IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 52800

JEFF CONGER, **Plaintiff-Counterdefendant-Appellant,** **v.** **JAY P. CLARK,** **Defendant-Counterclaimant-Respondent.**	**Boise, May 2026 Term** **Opinion Filed: September 4, 2026** **Melanie Gagnepain, Clerk**

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Elmore County. Theodore Fleming, District Judge.

The judgment of the district court is affirmed.

Johnson May, Boise, for Appellant, Jeff Conger. J. Justin May argued.

Jay P. Clark, Respondent *pro se*. Jay P. Clark argued.

MEYER, Justice.

This appeal arises from a dispute regarding the enforceability of a residential lease agreement with an option to purchase real property. Jeff Conger paid Jay P. Clark for an option to purchase a house in Mountain Home, Idaho. The option provided that Conger would obtain ownership upon satisfaction of a Wells Fargo mortgage held in Clark's name. After executing the agreement, Conger filed a Chapter 7 bankruptcy petition. In his petition, Conger identified Clark as a creditor and reported rent as an expense. However, he indicated that he did not have any legal or equitable interest in real property, and he denied the existence of any executory contract or unexpired lease. Conger obtained a discharge of his debts from the bankruptcy court.

Four years later, Conger notified Clark of his intent to exercise the option to purchase by satisfying the Wells Fargo mortgage, but Clark refused to honor the option. Conger filed a complaint seeking specific performance and declaratory relief. In response, Clark filed a counterclaim for breach of contract. The district court denied both parties' motions for summary judgment but subsequently granted Clark's motion for reconsideration. The court determined that judicial estoppel barred Conger's claims and, in the alternative, that Conger lacked standing because the option to purchase the home, an unscheduled asset, remained property of the bankruptcy estate.

I. FACTUAL AND PROCEDURAL BACKGROUND

On February 29, 2016, Conger entered into a residential lease agreement with Clark (the Lease Agreement) that included an option to purchase property located at 1795 North 4th East, Mountain Home (the Property). Conger began living at the property on that date and continues to reside there with his wife. Conger paid Clark $8,000 for the option to purchase the Property once the Wells Fargo mortgage in Clark's name was satisfied. The Property's purchase price was set at the outstanding mortgage balance on March 1, 2016. The Lease Agreement further specified that the option could not be assigned and would become null and void if not exercised before the lease's voluntary termination or termination due to Conger's breach.

Approximately 18 months after executing the Lease Agreement, in September 2017, Conger filed a voluntary Chapter 7 bankruptcy petition. In his bankruptcy schedules, Conger listed Clark as a creditor and disclosed that he paid $750 for rent. However, he answered "No" on Schedule A/B in response to a question regarding whether he had "any legal or equitable interest in any residence, building, land, or similar property[.]" Likewise, he answered "No" in response to questions regarding whether he owned any legal or equitable interest in security deposits or "equitable or future interests in property . . . , and rights or powers exercisable for [his] benefit[.]" On Schedule G, he also answered "No" in response to a question regarding whether he was party to any executory contracts or unexpired leases.

Conger's bankruptcy counsel certified that he had no knowledge of any inaccuracies in the bankruptcy schedules. The bankruptcy trustee conducted a required meeting of creditors in November 2017, examined Conger under oath, and subsequently filed a report of no distribution. The bankruptcy court entered an order of discharge on January 16, 2018.

In December 2022, Conger's counsel notified Clark in writing of Conger's intent to exercise the option to purchase and readiness to pay the outstanding mortgage balance on the Property. As of May 2024, the mortgage reflected an outstanding principal balance of $216,248.39 and a deferred principal balance of $70,924, for a total of $287,172.39.

In August 2023, Conger filed a complaint seeking specific performance and declaratory relief to enforce the option to purchase. Clark filed a counterclaim alleging breach of contract. On cross-motions for summary judgment, the district court identified the existence of genuine issues of material fact regarding the payment history under the Lease Agreement, whether Clark interfered with Conger's ability to make timely payments, the use of the mortgage interest deduction, and whether Clark authorized that deduction. Due to these factual disputes, the court denied both motions.

In addition, the court noted that Clark's motion was more accurately characterized as a motion to dismiss under the doctrine of judicial estoppel. Nevertheless, the court declined to apply judicial estoppel, explaining that "it does not appear that Conger was attempting to 'play fast and loose' with the rules, or make a mockery of the judicial system, or make an intentional decision to conceal the Lease Agreement, to which he was not bound to exercise his right to purchase at that time."

Clark subsequently filed a motion for reconsideration along with an alternative motion to dismiss for lack of standing. In opposition to the motion, Conger requested that he "be given the opportunity to file a petition with the Bankruptcy court to reopen the case, file amended schedules to list the option and file a motion to abandon."

The district court granted Clark's motion for reconsideration and motion to dismiss. The court explained that the previous decision "inadvertently fail[ed] to fully take into consideration the undisputed fact that Conger paid $8,000 for his legal interest in the real property." The court applied judicial estoppel after "re-examining the factors that a court *may* consider when determining whether to apply the equitable doctrine. . . ." In the district court's view, although Clark received notice of the bankruptcy as a listed creditor, the bankruptcy trustee was not informed of Conger's interest under the option to purchase. The court further considered the advantage Conger gained "by having his debts discharged in his Chapter 7 Bankruptcy without the bankruptcy court being informed about his future option to purchase the real estate."

Next, the court determined that, as a matter of law, the option to purchase was breached because "the contract was not assumed by the bankruptcy trustee within" 60 days as required by the Bankruptcy Code and was "therefore deemed rejected" under 11 U.S.C. § 365(g), which constituted a breach. The district court stated that the parties do not "dispute that Conger failed to inform and disclose his lease option to purchase the residential property in his bankruptcy proceeding." As a result, the court concluded that Conger did "not have standing to assert any legal interest" because the unscheduled asset belonged to the bankruptcy estate. Finally, the court denied Conger's request to stay the proceedings so that he could amend his bankruptcy schedules.

Thereafter, in November 2024, Conger filed a motion for reconsideration. The motion conceded that "the lease/option is a potential asset of the bankruptcy estate" and stated that Conger "reopened the bankruptcy and listed the lease/option in his schedules." However, Conger did not file an affidavit or a declaration to provide admissible testimony proving that he reopened the bankruptcy case. In an amended memorandum in support of the motion, Conger contended that he disclosed the existence of the Lease Agreement in the bankruptcy case. He highlighted that the option to purchase was "not separate and apart from" the Lease Agreement, which he asserted was disclosed in the bankruptcy petition and on the schedule of expenses. In Conger's view, he provided enough information to "put the trustee and the bankruptcy court on notice that a lease existed." In addition, Conger argued that he received no benefit from the alleged non-disclosure and that the trustee's rejection of an unexpired lease reverted the rights under the Lease Agreement to him. Conger claims, as a result, these rights "did not remain property of the bankruptcy estate" under 11 U.S.C. section 554; therefore, he had standing to enforce terms of the Lease Agreement, including the option to purchase.

The district court denied Conger's motion for reconsideration and entered a certified partial judgment under Idaho Rule of Civil Procedure 54. Conger appealed.

II. Issues on Appeal

1. Did Conger retain ownership of the option to purchase after the bankruptcy case closed?
2. Is either party entitled to an award of attorney fees on appeal?

III. Standards of Review

Standing and the interpretation of a statute are both questions of law, which this Court reviews de novo. *Gilbert v. Progressive Nw. Ins. Co.*, 176 Idaho 422, ___, 577 P.3d 519, 528 (2025).

In addition, we conduct a de novo review of motions to dismiss under Rule 12(b)(6) of the Idaho Rules of Civil Procedure and motions for summary judgment under Rule 56. *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, 823, 367 P.3d 208, 218 (2016). Under Rule 12(b)(6), courts consider "all facts and inferences" in favor of the non-moving party to determine whether a claim for relief has been stated. *Losser v. Bradstreet*, 145 Idaho 670, 673, 183 P.3d 758, 761 (2008). Dismissal for failure to state a claim is appropriate only if it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. *Taylor v. Maile*, 142 Idaho 253, 257, 127 P.3d 156, 160 (2005).

"If . . . matters outside the pleadings are presented to" the court and not excluded in a Rule 12(b)(6) motion, that "motion must be treated as one for summary judgment under Rule 56[,]" and the "parties must be given a reasonable opportunity to present all" pertinent material. I.R.C.P. 12(d). "Summary judgment is appropriate if the pleadings, depositions," admissions, and affidavits demonstrate that no genuine issue of material fact exists, and "the moving party is entitled to judgment as a matter of law." *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006).

On review of a motion for reconsideration, we apply the same standard of review the district court used in deciding the motion. *Liberty Bankers Life Ins. Co. v. Witherspoon, Kelley, Davenport & Toole, P.S.*, 159 Idaho 679, 686, 365 P.3d at 1033, 1040 (2016). "[T]he district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered." *Id.* (quoting *Westby v. Schaefer*, 157 Idaho 616, 621, 338 P.3d 1220, 1225 (2014)). For example, if the original order was within the court's discretion, then so is the district court's decision to grant or deny the motion to reconsider. *Id.*

IV. ANALYSIS

Conger appeals the district court's orders granting Clark's motion for reconsideration and dismissing Conger's claims arising from the Lease Agreement. Conger challenges the district court's application of judicial estoppel and argues, alternatively, that he has standing to enforce the option. The district court treated standing as secondary to the issue of judicial estoppel, and the parties briefed the issues in that order. We address standing first because standing "is a threshold issue to be determined before reaching the merits of the case." *Radford v. Van Orden*, 168 Idaho 287, 299, 483 P.3d 344, 356 (2021). Because we affirm the district court's judgment on standing grounds, we do not reach the parties' arguments regarding judicial estoppel and we express no opinion on that issue.

A. Conger lacks standing to enforce the option to purchase.

Resolution of the standing issue turns on whether Conger's option to purchase the property remained property of the bankruptcy estate following the conclusion of his Chapter 7 case. Therefore, we begin by examining whether the option became property of the bankruptcy estate upon the filing of Conger's bankruptcy petition. We next consider whether Conger sufficiently disclosed the Lease Agreement and option to purchase such that those interests were abandoned when the bankruptcy case closed. Finally, because we conclude the option remained property of the bankruptcy estate, we address whether Conger retained standing to enforce the option to purchase in this case.

The parties disagree at nearly every turn. They dispute whether Conger sufficiently disclosed the Lease Agreement with the option to purchase in his bankruptcy case, whether the rights under the option to purchase remained property of the bankruptcy estate, and whether Conger has standing to enforce the option to purchase the Property. Thus, we will address each disputed issue.

1. *Any legal or equitable interests of a debtor become property of the estate upon filing a bankruptcy petition, and any unscheduled interest remains property of the estate.*

When a debtor files a bankruptcy petition, the property that the person owns at the time of filing, "wherever located and by whomever held," becomes property of a bankruptcy estate. 11 U.S.C. § 541(a); *see A & J Constr. Co. v. Wood*, 141 Idaho 682, 688 n.1, 116 P.3d 12, 18 n.1 (2005). The Bankruptcy Code defines "property of the estate" broadly to include "all legal or equitable interests of the debtor in property as of the commencement" of the bankruptcy case. 11 U.S.C. § 541(a)(1).

Conger does not dispute that "the lease/option is a potential asset of the bankruptcy estate." When Conger filed his Chapter 7 petition, he possessed contractual rights under the Lease Agreement, including an option to purchase the Property for consideration previously paid and to be paid. Those rights therefore became property of the bankruptcy estate upon the filing of the petition. The dispositive issue—and where the parties' positions differ—is whether the option to purchase remained property of the estate.

2. *Because Conger did not sufficiently disclose the Lease Agreement and the option to purchase, those interests remained property of the bankruptcy estate.*

Conger contends that he provided sufficient information in his bankruptcy petition and schedules to disclose the Lease Agreement adequately. He supports his contention by highlighting that he listed the residence where he lived, identified Clark as a creditor, and indicated that he rented his residence. According to Conger, these disclosures placed the trustee on notice of the Lease Agreement and imposed a duty on the trustee to investigate the Lease Agreement, including the option to purchase. We disagree.

Debtors in bankruptcy must file a schedule of assets and liabilities and a statement of financial affairs. 11 U.S.C. § 521(a)(1)(B); Fed. R. Bankr. P. 1007(b)(1)(A), (C)–(D). The debtor has a duty to prepare bankruptcy schedules and statements "carefully, completely, and accurately . . . under penalty of perjury." *Stevens v. Whitmore* (*In re Stevens*), 617 B.R. 328, 333 (B.A.P. 9th Cir. 2020). Full disclosure is required because creditors and the courts rely on the accuracy of the schedules and may be impaired by incomplete disclosures. *A & J Constr. Co.*, 141 Idaho at 686, 116 P.3d at 16.

In addition to scheduling assets and liabilities, all contracts to which the debtor is a party must be listed under the appropriate schedule. *Diamond Z Trailer, Inc. v. JZ L.L.C.* (*In re JZ L.L.C.*), 371 B.R. 412, 417 (B.A.P. 9th Cir. 2007). Depending on the terms of the contract, an option to purchase "is either in the asset/liability category or in the executory contract category." *Id.* The proper category of a contract often requires a review of the specific terms of the contract and "may entail some guesswork." *Id.* Still, "every contract is required to appear *somewhere* on the schedules." *Id.*

The Bankruptcy Code informs the debtor what information is required, and the scheduling forms ask a series of questions to induce disclosure. *See* 11 U.S.C. § 521(a); Fed. R. Bankr. P. 1007(b) (2016). The schedules are essentially a list. *See A & J Constr. Co.*, 141 Idaho at 685, 116 P.3d at 15. The Lease Agreement *and* the option to purchase the Property belong on that list. *See In re JZ, L.L.C.*, 371 B.R. at 416–17. Yet, Conger's schedules failed to disclose the Lease Agreement or the option to purchase. Merely stating that he was leasing his residence is not sufficient.

Conger answered in the negative to every question that would have provided the trustee and the bankruptcy court with information regarding the Lease Agreement or the option to purchase. Schedule A/B, Part 1 directed Conger to "Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest In," and item 1 asked, "Do you own or have any legal or equitable interest in any residence, building, land, or similar property?" Conger answered "No" in response to item 1. The option to purchase real property is an equitable interest in the Property and should have been included on Schedule A/B.

Conger omitted that he had a legal or equitable interest in the security deposit. Schedule A/B, part 4 directed Conger to "Describe Your Financial Assets[,]" and to list the "[c]urrent value of the portion you own[.] Do not deduct secured claims or exemptions." Part 4, item 22 required

Conger to disclose security deposits and prepayments. As examples, the item listed, "Agreements with landlords, prepaid rent, [and] public utilities (electric, gas, water)[.]" The Lease Agreement, signed by Conger, provided for a security deposit, though its terms are inconsistent. Section 2 of the Lease Agreement recites a $9,000 down payment divided into a $1,500 security deposit and $7,500 in consideration for the option to purchase. Section 11, by contrast, states Conger paid $8,000 in consideration for the option to purchase.[1] Despite the variation in dollar amount, Conger paid consideration for the option to purchase and he paid a security deposit. Yet he answered "No" in response to item 22. He asserted he did not own or have any legal or equitable interest in security deposits. The $1,000 or $1,500 security deposit for the Property should have been listed in response to item 22.

Schedule G, related to executory contracts and unexpired leases, compounded Conger's omission. A contract is executory when "the obligations of both parties are so unperformed that the failure of either party to complete performance would constitute a material breach and thus excuse the performance of the other." *Unsecured Creditors' Comm. of Robert L. Helms Constr. & Dev. Co. v. Southmark Corp.* (*In re Robert L. Helms Constr. & Dev. Co.*), 139 F.3d 702, 705 (9th Cir. 1998) (quoting *Griffel v. Murphy* (*In re Wegner*), 839 F.3d 533, 536 (9th Cir. 1988)). "[L]eases of real property shall include any rental agreement to use real property." 11 U.S.C. § 365(m). Item 1 of Schedule G provided, as follows:

> **Do you have any executory contracts or unexpired leases?**
>
> ■ No. Check this box and file this form with the court with your other schedules. You have nothing else to report on this form.
>
> □ Yes. Fill in all of the information below even if the contacts or leases are listed on Schedule A/B: Property (Official Form 106 A/B).

Item 2 directed Conger to:

> **[l]ist separately each person or company with whom you have the contract or lease. Then state what each contract or lease is for (for example, rent, vehicle lease, cell phone).** See the instructions for this form in the instruction booklet for more examples of executory contracts and unexpired leases.

When Conger filed his bankruptcy petition, the Lease Agreement had not expired under its terms, and both parties were still required to perform under it. It required, among other things, Conger to pay monthly payments on a loan that Wells Fargo Home Mortgage carried, and all gas,

[1] The parties agree on appeal that Conger paid $8,000 for the option to purchase.

electricity, utilities, and water supplied to the Property. It required Clark to convey title by warranty deed upon satisfaction of the loan. Failure by either would have been a material breach excusing the other from performance. The Lease Agreement is an unexpired lease, and the option to purchase is an executory contract. Both should have been included on Schedule G. However, Conger filled in the first box, responding "No" to item 1 and left the remainder of Schedule G blank. He did not list any person or company, and did not identify any contract or lease.

In large part, Conger's responses on his bankruptcy schedules contradicted the terms of the Lease Agreement. The monthly rental expenses appear inconsistent with the Lease Agreement. On Schedule J, Conger was required to estimate his expenses "as of [the] bankruptcy filing date . . . ." In response, he asserted that he paid a rental expense of $750.00 per month. Yet Section 2 of the Lease Agreement, by contrast, provided

> [t]he amount of the monthly lease payment will be equal to the mortgage payment of the loan, *$1,339.06*, without any late penalties or late payments incurred prior to March 1, 2016, including the amount for taxes and insurance collected and held each month in escrow by Wells Fargo Home Mortgage.

(Emphasis added).

Listing Clark as an unsecured creditor did not disclose the Lease Agreement. Schedule E/F, part 2 requires the debtor to "List All . . . NONPRIORITY Unsecured Claims." It requires the debtor to "[l]ist the other party to any executory contracts or unexpired leases that could result in a claim. Also list executory contracts on Schedule A/B: Property (Official Form 106A/B) and on Schedule G: Executory Contracts and Unexpired Leases (Official Form 106G)."

Conger completed the form as follows:

		Total Claim
Jay Clark	**Last 4 digits of account number**_______	**Unknown**
Nonpriority Creditor's Name		
[address redacted]	**When was the debt incurred?** ____________	
Number Street City Zip Code	**As of the date you file, the claim is:** Check all that apply	
Who incurred the debt? Check one.		
■ Debtor 1 only	□ Contingent	
□ Debtor 2 only	□ Unliquidated	
□ Debtor 1 and 2 only	□ Disputed	
□ At least one of the debtors and another	**Type of NONPRIORITY unsecured claim**:	
	□ Student loans	
□ Check if this claim is for a community debt	□ Obligation arising out of a separate agreement or divorce that you did not report as priority claims	
Is the claim subject to offset?	■ Other. Specify ________________________________	
■ No		

□ Yes

Conger named Clark as a creditor while disclosing nothing about the Lease Agreement or the option to purchase. Conger merely identified Clark as an unsecured creditor with an unknown claim amount. Conger did not describe the relationship, indicate that Clark was the lessor under the Lease Agreement, or reference the option to purchase.

What little information Conger provided on his schedules was bare bones, at best. Viewed together, Conger's schedules affirmatively denied the existence of the interests he seeks to enforce in this case. Accordingly, we hold that Conger failed to sufficiently disclose the Lease Agreement and the option to purchase.

3. *Because the option to purchase was not sufficiently disclosed, it remained property of the bankruptcy estate after the bankruptcy case closed.*

Conger next argues that, since the trustee did not assume the Lease Agreement within sixty days after he filed his petition, the Lease Agreement was deemed rejected by operation of the Bankruptcy Code, under 11 U.S.C. section 365(d)(1). Rejection, according to Conger, returned the Lease Agreement and its option to him. This argument conflates rejection with abandonment.

In a Chapter 7 case, the bankruptcy court appoints a trustee to liquidate the assets of the estate and distribute the proceeds to creditors. 11 U.S.C. § 704(a)(1). To administer the estate, the trustee may assume or reject an executory contract or unexpired lease and may abandon property. 11 U.S.C. §§ 365(a), 554. "[I]f the trustee does not assume or reject an executory contract or unexpired lease of residential real property . . . of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected." 11 U.S.C. § 365(d)(1). Rejection constitutes a breach of that contract, which is deemed to occur immediately before the debtor filed his bankruptcy petition. 11 U.S.C. § 365(g); *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 378 (2019).

The United States Supreme Court in *Mission Product Holdings* explained the consequences of the trustee rejecting an executory contract or unexpired lease. In that case, a distributor entered a contract with a clothing manufacturer, granting the distributor a license to use the manufacturer's trademark and the right to use certain clothing and accessories. *Id.* at 373. Following the manufacturer's Chapter 11 bankruptcy filing, the bankruptcy court approved the manufacturer's rejection of the contract and determined that this rejection terminated the distributor's license to use the trademark. *Id.* at 374.

On appeal, the manufacturer argued that rejection did more than relieve the estate of its own future obligations—that rejection rescinded the agreement and stripped the distributor of the license to use the trademark, which the contract had already conferred. *Id.* at 375–77. The Court rejected the manufacturer's view and held that rejection "constitutes a breach," under 11 U.S.C. section 365(g). *Id.* at 379. The Court explained that, similar to a breach outside bankruptcy, rejection does not rescind the rights conferred by the contract. *Id.* The estate is released from performing going forward, but the counterparty retains the rights that it had and is left with a pre-petition damages claim for the breach of contract. *Id.* at 375, 378–79.

By contrast, 11 U.S.C. § 554 governs the abandonment of property of the estate. *DeVore v. Marshack* (*In re DeVore*), 223 B.R. 193, 197 (B.A.P. 9th Cir. 1998). Once an asset becomes property of the estate, it remains property of the estate until the trustee either administers or abandons it. 11 U.S.C. § 554(d); *McCallister v. Dixon*, 154 Idaho 891, 898, 303 P.3d 578, 585 (2013).

> Abandonment of an asset can occur in two ways. First, under § 554(a) and (b), after notice and a hearing, a trustee may voluntarily abandon or may be compelled to abandon specific property of the estate that is "burdensome" or "of inconsequential value and benefit to the estate." And second, . . . under § 554(c), "any property scheduled under section 521(a)(1) of this title [and] not otherwise administered at the time of the closing of a case is abandoned to the debtor . . . ." This type of abandonment is commonly referred to as a "technical abandonment."

In re Stevens, 617 B.R. at 331 (alterations in original).

The first method does not apply as neither party asserted that the trustee voluntarily abandoned any property of the estate following notice and a hearing. Under the second method, scheduled assets are deemed abandoned and returned to the debtor upon the closing of a Chapter 7 bankruptcy case if not otherwise administered by the trustee. 11 U.S.C. § 554(c); *see In re JZ, L.L.C.*, 371 B.R. at 418. However, this "technical abandonment" only applies to property that has been properly scheduled. *Cusano v. Klein*, 264 F.3d 936, 945–46 (9th Cir. 2001). If the debtor does not schedule property or any interest in property, and the trustee does not administer it before the case closes, that property or interest "remains property of the bankruptcy estate forever." *McCallister*, 154 Idaho at 898, 303 P.3d at 585 (citing *In re An-Tze Cheng*), 308 B.R. 448, 461 (B.A.P. 9th Cir. 2004); and *United States ex rel. Gebert v. Trans. Admin. Servs.*, 260 F.3d 909, 913 (8th Cir. 2001)); *see* 11 U.S.C. § 554(d).

Because Conger failed to disclose the Lease Agreement and option to purchase, as we explained above, the trustee did not administer or abandon that asset for the benefit of Conger's creditors. "[P]roperty of the estate that is not abandoned under [11 U.S.C. § 554] and that is not administered in the case remains property of the estate." 11 U.S.C. § 554(d).

Accordingly, we conclude that the option to purchase remained property of the bankruptcy estate notwithstanding the closing of Conger's Chapter 7 case.

4. *Because the option to purchase remained property of the bankruptcy estate, Conger lacked standing to enforce it.*

Because the interest in the Property remains an asset of the estate, the trustee alone may control it. *See* 11 U.S.C. § 323; *see also Mowrey v. Chevron Pipe Line Co.*, 155 Idaho 629, 635, 315 P.3d 817, 823 (2013) (explaining that a cause of action which arose from an accident that occurred before the debtor filed bankruptcy "was a claim for the bankruptcy trustee alone to assert"); *In re JZ, L.L.C.*, 371 B.R. at 418 (noting that "chapter 7 debtors . . . have no authority to control property of the estate at any time after the case is filed"). The United States Bankruptcy Appellate Panel of the Ninth Circuit, in *In re JZ, L.L.C.*, explained the procedure after a bankruptcy case is closed:

> Section 554(d) prompts the question of who controls property of the estate remaining after the case is closed. In chapter 7, the answer is nobody. The trustee ceases to serve when the case closes. *See* 11 U.S.C. § 350(a). Since no Bankruptcy Code provision authorizes a chapter 7 debtor to control property of the estate that remains in such status by virtue of § 554(d), the debtor lacks standing, and nobody is left to take the helm. In short, the chapter 7 estate after closing is a rudderless ship.
>
> A closed chapter 7 case may be reopened and a trustee appointed when it becomes appropriate to deal with property of the estate. 11 U.S.C § 350(b); Fed. R. Bankr. P. 5010. This typically occurs when undisclosed property surfaces or a state court realizes that a cause of action is being prosecuted by a chapter 7 debtor who is not the real party in interest.

371 B.R. at 418–19 (footnote omitted).

Idaho Rule of Civil Procedure 17 ordinarily guards against dismissal in this situation. The rule prohibits a court from dismissing an action "for failure to prosecute in the name of the real party in interest until . . . a reasonable time has been allowed" to cure the defect through ratification, joinder, or substitution of the real party in interest. I.R.C.P. 17(a)(3); *Houpt v. Wells Fargo Bank, Nat'l Ass'n*, 160 Idaho 181, 186–87, 370 P.3d 384, 389–90 (2016) (quoting I.R.C.P. 17(a)). The rule guards against dismissal when the proper party is difficult to determine, or the party made "an understandable mistake" in selecting the plaintiff. *Houpt*, 160 Idaho at 187, 370 P.3d at 390 (quoting *Conda P'ship, Inc. v. M.D. Constr. Co.*, 115 Idaho 902, 904, 771 P.2d 920, 922 (Ct. App. 1989)). The cure the rule contemplates is the substitution of the trustee. *See* I.R.C.P. 17(a)(3). Rather than seeking that cure, Conger litigated as the asserted real party in interest and requested a stay to reopen his bankruptcy case and amend his schedules only after Clark filed dispositive motions. The district court denied that motion, and Conger did not challenge that decision on appeal. Therefore, we do not address it. *See A & J Constr. Co.*, 141 Idaho at 688 n.1, 116 P.3d at 18 n.1.

The trustee is the representative of the estate, with the capacity to sue and be sued on the estate's behalf. 11 U.S.C. § 323. For property that remains in the estate, the trustee, not the debtor, is the real party in interest with standing. I.R.C.P. 17(a); *McCallister*, 154 Idaho at 898, 303 P.3d at 585. Conger does not have standing to enforce the option to purchase.

In summary, the option to purchase existed before Conger filed his petition and therefore became property of the estate. 11 U.S.C. § 541(a)(1). Because Conger did not schedule the option, it was not abandoned at closing and remained property of the estate. 11 U.S.C. § 554(d); *In re Davies*, 577 B.R. 352, 364 (Bankr. D. Idaho 2017). The trustee, not Conger, is the real party in interest. 11 U.S.C. § 323; *McCallister*, 154 Idaho at 898, 303 P.3d at 585. Conger lacks standing to enforce the option, and the district court's judgment is affirmed.

B. Neither party is entitled to attorney fees on appeal.

Conger requests attorney fees under Idaho Code section 12-121, Idaho Appellate Rule 41, and the Lease Agreement's prevailing-party provision. Conger is not the prevailing party on appeal and therefore he is not entitled to an attorney fees award. Because Clark represented himself pro se, he is also not eligible for an award of attorney fees. *See Frantz v. Osborn*, 167 Idaho 176, 181, 468 P.3d 306, 311 (2020) (citing *Chavez v. Canyon County ex. rel Duly Elected Bd. of Cnty. Comm'rs*, 152 Idaho 297, 305, 271 P.3d 695, 703 (2012) ("An attorney acting as a pro se litigant is not entitled to an award of attorney fees on appeal."). However, we award Clark costs on appeal as the prevailing party under Idaho Appellate Rule 40.

V. CONCLUSION

We affirm the judgment of the district court and award costs on appeal to Clark.

Chief Justice BEVAN and Justices BRODY, MOELLER and ZAHN CONCUR.