

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CASE NO. 15-64523-PWB
)	
CLAUIO PABLO AVENDANO,)	CHAPTER 7
)	
Debtor.)	
_____)	

OBJECTION TO CONFIRMATION OF DEBTOR’S CHAPTER 13 PLAN AND REQUEST TO RECONVERT CASE TO A CASE UNDER CHAPTER 7

COMES NOW Arnall Golden Gregory LLP (“**AGG**”), Jerry E. Austin and Lawson Realty, Inc. (the “**Objectors**”), hereby file this *Objection to Confirmation of Debtor’s Chapter 13 Plan and Request to Reconvert Case to a Case under Chapter 7* (the “**Objection**”), respectfully showing as follows:

Background

1. On August 3, 2015 (the “**Petition Date**”), Clauio Pablo Avendano (“**Debtor**”) filed *pro se* a voluntarily petition for relief under Chapter 7 of Title 11 of the United States Code, and initiated Case No. 15-64523-PWB (the “Case”).

2. Also on the Petition Date, Debtor filed under penalty of perjury his *Statement of Financial Affairs* (collectively, the “**Sworn Statements**”) and *Schedules “A” through “F” and Schedules “I” and “J”* (collectively, the “**Sworn Schedules**”).

3. On August 4, 2015, Neil C. Gordon (the “**Chapter 7 Trustee**”) was appointed to the Case as the interim Chapter 7 Trustee, pursuant to 11 U.S.C. § 701(a)(1).

4. The original meeting of creditors was scheduled for September 8, 2015, pursuant to 11 U.S.C. § 341(a). Because Debtor failed to appear, the Chapter 7 Trustee rescheduled the meeting to October 15, 2015 (the “**341 Meeting**”).

5. The Chapter 7 Trustee conducted and concluded the 341 Meeting on October 15, 2015, at which time, he became the permanent Chapter 7 Trustee, pursuant to 11 U.S.C. § 702(d).

6. On October 5, 2015, Mr. Jerry E. Austin (“**Mr. Austin**”) filed a *Motion for Relief from the Automatic Stay* [Doc. No. 18] (the “**Stay Relief Motion**”), indicating Debtor is delinquent in loan payments totaling \$38,486.28 (the “**Mortgage Arrearages**”). Mr. Austin set the Stay Relief Motion for hearing on October 28, 2015.¹

7. At the 341 Meeting, the Chapter 7 Trustee discussed at length with Debtor the Chapter 7 Trustee’s plans for liquidation of the Properties, particularly, the Chile Property.

8. On October 25, 2015, Richard K. Valldejuli, Jr. (“**Mr. Valldejuli**”), as counsel for Debtor, filed a *Notice of Appearance* [Doc. No. 20].

9. On Sunday, October 25, 2015, Debtor filed a *Motion to Convert Chapter 7 Case to a Case under Chapter 13* [Doc. No. 21] (the “**Motion to Convert**”) and had not listened to the tape of the 341 meeting, seeking to convert the Case to a case under Chapter 13 and asserting that he filed the Case under the wrong bankruptcy chapter. Mr. Valldejuli made no attempt to communicate with the Chapter 7 Trustee or his counsel prior to filing the Motion to Convert. As a result, the Chapter 7 Trustee incurred substantial fees and costs as he proceeded with the administration of the bankruptcy estate.

10. Upon information and belief, Debtor filed the Motion to Convert in response to the Chapter 7 Trustee's interest in liquidating various properties scheduled on Debtor's bankruptcy disclosure forms.

11. Debtor scheduled the Motion to Convert for hearing on November 17, 2015 at 10:00 a.m. [Doc. No. 21].

12. On October 29, 2015, the Chapter 7 Trustee filed an objection to the Motion to Convert, arguing, among other things, that Debtor, based on his bankruptcy disclosure form and his testimony at the 341 Meeting, had no income and was not eligible to be a debtor under Chapter 13. [Doc. No. 29].

13. On November 4, 2015, the only creditor in the case, Mr. Austin and Lawson Realty, Inc.², filed an objection to the Motion to Convert, incorporating the Chapter 7 Trustee's objection. [Doc. No. 35]

14. The morning of the hearing on the Motion to Convert, Debtor filed an addendum to the Motion to Convert (the "**Addendum**"), setting forth alleged sources of income and attaching a "Proposed Chapter 13 Plan" (the "**Proposed Plan**"). [Doc. No. 40].

15. No creditor or party in interest had the opportunity to review the Proposed Plan or the Addendum prior to the hearing on the Motion to Convert.

16. At the hearing on the Motion to Convert, the Court determined that it was appropriate to convert the Case to a case under Chapter 13, but emphasized that "having said . . . that the [C]ase can be converted. . . it needs to be on a *fast track*." [*Transcripts, Hearing on*

¹ The Stay Relief Motion was subsequently denied for want of prosecution.

Motion to Convert at page 49 of 59 at lines 13-14] (emphasis added). It went on to state that it recognized that Mr. Austin and the other creditors were not institutional lenders but instead were effectively individuals. Consequently, the Court noted “they got to get money. They can’t sit around and *wait forever*. So I would assume we could have a confirmation hearing and decide it up or down within sixty days.” [*Transcripts, Hearing on Motion to Convert* at page 55 of 59 at lines 4-12] (emphasis added).

17. On December 16, 2015, the Court entered an order converting the Case to a case under Chapter 13 [Doc. No. 43] (the “**Conversion Order**”). In the Conversion Order, the Court set the matter on a fast track by shortening the notice period for the Chapter 13 Section 341 Meeting of Creditors (the “**Chapter 13 341 Meeting**”) to 14 days and requiring that the Chapter 13 plan confirmation hearing be scheduled to occur within 60 days of entry of the Conversion Order. Notably, the entry of the Conversion Order was delayed in part by Mr. Valldejuli’s delayed approval.

18. Following entry of the Conversion Order, the Chapter 13 341 Meeting was originally scheduled to occur on January 4, 2016. [Doc. No. 45]. However, it was not held as originally scheduled due to Debtor’s failure to appear.

19. On February 18, 2016, despite the Court’s strict instructions regarding fast tracking the Chapter 13 Case, the Chapter 13 341 Meeting was finally held and concluded.

20. Like the Chapter 13 341 Meeting, the confirmation hearing was also delayed. It was originally scheduled to occur on January 27, 2016. [Doc. No. 45]. It was first rescheduled

² Upon information and belief, Lawson Realty, Inc. is a close corporation with only one or two individual owners.

to March 9, 2016 and then rescheduled again to May 11, 2016. Although the May 11, 2016 hearing occurred, an evidentiary hearing on confirmation has been scheduled for July 7, 2016.

21. Similar to the pleadings filed just before the hearing on the Motion to Convert, Debtor filed numerous documents the morning of the May 11, 2016 confirmation hearing. *See* [Doc. Nos. 73, 74, 75, and 76] including an objection to the claim of Mr. Austin and Lawson Realty, LLC [Doc. No. 73], an amended list of creditors [Doc. No. 74], a second amended Chapter 13 Plan [Doc. No. 75], and a verified statement showing that Debtor had no income in the 60 days preceding the filing of the Case [Doc. No. 76].

22. Like the pleadings filed immediately before the hearing on the Motion to Convert, no creditor or party in interest had an opportunity to read or consider these pleadings or documents before the May 11, 2016 hearing.

23. In addition, at the May 11, 2016 confirmation hearing, Mr. Valldejuli proffered to the Court that Debtor, without notice, hearing, or appropriate authority from the Court, sold property of the estate, paid creditors of the estate, and employed professionals to assist him in these endeavors in direct contravention of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

24. In sum, over 8 months after the hearing on the Motion to Convert, the Debtor's Chapter 13 Plan has still not been confirmed and is likely unconfirmable based on eligibility, good faith, and feasibility issues. *See, e.g.*, [Doc. No. 83]. Mr. Austin and Lawson Realty, Inc. have been harmed by this unnecessary and intentional delay and the debtor has made a complete mockery of the Court's "fast track" directive..

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25. The Objectors object to confirmation of Debtor's Chapter 13 Plan for the following reasons. First, it is not proposed in good faith. Debtor's actions during the Case including his intentional disregard of the Bankruptcy Code and the Bankruptcy Rules are evidence of Debtor's bad faith.

26. Second, the plan is not feasible. Debtor has not been able to maintain his plan payments while the Case has been pending under Chapter 13, and he has not complied with the Bankruptcy Code or the Bankruptcy Rules. There is no basis to believe that Debtor will be able to fulfill his obligations under the plan.

27. Third, based on Mr. Valldejuli's proffer at the May 11, 2016 confirmation hearing, it does not appear that Debtor has regular monthly income and is thus not eligible to be a debtor under Chapter 13. *See* 11 U.S.C. § 109(e) (2015).

28. Fourth, for the reasons as set forth in the Supplemental Objection to Confirmation [Doc. No. 83] filed by the Chapter 13 Trustee on June 23, 2016.

29. Fifth, confirmation of the Plan would not be in the best interest of creditors.

30. The Objectors represent all of the scheduled creditors in the case and lack any confidence in the of Debtor and Mr. Valldejuli to comply with the Bankruptcy Code and Rules and protect the interests of creditors. They request that the Court deny confirmation of the Chapter 13 Plan and reconvert this Case to a case under Chapter 7.

WHEREFORE, AGG prays that the Objection be sustained, that this Case be converted to a case under Chapter 7, and that the Court grant such other and further relief deemed just and proper.

Respectfully submitted.

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