of more than $78,000 in unsecured debt. As the court again stated:

> The Debtor's testimony did not establish any necessity for all three Vehicles. If the Debtor had his way, the Trustee would **[**22]** disperse nearly $3,000 each month toward claims secured by vehicles that adorn the Debtor's driveway and allow for luxuries at the expense of his creditors.

Finally, the court found that in this manner, Goddard manipulated the purposes of the Bankruptcy Code to enhance his own position at the expense of his creditors. As the court stated:

> [T]he Debtor is seeking to improve his financial condition at the expense of his unsecured creditors. Under the terms of the Plan, the Debtor would emerge from bankruptcy with three unencumbered vehicles and the discharge of over $78,000 in unsecured debt. The Debtor conceded that he "probably could have" remained current on his unsecured debt obligations pre-petition if he had reduced his obligations related to the Vehicles.

Based on the record before the bankruptcy court, which well supports these findings, we conclude that the bankruptcy **[*561]** court did not clearly err in finding that Goddard's Chapter 13 plan was not proposed in good faith.

* * *

Accordingly, the district court's March 13, 2025 judgment, affirming the order of the bankruptcy court rejecting Goddard's Chapter 13 plan, is affirmed.

AFFIRMED

JUDGMENT

In accordance with the decision of this court, **[**23]** the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with *Fed. R. App. P. 41*.

End of Document

Reinhardt v. Prince (In re Reinhardt), 2026 U.S. App. LEXIS 15108, 2026 LX 202149, 2026 FED App. 0155P (6th Cir.), __ F.4th __, 2026 WL 1481102

Reinhardt v. Prince (In re Reinhardt)

United States Court of Appeals for the Sixth Circuit

July 31, 2025, Argued; May 27, 2026, Decided; May 27, 2026, Filed

File Name: 26a0155p.06

No. 25-1072

Reporter

2026 U.S. App. LEXIS 15108 *; 2026 LX 202149; 2026 FED App. 0155P (6th Cir.); __ F.4th __; 2026 WL 1481102

IN RE: CARRIE ANN REINHARDT; TIMOTHY CONRAD REINHARDT, Debtors.CARRIE ANN REINHARDT, Plaintiff-Appellant, v. WESTON PRINCE, Bay County Treasurer, Defendant-Appellee.

Prior History: [*1] Appeal from the United States District Court for the Eastern District of Michigan at Bay City. No. 1:23-cv-13233—George Caram Steeh III, District Judge.

United States Bankruptcy Court for the Eastern District of Michigan at Bay City. Nos. 1:22-bk-20558; 1:22-ap-2017—Daniel S. Opperman, Bankruptcy Judge.

Reinhardt v. Prince (In re Reinhardt), 667 B.R. 13, 2025 U.S. Dist. LEXIS 3805 (Jan. 8, 2025)

Case Summary

Overview

Key Legal Holdings

- Where a Michigan ***tax*** ***foreclosure*** judgment states title "will vest" on a future date (March 31) if ***taxes*** aren't paid by that date, and the debtor fails to pay, the transfer occurs on the vesting date, not when the judgment was entered. Here, title transferred on March 31, 2022, within 90 days of Reinhardt's June 10, 2022 bankruptcy filing.
- Where a drastically oversecured ***tax*** creditor (owed $5,845 on property worth over $70,000) would receive a 5% sales commission under Michigan's ***tax foreclosure*** process but no such commission in Chapter 7 liquidation, the ***transfer*** is ***preferential***. The sales commission alone satisfies the 'more than' test even when the creditor would be paid in full under both scenarios.

Material Facts

- Reinhardt owned Bay County property subject to PNC Bank mortgage.
- Failed to pay 2019 property ***taxes*** totaling $5,845.
- Property's fair market value was $73,500-$79,900.
- Michigan circuit court entered ***foreclosure*** judgment February 18, 2022.
- Title vested in Bay County Treasurer March 31, 2022.
- Reinhardt filed Chapter 13 bankruptcy June 10, 2022.
- Treasurer would have received 5% sales commission under Michigan's ***foreclosure*** process.

Controlling Law

- *11 U.S.C.S. § 547(b)(4) - 90-day*lookback period for ***preferential transfers***.
- *11 U.S.C.S. § 547(b)(5)*- "more than" test comparing actual transfer to hypothetical Chapter 7 liquidation.
- *11 U.S.C.S. § 101(54)(D)*- definition of "transfer" as parting with property or interest in property.
- Michigan's General Property ***Tax*** Act (GPTA) - state law governing ***tax foreclosure*** process.

Court Rationale

The federal appellate court applied plain statutory language, rejecting the Treasurer's argument that 'more than" should be limited to priority or percentage comparisons among creditor classes. The 1978 Bankruptcy Code removed such language from the preference provision.

The court distinguished BFP v. Resolution Trust Corp., noting it addressed fraudulent ***transfers*** under *§ 548*, not ***preferential transfers*** under *§ 547*. The 5% sales commission the Treasurer would receive under Michigan law but not in Chapter 7 liquidation was sufficient to establish the preference.

Outcome
Procedural Outcome

Judgment reversed. Case remanded.

Counsel: ARGUED: Matthew A. Sous, LEGAL SERVICES OF EASTERN MICHIGAN, Saginaw, Michigan, for Appellant.

Andrew C. Thompson, POZNAK DYER KANAR SCHEFSKY THOMPSON, PLC, Midland, Michigan, for Appellee.

ON BRIEF: Matthew A. Sous, LEGAL SERVICES OF EASTERN MICHIGAN, Saginaw, Michigan, for Appellant.

Andrew C. Thompson, POZNAK DYER KANAR SCHEFSKY THOMPSON, PLC, Midland, Michigan, for Appellee.

Judges: Before: MOORE, GRIFFIN, and ***NALBANDIAN***, Circuit Judges.

Opinion by: ***NALBANDIAN***

Opinion

NALBANDIAN, Circuit Judge. In Michigan, counties follow a years-long process when foreclosing on properties to satisfy property ***tax*** liens. In the third and final year of this process, a court enters a ***foreclosure*** judgment against the property. Then, the property owner must pay off the ***tax*** lien before the judgment's deadline or else the county receives title to the property. Once the county has title, the former owner loses all rights to the **[*2]** property except the right to the ***foreclosure*** sale's proceeds. But the county takes a cut, which includes the ***tax*** deficiency, interest, fees, a 5% sales commission, and the county's expenses.

This case involves the interaction between that process and the United States Bankruptcy Code. Carrie Ann Reinhardt owned a house in Bay County, Michigan. In 2019, she didn't pay her property ***taxes***, so Bay County initiated ***foreclosure***. When a Michigan court entered a ***foreclosure*** judgment against the property three years later, Reinhardt owed the county $5,845 and the property's fair market value was roughly $75,000. Bay County received title to Reinhardt's property. And shortly after, Reinhardt filed for Chapter 13 bankruptcy and then filed a complaint seeking to ***avoid*** (undo) the ***transfer*** of title as ***preferential*** under the Code.

The bankruptcy court granted the Bay County Treasurer's summary-judgment motion and denied Reinhardt's. The district court affirmed. But because we find that Reinhardt established that the ***transfer*** was ***preferential*** under *11 U.S.C. § 547(b)(4)* and *§ 547(b)(5)* as a matter of law, we reverse.

I.

A.

*Michigan's General Property **Tax** Act* (GPTA) describes the years-long ***tax*** ***foreclosure*** process for county treasurers **[*3]** to collect unpaid property ***taxes***. [1] The GPTA subjects all taxpayers with delinquent property ***taxes*** in a given ***tax*** year to the same general timeline and process. *See generally Mich. Comp. Laws § 211.78 et seq.* The process ***can*** end in two ways. Either the taxpayer pays the delinquent ***taxes*** during the process, which terminates the proceedings and leaves the taxpayer with title. Or the taxpayer doesn't pay, in which case the county receives title to the property to sell later in the year. To fit Reinhardt's situation, we'll describe the GPTA's timeline from the perspective of a taxpayer who didn't pay 2019 property ***taxes***.

If a taxpayer doesn't pay her 2019 property ***taxes***, then the county treasurer receives a super-priority ***tax*** lien on the property in December 2019. *Id. § 211.40*. The unpaid ***taxes*** become "delinquent" in March 2020, and they start accruing fees and interest at a non-compounded rate of 1% per month. *Id. § 211.78a(2)-(3)*. And if the ***tax*** lien remains unpaid for another year, the taxpayer "forfeits" the property on March 1, 2021, and a $175 fee is added to the lien. *Id. § 211.78g(1)*. The county treasurer must record a certificate of forfeiture with the county register of deeds within 45 days. *Id. § 211.78g(2)*. This recording allows the **[*4]** treasurer to

[1] We note as background that the GPTA's process for property-***tax*** ***foreclosures*** has been the subject of much recent litigation in both state and federal court. Under an earlier version of the GPTA, Michigan permitted counties to keep proceeds from a ***foreclosure*** sale above the deficiency amount—a practice that the Michigan Supreme Court ***said*** violated Michigan's *Takings Clause* and we ***said*** violated the federal *Takings Clause*. *Hall v. Meisner, 51 F.4th 185, 196 (6th Cir. 2022)*; *Rafaeli, LLC v. Oakland County, 505 Mich. 429, 952 N.W.2d 434, 466 (Mich. 2020)*. And the U.S. Supreme Court agreed with respect to a similar process in Minnesota. *See Tyler v. Hennepin County, 598 U.S. 631, 635-39, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023)*. The Michigan legislature changed its ***foreclosure*** law to the system that governs this case. But that's not the end of it. The U.S. Supreme Court is poised to decide a case involving whether the proceeds due to the property owner should be measured using the fair market value of the property as opposed to the actual sale price at auction. *See Pung v. Kopke, 2025 U.S. App. LEXIS 2149, 2025 WL 318222 (6th Cir. Jan. 28, 2025)*, *cert. granted*, ***146 S. Ct. 80, 222 L. Ed. 2d 1241 (2025)***.

continue the ***foreclosure*** process, but the county doesn't "acquire a right to possession or any other interest in the property." *Id. § 211.78(8)(b)*; *see also id. § 211.78g(1)-(2)*. The forfeiture also triggers an additional non-compounded interest of 0.5% per month, calculated from the previous March 1 when the ***taxes*** had become delinquent. *Id. § 211.78g(3)(b)*.

Then the county must petition for ***foreclosure*** with the state circuit court before June 15, 2021. *Id. § 211.78h(1)*. If the ***tax*** lien remains unpaid and the county satisfies the GPTA's notice requirements, a Michigan circuit court holds a judicial ***foreclosure*** hearing between January 30 and February 28, 2022, and enters a ***foreclosure*** judgment by March 30, 2022. *Id. §§ 211.78h(5)*, *211.78k(5)*. But the judgment ***can***'t go into effect before March 31. *Id. § 211.78k(5)*. The March 31 effective date marks when fee simple title to the property "vest[s] absolutely" in the county and the taxpayer loses "[a]ll redemption rights to the property." *Id.* On that date, the judgment also extinguishes most liens and interests associated with the property. *Id. § 211.78k(5)(c)*, *(e)*. And on April 1, the county gains the right to possess the property. *Id. § 211.78g(1)*.

Once the county receives title, it must record the ***foreclosure*** judgment with the county register **[*5]** of deeds. *Id. § 211.78k(8)*. And then it must attempt to sell the property by arranging public auctions between July and November 2022. *Id. § 211.78m(2)-(5)*. The county ***can*** bundle foreclosed properties for sale in groups. *Id. § 211.78m(2)*. But the GPTA requires that it offer each property for at least the "minimum bid," which must include the delinquent ***taxes*** (including interest), penalties, and fees due on the property and may include any additional expenses incurred by the county related to the property's ***foreclosure*** and auction. *Id. § 211.78m(16)(c)*. The county ***can*** offer a property for sale at later auctions if no one purchased it at the first. But after at least one attempt to sell for the minimum bid, the county ***can*** declare the next auction to be the property's final auction and "establish a reasonable opening bid at the sale to recover the cost of the sale of the property or properties" rather than adhering to the earlier minimum bid requirement. *Id. § 211.78m(5)*.

In addition to public auctions, the government has a chance to get in on the action. Before the first auction is held, state and local government entities ***can*** purchase the property for the greater of the minimum bid or the fair market value. *Id. § 211.78m(1)*. And in between the first and second public **[*6]** auctions, those entities have another chance to purchase the property—this time for just the minimum bid. *Id. § 211.78m(3)*.

The taxpayer—and any other party who had an interest in the property before the ***foreclosure***—has a right to claim remaining proceeds from the sale by first filing a notice of intent to claim the proceeds by July 1, 2022. *Id. § 211.78t(2)*. Then, after the county provides the taxpayer with notice of the sale and her right to claim proceeds, the taxpayer must file a motion with the foreclosing court by May 15, 2023. *Id. § 211.78t(3)-(4)*. In response to the motion, the foreclosing court holds a hearing at which the taxpayer bears the burden of proving her right to proceeds. *Id. § 211.78t(9)*. If the taxpayer meets her burden, the court orders the county to distribute the remaining proceeds to the taxpayer. *Id.*

Assuming the taxpayer was the only claimant, the proceeds owed to her follow a simple equation: the sale price of the property less (1) the minimum bid, (2) any other fees or expenses related to disposing of the property, and (3) a 5% sales commission to the county. *Id. § 211.78t(12)(b)*. [2]

B.

In Reinhardt's case, the parties agree that the Bay County Treasurer complied with the GPTA's procedures. In November 2015, Reinhardt became **[*7]** the owner of a property in Bay County, Michigan. She took this property subject to a mortgage held by PNC Bank. And she paid her property ***taxes*** on time for several years.

But in 2019, she didn't pay her property ***taxes***. So Bay County received its super-priority ***tax*** lien in December 2019, and the ***taxes*** became delinquent in March 2020. A year later, on March 1, 2021, Reinhardt still hadn't paid the ***tax*** debt, so the Treasurer recorded a certificate of forfeiture with the county register within the required 45 days.

In June 2021, the Treasurer filed a petition for ***foreclosure*** in a Michigan circuit court. And on February 18, 2022, the circuit court entered a judgment of ***foreclosure***. The judgment ***said***:

> Fee simple title to each parcel foreclosed upon by this

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[2] There's some evidence, however, that potential claimants to remaining proceeds aren't recovering what they could under the GPTA. In 2021, Bay County sold around 30 foreclosed properties above the minimum bid. These sales netted Bay County around $170,000 in excess proceeds—meaning proceeds exceeding the properties' aggregated minimum bids. Six claimants filed timely notices of intent to claim remaining proceeds. But none of them followed up with a motion to the foreclosing court to recover those proceeds. And for 2022, we know that the sales netted Bay County over $300,000 in excess proceeds, but we don't have information in the record revealing whether any claimants to remaining proceeds were successful.

> Judgment will vest absolutely in [the Treasurer] . . . without any further rights of redemption, if all forfeited delinquent ***taxes***, interest, penalties and fees foreclosed against the parcel, plus any additional interest required by statute, are not paid to the County Treasurer on or before March 31, 2022.

R.3, Bankr. R., PageID 172. Reinhardt didn't pay, so the ***foreclosure*** judgment took effect on March 31. And the Treasurer recorded the judgment **[*8]** with the county register on April 5.

On June 8, Reinhardt preserved her right to remaining proceeds by filing a timely notice. Because PNC Bank (whose mortgage lien had been extinguished by the judgment) filed its notice late, Reinhardt is the only one who filed a timely notice.

And on June 10, she filed for Chapter 13 bankruptcy. Because the property was her only potential asset with unexempt value, Reinhardt premised her proposed Chapter 13 plan on ***avoiding*** the transfer of title to the Treasurer. If the transfer were ***avoided***, her plan called for paying the Treasurer's lien in full and then paying the roughly $18,000 owed to other creditors—$8,826 to PNC Bank for its mortgage lien and $8,965 to unsecured creditors.

But the bankruptcy trustee was unwilling to try to set aside the transfer. So shortly after filing for bankruptcy, Reinhardt filed a complaint against the Treasurer to ***avoid*** the ***transfer*** of title as "***preferential***" under the Bankruptcy Code. The Treasurer had planned to offer Reinhardt's property for sale for the first time in August 2022 along with other Bay County properties, but he withdrew the property from the auction in June because of Reinhardt's bankruptcy filing. **[*9]** At that August sale, though the Treasurer offered other properties for sale individually, he didn't offer any properties for sale as a bundle.

Reinhardt and the Treasurer filed cross-motions for summary judgment. They agreed on several facts. They stipulated that Reinhardt owed Bay County $5,845 in delinquent ***taxes***, accrued interest, and fees on the June 10 bankruptcy petition date. And they stipulated that the minimum bid for the property would've been $11,055 if the property had been offered at the August 2022 ***tax*** sale. They also submitted a realtor's estimate of the property's fair market value for the spring and summer of 2022—the estimate was $73,500 to $79,900. For the August ***tax*** sale, Reinhardt estimated that the property would've sold for around $37,000. But the Treasurer didn't provide his own estimate, nor did he dispute the accuracy of Reinhardt's estimate. Instead, he used $73,500, the low end of the property's fair market value, to illustrate his argument without conceding that the property would've sold for that amount.

The parties' disagreement on summary judgment centered on two requirements to ***avoid*** a ***transfer*** as "***preferential***" under the Code: (1) the transfer must occur **[*10]** within a 90-day period before the bankruptcy petition's filing (the lookback period); and (2) the transfer must enable the creditor to receive more than he would've if the transfer hadn't happened and the debtor's estate had been liquidated in a Chapter 7 bankruptcy (the "more than" test). *11 U.S.C. § 547(b)(4)-(5)*.

The bankruptcy court granted the Treasurer's motion for summary judgment and denied Reinhardt's. It found that, though the transfer had occurred within the lookback period, Reinhardt couldn't satisfy the "more than" test. The district court affirmed. Though the district court didn't address the lookback period, it agreed that Reinhardt couldn't satisfy the "more than" test. Reinhardt appealed.

II.

A.

Federal Rule of Civil Procedure 56 provides the basis for summary judgment. And the Federal Rules of Bankruptcy Procedure make *Rule 56* applicable to adversary bankruptcy proceedings. *Fed. R. Bankr. P. 7056*. So bankruptcy courts grant summary judgment only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*. A fact is material only if it might affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*. And a genuine dispute of material fact exists only "if the evidence is such that a reasonable jury could **[*11]** return a verdict for the nonmoving party." *Id.* Though we draw all reasonable inferences for the nonmoving party, that party must identify significant probative evidence to counter the movant's showing. *Bivens v. Zep, Inc., 147 F.4th 635, 642 (6th Cir. 2025)*. If the movant's evidence isn't disputed by the nonmoving party, then the uncontradicted evidence governs. *Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150-51, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000)*.

Though the district court issued an intervening and reasoned decision, we look to the bankruptcy court's opinion, reviewing its legal conclusions de novo and its factual findings for clear error. *In re M.J. Waterman & Assocs., Inc., 227 F.3d 604, 607 (6th Cir. 2000)*. And "[a]lthough the denial of a motion for summary judgment is usually an interlocutory order that is not immediately appealable, where 'an appeal from a denial of summary judgment is presented in tandem with a grant of summary judgment, this court has jurisdiction to review the propriety of the [bankruptcy] court's denial of summary judgment.'" *Walls v. Amerisure Mut. Ins. Co., 343 F.3d 881, 884 (6th Cir. 2003)* (quoting *Hamad v. Woodcrest Condo. Ass'n, 328 F.3d 224, 235 (6th Cir. 2003)*).

B.

This case is about the meaning of *11 U.S.C. § 547(b)*, which allows a debtor in bankruptcy to ***avoid*** "***preferential" transfers***. For a ***transfer*** to be ***preferential***, the debtor bears the burden of showing that the transfer satisfies the requirements described in *§ 547(b)*. *See 11 U.S.C. §§ 522(h)*, *547(g)*.

The parties dispute two requirements—*§ 547(b)(4)*'s lookback requirement and *§ 547(b)(5)*'s "more than" test. **[*12]** *Section 547(b)(4)* requires the debtor to show that the transfer was made "on or within 90 days before the date of the filing of the [bankruptcy] petition." *Id. § 547(b)(4)*. *Section 547(b)(5)* requires the debtor to show that the transfer "enables [the] creditor to receive more than [the] creditor would receive if—(A) the case were a case under [C]hapter 7 of this title; (B) the transfer had not been made; and (C) [the] creditor received payment of such debt to the extent provided by" the Code. *Id. § 547(b)(5)*.

Reinhardt argues that we ***can*** consider only *§ 547(b)(5)*'s "more than" requirement because, though the bankruptcy court addressed the *§ 547(b)(4)* issue, the district court didn't and the Treasurer didn't file a cross-appeal.

We disagree. It's "only necessary and appropriate to file a cross-appeal when a party seeks to enlarge its own rights under the judgment." *Shropshire v. Laidlaw Transit, Inc., 550 F.3d 570, 571 n.2 (6th Cir. 2008)* (quoting *Bailey v. Dart Container Corp., 292 F.3d 1360, 1362 (Fed. Cir. 2002)*); *see also Greenlaw v. United States, 554 U.S. 237, 244-45, 128 S. Ct. 2559, 171 L. Ed. 2d 399 (2008)*. In fact, "a cross-appeal is inappropriate when the only relief sought is an affirmance of the [bankruptcy] court judgment." *Shropshire, 550 F.3d at 571 n.2*. Without filing a cross-appeal, the Treasurer ***can*** still argue in favor of the bankruptcy court's order based on "any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court or an insistence upon matter **[*13]** overlooked or ignored by it." *Baatz v. Columbia Gas Transmission, LLC, 929 F.3d 767, 774-75 (6th Cir. 2019)* (quoting *United States v. Am. Ry. Express Co., 265 U.S. 425, 435, 44 S. Ct. 560, 68 L. Ed. 1087 (1924)*); *see also Greenlaw, 554 U.S. at 250 n.5*. Here, the Treasurer doesn't seek to expand his rights by raising the *§ 547(b)(4)* lookback question. Instead, he argues that we should affirm the bankruptcy court's order on grounds rejected by that court.

So the Treasurer didn't need to file a cross-appeal. And because we ***can*** affirm on any basis supported by the record when we review a bankruptcy court's decision, we ***can*** consider both the *§ 547(b)(4)* and *§ 547(b)(5)* issues. *See Wallace v. Oakwood Healthcare, Inc., 954 F.3d 879, 886 (6th Cir. 2020)*. We address each issue, starting with *§ 547(b)(4)* and whether the transfer occurred no more than 90 days before the bankruptcy petition date, June 10, 2022.

III.

The Code authorizes the avoidance of transfers made no more than 90 days before the debtor filed her bankruptcy petition. *11 U.S.C. § 547(b)(4)(A)*. So with June 10, 2022, as her petition date, Reinhardt ***can*** satisfy this requirement if the transfer occurred on or after March 12. *See Fed R. Bankr. P. 9006(a)(1)*. Reinhardt ***says*** a transfer occurred on March 31, the effective date of the ***foreclosure*** judgment. But the Treasurer ***says*** the transfer occurred outside the 90-day window, on February 18, when the circuit court entered the ***foreclosure*** judgment. The bankruptcy court found for Reinhardt on this issue, reasoning that the transfer occurred when **[*14]** title vested in the Treasurer on March 31.

Whether a transfer was made on March 31 rests on two questions. We first ask whether the purported March 31 transfer falls within the Code's definition of "transfer." *See 11 U.S.C. § 101(54)*. If it does, we then ask when that transfer was perfected because the Code links a transfer's date to its perfection date. *See id. § 547(e)(2)*.

A.

1.

To determine when a transfer occurred, we look to both state and federal law. Federal law matters because the Code defines "transfer." *Barnhill v. Johnson, 503 U.S. 393, 397-98, 112 S. Ct. 1386, 118 L. Ed. 2d 39 (1992)*. And the Code's definition has well-established breadth. [3] It defines "transfer" as: "(A)

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[3] *See, e.g., Barnhill, 503 U.S. at 400* ("We acknowledge that *§ 101(54)* adopts an expansive definition of transfer."); *Meoli v. Huntington Nat'l Bank, 848 F.3d 716, 728 n.6 (6th Cir. 2017)*; ***In re Boy Scouts of Am., 137 F.4th 126, 161 (3d Cir. 2025)*** ("The Bankruptcy Code[] defines transfer in the broadest possible terms." (internal quotations omitted)); *In re Whitley, 848 F.3d 205, 208 (4th*

the creation of a lien; (B) the retention of title as a security interest; (C) the ***foreclosure*** of a debtor's equity of redemption; or (D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—(i) property; or (ii) an interest in property." *11 U.S.C. § 101(54)*. And state law matters because "[p]roperty interests are created and defined by state law." *Butner v. United States, 440 U.S. 48, 55, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979)*; *see also* *In re Morehead, 249 F.3d 445, 447-48 (6th Cir. 2001)*.

Here, if a transfer occurred on March 31, then it happened as defined by *§ 101(54)(C)* or *§ 101(54)(D)* or both. We find that it happened at least under *§ 101(54)(D)*. So we don't need to address *§ 101(54)(C)* to affirm the bankruptcy court on this issue.

Section 101(54)(D) classifies **[*15]** any parting with property or "an interest in property" as a transfer. The Code doesn't define "interest," but the Supreme Court has noted that "interest" is "[t]he most general term that ***can*** be employed to denote a right, claim, title or legal share in something." *Russello v. United States, 464 U.S. 16, 22, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983)* (quoting *Interest, Black's Law Dictionary* (5th ed. 1979)); *see also* *In re Emmet Cnty. Treasurer for **Foreclosure**, 345 Mich. App. 692, 9 N.W.3d 142, 145 (Mich. Ct. App. 2023)* (quoting *Interest, Black's Law Dictionary* (11th ed. 2019)). And the Code's definition includes involuntary modes of transfer that "occur[] when property is transferred by operation of law, such as by means of an execution of judgment." *In re Dickson, 655 F.3d 585, 593 (6th Cir. 2011)* (citation modified); *see also* *In re Jones, 226 F.3d 917, 921 (7th Cir. 2000)* (noting that *§ 101(54)* includes transfers made pursuant to state-court judgments). For instance, in the context of a judicial mortgage ***foreclosure***, the Eighth Circuit had "no difficulty in concluding that under North Dakota law [the debtor] had an interest in the property at the time of its [***foreclosure***] sale, and at least until expiration of the [statutory] redemption period." *In re Hulm, 738 F.2d 323, 326 (8th Cir. 1984)*. Concluding that transfers occurred throughout the ***foreclosure*** process, the court identified several property interests that the debtor parted with: the debtor's title interest, right to possession, right to the excess of the **[*16]** value of the property over the mortgage, and equity of redemption. *Id.*

So a transfer occurs under *§ 101(54)(D)* when a state-recognized property interest—a right, claim, title, or legal share in something—is parted with, whether voluntarily or involuntarily.

2.

Here, a transfer occurred on March 31, 2022, under *§ 101(54)(D)*. [4] None of the facts relevant to this issue are disputed. On March 1, 2021, Reinhardt forfeited her property to the Treasurer because she hadn't paid her ***taxes***. *See* *Mich. Comp. Laws § 211.78g(1)*. But as the GPTA states, the only interest the Treasurer gained at that time was a right to seek a judgment of ***foreclosure***; the Treasurer did "not acquire a right to possession or any other interest in the property." *Id.* *§ 211.78(8)(b)*. On February 18, 2022, the Michigan circuit court entered a ***foreclosure*** judgment against Reinhardt's property. The judgment ordered that "[f]ee simple title to [Reinhardt's property] will vest absolutely in [the Treasurer] . . . without any further rights of redemption, if all [debts] are not paid to the County Treasurer on or before March 31, 2022." R.3, Bankr. R., PageID 172.

Because Reinhardt didn't pay off the ***tax*** lien, the ***foreclosure*** judgment took effect on March 31. On that day, title to the property **[*17]** vested absolutely in the Treasurer, and Reinhardt lost all rights to the property (including her equity of redemption and possession rights) except the right to claim remaining proceeds from the Treasurer's sale of the property. [5] *See* *Mich. Comp. Laws §§ 211.78g(1)*, *211.78k(5)*. Contrary to the Treasurer's assertions, Reinhardt didn't lose her rights on February 18. The judgment's use of "will vest"—as opposed to, for instance, "vests"—marks March 31 as the transfer of title, not February 18. And nothing in the GPTA or the judgment indicates that Reinhardt lost title, her equity of redemption, or her right to possess before March 31.

Title to property is a property interest, so a transfer occurred under *§ 101(54)(D)* on March 31 when Reinhardt involuntarily parted with that interest. *See In re Hackler, 938 F.3d 473, 475-77 (3d Cir. 2019)* (noting that, though the issue wasn't disputed by the parties, the transfer occurred when title

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Cir. 2017); *In re Veretto, 131 B.R. 732, 737 (Bankr. D.N.M. 1991)* ("[A] forfeiture of an equity interest under a real estate contract constitutes a transfer.").

[4] Because Reinhardt could've redeemed her property at any point during March 31, it may seem that April 1 should be viewed as the transfer date. April 1 is also when the Treasurer received the right to possess the property. *See* *Mich. Comp. Laws § 211.78g(1)*. But the GPTA explicitly denotes March 31 as the effective date of the ***foreclosure*** judgment and when the delinquent taxpayer loses her rights in the property. *Id.* *§ 211.78k(5)*. In any event, the one-day difference between the transfer occurring on March 31 or April 1 would affect neither the outcome here nor the substance of either party's arguments.

[5] Because Michigan is a lien-theory state, Reinhardt had maintained legal title to the property despite the mortgage with PNC Bank. *See* *Prime Fin. Servs. v. Vinton, 279 Mich. App. 245, 761 N.W.2d 694, 703 (Mich. Ct. App. 2008)*.

to the property vested in the lienholder); *In re RL Mgmt. Grp., LLC, 2014 Bankr. LEXIS 206, 2014 WL 197692, at *3 (Bankr. E.D. Mich. Jan. 10, 2014)* (concluding that March 31 is the date of the transfer under the GPTA's ***tax*** ***foreclosure*** scheme). Before March 31, Reinhardt held title and could prevent ***foreclosure*** by paying off her ***tax*** debt through her equity of redemption. After March 31, the Treasurer held absolute title. "[T]he general rule is that the hallmark **[*18]** of a transfer is a change in the rights of the transferor with respect to the property after the transaction." 2 *Collier on Bankruptcy § 101.54* (16th ed.) (citation modified). To ***say*** that a transfer didn't occur on March 31 ignores the clear and broad language of *§ 101(54)(D)*.

Despite the plain language of the ***foreclosure*** judgment and the GPTA, the Treasurer argues that the judgment vested title in him on February 18. To arrive at his conclusion, he ***says*** that the judgment foreclosed Reinhardt's equity of redemption on February 18, with the implication that Reinhardt lost title at the same time. And that left Reinhardt with only a statutory right of redemption and right to possess until March 31. But this argument conflates the statutory right of redemption with the equity of redemption. The equity of redemption is an equitable, pre-***foreclosure***-sale right that allows a debtor to ***avoid*** ***foreclosure*** by paying the outstanding debt. *Garcia v. Fed. Nat'l Mortg. Ass'n, 782 F.3d 736, 740 (6th Cir. 2015)*; *see also* *Hall v. Meisner, 51 F.4th 185, 190-95 (6th Cir. 2022)*. The statutory right of redemption is a post-***foreclosure***-sale right created by legislation that allows the debtor to regain property by paying the sale price. *Id.* This latter right, which the GPTA doesn't create, isn't at issue here. What matters is that the judgment and the GPTA set March **[*19]** 31 as the future date when Reinhardt would lose title (along with the ability to stop the ***foreclosure*** sale by paying off her debt).

The Treasurer misses the forest for the trees by focusing on labels as opposed to function. Regardless of the labels, we know that Reinhardt had several interests in her property until March 31, including possession. And if she had taken care of the ***tax*** delinquency by March 31, those rights would have continued as before. In the language of the February 18 ***foreclosure*** judgment, "[f]ee simple title . . . will vest" in the Treasurer "if all forfeited delinquent ***taxes*** . . . are not paid to the County Treasurer on or before March 31, 2022." R.3, Bankr. R., PageID 172. So Reinhardt had alienable property rights between February 18 and March 31. Those rights expired on March 31, bringing what happened on that date within the meaning of a transfer under *§ 101(54)(D)*.

B.

But concluding that a "transfer" occurred on March 31 doesn't resolve the *§ 547(b)(4)* lookback issue. We must also decide the perfection date.

The Code links the transfer date to the perfection date. *See* *11 U.S.C. § 547(e)(2)*. Transfers are "made" when the "transfer takes effect between the transferor and the transferee" if perfected within **[*20]** 30 days after the transfer. *Id.* *§ 547(e)(2)(A)*. So here, if the transfer was perfected within 30 days after March 31, the transfer was "made" on March 31.

For real property, a transfer is perfected "when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee." *Id.* *§ 547(e)(1)(A)*. So we look to Michigan law to determine whether the Treasurer perfected its interest within the 30 days provided by the Code. *In re Lee, 530 F.3d 458, 466 n.6 (6th Cir. 2008)* (citing *Fid. Fin. Servs. v. Fink, 522 U.S. 211, 213 n.1, 118 S. Ct. 651, 139 L. Ed. 2d 571 (1998)*).

Michigan has a race-notice recording statute. *See* *Mich. Comp. Laws § 565.29*. When a conveyance of real property isn't recorded, that conveyance is void against a subsequent purchaser who records first and didn't have notice of the earlier conveyance. And the GPTA requires ***foreclosure*** judgments to be recorded with the county register of deeds. *Id.* *§ 211.78k(8)*. To determine when a purchaser of Reinhardt's property could no longer acquire a superior interest in title to the property as against the Treasurer, we look to when the Treasurer recorded the ***foreclosure*** judgment's transfer of title.

The ***foreclosure*** judgment vested fee simple title in the Treasurer on March 31, and the Treasurer recorded that **[*21]** judgment on April 5, 2022. There's nothing else in the record indicating how notice of the transfer of title might've been given to a bona fide purchaser between March 31 and April 5. So a subsequent purchaser could've acquired a superior title interest until April 5. And that means the March 31 transfer was perfected on April 5, within 30 days. The transfer, therefore, was "made" on March 31. Because Reinhardt petitioned for bankruptcy on June 10, the transfer was made within the 90-day lookback period under *§ 547(b)(4)*. The bankruptcy court correctly ruled in Reinhardt's favor on this issue.

IV.

Next, we apply the "more than" test: Did the March 31 transfer enable the Treasurer to receive more than he would've received if the transfer hadn't happened and Reinhardt's bankruptcy were a Chapter 7 liquidation? *11 U.S.C. §*

547(b)(5); *see In re Chattanooga Wholesale Antiques, Inc., 930 F.2d 458, 461 n.1 (6th Cir. 1991)*; *In re C-L Cartage Co., 899 F.2d 1490, 1493 (6th Cir. 1990)*.

On this question, we disagree with the bankruptcy court. Reinhardt met her burden of showing her entitlement to summary judgment for the *§ 547(b)(5)* requirement. The 5% sales commission, which the Treasurer would receive from the August ***tax*** sale but wouldn't receive in the hypothetical Chapter 7 liquidation, makes the difference.

The "more than" test boils down to a comparison of two values. **[*22]** *See Hackler, 938 F.3d at 477-78*; *In re Smith's Home Furnishings, Inc., 265 F.3d 959, 963 (9th Cir. 2001)*. On one hand, we assess what the March 31 transfer enabled the Treasurer to receive. On the other, we construct a hypothetical Chapter 7 liquidation—pretending the March 31 transfer never happened—and calculate what the Treasurer would've received. *Chattanooga, 930 F.2d at 464*. Then we compare. If Reinhardt ***can*** show that the March 31 transfer enabled the Treasurer to receive more than he would've in the hypothetical liquidation, then she meets the *§ 547(b)(5)* requirement and ***can*** ***avoid*** the transfer.

The bankruptcy petition date is the reference point for this comparison. *In re Tenna Corp., 801 F.2d 819, 823 (6th Cir. 1986)*. This rule has its origins in *Palmer Clay Products Co. v. Brown, 297 U.S. 227, 56 S. Ct. 450, 80 L. Ed. 655 (1936)*. There, the Supreme Court interpreted the predecessor provision to *§ 547(b)* and viewed the petition date as the most practical way of determining the "actual effect" of the transfer. *Palmer Clay, 297 U.S. at 229*. *Section 547(b)(5)* retained that approach. *Tenna, 801 F.2d at 823*; *5 Collier on Bankruptcy § 547.03[7]* (16th ed.).

So when constructing the hypothetical Chapter 7 liquidation, we ignore claims against the debtor or changes to a claim's status incurred after the debtor filed for bankruptcy. *Tenna, 801 F.2d at 823*. Instead, we evaluate claims as they existed on the date the debtor filed her bankruptcy petition. *Id.*; *see also In re Royal Golf Prods. Corp., 908 F.2d 91, 95 (6th Cir. 1990)*; *In re Cumberland Molded Prods., LLC, 431 B.R. 718, 723 (B.A.P. 6th Cir. 2010)* ("The extent to which a claim is properly secured in a [C]hapter 7 case is determined as of the petition date.").

[*23] Because we're dealing with hypotheticals, some uncertainty inheres in the Chapter 7 analysis. Predicting events and how trustees will administer estates "is not an exact science" and ***can*** require "an estimation of the value of all of the bankruptcy estate's assets, including such hard to determine values as disputed and contingent claims, the potential disallowance of claims (under *§ 502(d)*), [and] the probability of success and value of causes of action held by the estate." *In re Affiliated Foods, Inc., 249 B.R. 770, 788 (Bankr. W.D. Mo. 2000)* (citation modified). Despite the possible pitfalls of forecasting future events, our predictions shouldn't be boundless conjecture. They must remain tied to the facts in the record. *See Tenna, 801 F.2d at 823* (recognizing that the estate's administrative expenses incurred during bankruptcy ***can*** be calculated with some degree of certainty for the hypothetical Chapter 7 liquidation analysis); *In re Tenderloin Health, 849 F.3d 1231, 1245 (9th Cir. 2017)* (holding "that courts may entertain hypothetical preference actions within *section 547(b)(5)*'s hypothetical liquidation when such an inquiry is factually warranted [and] supported by appropriate evidence").

And the other part of the *§ 547(b)(5)* analysis—what the transfer enabled the Treasurer to receive—invites uncertainty and variability as well. Unlike other cases where a ***foreclosure*** sale occurred before the petition date, *see In re Villarreal, 413 B.R. 633, 635 (Bankr. S.D. Tex. 2009)*, or a ***foreclosure***-by-sale wasn't in the cards, *see Hackler, 938 F.3d at 475-76*, the ***foreclosure*** sale mandated by the GPTA didn't happen before the petition date and never happened afterward.

So the key question in this case is whether we should—and if so, how we should—incorporate hypothetical post-petition events into this side of *§ 547(b)(5)*'s "more than" comparison. On the petition date, the Treasurer held title to Reinhardt's property. But if we look just a little bit past the petition date, we ***can*** see that the **[*24]** Treasurer likely wouldn't have held title for much longer had Reinhardt not pursued avoidance of the transfer. Still, even though we ***can*** probably assume that the Treasurer would've complied with the GPTA and eventually given up title to Reinhardt's property, the value of what the Treasurer would receive is less certain. That's because a county ***can*** dispose of a given parcel of property in several ways under the GPTA. And what the Treasurer eventually receives is contingent on the decisions of the Treasurer and others, like Michigan government entities and potential purchasers. So in cases like this one where we don't have an actual sale, many questions about what might've happened post-petition arise. Would a government entity have swooped in and acquired the property for fair market value? Would the county treasurer have sold the property at the first public auction? What would it have sold for? Would the taxpayer have been able to recover the remaining proceeds? And if so, how much?

The parties offer several paths through this thicket. One path is to take a snapshot in time on the petition date. We'd ignore all post-petition events to arrive at the value of what the transfer enabled **[*25]** the Treasurer to receive. A second path is to factor in post-petition events to account for the conditions that the GPTA imposed on the Treasurer's receipt of Reinhardt's property—conditions that existed on the petition date. In other words, we'd predict how the GPTA's process likely would've played out if Reinhardt hadn't filed for bankruptcy.

With that ***said***, we'll start the "more than" analysis by determining what the Treasurer would've received in a Chapter 7 liquidation had the March 31 transfer never happened. Then we'll determine what the March 31 transfer enabled the Treasurer to receive. And lastly, we'll compare.

A.

1.

In a Chapter 7 liquidation, "a trustee liquidates the debtor's assets and distributes them to creditors." *Czyzewski v. Jevic Holding Corp., 580 U.S. 451, 455, 137 S. Ct. 973, 197 L. Ed. 2d 398 (2017)*. The Code authorizes Chapter 7 trustees to sell property if the property's sale price is greater than the total value of all liens on the property. *11 U.S.C. § 363(f)(3)*; *see In re Burke, 863 F.3d 521, 525 (6th Cir. 2017)*. Compared to a ***tax*** ***foreclosure*** sale, a trustee's sale in a Chapter 7 liquidation will typically generate value closer to the property's fair market value because the trustee, without the same time and resource constraints, ***can*** market the property and facilitate a sale to achieve the highest return. *See In re Gledhill, 76 F.3d 1070, 1081 (10th Cir. 1996)* **[*26]** ; *Villarreal, 413 B.R. at 639*; *see also Teed v. Thomas & Betts Power Sols., L.L.C., 711 F.3d 763, 769 (7th Cir. 2013)* (describing the trustee's duty to maximize the estate's value). And a higher return ***can*** mean higher compensation for the trustee. *See 11 U.S.C. § 326*. Still, the trustee has a statutory duty to complete the liquidation as "expeditiously as is compatible with the best interests of parties in interest." *Id. § 704(a)(1)*.

Distribution of the debtor's assets must follow the Code's priority list, with secured creditors at the top and low-priority creditors (including general unsecured creditors) at the bottom. *Czyzewski, 580 U.S. at 457*; *see 11 U.S.C. §§ 725-26*. Whether a creditor's claim is secured isn't a simple "yes" or "no" question—it's a matter of degree. *See 11 U.S.C. § 506(a)(1)*. A creditor's claim falls into one of four categories: It's either completely unsecured (he has no underlying asset securing the debt), partially secured (the asset is valued less than the outstanding debt), fully secured (the asset is valued the same as the debt), or oversecured (the asset is more valuable than the debt).

Oversecured claims receive additional benefits. *Section 506(b)* of the Code allows the oversecured creditor to add to his secured claim (1) post-petition interest and (2) reasonable fees, costs, or charges up to the extent of the creditor's oversecurity. *Id. § 506(b)*. For post-petition interest, the state's "applicable nonbankruptcy law"—which refers to any generally applicable law that isn't aimed solely at bankruptcy proceedings—sets the interest rate. *In re Corrin, 849 F.3d 653, 658 (6th Cir. 2017)*; *see 11 U.S.C. § 511(a)*. And for "fees, costs, or charges," the creditor receives them from the bankruptcy estate only if they're provided **[*27]** for by the state law "under which [the creditor's] claim arose" and are reasonable. *11 U.S.C. § 506(b)*; *see also 4 Collier on Bankruptcy § 506.04[3]* (16th ed.). Importantly, post-petition interest and costs join the oversecured claim, with interest accruing until payment of the claim. *See Rake v. Wade, 508 U.S. 464, 468, 470-71, 113 S. Ct. 2187, 124 L. Ed. 2d 424 (1993)*; *In re Leatherland Corp., 302 B.R. 250, 257-58 (Bankr. N.D. Ohio 2003)*; *In re Dow Corning Corp., 244 B.R. 678, 684 (Bankr. E.D. Mich. 1999)*. And this is true whether the creditor holds a consensual or nonconsensual lien. *See United States v. Ron Pair Enters., 489 U.S. 235, 237, 109 S. Ct. 1026, 103 L. Ed. 2d 290 (1989)*.

Here, the parties stipulated that, before including any *§ 506(b)* benefits, the value of the Treasurer's claim on the petition date was $5,845. And his claim was secured by property with a fair market value of over $70,000. So the Treasurer was oversecured—significantly. The Treasurer's oversecured status would entitle him to the *§ 506(b)* benefits. And though we ignore claims that arose after the bankruptcy petition date, *Tenna, 801 F.2d at 823*, the rights to payment provided to an oversecured creditor under *§ 506(b)* exist on the petition date by operation of the Code. So we must consider *§ 506(b)* when constructing the hypothetical Chapter 7 liquidation. Just as administrative expenses "are a constant element in all bankruptcy proceedings and ***can*** be derived with some degree of certainty" for the hypothetical Chapter 7 liquidation, the payments provided by *§ 506(b)* ***can*** also be predicted with enough certainty. *Id.*; *see In re Keenan, 364 B.R. 786, 803-04 (Bankr. D.N.M. 2007)* (approximating **[*28]** the length of time of a hypothetical Chapter 7 liquidation).

Because the Treasurer was oversecured, *§ 506(b)* would've entitled him to the post-petition interest that would've accrued during the hypothetical bankruptcy proceedings under Michigan's applicable nonbankruptcy law. *See 11 U.S.C. § 506(b)*. And here, the GPTA is that law, imposing interest at a non-compounded 1.5% monthly rate. *Mich. Comp. Laws §§ 211.78a(3)*, *211.78g(3)(b)*.

For fees, costs, or charges under *§ 506(b)*, we look to the state law under which the Treasurer's claim arose—also the GPTA. But the GPTA doesn't authorize any fees, costs, or charges that would apply to the hypothetical Chapter 7 liquidation. The GPTA does use proceeds from the ***foreclosure*** sale to send a 5% sales commission to the county. *Id. § 211.78t(9)*. But in this hypothetical, the March 31 transfer never happened, so the ***foreclosure*** sale never happened. That means the Treasurer doesn't receive a 5% sales commission.

The GPTA also provides that the minimum bid for ***tax***-foreclosed property may include expenses incurred by the county in connection with the ***tax*** ***foreclosure*** process. *Id.* *§ 211.78m(16)(c)*. And the GPTA tells the county to withhold all other fees and expenses related to the ***foreclosure*** and sale of the property from the taxpayer's remaining proceeds. **[*29]** *Id.* *§ 211.78t(12)(b)(ii)*. But the county withholds these expenses from the taxpayer only after the transfer of title and only if the foreclosed property is sold, not before or without a sale. *Id.* *§ 211.78m(1)-(5)*. Again, because the Treasurer never received title to the property nor sold it at auction in this hypothetical, the Treasurer's Chapter 7 claim wouldn't include these fees.

In the bankruptcy court, the parties agreed that the Treasurer's claim would be paid in full in the hypothetical Chapter 7 liquidation. But they disputed what the value of the Treasurer's claim would be. Using a liquidation sale price of $76,700, the midpoint of the range of her property's fair market value, Reinhardt concluded that a Chapter 7 liquidation would've resulted in full payment to all claims—the Treasurer's $5,845 claim, PNC Bank's $8,826 claim, and the unsecured creditors' $8,965 claims—with $13,696 remaining in the bankruptcy estate after accounting for liquidation-sale costs and the equity in Reinhardt's property exempt from distribution. Reinhardt, however, didn't include the Treasurer's right to post-petition interest under *§ 506(b)* as part of his claim, which, as we explained above, is incorrect. In addition, we question her use **[*30]** of the midpoint of the property's fair market value. Though a trustee's sale typically generates value closer to the property's fair market value than a ***foreclosure*** sale, using the midpoint of the property's fair market value was an aggressive estimate.

The Treasurer didn't concede that the property would've sold within the market analysis's range of $73,500 to $79,900, but he nonetheless agreed that, even under the low end of that range, his claim would've been paid in full. And he included post-petition interest and costs under *§ 506(b)* as part of his claim. But though the Treasurer correctly included post-petition interest, he shouldn't have included the *§ 506(b)* "fees, costs, or charges" under the GPTA because he wouldn't have incurred those expenses if the March 31 transfer hadn't happened.

So correcting the parties' views, we're left with the Treasurer receiving his $5,845 claim in full plus post-petition interest from the hypothetical liquidation. Neither party presented an actual estimate of the post-petition interest nor any facts, such as the expected pendency of the hypothetical Chapter 7, that could be used to estimate that value. But the post-petition interest's precise value ends up not **[*31]** being material to the *§ 547(b)(5)* issue in this case, for reasons we discuss below.

2.

We now turn to the other side of the "more than" comparison: what the March 31 transfer enabled (or would've enabled) the Treasurer to receive. As discussed already, we have two approaches to determine the value of what the transfer enabled the Treasurer to receive. First, we could take a snapshot in time on the petition date and ignore post-petition events when determining what the transfer enabled the Treasurer to receive. Second, we could consider the conditions imposed on the Treasurer's receipt of the property by predicting how the GPTA's process likely would've played out post-petition.

Start with the snapshot approach. On the petition date, the Treasurer held Reinhardt's property in fee simple title because of the March 31 transfer. The property's fair market value was between $73,500 and $79,900, and the minimum bid was $11,055. But as of the petition date, the property's value wasn't yet subject to the conditions of a ***foreclosure*** sale—for instance, if a state or local government entity stepped in to purchase the property, the purchase price would be the greater of the minimum bid or fair market value. **[*32]** *Mich. Comp. Laws § 211.78m(1)*. And though the Treasurer contends that the value of his holding title to the property was offset by Reinhardt's right to remaining proceeds, as of the petition date Reinhardt had filed only a notice of intent to claim proceeds. She'd receive the right to the proceeds only after filing a claim, proving her interest, and obtaining a court order for the county to distribute the proceeds. *Id.* *§ 211.78t(9)*. So taking a snapshot on the petition date, the transfer enabled the Treasurer to receive the fair market value of Reinhardt's property, between $73,500 and $79,900. Because this amount is substantially "more than" $5,845 plus post-petition interest, Reinhardt would satisfy the *§ 547(b)(5)* requirement under this approach.

Though the snapshot approach is easy to apply, it's unrealistic here because it doesn't accurately convey the value of what the March 31 transfer enabled the Treasurer to receive. Yes, the Treasurer held title on the petition date. But under Michigan law, the Treasurer's possession is a way station. The Treasurer was duty-bound to dispose of the property to satisfy the ***tax*** deficiency. So holding title on the petition date was, in some sense, illusory. Or at least an incomplete picture of **[*33]** what the transfer enabled the Treasurer to receive because it requires us to ignore how the GPTA limited the transfer's value to the Treasurer.

Having rejected the snapshot approach, we turn to the approach where we consider post-petition events as contemplated by the GPTA. And it is the approach that must be adopted if we are to follow *§ 547(b)(5)*. On the petition date, the GPTA imposed conditions on the Treasurer's receipt of Reinhardt's property that potentially limited the transfer's value to the Treasurer. So we account for these future events to help us calculate the value of the property at a point in time (the petition date). And predicting how the GPTA's process would've played out, when sufficiently constrained by the facts in the record, is consistent with the general approach to evaluating bankruptcy proceedings on either side of the "more than" comparison. [6] *See, e.g.*, Tenna, 801 F.2d at 823 (recognizing that bankruptcy administrative expenses should be considered for the hypothetical Chapter 7 liquidation); *Tenderloin Health, 849 F.3d at 1245* (recognizing that a trustee's hypothetical avoidance action during bankruptcy ***can*** be considered). Determining the result of bankruptcy proceedings often requires, for instance, predicting how a trustee **[*34]** will administer the bankruptcy estate or resolving contingent claims. *See* Tenderloin Health, 849 F.3d at 1237-38.

To be sure, the parties dispute some facts regarding what might've happened had the ***foreclosure*** sale process taken place in the absence of the bankruptcy filing. But enough is undisputed for us to find that Reinhardt carried her burden of satisfying the "more than" test. While drawing inferences in the Treasurer's favor for disputed facts, we ***can*** conclude that the transfer enabled the Treasurer to receive more than he would've in the hypothetical Chapter 7 liquidation.

Though there's some uncertainty in looking at post-petition events to determine what the transfer enabled the Treasurer to receive, this uncertainty is mitigated here because the parties largely agree on how events would've played out. Uncertainty arises because post-petition events don't occur in a vacuum. They occur, and would've occurred, with knowledge of the bankruptcy and later adversary complaints. So parties ***can*** make decisions that are advantageous to their positions in a pending avoidance action. *Cf.* *Tenna, 801 F.2d at 823* (finding that it would be "inconceivable and illogical" if courts allowed the estate's trustee to control whether a ***transfer*** **[*35]** was ***preferential*** by looking to when payments were made post-petition). And these decisions might give the false impression that certain outcomes were likely had bankruptcy not occurred.

But we largely ***avoid*** this problem. Neither party contends that Reinhardt's property would've been scooped up earlier by a government entity, bundled with other properties in August, or sold at a second auction rather than being sold individually at its first offering in August. So we're left with one central dispute: whether Reinhardt would've recovered proceeds from the sale.

On March 31, the Treasurer obtained title to property with a fair market value of around $76,700. But if no government entity stepped in, then the GPTA obligated him to offer Reinhardt's property for sale at a public auction. To determine what the Treasurer would receive, ideally we'd know what the property sold for at the August 2022 ***tax*** sale. But the Treasurer withdrew the property from the sale in response to the bankruptcy filing.

Still, we know enough. We know that Reinhardt preserved her right to claim remaining proceeds by filing a timely notice. We know that the Treasurer didn't bundle any properties at the August sale. And **[*36]** the parties stipulated that the property's minimum bid at the August sale would've been $11,055.

Importantly, the Treasurer didn't dispute that the property would've sold for considerably more than the minimum bid—after all, the fair market value was over six times the minimum bid. Reinhardt estimates that the property would've sold for around $37,000. And the Treasurer hasn't disputed Reinhardt's estimate nor provided one of his own. Instead, his argument to the bankruptcy court relied on assuming (without conceding) that the property would've sold for $73,500. And he doesn't provide an estimate or dispute Reinhardt's on appeal.

So we know that had the property sold at a price close to market value, or indeed even half of that, as Reinhardt suggests, the proceeds would've been divided in the following way. The Treasurer would've received the $11,055 minimum bid. That minimum bid amount would've included the delinquent ***taxes***, interest and penalties, and other fees including legal fees. *Mich. Comp. Laws § 211.78m(16)(c)*. Again, the Treasurer left undisputed Reinhardt's estimate for the property's ***tax*** sale price. And he certainly didn't contend that the sale price would've been anywhere near the minimum bid. So the ***tax*** **[*37]** sale would result in an excess over the

[6] In this way, the approach is similar to the way that accountants or financial analysts would calculate present value by incorporating discounted, future cash flows. *See, e.g.*, *Tri Cnty. Wholesale Distribs., Inc. v. Labatt USA Operating Co., 828 F.3d 421, 431 (6th Cir. 2016)*; *In re Glob. Technovations, Inc., 431 B.R. 739, 765 (Bankr. E.D. Mich. 2010)*. So distinguishing between the two approaches by calling the first one the snapshot approach is imperfect because this approach also involves determining a property's value (or at least a range of values) at a single point in time. The difference is that the snapshot approach ignores how statutorily required events just over the horizon affect petition-date value.

minimum bid. And from that excess, the Treasurer retains a 5% sales commission. [7] *See id.* § 211.78t(12)(b). Then, Reinhardt would've successfully recovered the remaining proceeds. [8]

Regardless of the precise August sale price, we ***can*** be confident that the Treasurer would've received "more than" he would've received in the hypothetical Chapter 7 liquidation. Taking a simplistic view, the minimum bid, on its face, would've resulted in twice the amount of money being paid to the Treasurer (or perhaps his designees) compared to the hypothetical Chapter 7 liquidation. Of course, the difference represents fees that the Treasurer would've necessarily spent as part of the sale process and post-petition interest that would accrue at the same rate as it would during a bankruptcy. And it might be inaccurate to ***say*** that the March 31 transfer enabled the Treasurer to receive fees that merely compensate him for expenses incurred because of the transfer.

But setting fees and interest aside, the Treasurer still retains the 5% sales commission. [9] This 5% simply comes off the top of the sale price and goes directly to the Treasurer. And though certain fees and interest might have **[*38]** analogs in the Chapter 7 liquidation process, creditors in bankruptcy don't receive sales commissions. The 5% sales commission ensures that the March 31 transfer enabled the Treasurer to receive more than he would've if the transfer hadn't happened and the case was a Chapter 7 bankruptcy.

Simply put, the Treasurer's Chapter 7 claim plus a 5% sales commission is more than the Treasurer's Chapter 7 claim alone. So Reinhardt is entitled to summary judgment on the § 547(b)(5) issue.

Though the value of post-petition interest in the hypothetical Chapter 7 liquidation is unclear from the record, its precise value isn't material to the outcome of this case. Neither party estimated the post-petition interest's value. But the Treasurer ***can***'t genuinely assert that the hypothetical Chapter 7 proceedings would be pending long enough for the interest to bridge the gap between what the Treasurer would receive in the two scenarios that the "more than" test tells us to compare. Taking Reinhardt's August sale estimate of around $37,000, it would've taken a nearly two-year Chapter 7 liquidation process for post-petition interest to match the 5% sales commission. The Treasurer doesn't provide any factual basis **[*39]** for us to believe that a Chapter 7 liquidation of Reinhardt's estate would be so unusually and exceptionally long.

B.

1.

Resisting this conclusion, the Treasurer maintains that there's more than meets the eye to § 547(b)(5)'s use of "more than." He ***says*** that a transfer, to satisfy the "more than" test and allow avoidance, must've enabled the creditor to either get paid at a higher priority or receive a higher percentage of its claim relative to other creditors within its class. And because he'd receive 100% of his claim in both scenarios, he didn't receive "more than." But this argument, in effect, asks us to return to the pre-1978 definition of a ***preferential transfer*** by inserting words into the Code that are no longer there.

Before Congress enacted § 547(b)(5), federal law looked at ***preferential transfers*** as the Treasurer does now. It classified a ***transfer*** as ***preferential*** if it enabled a creditor "to obtain a greater percentage of his debt than any other such creditors of the same class." Bankruptcy Act of 1898, Pub. L. No. 55-541, 30 Stat. 544, 562 (repealed 1978). But in 1978, Congress

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[7] Of course, if the property sold for exactly the minimum bid, then there wouldn't be a 5% sales commission for the Treasurer to retain. But the sale price doesn't need to be much higher than the minimum bid for the Treasurer to retain the full 5% authorized by the GPTA. If the property sold for at least $11,637, the Treasurer would retain a full 5%. This isn't an issue, however, because the Treasurer doesn't dispute that the sale price would've been much higher than the minimum bid.

[8] Reinhardt cautions us that there's reason to be skeptical she would've ever received the remaining proceeds. In 2021, Bay County sold over 30 foreclosed properties at auction. Only six claimants filed timely notices of intent to claim remaining proceeds, and none of those six followed up on that notice with a filing to recover the proceeds. But without details on why the 2021 claimants didn't pursue an opportunity to recover the remaining proceeds, and without anything in the record giving us reason to believe that Reinhardt would've followed the same path, we're comfortable inferring that Reinhardt would've recovered the remaining proceeds. The Michigan Supreme Court has found that the right to remaining proceeds isn't just a statutory right, but a long-recognized common-law right that is "entitled to as much protection" as any other property right and "constitutionally protected by [Michigan's] *Takings Clause*." *Rafaeli, 952 N.W.2d at 459 n.101, 460*. We're confident that Michigan courts would've ensured compliance with constitutional and statutory requirements throughout the ***tax foreclosure*** process.

[9] Outside of bankruptcy, the 5% sales commission, which Michigan intended to incentivize county treasurers to get the best deal possible, would benefit the ***tax*** debtor as well as the Treasurer if the commission serves its intent. Indeed, the Treasurer speculated that Reinhardt (or the estate) would've been better off under a market value ***foreclosure*** sale than under a Chapter 7 liquidation. We have our doubts—after all, the trustee owes a fiduciary duty to the estate in addition to having a financial incentive to disburse as much money to the creditors as possible. *See* 11 U.S.C. § 704(a).

removed any mention of percentages or creditor classes. Now, § 547(b)(5) simply asks whether the transfer enabled the creditor to receive more than he would've in a Chapter 7 liquidation. Though **[*40]** the creditor's class still matters, it matters only because it ***can*** affect what the creditor would receive.

None of the Treasurer's cited cases persuade us. The Treasurer points to *Palmer Clay* to support his interpretation of § 547(b)(5). In that case, the parties disputed whether the Bankruptcy Act of 1898 obligated courts to evaluate a purported ***preferential transfer*** based on the date of the transfer or the bankruptcy petition. *Palmer Clay, 297 U.S. at 229*. The Supreme Court held that the petition date was the correct benchmark. *Id.* The Treasurer ***says*** *Palmer Clay* supports his position because the opinion described a preference as "[a] payment which enables the creditor 'to obtain a greater percentage of his debt than any other of such creditors of the same class.'" *Id.* (quoting the Bankruptcy Act of 1898). But *Palmer Clay* was quoting and interpreting language from the pre-1978 version of the Code, and Congress removed that quoted language when it codified § 547. So that case doesn't control our interpretation.

The Treasurer next points to cases from this Court, *Tenna* and *Royal Golf*. In *Tenna*, we held that § 547(b) retained the *Palmer Clay* rule by setting the bankruptcy petition date as the correct date for constructing the hypothetical Chapter 7 liquidation. *801 F.2d at 822-23*. As the Treasurer points out, *Tenna* identified that when a bankruptcy court "mak[es] **[*41]** the § 547(b) determination, it determines the priority status of all creditors as 'if' the Chapter 7 liquidation had been made." *Id. at 821*. But there, we simply recognized that the priority status of the creditor will, of course, help determine the hypothetical distribution to the creditor. Nothing in that case suggests that § 547(b)(5) cares only about the creditor's position relative to other creditors within its class.

The Treasurer's use of *Royal Golf* doesn't work either. There, we addressed whether a bankruptcy court had based its hypothetical Chapter 7 analysis on the bankruptcy petition date. *Royal Golf, 908 F.2d at 94-95*. We held that the bankruptcy court's failure to explicitly explain its hypothetical Chapter 7 analysis was a harmless error because it implicitly based its analysis on the petition date and reached the correct result. *Id. at 95*. The Treasurer clings to language from *Royal Golf* where we noted that the *Tenna* court "read *Palmer Clay Products* as solely concerned with the effect of the alleged ***preferential transfer*** on the equality of distribution among the bankruptcy creditors." *Id.* But again, that reading of *Palmer Clay* is correct because *Palmer Clay* was interpreting the Bankruptcy Act of 1898, not the modern § 547. And just like *Tenna*, we weren't concerned with creditor class in *Royal Golf*. We addressed only whether the bankruptcy court **[*42]** had used the petition date as the basis for the hypothetical Chapter 7 analysis. So neither *Tenna* nor *Royal Golf* robs § 547(b)(5) of its plain meaning.

When "the statute's language is plain, the sole function of the courts is to enforce it according to its terms." *Ron Pair, 489 U.S. at 241* (citation modified). Here, § 547(b)(5) carries an unambiguous command. "More than" means just that. And the Treasurer doesn't point to any other provision of the Code, or another statute for that matter, in which "more than" wanders from its plain meaning. Though the priority class of each claim matters in the "more than" analysis, nothing in the Code limits the meaning of "more than" to refer only to whether the transfer enabled the creditor to receive distribution at a higher priority or a greater percentage within its priority class.

2.

We recognize that a pre-petition transfer to a fully secured creditor isn't usually a ***preferential transfer***. *C-L Cartage, 899 F.2d at 1493*. But we reject a per se rule that would immunize property ***tax*** ***foreclosures*** from preferential status even when, as here, the creditor is drastically oversecured. Nothing in the Code prescribes such rigidity.

Still, courts have taken opposite views on § 547(b)'s application to property ***tax*** ***foreclosures***. Some courts have relied **[*43]** on the Supreme Court's holding in *BFP v. Resolution Trust Corp., 511 U.S. 531, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (1994)*, to find property ***tax*** ***foreclosures*** per se non-preferential. *See, e.g., In re Pulcini, 261 B.R. 836, 844-45 (Bankr. W.D. Pa. 2001)*; *RL Mgmt. Grp., 2014 Bankr. LEXIS 206, 2014 WL 197692, at *6*. But others have found property ***tax*** ***foreclosures*** preferential, rejecting the view that *BFP* foreclosed its conclusion or counseled against it. *See, e.g., Hackler, 938 F.3d at 478-80*; *In re Andrews, 262 B.R. 299, 303-04 (Bankr. M.D. Pa. 2001)*. We take the latter view.

BFP addressed *11 U.S.C. § 548*, which deals with fraudulent transfers. *Section 548* labels a transfer fraudulent—and grants the trustee power to ***avoid*** it—if, among other things, the transfer yielded "less than a reasonably equivalent value" for the property. *11 U.S.C. § 548(a)(1)(B)(i)*. So to determine whether § 548 classifies a transfer as fraudulent, courts assess the value of what was transferred. In *BFP*, the debtor had filed for Chapter 11 bankruptcy and sought to ***avoid*** the transfer of the home as fraudulent after it had been sold in a state-law-compliant ***foreclosure*** sale. *511 U.S. at 533*. In the debtor's view, because the home was worth $725,000 but sold for only $433,000 at the ***foreclosure*** sale, the sale was a fraudulent transfer. *Id. at 534*.

The Supreme Court disagreed. It held that, assuming compliance with state ***foreclosure*** law, "reasonably equivalent value" meant the forced-sale price rather than, for instance, fair market value. *Id. at 545*. In reaching this conclusion, the Supreme Court noted **[*44]** that though "fair market value" appeared elsewhere in the Code, it didn't appear in *§ 548*. *Id. at 537*. It recognized that a property sold at a mortgage ***foreclosure*** sale is simply worth less than it would be in normal market conditions. *Id. at 537-38*. So for *§ 548*'s purposes, the ***foreclosure*** sale price was the home's value. In so holding, the Supreme Court effectively eliminated the possibility of a mortgage ***foreclosure*** sale constituting a fraudulent transfer unless the sale was intentionally fraudulent or violated applicable state law. *Id. at 545-46*.

Our analysis doesn't conflict with *BFP*. To start, *BFP* interpreted the fraudulent transfer provision, *§ 548*, not the ***preferential transfer*** provision, *§ 547*. The term "reasonably equivalent value" doesn't appear in *§ 547*. And the Court expressly limited its *§ 548* reasoning to mortgage ***foreclosures***, acknowledging that "considerations bearing upon other ***foreclosures*** and forced sales (to satisfy ***tax*** liens, for example) may be different." *Id. at 537 n.3*. What's more, our analysis doesn't conflict with the way the Court resolved the ambiguity in determining a home's value. The Court grappled with the fact that a home's value is contingent on conditions surrounding the sale. So a home's fair market value doesn't reflect its value **[*45]** under the forced-sale conditions of a mortgage ***foreclosure***. *Id. at 537-39*. Here, unlike in *BFP*, we don't have the benefit of the property's actual sale price at a ***foreclosure*** sale. But even so, in our predictive mode of analysis, we don't rely on the fair market value of Reinhardt's property when making the "more than" comparison. When looking to what the transfer enabled the Treasurer to receive, we recognize that the property's value wasn't its fair market value. We look to the conditions surrounding the Treasurer's possession of the property on the petition date, which leads us to estimates for what the property would've sold for at the ***tax*** sale. As for the hypothetical Chapter 7 liquidation, the Treasurer didn't dispute before the bankruptcy court that he would've recovered his claim in full, meaning that the liquidation sale price of Reinhardt's property wasn't a material dispute.

Still, some courts have found *BFP* persuasive in *§ 547* cases involving property ***tax foreclosures***. *See, e.g., RL Mgmt. Grp., LLC, 2014 Bankr. LEXIS 206, 2014 WL 197692, at *6*. *BFP* expressed concerns that subjecting mortgage ***foreclosures*** to avoidance under *§ 548* would place all property purchased at a ***foreclosure*** sale "under a federally created cloud" and impede the state's interest in ensuring certainty **[*46]** of title. *BFP, 511 U.S. at 544*. But the Supreme Court voiced its concerns only after concluding that *§ 548*'s use of "reasonably equivalent value" wasn't clear textual guidance. *Id. at 542-43*. Here, we view *§ 547(b)(5)* as clear and unambiguous. So to the extent that *§ 547(b)* creates a federal cloud over some property ***tax foreclosures***, federal law commands that result. *See id. at 546* ("The Bankruptcy Code ***can*** of course override [contrary state law or historical practice] by implication when the implication is unambiguous.").

And we aren't convinced that our ruling will upset the applecart by disrupting Michigan's ***tax foreclosure*** process, as the Treasurer warns. *Section 547* still requires ***preferential transfers*** to meet other requirements, such as being made when the debtor was insolvent. *11 U.S.C. § 547(b)(3)*. And not all taxpayers subject to ***tax foreclosure*** will file for bankruptcy. The bankruptcy process is long and expensive, and federal law imposes harsh penalties for its abuse. *See, e.g., 18 U.S.C. §§ 152, 157*.

Regardless, "no amount of policy-talk ***can*** overcome a plain statutory command." *Niz-Chavez v. Garland, 593 U.S. 155, 171, 141 S. Ct. 1474, 209 L. Ed. 2d 433 (2021)*. Exempting property ***tax foreclosures*** from *§ 547(b)* is a job for Congress, not us. And Michigan's legislature ***can*** always choose to adopt different procedures that better fulfill its policy goals in the shadow of federal **[*47]** bankruptcy law.

Finally, we note some limitations to this opinion. First, the outcome of the *§ 547(b)* analysis for ***tax foreclosures*** depends on the state's chosen method for collecting delinquent property ***taxes*** and the particulars of the case. Michigan's ***foreclosure*** scheme relies on selling the property, but a system that relies on selling the lien or selling the interest might lead to a different outcome. *Cf. In re Smith, 811 F.3d 228, 237-38 (7th Cir. 2016)* (describing three methods states generally use to collect delinquent property ***taxes***). And we aren't ***saying*** that every ***tax foreclosure*** under the GPTA results in a ***preferential transfer***. For instance, if a foreclosed property sold at or below the minimum bid, the county wouldn't receive the sales commission.

Second, our finding that the March 31 ***transfer*** is ***preferential*** does nothing to harm the Treasurer's secured status in Reinhardt's continued Chapter 13 proceedings. Once ***avoided***, the property will return to Reinhardt's bankruptcy estate and the Treasurer will retain the secured ***tax*** lien, with the benefits that the Code provides to such claims. *See, e.g., 11 U.S.C. § 1325(a)*; *Rake, 508 U.S. at 468* (noting the general recognition that post-petition interest provided to oversecured claims under *§ 506* accrues until the plan's effective **[*48]** date). And as Reinhardt's Chapter 13 plan sets out, she intends to pay the Treasurer in full and before any other creditor.

V.

Reinhardt established that the ***transfer*** was ***preferential*** under *11 U.S.C. § 547(b)(4)* and *§ 547(b)(5)* as a matter of law. So we reverse the district court's judgment affirming the bankruptcy court's grant of the Treasurer's summary-judgment motion and denial of Reinhardt's.

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