

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE : CASE NO. 15-64523-PWB
 :
CLAUDIO PABLO AVENDANO, :
 :
 :
 : CHAPTER 13
DEBTOR. :

**UNITED STATES TRUSTEE’S OBJECTION TO CONFIRMATION
AND MOTION TO RECONVERT CASE**

COMES NOW Guy G. Gebhardt, the Acting United States Trustee for Region 21, in furtherance of his administrative responsibilities imposed by 28 U.S.C. § 586(a), and respectfully moves this Court to deny confirmation of the chapter 13 plan filed by Claudio Pablo Avendano (the “Debtor”) and enter an order reconverting this case pursuant to 11 U.S.C. § 1307(c). In support of this motion, The United States Trustee states as follows:

1. On or about August 3, 2015, Debtor *pro se* filed a voluntary petition under Chapter 7 [Docket No. 1]. The Acting United States Trustee appointed Neil C. Gordon (the “Chapter 7 Trustee”) as the acting chapter 7 trustee for this case.

2. On October 15, 2015, the Chapter 7 Trustee conducted and concluded the 341 Meeting. During the October 15 meeting the Chapter 7 Trustee and Debtor

addressed an orderly liquidation of Debtor's assets, including a subdivision located in Chile containing 161 one acre lots.

5. On October 25, 2015, Richard K. Valldejuli, filed on behalf of Debtor a Motion to Convert Chapter 7 Case to a Chapter 13 [Docket No. 21] ("Motion to Convert"). Objections to the Motion to Convert were filed by the Chapter 7 Trustee and by Jerry E. Austin and Lawson Realty, Inc., creditors of Debtor.

6. On December 16, 2015 the Court entered an order granting the Motion to Convert.

7. The Chapter 13 341 Meeting in this case was conducted on February 18, 2016 and a hearing on confirmation of Debtor's chapter 13 plan was scheduled for May 11, 2016.

8. During the May 11, 2016 Confirmation Hearing, Debtor's counsel revealed that ten (10) of the Debtor's Chilean parcels had been sold post-petition without Court approval. During the hearing counsel stated that a report would be filed accounting for the proceeds of the sale. Upon information and belief no such report has been filed in the 56 days since the May 11 hearing.

9. To date Debtor has failed to file any motion to sell property, motion to ratify sales of property, applications to employ any professionals such as a real estate

agent or broker. The record is silent as to which properties were sold, how they were marketed, to whom, and for how much.

10. Debtor has acted in bad faith by failing to properly obtain authority from the Court for the sales of these properties. Debtor not only failed to provide notice to the Court of the sale, but also failed to provide any explanation as to the disposition of the proceeds.

11. Debtor's continued failure to provide basic details of his unauthorized sales of real property demonstrates a blatant disregard for the Bankruptcy Code and Court.

12. Based upon the foregoing, the United States Trustee alleges that Debtor's conduct is indicative of bad faith and accordingly, Debtor's plan fails to meet the confirmation standards required by 11 U.S.C. § 1325(a)(3) and (4) due to his failure to demonstrate good faith.

13. Pursuant to 11 U.S.C. § 1307(c), on request of a "party in interest or the United States trustee," a bankruptcy court may dismiss a chapter 13 case for cause. Section 1307(c) provides a non-exhaustive list of "causes" that constitute grounds for dismissal. *See* 11 U.S.C. § 1307(c); *In re Watkins*, 2007 WL 539144 at *3-4 (E.D.N.Y., 2007) (chapter 13 case dismissed for cause under section 1307(c) due to debtor's failure to propose confirmable plan after three continuances); *In re Green*, 141 B.R. 440,442 (Bankr. M.D.Fla. 1992) (chapter 13 case dismissed for cause due to debtor's failure to

schedule all of her assets as required by section 521(i)). A debtor's willful disregard of the responsibilities imposed by the Bankruptcy Code must constitute cause for dismissal or conversion under section 1307(c).

14. Dismissal or conversion is an appropriate remedy for a debtor's continuing failure to comply with the mandatory obligations under the Bankruptcy Code. *See In re Harris*, 226 B.R. 924, 926 (Bankr. S.D. Fla. 1998). *See also In re Gilton*, 2006 WL 6810991 at *3-4 (E.D.Ca. 2006) (deeming a disregard of the Bankruptcy Code as a factor in the totality of circumstances used to establish "for cause" dismissal pursuant to Section 1307(c)).

15. The record in this case demonstrates Debtor's willful failure to abide by the mandatory obligations imposed under the Bankruptcy Code. Because Debtor has not properly prosecuted his case cause exists under section 1307(c) for the Court to convert this case.

WHEREFORE, the United States Trustee respectfully requests that this Court deny confirmation of Debtor's chapter 13 plan and reconvert this case pursuant to 11 U.S.C. §§ 1307(c) and 105(a), and grant any other relief the Court deems necessary and appropriate.

GUY G. GEBHARDT
Acting United States Trustee
Region 21

