

11 U.S.C. § 348(f)(1)(A)  
11 U.S.C. § 348(f)(1)(B)  
11 U.S.C. § 541(a)(6)  
property of the estate  
conversion

In Re Peter

Case # 600-  
65936-aer7

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Radcliffe

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Debtor filed Chapter 13. Before a plan could be confirmed, the case was converted to Chapter 7. While the case was in Chapter 13, Debtor (by direct payments) paid down a secured debt to a vehicle lender. The payments were made from post-petition wages. This pay-down created non-exempt equity in the vehicle. Debtor remained in control of the vehicle on the date of conversion.

The Chapter 7 trustee moved for turnover of the vehicle so he could realize on the non-exempt equity. The Court was called upon to construe 11 U.S.C. § 348(f)(1)(A). That statute provides that upon a good faith conversion, property of the Chapter 7 estate consists of property of the estate as of the filing of the [Chapter 13] petition that remains under the debtor's control on the date of conversion. Debtor argued that the "equity" he created did not exist as of the date of the Chapter 13 petition, and thus should be excluded from the Chapter 7 estate, pointing to the statute's legislative history as supporting this interpretation. The court rejected Debtor's argument and applied the plain meaning of the term "property of the estate" as including the entire vehicle (with or without equity as of the date of the Ch. 13 petition). Because applying the plain meaning would not produce absurd results, the court did not resort to the statute's legislative history. The court noted the inapplicability to the facts at bar of 11 U.S.C. § 348(f)(1)(B) dealing with post conversion preservation of "valuations" of property in the Chapter 13 portion of the case.

While not ruling on the merits of same, the court did allow that the debtor could file an administrative expense claim based on the pay-down of the secured claim, if he thought those payments benefitted the estate.

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case No.  
          ) 600-65936-aer7  
DAVID RUSSELL PETER, )  
  ) MEMORANDUM OPINION  
\_\_\_\_\_  
Debtor. )

This matter comes before the court on the Chapter 7 Trustee's motion for turnover of a 1998 Honda Civic.

FACTS

The facts are undisputed.

Dr. David Peter, the Debtor herein, filed a Chapter 13 petition on October 10, 2000. His original Ch. 13 schedules listed a 1998 Honda Civic valued at \$7,500, with American Honda Finance Corp. (American Honda) as having a secured claim against it for \$6,221.52. Debtor claimed the full \$1,700 vehicle exemption under ORS 23.170(1)(d).

Debtor's original, amended, and second amended Chapter 13 plans, all provided for American Honda to be paid directly. Confirmation was delayed pending claims litigation. Eventually,



1 (A) property of the estate in the converted case  
2 shall consist of property of the estate, as of  
3 the date of filing of the petition, that remains  
4 in the possession of or is under the control of  
5 the debtor on the date of conversion.

6 (B) valuations of property and of allowed  
7 secured claims in the chapter 13 case shall  
8 apply in the converted case, with allowed  
9 secured claims reduced to the extent that they  
10 have been paid in accordance with the chapter 13  
11 plan.

12 (2) If the debtor converts a case under chapter 13 of  
13 this title to a case under another chapter under this  
14 title in bad faith, the property in the converted case  
15 shall consist of the property of the estate as of the  
16 date of conversion.<sup>3</sup>

17 The parties focus the court's attention on § 348(f)(1)(A).  
18 Debtor argues it should be construed to exclude any equity that  
19 arose because of the pay-down of the secured debt during the Chapter  
20 13 portion of the case, because this equity did not exist "as of the  
21 date of filing of the petition." Trustee argues that "property of  
22 the estate" as used in the statute, does not differentiate between  
23 property with equity and property without equity and that  
24 appreciation in asset values inure to the estate.

25 Pursuant to § 541(a)(6), property of the estate includes  
26 "[p]roceeds, product, offspring, rents, or profits of or from  
property of the estate, except such as are earnings from services  
performed by an individual debtor after the commencement of the  
case." The 9<sup>th</sup> Circuit has held that if an asset increases in value  
during the case, under § 541(a)(6), the appreciation inures to the

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<sup>3</sup> As noted above, this case was not converted in bad faith, so subsection  
(2) is inapplicable.



1 created by payments made during the pendency of the Ch. 13 case."<sup>4</sup>

2 Id. at 735.

3 On the other hand, in In Re Sargente, 202 B.R. 1023 (Bankr.  
4 S.D. Fla. 1996), at the filing of the Chapter 13, there was no  
5 equity for the estate in two vehicles. A plan was confirmed.  
6 Debtors made payments on the vehicle debt, the case converted to  
7 Chapter 7 and the trustee made claim to the non-exempt equity  
8 created by the pay-down. The case had been filed before  
9 § 348(f)(1)(A)'s effective date,<sup>5</sup> and thus the statute was not  
10 controlling. Nonetheless, the court construed its policy as allowing  
11 the debtors to keep the equity created by the pay-down.

12 Section 348(f) was enacted to resolve a split among the  
13 circuits as to whether property acquired during the course of a  
14 Chapter 13 was included in the Chapter 7 estate upon conversion.<sup>6</sup>  
15 Debtor argues that the legislative history of § 348(f) supports his  
16 position. That may be, however, the Supreme Court has consistently

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18 <sup>4</sup> Wegner, as well as other cases also opine whether and in what  
19 circumstances, a debtor may keep the appreciation in value of an asset which  
20 accrued pre-conversion. The courts have implicated § 348(f)(1)(B) in this  
21 analysis. That subsection makes Ch. 13 valuations binding post-conversion. The  
22 courts have held that confirmation, either explicitly or implicitly, is a  
23 "valuation" for purposes of § 348(f)(1)(B). In Wegner, the court excluded from  
24 the Ch. 7 estate, the \$9,500 in pre-conversion appreciation. See also, In Re  
25 Page, 250 B.R. 465 (Bankr. D. N.H. 2000) (confirmation is an implicit "valuation"  
26 for § 348(f)(1)(B) purposes, thus debtor entitled to keep Chapter 13  
appreciation); In re Kuhlman, 254 B.R. 755 (Bankr. N.D. Cal. 2000) (case  
converted pre-confirmation; since no "valuation" was made by the court, the Ch. 7  
estate, rather than the debtor, was entitled to pre-conversion appreciation).  
Here, no plan was ever confirmed, although the Honda appears to have declined in  
value.

<sup>5</sup> Current § 348(f) was part of the 1994 Bankruptcy Reform Act.

<sup>6</sup> See, Farmer v. Taco Bell Corp., 242 B.R. 435 (Bankr. W.D. Tenn. 1999) for  
an extensive discussion of the statute's history.

1 admonished that where a statute's text is plain, the court is to  
2 apply it as written, unless its application would lead to absurd  
3 results.<sup>7</sup>

4 Pursuant to § 348(f)(1)(A), upon conversion, property of the  
5 Chapter 7 estate consists of "property of the estate as of the date  
6 of filing of the petition, that remains in the possession of or is  
7 under the control of the debtor on the date of conversion."

8 (emphasis added). There is no dispute that the Honda was "property  
9 of the estate" (as defined by § 541(a)(1)), as of the filing of the  
10 Chapter 13 petition. The statute does not limit the subsequent  
11 Chapter 7 estate to "equity in" "property of the estate" as of the  
12 filing of the [Chapter 13] petition.<sup>8</sup> That policy choice appears to  
13 have been dealt with by § 348(f)(1)(B). Application of the statute  
14 as written will not lead to the level of "absurdity" that would  
15 allow this court to ignore the plain wording of the statute.

16 While it is true that § 348(f)(1) was enacted to encourage  
17 Chapter 13 filings and including the non-exempt equity at bar in the  
18 Chapter 7 estate may perhaps be seen as a slight disincentive to  
19 filing Chapter 13, it is no more so than including (upon conversion,  
20 absent a formal "valuation"), appreciation accrued during the  
21 Chapter 13. See, Kuhlman, supra. Accordingly, this court is

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23 <sup>7</sup> The most recent Supreme Court case on this point is Lamie v. U.S.  
24 Trustee, \_\_\_ U.S. \_\_\_, 124 S.Ct. 1023, 1030, 157 L.Ed. 2d 1024, \_\_\_ (2004).

25 <sup>8</sup> See e.g., Potter v. Drewes (*In re Potter*), 228 B.R. 422, 424 (8<sup>th</sup> Cir.  
26 B.A.P. (N.D.) 1999) ("[n]othing in Section 541 suggests that the estate's  
interest is anything less than the entire asset, including any changes in its  
value which might occur after the date of filing).

