

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 CHARLES E. HARRIS, III, :

4 Petitioner : No. 14-400

5 v. :

6 MARY K. VIEGELAHN, :

7 CHAPTER 13 TRUSTEE. :

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9 Washington, D.C.

10 Wednesday, April 1, 2015

11

12 The above-entitled matter came on for oral

13 argument before the Supreme Court of the United States

14 at 10:06 a.m.

15 APPEARANCES:

16 MATTHEW M. MADDEN, ESQ., Washington, D.C.; on behalf

17 of Petitioner.

18 CRAIG GOLDBLATT, ESQ., Washington, D.C.; on behalf of

19 Respondent.

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1 P R O C E E D I N G S

2 (10:06 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 first this morning in Case 14-400, Charles Harris v.
5 Mary Viegelahn for the Chapter 13 Trustee.

6 Mr. Madden.

7 ORAL ARGUMENT OF MATTHEW M. MADDEN

8 ON BEHALF OF PETITIONER

9 MR. MADDEN: Mr. Chief Justice, and may it
10 please the Court:

11 Bankruptcy cases can proceed under only one
12 chapter of the Bankruptcy Code at a time. There are
13 three mains reasons why. When Petitioner converted his
14 case from Chapter 13 to Chapter 7, Respondent was
15 required to return post-petition wages she held as
16 Chapter 13 Trustee.

17 First, the Code says --

18 JUSTICE SCALIA: Not just wages, right? I
19 mean, you constantly refer to it as post-petition wages.
20 Anything that went into the pot that was still there.

21 MR. MADDEN: That's right.

22 JUSTICE SCALIA: I mean, it would be, you
23 know, lease payments or anything else, right?

24 MR. MADDEN: Yes, Your Honor. Any
25 post-petition property, including wages. Now, in the --

1 in the general category -- Chapter 13 case,
2 post-petition property held by the Chapter 13 trustee
3 are wages, but because Section 348(f) of the Code speaks
4 to what remains property of the estate in the converted
5 case, that -- that section requires that those wages or
6 any other property remain property of the estate only if
7 the -- only if the case was converted in bad faith. If
8 the case is converted in good faith, as here, the
9 petitioner gets to keep that property.

10 The second, the Code requires that when a
11 case is converted from Chapter 13 to Chapter --

12 JUSTICE SCALIA: Excuse me. It really
13 doesn't say what happens to it, does it? It just says
14 what -- what becomes the -- the estate of the -- of the
15 Chapter 7 bankruptcy.

16 MR. MADDEN: That's right.

17 JUSTICE SCALIA: It leaves up in the air
18 what -- what happens to the material that is not
19 described in -- in that provision, right?

20 MR. MADDEN: I think the statute doesn't
21 explicitly say what happens to that -- to that material,
22 but what it does say is --

23 JUSTICE SCALIA: So why would it go back --
24 why would it go back to the debtor automatically?

25 MR. MADDEN: Because there's only one estate

1 in a bankruptcy case that's created at the commencement
2 of the case. And so when Congress decided what will
3 remain in that estate after conversion, and made that
4 decision turn on whether the debtor has acted in good
5 faith or bad faith, Congress has said what should happen
6 in the case going forward. So by creating a penalty for
7 debtors who have converted their case in bad faith,
8 Congress has said that debtors should -- should retain
9 the funds if they have converted the case in good faith.
10 Moreover --

11 JUSTICE SCALIA: What happens in bad faith?

12 MR. MADDEN: In bad faith, under Section
13 348(f)(2) of the Code, if the debtor has converted his
14 case to Chapter 7 in bad faith, all of the post-petition
15 property remains property of the estate. Effectively --

16 JUSTICE KENNEDY: But -- but -- and it seems
17 to me that that is a statutory argument that cuts
18 against your position, because the Code makes this --
19 makes this distinction.

20 MR. MADDEN: Well, no. Respectfully, I
21 disagree, Your Honor. I think the Code cuts in our
22 favor because -- because of this distinction. Congress
23 has decided that it's only when -- when a debtor
24 converts its case in bad faith that this property should
25 remain property of the estate available to creditors in

1 the case.

2 JUSTICE GINSBURG: What does that mean?
3 That -- Chapter 13 is over, Chapter 7 is underway.
4 Remains in a nonexistent estate -- I mean, there's no
5 more Chapter 13. It goes to the creditors, right?

6 MR. MADDEN: Not quite, Your Honor. It
7 remains in the estate because a new Chapter 7 trustee
8 takes over as the representative of the estate under the
9 Code. And so it becomes the Chapter 7 trustee's
10 responsibility to administer that estate and make
11 disbursements to creditors according to the Code.

12 Now, here --

13 JUSTICE KENNEDY: Incidentally, I must say
14 you are correct, I think this does cut in -- in your
15 favor, the idea that a -- a bad-faith conversion means
16 that the estate is -- is the current one, the current
17 estate.

18 MR. MADDEN: Okay.

19 JUSTICE KENNEDY: I think that Code
20 distinction does cut in front of your favor.

21 MR. MADDEN: Right, and I think that's what
22 Congress intended when they enacted Section 348 --

23 JUSTICE BREYER: What they said,
24 specifically, is the property of the estate, and that's
25 the property we're talking about, the property of the 13

1 estate, right? Because it's the property of the 13
2 estate that goes into 7 at the moment the petition is
3 filed to convert.

4 MR. MADDEN: That's right.

5 JUSTICE BREYER: Okay.

6 MR. MADDEN: Section --

7 JUSTICE BREYER: Now, it says which property
8 of the 13 estate that remains in the possession or is
9 under the control of the debtor. Is this money which is
10 in the trustee in the possession of the debtor? No. Is
11 it under the control of the -- of the debtor? Well,
12 that depends on the answer to your question. I mean, if
13 you treat it like an escrow, as they want to, it isn't.
14 If you treat it like a, say, a normal trustee, a normal
15 trustee, I'll ask them this, it isn't. And, therefore,
16 it's outside the statute. And there are no other words
17 in this statute that really cut one way or the other.
18 You can make an excellent argument either way as to any
19 other word.

20 So there we are. I read these and I said, I
21 don't know. So --

22 MR. MADDEN: But --

23 JUSTICE BREYER: So if you're going to point
24 to -- if you're going to point to the -- to the words,
25 unless I -- I really read them several times in the

1 statute. I couldn't say that you're favored or they're
2 favored, because I don't know the answer to that word,
3 control, and I couldn't find anything that really
4 helped.

5 MR. MADDEN: Well, Section 348(f) intends
6 essentially two elements to determine whether property
7 is going to remain in the estate. It has to both be --
8 in a good-faith conversion, it has to be property that
9 existed as of the date of the petition, and it still has
10 to exist in the estate. The debtor --

11 JUSTICE BREYER: It doesn't say exist. We
12 got the words that it says.

13 MR. MADDEN: That's right.

14 JUSTICE BREYER: And now, why -- why is
15 this -- you could -- why -- why -- is it in his
16 possession? What they're thinking about with (f), is
17 they're thinking about the aunt left a legacy which he
18 received after he filed the 13. And what they want to
19 do is make certain that that legacy is counted as part
20 of the 7 estate, isn't that right?

21 MR. MADDEN: I think that's part of what
22 Congress intended, but --

23 JUSTICE BREYER: I couldn't find a word that
24 suggests anything else. You point to it.

25 MR. MADDEN: Well, there's nothing in

1 Section 348(f) that distinguishes post-petition property
2 that's held by the debtor versus post-petition property
3 that's held by the trustee. When Congress enacted the
4 statute, it intended to define what would remain
5 property of the estate in a case going forward, and it
6 didn't distinguish --

7 JUSTICE BREYER: Well, what's the answer to
8 my first question, where I pointed to two words,
9 possession and control?

10 MR. MADDEN: Well, I think when a case ends
11 and the trustee's service is terminated, the property of
12 the estate that the trustee is holding is in the control
13 of the debtor, because it becomes the debtor's property,
14 if it's no longer property --

15 JUSTICE SOTOMAYOR: So is this a revocable
16 or irrevocable trust? If you can convert, you're
17 claiming it's a revocable trust, correct?

18 MR. MADDEN: I -- I think if any analogy
19 from the common law applies, Justice Sotomayor, it would
20 be that of a revocable trust, because Congress has been
21 very clear in Section 1307(a) that a debtor has the
22 right to convert his case out of Chapter 13 and into
23 Chapter 7 at any time.

24 JUSTICE SOTOMAYOR: So if it's a revocable
25 trust, what's the trust law in that situation?

1 MR. MADDEN: A settler in a revocable trust
2 obtains the corpus of the trust upon revocation. That's
3 effectively what Congress has said here, because when a
4 case leaves Chapter 13 and enters Chapter 7, it's
5 Chapter 7 that governs. A new Chapter 7 trustee is
6 appointed to administer the case and that trustee --

7 JUSTICE GINSBURG: So how is that in
8 practice? Is it -- when a 13 gets converted to a 7, so
9 the trustee in the 13 is out, is it common to appoint a
10 different person, or is it the same person with a new
11 hat?

12 MR. MADDEN: It's usually a different
13 person. So in this case, when Petitioner converted his
14 case from Chapter 13 to Chapter 7, the court docket
15 reflected that Respondent's service had terminated and
16 an interim Chapter 7 trustee was appointed the very next
17 day.

18 CHIEF JUSTICE ROBERTS: Would your problem,
19 the issue, be moot in 99 percent of the cases if the
20 trustee decided to adopt a procedure which will provide
21 for a distribution at the end of every day?

22 MR. MADDEN: If a trustee has already
23 distributed the money to creditors lawfully under a
24 plan, then, yes, that property has left the estate.

25 CHIEF JUSTICE ROBERTS: So it would only be

1 the rare situation when this -- even rarer than now,
2 when this arises, and presumably trustees who wish to
3 distribute to creditors can adopt the sort of rule that
4 they desire.

5 MR. MADDEN: Yes, but because trustees are
6 fiduciaries of the estate and represent the estate,
7 they're not allowed to dissipate estate assets by making
8 frequent or even constant distributions. And it's --
9 it's because they're the representative of the estate --

10 CHIEF JUSTICE ROBERTS: Well, I suppose if
11 there's a particularly difficult -- and maybe this is
12 such a case -- where the trustee has to take some time
13 to figure it out, perhaps. But in a fortuitous case
14 where the wages arrive on a Wednesday or whatever, it
15 doesn't seem to me that this would raise serious
16 concerns.

17 And the consequence of that is it becomes
18 even more fortuitous when the assets come within the
19 control of the trustee, so that a rule that says there's
20 a huge difference based on the fortuity of the timing
21 might not make much sense.

22 MR. MADDEN: Well, I think that's the rule,
23 respectfully, that Congress adopted when they allowed
24 debtors to make the conversion at any time. Congress
25 didn't require a debtor to give notice, and Congress

1 didn't make conversion effective only after
2 disbursements.

3 JUSTICE SCALIA: What about the parties?
4 Can they -- can they handle the situation by providing
5 in the -- in the Chapter 13 agreement that any funds
6 remaining, if there should be a conversion, will be
7 distributed among the creditors?

8 MR. MADDEN: Well, what they can't do is
9 undermine the effects of conversion, because under
10 Section 1307 of the Code, the debtor's right to convert
11 the case at any time is not --

12 JUSTICE SCALIA: So your answer is no, the
13 parties could not -- could not do that.

14 MR. MADDEN: That's right, the answer is no
15 in that the parties can't undermine the effective
16 conversion.

17 JUSTICE SCALIA: Why would Congress adopt a
18 rule that depends so much on happenstance? I mean, you
19 know, if -- if the trustee distributes the money
20 promptly, there's nothing there. If he waits three
21 months, the -- the debtor gets it all back. It's --
22 it's random, just utterly -- why would anybody adopt a
23 rule like that?

24 MR. MADDEN: I think the rule is adopted
25 here because Chapter 13 is, in essence, a voluntary

1 proceeding. A -- a debtor has to elect to put his
2 future income into the estate in the first place by
3 treating --

4 JUSTICE SCALIA: Yeah, but he doesn't know
5 whether this random event is going to happen or not
6 when -- when he does that. So you're saying that
7 Congress is forcing the debtor, and the creditors, I
8 suppose, to roll the dice, right? He doesn't know what
9 he's going to get back; it depends on whether the
10 trustee is lazy or not.

11 MR. MADDEN: Sometimes, but there are cases
12 like this one, Your Honor, where it's not mere
13 happenstance. Respondent was holding funds in this
14 case, because Chase, the mortgage lender, had received
15 relief from the stay. So funds that had been earmarked
16 for Chase, so that no creditor under the plan was going
17 to get other than Chase, were being held while Chase and
18 the debtor --

19 JUSTICE BREYER: That's -- no, that's
20 exactly the question I have that Justice Scalia just
21 raised. And I'd like you to think about that. You
22 practice bankruptcy law, so you're familiar with it in
23 your experience. Now, I -- assume with me for the
24 moment that the language does not resolve this. The
25 funds are not in the possession of the debtor. The

1 question is whether he nonetheless still controls them,
2 i.e. gets them back. All right? So that's the
3 assumption.

4 Now, I had exactly the same reaction, I
5 think, the Chief Justice and Justice Scalia had, that in
6 the mine run of bankruptcy cases, whether a trustee at
7 the moment of conversion is holding funds that he
8 should -- that will be distributed to creditors, but
9 they haven't been yet is a fluke, chance.

10 Sometimes there might be a lot, sometimes
11 there might be a little. It depends on when the mail
12 went out that day. It depends on unusual circumstances
13 such as the one in this case, and you shouldn't turn a
14 rule of law on that. You'll produce a -- you produce
15 gaming and who knows what will happen.

16 Now, you've heard the question. Is the
17 thrust of the question, which I think you've now gotten
18 three times, right or wrong? Is it chance? Is it a
19 fluke? And I've talked very slowly, so I want to be
20 sure that you get this question, because it's important
21 to me how you answer it.

22 MR. MADDEN: I think the answer is that,
23 yes, there are some cases in which this will be
24 happenstance, but Congress has spoken to those cases by
25 allowing --

1 JUSTICE BREYER: Yes, but that isn't my
2 question about what Congress wants. My question is, in
3 your experience, what is it? Is it that happenstance
4 governs, 50/50, almost never, what's your experience?

5 MR. MADDEN: I don't know from a survey of
6 the -- of the bankruptcy --

7 JUSTICE BREYER: No, from your experience.

8 MR. MADDEN: Well, my experience may not be
9 as -- as broad as --

10 JUSTICE BREYER: But what is your
11 experience? I would just be curious. I'm trying to get
12 some kind of a rough answer.

13 MR. MADDEN: Here's what I can tell you,
14 Justice Breyer. I think that most Chapter 13 cases are
15 converted because the debtor has stopped being able to
16 make his payments. So in the mine run of cases, there's
17 not really funds in the -- that the trustee is holding.

18 I think what happens are cases like these,
19 where there -- where funds have built up in the
20 trustee's possession for a reason, and that's because
21 the creditor to whom they were earmarked can no longer
22 obtain those funds under the plan.

23 Now, Congress has spoken to this by allowing
24 the debtor in this circumstance, or any other, to make
25 the conversion at any time because Chapter 13 has been a

1 voluntarily proceeding.

2 JUSTICE KENNEDY: I -- I don't understand.
 3 The three months' wages have -- have accumulated in the
 4 estate. In the ordinary course, if there's no change,
 5 they're going to go out to the creditors. And you just
 6 said that the creditors can't get them? I didn't quite
 7 get that. They can't get them only because, as the
 8 questions have indicated, that the trustee is doing
 9 something else for a week.

10 MR. MADDEN: Well, they would go to the
 11 creditors if, in performing the trustee's service, the
 12 trustee, in following the plan, eventually disburses
 13 them to creditors. But that's what's important, is that
 14 the trustee has to be making -- has to be following her
 15 service to disburse funds in the case.

16 Now, under Section 348(e) of the Code, the
 17 trustee's service ends at conversion. Now, I think both
 18 parties agree that a core function of that service --

19 JUSTICE KENNEDY: But that doesn't answer
 20 the fortuity point, other than what you say the --
 21 that's the statute and that's it.

22 MR. MADDEN: I think that's right. I -- I
 23 think at the end of the day, if a case -- if -- if funds
 24 are in the estate by happenstance, because they just
 25 haven't gone out in the next disbursement, that Congress

1 has made the election that the -- that the debtor is
2 still entitled to convert this case at any time.

3 JUSTICE SOTOMAYOR: Could I --

4 JUSTICE KAGAN: Mr. Madden.

5 JUSTICE SOTOMAYOR: -- follow up on your
6 statement about in this case, the plan called for the
7 bulk of this money to go to Chase; correct?

8 MR. MADDEN: Yes, that's right. Especially
9 early in the plan.

10 JUSTICE SOTOMAYOR: Early in the plan. And
11 you said Chase couldn't get the bulk of this money, why?

12 MR. MADDEN: Because --

13 JUSTICE SOTOMAYOR: It had foreclosed.

14 MR. MADDEN: Not yet. They had obtained
15 relief from the automatic stay in the bankruptcy case.
16 So what happened here is the Petitioner was supposed to
17 make his current mortgage payments, what's called
18 outside of the plan or directly to Chase, and because of
19 circumstances, debtor found himself unable to make those
20 payments. And so then when that happened, Chase went to
21 the bankruptcy court and received relief from the
22 automatic stay which allowed them to foreclose. But
23 that didn't resolve their claim in the case.

24 So what the Trustee explains in her brief
25 that she did was to reserve the funds that had been

1 earmarked for Chase, so that -- because it's a common
2 circumstance that the mortgage lender and the debtor
3 will then work out a modification of the loan --

4 JUSTICE SOTOMAYOR: But finish this -- but
5 she didn't give the money to Chase.

6 MR. MADDEN: No. That's correct.

7 JUSTICE SOTOMAYOR: She decided to
8 distribute it to the other creditors.

9 MR. MADDEN: That's exactly right.

10 JUSTICE SOTOMAYOR: What permitted that in
11 the plan?

12 MR. MADDEN: Well, nothing permitted that in
13 the plan until both secured creditors had been paid in
14 full. Now, importantly, in this case, neither of
15 Petitioner's secured creditors under the plan had been
16 paid in full on the day he converted his case from
17 Chapter 13 to Chapter 9. It was only -- Respondent
18 ended up filing a document in the bankruptcy court
19 called the trustee's recommendation concerning claims in
20 which the -- the treatment of Chase's claims changed,
21 but her service had terminated by that point under
22 Section 348(e) of the Code. And so this case presents
23 an interesting example of what happens if you end up
24 with two trustees performing in the case at the same
25 time.

1 JUSTICE GINSBURG: There was never any --
 2 there was never any distribution for these -- these
 3 wages that were being collected. They -- there was
 4 never any distribution. They were just held. Is
 5 that --

6 MR. MADDEN: The funds at issue in this case
 7 had just been held. There had been distributions in the
 8 case while the case had proceeded, so Chase had received
 9 some --

10 JUSTICE GINSBURG: How is that -- how is it
 11 determined what the frequency of payments will be to the
 12 creditors?

13 MR. MADDEN: Well, those are determined both
 14 in the Trustee's service as the trustee and reading the
 15 plan terms and -- and the Bankruptcy Code, but it -- but
 16 it's generally covered by the confirmed plan. And so
 17 the confirmed plan in this case required secured
 18 creditors to get paid first before any unsecured
 19 creditors were paid.

20 JUSTICE KENNEDY: But does the plan say
 21 payments will be made once a week, or once a month,
 22 or --

23 MR. MADDEN: To some secured creditors, it
 24 suggested the payments will be made monthly, but
 25 unsecured creditors aren't entitled to payment at any

1 time during the plan. They're -- they're effectively
2 entitled to the funds that are left over after creditors
3 who have higher priority are -- are paid first.

4 JUSTICE SCALIA: Mr. Madden, I've been
5 thinking about your response to my earlier question
6 about whether this issue could be covered in the plan if
7 the plan said that, you know, any funds still held by
8 the trustee shall be distributed to the -- to the
9 creditors.

10 Your answer was it couldn't because it would
11 contradict the -- the statutory requirement, but there
12 isn't any statutory requirement. I mean, that's what
13 we're dealing with. We're dealing with an absolute
14 void. The statute doesn't say what will happen to this
15 money. If a statute doesn't say so, what's wrong with
16 having -- having the parties adopt a provision in the
17 plan that says that?

18 And, by the way, in my estimation, this
19 helps your case because I am much more willing to buy
20 onto a random rule of law that the parties can contract
21 out of than a random rule of law that has to be applied
22 in the future. And you're -- and what you're urging
23 upon us is a random rule of law. You're just saying,
24 well, you know, Congress wanted randomness. Well,
25 maybe.

1 MR. MADDEN: The Third Circuit in deciding
2 this issue did suggest in a footnote that Your Honor's
3 position might be an out the parties could take. I
4 think there would just -- there would be two constraints
5 on that issue in another case that isn't presented here.
6 One is that a plan can only provide what The Code allows
7 the plan to provide. So what the Chapter 13 plan can
8 provide is specified in Section 1322 of The Code. And
9 The Code provides that a debtor could vest property of
10 the estate in any other entity, so a debtor could vest
11 property in specific entities. But there's no provision
12 in the Code that allows a debtor to vest property
13 generally in creditors.

14 And the second problem, as I -- as I
15 mentioned earlier, I said under Section 1307(a) of the
16 Code, a waiver of the right to convert a case at any
17 time is unenforceable. So if there's a provision in the
18 plan that undermines the natural statutory effective
19 conversion by keeping the -- keeping property of the
20 estate larger in a case of good faith conversion or
21 asking the trustee to continue performing the service of
22 the trustee after conversion, those provisions of a plan
23 would be unenforceable.

24 JUSTICE KAGAN: Mr. Madden, there's a --
25 there's a policy argument that cuts against you, which

1 the Fifth Circuit talked about. And, of course, it's
2 only relevant if the statute doesn't say much of
3 anything about this. But let's assume for this purpose
4 that the statute doesn't say much of anything about
5 this, and what the Fifth Circuit said was that Chapter
6 13 is essentially a quid pro quo, that -- the debtor
7 gives up a certain amount of his wages, but in exchange,
8 the debtor gets to keep his assets. And here what the
9 debtor is essentially asking for is to get back the
10 wages, but he's gotten the benefit of having kept his
11 assets. So he's kind of asking for the quid without the
12 quo or the quo without the quid, or whatever it is.

13 So what's your response to that?

14 MR. MADDEN: I think there are a number of
15 problems with viewing Chapter 13 through that lens.
16 Chapter 13 is better for debtors and creditors alike,
17 that everyone comes out ahead because no creditor can
18 receive less under a Chapter 13 plan than they would be
19 entitled to receive under a Chapter 7 liquidation. So
20 Congress -- and generally, the policy of the Bankruptcy
21 Code is intended to encourage debtors into Chapter 13
22 because it's better for everyone. The idea that a
23 debtor sort of rents the benefits of Chapter 13 from his
24 creditors who stands to gain from him doing so doesn't
25 make a whole lot of sense under the way the Bankruptcy

1 Code is structured.

2 CHIEF JUSTICE ROBERTS: What about -- I
3 gather there can be payments directly to the creditors.
4 What -- those, I assume, they get those without having
5 to worry about this problem?

6 MR. MADDEN: That's correct. Under Chapter
7 13, either the debtor or the trustee can be the
8 disbursing agent under the plan, but in either case,
9 it's when the money is disbursed by the disbursing agent
10 that the rights shift to the creditors.

11 CHIEF JUSTICE ROBERTS: No. But in the case
12 of the creditor who is paid directly, that's -- there's
13 sort of no middleman, right?

14 MR. MADDEN: That's right. But the question
15 is whether the -- when they've been paid, the property
16 leaves the estate and becomes property of the creditors.
17 Now --

18 CHIEF JUSTICE ROBERTS: No. But, I guess,
19 I'm just trying to highlight another randomness in
20 fortuity in that some creditors will be -- get their
21 money directly, others it will go through the estate,
22 and if you get your money directly, you're not going to
23 have to worry about this.

24 MR. MADDEN: That's true if the debtor keeps
25 up his payments. The reason why -- I think most

1 creditors like the trustee to be holding funds in the
2 estate, subject to future disbursements as appropriate,
3 is that that increases the likelihood of success of the
4 plan.

5 CHIEF JUSTICE ROBERTS: How does that work
6 as a practical matter? Is there direct deposit of a
7 portion of wages with a creditor?

8 MR. MADDEN: It varies from case to case.
9 In this case, Respondent effectively had -- it was
10 called a wage order. So Petitioner's employer sent a
11 portion of his income directly to the Trustee every
12 month. Now --

13 JUSTICE GINSBURG: What -- what would
14 happen -- let's suppose you're right. The trustee has
15 given this money to the creditors, and she wasn't
16 supposed to do that. The debtor was supposed to get
17 them. What happens now? How do we undo what has
18 already been done?

19 MR. MADDEN: Well, Respondent may be able to
20 get the money back from the creditors with whom she has
21 relationships and rights. Ultimately, the liability is
22 the trustee's for --

23 JUSTICE GINSBURG: So it would be personal
24 liability on the part of the trustee?

25 MR. MADDEN: That's right. And so the order

1 in the bankruptcy case is that in order for Respondent
2 to -- to pay this sum of money to the Petitioner. Now,
3 that's because when trustees act outside their service,
4 that's how the liability works in the Bankruptcy Code.
5 And I think both parties agree that it's a core function
6 of the trustee's service in a bankruptcy case to make
7 disbursements to creditors. Under Section 348(e) of the
8 Code, that service has to end at conversion.

9 JUSTICE SCALIA: I assume that trustees have
10 insurance, right?

11 MR. MADDEN: That's right.

12 JUSTICE SCALIA: So we don't have to feel
13 sorry for this lady.

14 (Laughter.)

15 MR. MADDEN: Yes. They have what's called
16 errors and omissions insurance that covers this sort of
17 thing.

18 JUSTICE KENNEDY: I assume there would also
19 be a right to recoup from the creditor if the creditor
20 has received something improperly paid.

21 MR. MADDEN: There may be. I think --

22 JUSTICE KENNEDY: Like standard recoupment
23 principles.

24 MR. MADDEN: I think that may -- may well be
25 true, Your Honor. I think returning to the point about

1 the -- the ending of the trustee's service, the
2 practical significance of that is that Congress didn't
3 want two trustees functioning in a case at the same
4 time. Once the case had been converted, all of the
5 claims against the estate in the Chapter 13 case
6 automatically became claims against the estate in the
7 Chapter 7 case.

8 And so what happened here is you had a
9 Chapter 13 trustee still acting on and paying claims as
10 though Chapter 13 was still going. All the while, a
11 Chapter 7 trustee had taken over the reins of being the
12 representative of the estate and dealing with claims.

13 JUSTICE BREYER: But the -- the money that's
14 in the hands of the trustee at the moment that the
15 Chapter 7 petition is filed will probably be wages that,
16 under the 13 plan, were to be distributed to creditors.
17 And the trustee has to make out a check to somebody.

18 So the only question is: Is the name of the
19 trustee X, which is the creditor to which it has gone,
20 or is the name Y, which is the debtor or the equivalent?

21 So I don't see how we get very far saying
22 that the trustee's services have ended at that point.
23 No one thinks the trustee would keep the money. And,
24 again, six of one, half a dozen of the other.

25 MR. MADDEN: But I think there's a

1 difference here because the trustee's core function,
2 while serving as trustee and while serving as the
3 representative of the estate under the Code, is to
4 disburse funds to creditors.

5 JUSTICE BREYER: Why do you think that the
6 trustees have filed a brief on the other side? I'm --
7 I'm not -- I -- I read the brief; it makes a series of
8 legal arguments. But they must -- what do they care?
9 They obviously care, and I don't -- I'll ask, perhaps,
10 them the question. But what's your view of that? Why
11 do they care, since it's just a matter of writing what
12 name to write in?

13 MR. MADDEN: I -- I think that may be a
14 better question for my -- my colleague, but --

15 JUSTICE BREYER: Well, what's your view of
16 it? I don't want to ask them without getting your view.

17 MR. MADDEN: I -- I think the trustee is
18 attempting to -- to send funds to whoever the trustee is
19 supposed to send funds to, and many --

20 JUSTICE SCALIA: Well, it's easy to see why
21 they care in this case, isn't it?

22 MR. MADDEN: Well, in -- in this case, some
23 of the funds --

24 JUSTICE SCALIA: The trustee doesn't want to
25 be liable for the money that she has turned over.

1 MR. MADDEN: Right. The trustee does --

2 JUSTICE SCALIA: It's an easy answer.

3 CHIEF JUSTICE ROBERTS: That --

4 JUSTICE BREYER: According to his -- I mean,
5 it's the whole group.

6 MR. MADDEN: Right. I agree with that. And
7 some of the funds that were disbursed here were funds
8 that were paid to the Trustee as -- as her -- her
9 percentage fee in the case, as well.

10 If there are no other questions, I'd like to
11 reserve the balance of my time for rebuttal.

12 CHIEF JUSTICE ROBERTS: Thank you, counsel.
13 Mr. Goldblatt.

14 ORAL ARGUMENT OF CRAIG GOLDBLATT

15 ON BEHALF OF RESPONDENT

16 MR. GOLDBLATT: Mr. Chief Justice, and may
17 it please the Court:

18 The funds at issue here were held by the
19 Trustee under the terms of a confirmed plan that
20 obligated her to distribute those funds to creditors.

21 Petitioner does not --

22 JUSTICE SOTOMAYOR: Now, you did not -- the
23 court below said -- rejected your argument that when the
24 money was paid to the Trustee or the Trustee got it,
25 that it vested in the creditors. It --

1 MR. GOLDBLATT: Yes, Justice Sotomayor.

2 JUSTICE SOTOMAYOR: -- rejected that part of
3 your argument, correct?

4 MR. GOLDBLATT: That -- that's right,
5 Justice Sotomayor, and --

6 JUSTICE SOTOMAYOR: So if you don't have a
7 vested right to the money, then what gives you the
8 right?

9 MR. GOLDBLATT: Well --

10 JUSTICE SOTOMAYOR: It's the plan, right?

11 MR. GOLDBLATT: It's the plan and the
12 backdrop against which the --

13 JUSTICE SOTOMAYOR: Well, but --

14 MR. GOLDBLATT: -- plan is written.

15 JUSTICE SOTOMAYOR: -- the problem is that
16 upon conversion, it nullifies the plan.

17 MR. GOLDBLATT: Justice Sotomayor --

18 JUSTICE SOTOMAYOR: So what's the remaining
19 power that you have to distribute the funds to
20 creditors?

21 MR. GOLDBLATT: So, Justice Sotomayor, that
22 is a problem that arises not just in bankruptcy, but
23 under the common law all the time. A trust can
24 terminate, and a trustee can be holding funds and is
25 left with the question of do these go back to the

1 grantor? Do I pay them backwards, or do I pay them
2 forwards?

3 And long before there was a Bankruptcy Code,
4 there was an established common law principle that says,
5 first, the trust pays the obligations of the trust, and
6 the obligations of the trust include matured claims of
7 beneficiaries. That's the rule that -- that comes out
8 of Section 235(a) in the Second Restatement and
9 Section 89 of the Third Restatement, and the Bankruptcy
10 Code was written against that common law backdrop.

11 And -- and where the Code -- there are
12 indications in the Code -- we think those indications
13 support the -- the notion that it's consistent with the
14 common law that they be paid forward. But to the extent
15 the Court were to conclude that nothing in the
16 Bankruptcy Code helps answer the question, there is
17 surely no reason to think that Congress intended to
18 abrogate that established common law --

19 JUSTICE SOTOMAYOR: Well, it --

20 MR. GOLDBLATT: -- backdrop.

21 JUSTICE SOTOMAYOR: -- certainly did,
22 because it -- it -- it has said upon conversion, you
23 have to give everything to the Chapter 7 trustee --

24 MR. GOLDBLATT: So if I could -- Section --

25 JUSTICE SOTOMAYOR: -- that's in the control

1 or possession of the debtor. But if it hasn't vested in
2 the creditors, then --

3 MR. GOLDBLATT: So, Justice Sotomayor --

4 JUSTICE SOTOMAYOR: -- how -- how -- what
5 remains to --

6 MR. GOLDBLATT: So if I -- if I can explain,
7 Section 348(f), which is the provision I believe you're
8 referring to, says the following. It says that upon the
9 conversion of the case, the Chapter -- the Chapter 7
10 estate is made up of the assets that the debtor had on
11 the petition date that they still have on the conversion
12 date.

13 So there's the question -- the question
14 Congress was dealing with is -- is exactly the question
15 that Justice Breyer was referring to, which is, let's
16 say during the course of the 13, there's some sort of
17 windfall that comes into the estate. Does that become
18 part of the Chapter 7 estate? And the answer to that is
19 no.

20 But that -- that -- that determination says
21 nothing about funds that the debtor already paid out to
22 the trustee at a time when the debtor was required to
23 pay those funds to the trustee in order to obtain the
24 benefits of being in Chapter 13 at that time.

25 JUSTICE KAGAN: Well, it -- it at least

1 raises the question why you should treat differently
2 the -- let's say the inheritance from the new wages. In
3 other words, say, the new wages come in. They're
4 garnished. It goes straight to the trustee. But that's
5 also a fortuity. You know, why should you treat
6 the wages different from the inheritance?

7 MR. GOLDBLATT: So -- so, Justice Kagan,
8 the -- the answer is because the -- the debtor made a
9 decision to pay these funds over to the trustee. Here
10 the decision was done through a garnishment order, but
11 that itself is, of course, itself a fortuity. What
12 we're talking about are funds that a debtor made a
13 voluntary decision to pay over to a trustee in order to
14 remain in Chapter 13. If the debtor --

15 JUSTICE KAGAN: Well, until he decided to
16 switch the petition to a Chapter 7.

17 MR. GOLDBLATT: That -- that's right. He
18 could have done that at -- at any time. So the debtor
19 here had the ability, as soon as Chase received relief
20 from the stay, to convert at that time.

21 The debtor didn't make that decision. The
22 debtor instead decided, for the remaining 12 months, to
23 remain in Chapter 13 and to obtain the benefits of being
24 in Chapter 13, precisely the quid pro quo that Your
25 Honor was describing and that the Court described in

1 Ranta.

2 JUSTICE BREYER: How does it work in a
3 revocable trust, a revocable trust?

4 MR. GOLDBLATT: So --

5 JUSTICE BREYER: Let's imagine that on --
6 on -- under the terms of the trust on February 1, Joe
7 Smith gets a \$100. All right.

8 On March 1, the settlor revokes the trust.
9 There is money in the trust that would pay his monthly
10 payment on February 1, on March 1, on April 1. That's
11 \$300 that he has, \$100 after it's revoked and \$100
12 before it's revoked.

13 MR. GOLDBLATT: So --

14 JUSTICE BREYER: How does it work under the
15 law of revocable trust?

16 MR. GOLDBLATT: So, Justice Breyer, Section
17 235(a) of the Second Restatement of Trusts deals exactly
18 with this question. The answer is the revocation
19 here -- the -- the debtor's decision to convert
20 effectively operated as a revocation. Because of that,
21 the remaining three years' worth of payments that he
22 otherwise would have been obligated to pay, he didn't
23 have to pay. But as to the funds that were already in
24 the trust as -- where the obligations have matured,
25 the -- the -- the trustee is required to pay those

1 matured obligations. The situation that's in --

2 JUSTICE BREYER: In other words, in my
3 example, the January money which is owed before the
4 revocation goes to the beneficiary.

5 MR. GOLDBLATT: That's exactly --

6 JUSTICE BREYER: But the March money goes
7 back to the settlor.

8 MR. GOLDBLATT: That's exactly right.

9 JUSTICE BREYER: And you're saying the same
10 is true here, that the pre-petition 7 money that was
11 owed and not paid should, if in the hands of the -- of
12 the trustee, go to the creditor; that any money that he
13 has, which is for the creditors, where they are not yet
14 entitled to it -- say, like, an early payment of the
15 next month's -- they go back to the -- to the debtor.

16 MR. GOLDBLATT: Justice Breyer, I think
17 that's exactly right. Section 235(a) of the -- the
18 Second Restatement of Trusts talks about the life
19 beneficiary who is entitled to all of the income of a
20 trust during their life. Income comes in while they're
21 alive, but before it's paid, they die. The question is
22 does that -- where does that go? Does it go back to the
23 grantor, or does it go to the estate of the life
24 beneficiary?

25 And the answer that Section 235(a) says is

1 it goes to the -- to the estate of the life beneficiary
2 because that obligation matured under the terms of the
3 trust before the revocation. That same principle, I
4 think, is fully applicable here for exactly the reasons
5 that --

6 CHIEF JUSTICE ROBERTS: When --

7 MR. GOLDBLATT: -- Your Honor describes.

8 CHIEF JUSTICE ROBERTS: -- when we talk --
9 maybe this is too abstract a way to envision of it, but
10 when we talk of an estate, it's somebody's estate,
11 right? John Smith dies. He leaves an estate.

12 MR. GOLDBLATT: Yes.

13 CHIEF JUSTICE ROBERTS: We call it John
14 Smith's estate. Here, you know, we call this
15 Mr. Harris's estate, at least more naturally than we
16 would call it, you know, Consumer Electronics's,
17 Chase Manhattan's whatever's, estate. And isn't that
18 a -- a fairly strong signal of who should get the stuff
19 that's kind of left in the middle?

20 MR. GOLDBLATT: Mr. Chief Justice, the --
21 the -- the Bankruptcy Code -- it -- it is his estate,
22 but it's his estate in -- in -- to -- to be paid in --
23 consistent with the terms of the plan.

24 CHIEF JUSTICE ROBERTS: No. I -- I
25 understand that. As I said, just sort of looking at it

1 from a more conceptual level, it does seem that it's --
2 it's -- well, I guess I can't say it more than that.
3 It's his estate, so stuff that you can't decide where it
4 goes ought to go to him.

5 MR. GOLDBLATT: I don't think that
6 nomenclature should overtake the -- the -- the structure
7 and purpose of -- of the Code. And if I -- if I may,
8 while it's --

9 JUSTICE SCALIA: Is it normally called the
10 debtor's estate or is it called the Chapter 13 estate?

11 MR. GOLDBLATT: I -- I --

12 JUSTICE SCALIA: I would normally say the
13 Chapter 13 estate.

14 MR. GOLDBLATT: In fairness, Justice Scalia,
15 I've heard it used both ways colloquially. Before
16 abandoning the text, though, in fairness, this is not a
17 case in which the language of the Code is entirely --
18 there are clear indications from the text of the Code
19 that do help answer the question, and are consistent
20 with the common law backdrop. For example, under
21 Section 1328(a) of the Bankruptcy Code, it says, the
22 debtor is entitled to the discharge upon the debtor's
23 completion of the payments he's required to make under
24 the plan.

25 It doesn't say when the trustee distributes

1 that money to creditors. It says when the -- when the
2 debtor makes the last payment he's required to make
3 under the trustee, which is at least a signal that the
4 legally operative moment within -- that Congress was
5 contemplating, was the debtor making the planned
6 payment.

7 JUSTICE BREYER: What about -- back to the
8 trustee, just for a moment, of a revocable trust.

9 MR. GOLDBLATT: Yes.

10 JUSTICE BREYER: Now, the standard trust
11 law, CJS, when the grantor exercises a power of
12 revocation, the interest of the beneficiary ceases, and
13 the assignee of the grant or namely the grantor, takes
14 the corpus of the trust free from the trust. But what
15 you are saying is, if I look further into that, I will
16 discover that if the grantor revoked the trust on
17 February 1, and if under the trust documents, a \$100 is
18 due to a beneficiary on January 1, and on March 1,
19 standard trust law is the beneficiary gets the \$100 from
20 January and does not get the \$100 from March.

21 MR. GOLDBLATT: That -- that's exactly
22 right, I --

23 JUSTICE BREYER: All right. And the thing
24 that I will look up in the trust law to show that, you
25 gave me the cite, and I lost it.

1 MR. GOLDBLATT: It's Section 89 of the third
2 restatement --

3 JUSTICE BREYER: And you're saying that's
4 precisely how we should treat this?

5 MR. GOLDBLATT: That is correct. That there
6 is nothing in the Bankruptcy Code that is inconsistent
7 with that --

8 JUSTICE BREYER: That's how you want to
9 treat it?

10 MR. GOLDBLATT: We think that's -- that's
11 correct, yes. In addition to the provision regarding
12 the --

13 JUSTICE SOTOMAYOR: Has anyone else, any
14 other circuit, bankruptcy court, treated your function
15 as that of a typical trustee? I mean --

16 MR. GOLDBLATT: Well --

17 JUSTICE SOTOMAYOR: So, you're not a typical
18 trustee, you're -- you're -- of an escrow account.

19 MR. GOLDBLATT: That's correct.

20 JUSTICE SOTOMAYOR: You're a trustee for the
21 estate or for the debtor.

22 MR. GOLDBLATT: So it's a creature created
23 by the Bankruptcy Code that is in some ways a hybrid
24 of -- of escrow law and trust law. We think that's the
25 best way to think about it. As between the two, they

1 both point the same direction, so I don't think a great
2 deal turns on whether the lens of the common law here is
3 that of escrow or that of trust. There are cases, a
4 number of them, that have talked about the role of the
5 trustee by reference to the common law of trust.
6 Congress did, after all, use the term trustee, which is
7 some indication that it was drawing on the common law
8 backdrop of trust in thinking about this question.

9 JUSTICE SCALIA: Mr. Goldblatt, what do you
10 do about the argument that what you're asking to be done
11 cannot be done, because immediately upon the conversion,
12 the Chapter 13 Trustee no longer has any powers?

13 MR. GOLDBLATT: So, Justice Scalia, that --
14 that argument from Section 348(e) of the Bankruptcy Code
15 simply proves too much, as was suggested earlier. The
16 trustee clearly has to distribute the money to someone.
17 They have to write a check either to the debtor or to
18 creditors. The question is to -- who is legally
19 entitled to the funds? And that is the answer that
20 drives the resolution of this case. The notion that --
21 no one is suggesting the trustee keeps the money
22 herself. She obviously needs to distribute it, and that
23 common law with trusts terminate, and there is a
24 doctrine about the wind up obligations of the trustee
25 upon termination.

1 JUSTICE KENNEDY: So I suppose you're saying
2 that -- that the service of the trustee is owed both to
3 the debtor and the creditors. If it were to the
4 creditors, then you would have a weaker position.

5 MR. GOLDBLATT: In fairness, Justice
6 Kennedy, the -- the obligation that the trustee has to
7 carry out the terms of the plan. That includes
8 obligations that run for the benefit of creditors and
9 some that run --

10 JUSTICE KENNEDY: What about the provision
11 that if the conversion is made in bad faith, then the
12 estate consists of the property as of the date of the
13 conversion.

14 MR. GOLDBLATT: Right, so Justice Kennedy,
15 that deals --

16 JUSTICE KENNEDY: So the statute appears to
17 make it -- a specific requirement for that, but not
18 for -- for the case we have.

19 MR. GOLDBLATT: So, Justice Kennedy, that
20 provision of 348, of 348(f), deals with the situation
21 that Justice Breyer was referring to, which is, what if
22 the debtor during the life of the Chapter 13 case
23 received an inheritance? So money that the debtor still
24 had, hadn't yet voluntarily paid over to the trustee,
25 received an inheritance, but she converted in an act of

1 gamesmanship.

2 JUSTICE KENNEDY: Well, but I would suppose
3 it would apply to your case, too. Property of the
4 estate as of the date.

5 MR. GOLDBLATT: So if -- the language of
6 348(f) does the following: It says that the -- the
7 property of the Chapter 7 estate is the property that --
8 the question that Congress had when it dealt with 348(f)
9 is the debtor files a Chapter 13 case on day one, lives
10 in Chapter 13 for some period of time, and then
11 converts.

12 So the question is: Okay, what universe of
13 property is in the Chapter 7 estate? Is it all the
14 property the debtor had at the beginning of the case or
15 is it the property the debtor had on the day of
16 conversion? That was a fair question and there was
17 disagreement in the courts on that question until 1994.

18 Congress answered that question by saying,
19 the property of the 13 estate is the property that the
20 debtor had on the petition date, the original petition
21 date, that they still have as of the date of conversion.

22 And the reason that makes sense is for the
23 reason Justice Breyer identified. Because otherwise,
24 someone who came into some sort of windfall during that
25 period of time would essentially have to turn that all

1 over to creditors instead of keeping it. So the -- so
2 the -- or actually, even -- even more directly and the
3 Third Circuit talks about this, in the In Re Michael
4 decision, if the debtor's home reacquired equity during
5 the course of the bankruptcy, or if the debtor just
6 saved a lot -- worked hard and saved money, the notion
7 is by defining the estate that way, it allowed the
8 debtor to keep what the debtor had obtained during the
9 life of the Chapter 13, even when it converts. But that
10 doesn't say a word about what happens to funds that the
11 debtor paid during the bankruptcy in order to obtain the
12 benefits of being in Chapter 13.

13 There is a clear quid pro quo here. The
14 cost of being in Chapter 13, as this Court explained in
15 Ransom v. Lanham, and in Ransom -- I'm sorry, and in the
16 Lanning case, is that the cost under Section 325(a)(2)
17 is the debtor is required to pay all of his projected
18 disposable income for the benefit of his unsecured
19 creditors, that is the cost. The benefit the debtor
20 obtains on the other side is he gets to keep his
21 assets --

22 JUSTICE KAGAN: But there's also a policy
23 argument, Mr. Goldblatt, that works against you, which
24 is that one of the things we know is that Congress
25 didn't want to disincentivize debtors from using Chapter

1 13. And essentially, if you win, under your argument,
2 the debtor is worse off for having tried Chapter 13 than
3 if he had gone into Chapter 7 initially, because he's
4 now being put to paying down debt that would have been
5 discharged under Chapter 7, and why should we give him
6 that kind of double whammy, given Congress's view that
7 we should want people to try Chapter 13 first.

8 MR. GOLDBLATT: So, Justice Kagan, a few
9 different answers, if I may. First, under Section
10 707(d)(2)(A), a debtor with above median income may
11 not -- is presumptively abusive if they file for Chapter
12 7 in the first instance. And here the -- the record
13 which includes the description at Joint Appendix Page
14 37, shows that this debtor's income was \$49,000 a year,
15 so I understand the question.

16 JUSTICE KAGAN: That is a very case-specific
17 answer.

18 MR. GOLDBLATT: No, I understand that, so --
19 but not every -- the point being that not every debtor
20 is eligible to file for 7 to begin with. There are some
21 who must file for Chapter 13, including, we believe,
22 this debtor. More broadly, because of the happenstance
23 of this case, it is indeed fanciful to believe that any
24 debtor is going-in decision about whether to file for
25 Chapter 13 is going to be affected. The debtor of

1 course has no control over when the trustee makes
2 payments, and he --

3 JUSTICE SCALIA: Well, wait. It seems to me
4 it is always a disadvantage to the debtor who converts
5 to have begun in Chapter 13. Whether there is any money
6 left in the pot or not, he will have paid his wages to
7 his creditors, whereas if he had filed for Chapter 7
8 immediately, he wouldn't have had to do that.

9 MR. GOLDBLATT: Justice Scalia, that's -- in
10 fairness, that's probably right, that after the --
11 viewed after the fact --

12 JUSTICE KAGAN: Well, it is absolutely
13 right, but your exacerbating the effect of that under
14 your proposed rule.

15 MR. GOLDBLATT: But, Justice Kagan, not in a
16 way that -- that could possibly provide a material
17 effect on anyone's incentives. After all, the debtor --

18 JUSTICE KAGAN: No, possibly. But it's at
19 least an extra penalty that you are imposing on him, and
20 -- and, you know, one way to look at what Congress
21 wanted to do here is in terms of incentives. Another
22 way is just to say, we shouldn't penalize people for
23 going into Chapter 13 first.

24 MR. GOLDBLATT: Right. But -- but, Justice
25 Kagan, in fairness, this isn't a penalty. After all,

1 had the Trustee distributed these funds to creditors
2 before the date of conversion, no one would say that
3 that operated to penalize the debtor.

4 So viewing it as a penalty, I think, begins
5 with the conclusion that there's a baseline entitlement
6 to these funds to begin with. And that assumption is --
7 is incorrect and inconsistent with the structure of the
8 Code.

9 JUSTICE KAGAN: Well, but I thought that
10 Congress's baseline is to the extent possible to
11 make -- to -- to encourage Chapter 13 and not to impose
12 extra costs on the people who go there.

13 MR. GOLDBLATT: Right. But -- but it's --
14 with respect, it's not an extra cost. It is clear that
15 the cost of being in Chapter 13 by the function of the
16 statute is the debtor is obligated to pay all of his
17 projected disposable income to the plan for the benefit
18 of his unsecured creditors as the price of being in
19 Chapter 13.

20 Here the Debtor obtained those benefits. He
21 was able to keep his property throughout the time he was
22 in Chapter 13.

23 To address Justice Sotomayor's question, he
24 also was able to seek to negotiate with Chase the effort
25 to modify his mortgage. So what happened in this case

1 is he reached the conclusion that he couldn't keep his
2 house under the monthly payments on the mortgage as it
3 existed, but as commonly occurs, particularly since the
4 financial crisis, he then undertook to negotiate with
5 Chase for a modification of the mortgage; could he
6 reduce the plan payments.

7 If -- if he could have gotten to a mortgage
8 modification, that would have been implemented by a
9 modified plan. Here he -- they tried. They tried for a
10 year. They were ultimately unsuccessful. But -- but --
11 but the opportunity to try is the benefit of Chapter 13,
12 and it can't be the case that because he was ultimately
13 unsuccessful you can say that he didn't obtain the
14 benefit during the period in which he was trying to do
15 that. That was a voluntary decision on his part. He --
16 as -- as the Petitioner explains, could have converted
17 any time.

18 So if he didn't want to continue to devote
19 his projected disposable income under the terms of the
20 plan while he was doing so, he had every right to
21 convert as soon as Chase receives stay relief.

22 JUSTICE SCALIA: Could -- could I ask you
23 the same question I asked your friend on the other side?
24 Assuming we find against you and -- and for the
25 Petitioner on the issue of -- of who gets this money,

1 would the parties be able to alter that disposition in
2 the plan?

3 MR. GOLDBLATT: So, Justice Scalia, that's a
4 really good question and one with which we have
5 struggled. We believe that the indications of
6 congressional intent, that Congress did not mean to
7 permit this.

8 JUSTICE SCALIA: Okay. So you agree with
9 your -- with the other side on that point?

10 MR. GOLDBLATT: Well, we -- on the -- on the
11 flip side, we -- we think that the better view of the Code
12 is that -- let me -- let me enter, if I can, there were
13 two different questions; right? One is if there was
14 language in a plan that did that and that language --
15 that plan was confirmed, would it govern? The answer to
16 that, under Espinosa, is obviously yes.

17 The -- the question I think Your Honor
18 intends to ask is if a plan said that and someone
19 objected, could that properly be confirmed? And our
20 view is that while that's a close question and
21 thankfully not the one presented here, that the better
22 view is that a plan that said the money goes back to the
23 debtor is sufficiently inconsistent with the structure
24 of the Code that -- that -- that such a plan couldn't be
25 confirmed, but that is a much closer question than the

1 one you have here where there is no language. And so
2 the language of the plan should be read against the
3 common law backdrop, which answers this question
4 decisively in our favor.

5 CHIEF JUSTICE ROBERTS: Typically, how --
6 how often are distributions made? Every three months?
7 Every --

8 MR. GOLDBLATT: So in -- in the ordinary
9 case, my understanding and experience is that trustees
10 will make monthly distributions. Here -- as long as
11 sufficient funds have accumulated to make that
12 worthwhile -- here, what the Trustee did -- what the
13 Trustee did here makes good sense. So when Chase got
14 stay relief, the Trustee was holding money. Once it got
15 relief -- and, again, this is in response to Justice
16 Sotomayor's earlier question, the -- the plan says what
17 happens there -- it's on the Joint Appendix on pages 34
18 and 35, and it sets out a priority of payment under the
19 plan.

20 And Chase, when it got stay relief, that --
21 that satisfied in full its secured claim. Just the --
22 anytime a secured creditor gets back its collateral,
23 that satisfies the secured claim of the secured
24 creditor. So then just going through, to use the
25 bankruptcy vernacular, the waterfall created by the

1 plan, the funds flowed according to -- thereto, to the
2 unsecured creditors after the payment of administrative
3 claims.

4 That's a very common feature of plans, and
5 typically trustees, when there are material funds to be
6 distributed, will distribute on a monthly basis. Here,
7 the Trustee didn't distribute those funds because the
8 Debtor presumably wanted the opportunity to take this
9 time to try to save their house. So the Trustee was
10 facilitating the Debtor's efforts to save their house by
11 holding those funds to see if a modification could be
12 reached. And when it wasn't reached, the Trustee said,
13 okay, now, under the plan, this money goes to unsecured
14 creditors.

15 CHIEF JUSTICE ROBERTS: It sounds like --
16 sounds like she's acting in the interests of the Debtor
17 then.

18 MR. GOLDBLATT: She -- she was seeking to
19 serve the objectives of the Code and the plan. Chapter --
20 the reason people file for Chapter 13 primarily is to
21 save their house. And so that was why the Debtor filed
22 and the Trustee was trying to do, consistent with the
23 plan, what the purpose of the case was.

24 When those efforts failed -- the Trustee
25 can't, obviously, cause that to succeed. When it

1 failed, the Trustee then did what the plan obligated her
2 to do.

3 JUSTICE BREYER: At that moment -- at that
4 very moment when -- think of the instant when he filed
5 the conversion. As of that particular moment, had the
6 efforts failed?

7 MR. GOLDBLATT: Yes. By -- by -- by
8 converting what the -- in Chapter 7, the debtor is
9 required to turn over all of their nonexempt assets
10 to --

11 JUSTICE BREYER: What I'm wondering is that
12 as of that instant, is it the case that under the 13
13 plan, as of that instant the funds were already -- there
14 was already on the Trustee, at that instant, a fixed
15 obligation to write a check to the creditors.

16 MR. GOLDBLATT: So --

17 JUSTICE BREYER: Then and there.

18 MR. GOLDBLATT: Certainly by no later than
19 the moment of conversion, there was a -- there was a
20 fixed obligation.

21 JUSTICE BREYER: All right. So that's
22 right. But if there had been money in that pile which
23 she was simply keeping for the fulfillment of an
24 obligation that came up later, that would have under the
25 plan, that she would have had to return, you concede.

1 MR. GOLDBLATT: So the question of -- of
2 prepayments is -- is more complicated, and -- and I
3 think a fair --

4 JUSTICE BREYER: It wouldn't exactly have
5 been prepayments. There would have been money there
6 because of the situation you describe. And -- and if
7 there was not an obligation as of the Section 7 filing
8 instance to pay the money then and there to the
9 unsecured creditors, then I think, under your view of
10 the case, that money would and should have gone to the
11 Debtor.

12 MR. GOLDBLATT: So --

13 JUSTICE BREYER: For the same reason as
14 you've just said it would occur --

15 MR. GOLDBLATT: So --

16 JUSTICE BREYER: In a -- in a revocable
17 trust.

18 MR. GOLDBLATT: So, Justice Breyer, just in
19 fairness --

20 JUSTICE BREYER: Yes.

21 MR. GOLDBLATT: I think there's a difference
22 between when the creditors right to payment attaches and
23 when the debtor's obligation to make the payment is.
24 And what -- what would happen if a debtor pre-funds the
25 plan strikes me, just without having thought about it as

1 hard as perhaps I should have before today, as a
2 different and perhaps more complicated --

3 JUSTICE BREYER: No.

4 MR. GOLDBLATT: -- case.

5 JUSTICE BREYER: Not at all. You've
6 provided an easy principle. The principle is as in a
7 revocable trust, the money that is in the trust that is
8 already under an obligation then and there at the matter
9 of revocation to go to the beneficiary goes. But where
10 that obligation under the trust document has not yet
11 arisen, it goes back to the settlor. That's what you've
12 told me --

13 MR. GOLDBLATT: I agree with that principle
14 100 percent.

15 JUSTICE BREYER: And it would apply the same
16 here?

17 MR. GOLDBLATT: If -- if that's how that
18 principle plays out, then -- then I agree.

19 JUSTICE SOTOMAYOR: But I still have
20 problems, which is if you're talking about the Fifth
21 Circuit saying you don't have a vested right, where does
22 the -- until you're paid by the trustee, and the trustee
23 hasn't paid you, so where is the preexisting obligation
24 coming from?

25 MR. GOLDBLATT: So, Justice Sotomayor, the

1 language --

2 JUSTICE SOTOMAYOR: Or right of the
3 creditor.

4 MR. GOLDBLATT: So, Justice Sotomayor --

5 JUSTICE SOTOMAYOR: An insured right of the
6 creditor.

7 MR. GOLDBLATT: Yes. Exactly. So the --
8 the language of vested rights is -- is fraught. And
9 if -- if what is meant by a vested right --

10 JUSTICE SOTOMAYOR: You -- you made the
11 argument so --

12 MR. GOLDBLATT: Right. And if what is meant
13 by vested right is there is a matured obligation of the
14 trust, if -- if that's what is meant by vested right,
15 then the -- the court below was wrong in that regard.
16 If it meant by vested right something beyond that,
17 may -- maybe it was right. I think the legal standard
18 is there a matured obligation of the trust? And that
19 clearly did exist.

20 Whether that does or doesn't give rise to a
21 vested right under some different definition of vesting
22 is unclear to me. But what is clear is that the -- the
23 trust had a matured obligation to pay the funds over to
24 the beneficiary of the trust.

25 JUSTICE SOTOMAYOR: That's what I've always

1 thought of as a vested right.

2 MR. GOLDBLATT: Well, then the Fifth
3 Circuit, in saying there wasn't a vested right, was
4 incorrect. So if that is what is meant by vested --

5 JUSTICE KAGAN: Mr. Goldblatt, you might not
6 be able to answer this question, but I take it from the
7 fact that the solicitor general is not here in this
8 case, the government -- the Trustees don't care who they
9 pay this money to as long as they have a clear rule; is
10 that correct?

11 MR. GOLDBLATT: I -- I don't think that
12 that's right, Justice Kagan. Here the National
13 Association of Chapter 13 Trustees has come in, in
14 support of -- of our position. The Executive Office of
15 the United States Trustee plays a very different role in
16 bankruptcy cases, and so their absence, I think, is --
17 is evidence that the role of that office --

18 JUSTICE KAGAN: I see.

19 MR. GOLDBLATT: -- is different.

20 JUSTICE KAGAN: And do you think that it
21 matters to the trustees, to any of them, whether we view
22 this as a role rule or only as a default rule that can
23 be changed by the plan? Is there any reason why they
24 would care about that question?

25 MR. GOLDBLATT: I don't -- I -- in fairness,

1 I don't know the answer to that. It seems -- it seems
2 clear to me that in the absence -- that as a default
3 rule, this is the right answer. I -- I think the
4 prudent thing to do would be to wait for a case in which
5 someone sought to change the default to address the next
6 question of, can you change the default or -- or -- my
7 answer -- my -- I believe that the better view is
8 probably that you cannot, because there are indications
9 in the Code that suggest that Congress intended the
10 application of what we're calling the default rule. But
11 whether that's right or wrong, it seems to me, should
12 properly await a case in which it's -- it's actually
13 presented.

14 In sum, the -- the question here is, the
15 debtor is entitled to convert his case to Chapter 7 at
16 any time. Everyone agrees that when he does, that
17 terminates his obligations to make payments into the
18 trust.

19 The question is whether the decision to
20 terminate essentially is retroactive, that by
21 terminating -- by -- by making the decision to convert,
22 he not only excuses himself of future obligations, but
23 is able to undo payments he previously made when he
24 enjoyed the benefits. And for those reasons, the
25 judgment should be affirmed.

1 CHIEF JUSTICE ROBERTS: Thank you, counsel.

2 Mr. Madden, you have four minutes remaining.

3 REBUTTAL ARGUMENT OF MATTHEW M. MADDEN

4 ON BEHALF OF PETITIONER

5 MR. MADDEN: Thank you.

6 Two main -- two main points on rebuttal,

7 Your Honor.

8 First, this case isn't one where you can
 9 make a -- a jump to trust law in the restatements,
 10 because to make that jump, Respondent requires the Court
 11 to declare that a Chapter 13 trustee doesn't hold
 12 property of the estate and isn't a representative of
 13 the -- of the estate, but, instead, holds a new species
 14 of property as a bankruptcy trustee that already belongs
 15 to creditors and acts as an escrow agent to creditors as
 16 a representative -- instead of a representative of the
 17 estate.

18 In our reply brief, pages 6 to 7, we point
 19 to a number of indications in the Code where that would
 20 be inconsistent with the way the Bankruptcy Code is
 21 structured.

22 To take just one example, the Code gives a
 23 trustee the right to deposit money of the estate in an
 24 interest-bearing account, but in the Respondent's view,
 25 after a confirmation of the plan, a Chapter 13 trustee

1 holds property of the creditors and lacks statutory
2 authorization to make that deposit.

3 It would do violence, I think, to the basic
4 structure of Chapter 13, which would have a number of
5 implications in other cases, to declare that a Chapter
6 13 trustee is no longer a representative of an estate
7 and a fiduciary of an estate, but, instead, is an agent
8 of the creditors.

9 Second, I -- the service of the trustee
10 point which involves Section 348(e) of the Code,
11 Congress didn't intend to tell a trustee that they can
12 do nothing at all, and they -- they lack any other
13 powers in a case on how to dispose of money.

14 For example, in Bankruptcy Rule 1019,
15 paragraph 4, a Chapter 13 trustee, upon conversion to
16 Chapter 7, is required to turn over property of the
17 estate to the new Chapter 7 trustee. It's no more a
18 service that the trustee performs, as the trustee in the
19 case, to turn over property that is no longer property
20 of the estate to the debtor.

21 The service that the trustee performs is to
22 take possession of property of the estate, to examine
23 and object to claims, and when appropriate, to pay -- to
24 pay creditors according to the chapter of the Code under
25 which the trustee operates.

1 Now, here, that's apparent, because to make
2 the payments the trustee made in this case, Respondent
3 had to file a document with the bankruptcy court to
4 recommend how to treat claims. As we explained in the
5 reply brief, Respondent had to tell the court that we
6 should treat Chase's \$5500 claim as being allowed only
7 in the amount of a thousand dollars, because that
8 renders Chase paid in full and allows unsecured
9 creditors to obtain payments under the plan.

10 But all of that only happened after the --
11 after the debtor converted his case to Chapter 7. And
12 what Congress is intending to prevent is to have two
13 trustees operating in the same bankruptcy case on the
14 same estate dealing with the same creditors' claims.
15 That's what the termination of the service of a trustee
16 upon conversion means.

17 Unless there are further questions.

18 CHIEF JUSTICE ROBERTS: Thank you, counsel.
19 The case is submitted.

20 (Whereupon, at 11:05 a.m., the case in the
21 above-entitled matter was submitted.)

22

23

24

25

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