

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

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

**MOTION TO RATIFY SALE OF REAL PROPERTY  
LOCATED IN PUNTA CHOROS, CHILE, S.A.**

**COMES NOW**, the above-captioned Debtor, and herein does petition the court to ratify the post-petition sale of certain parcels of real property held by the estate located in Chile, South America (hereinafter “the Property”) by private sale and in support thereof shows the following:

1.

Debtor filed pro se a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code on August 3, 2015 initiating this case. 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).

2.

On October 25, 2015, Debtor filed a *Motion to Convert Chapter 7 Case to a Case under Chapter 13* (Doc. No. 21), which, after a hearing, was granted by Order entered December 16, 2015 (Doc. No. 43).

3.

Debtor's assets include a 161 acres located on the coastline of Camino Punta Choros, Chile, SA, that he purchased in 2001 (the “Chile Property”). Attached hereto as Exhibit “A” is an aerial photo of the Chile Property. On July 24, 2006, the Chile Property was

subdivided into 161, one (1) acre lots (the “Subdivided Lots”). Attached hereto as Exhibit “B” is the Subdivision Deed and parcel map.

4.

On March 31, 2016 the Court entered an Interim Order addressing the objections to confirmation of Jerry E. Austin (“Austin”), Lawson Realty, Inc. (“Lawson”)<sup>1</sup> and the Chapter 13 Trustee (Doc No. 70). The Interim Order provided that the case be re-converted to Chapter 7, unless the Debtor paid the February and March, 2016 post-petition mortgage payments Austin and Lawson pursuant to the terms of their respective Note no later than March 31, 2016.<sup>2</sup>

5.

Debtor’s Second Amended Plan filed May 11, 2016 (Doc No. 75), provided for monthly Plan payments in the amount of \$875.00; making all post-petition mortgage payments directly to each mortgage creditor as they ordinarily come due and, in part, proposes to pay creditors from the sale proceeds of the Subdivided Lots.

6.

At the second rescheduled hearing on confirmation held on May 11, 2016, the Court was informed that certain lots of the Chile Subdivision had been sold and the proceeds used to fund the Debtor’s post-petition mortgage obligations to Austin and Lawson, Plan payments, living expenses and insurance.

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<sup>1</sup> The holders of the 1st and 2nd deeds to secure debt (respectively) of commercial property located at 155 Liberty Road, Villa Rica, GA 30180.

<sup>2</sup> The sum required to be paid totaled \$7,320.94.

### **Process and Procedure of Selling Land in Chile**

7.

Unlike most other countries, buying and selling property in Chile is secure and usually easy. Like the US, a realtor, or broker, finds a buyer and communicates this to the seller. All commissions and/or compensation are paid by the buyer. A buyer makes a written "Offer to Purchase" to the Broker with the value offered and a payment equal to 10% of the offer amount as earnest money to be held by the Broker. If the offer is accepted by the owner, the Broker writes a "Promise of Sale" that broadly identifies the real estate, stating the accepted form of payment, establish deadlines to conclude the sale and payment of commissions. The Promise of Sale agreements need to be notarized then sent to the Real Estate Registry, a government office, and registered with the Registration Property Clerk. The whole process of registering a property can be completed in around 20 to 40 days.

### **Determining Sale Price - Valuation of Subdivided Lots**

8.

Mr. Avendano believed the value of the Subdivided Lots would range between 4 to 6 million pesos.<sup>3</sup> Investigating prices in the community of Camino Punta Choros, was difficult in that most of the neighboring lands are National Parks and there are few, if any, realtors that had listings for the area. Mr. Avendano relied on the advice of brokers in arriving at a price point that would attract buyers, which worked out to be an average price of 2million and 5 million pesos per Subdivided Lot.<sup>4</sup> Prior to arriving in Chile, Mr. Avendano received from two Realtors in Chile, Hans Lenert and Claudio Gacitua , a list of

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<sup>3</sup> At that time, the exchange rate was 1 Chilean Peso = .00148 dollars. As of July 7, 2016, 1 Chilean Peso = .00151 dollars

<sup>4</sup> Lots closer to the main road are more desirable, thus more expensive.

buyers interested in purchasing thirty (30) of the Subdivided Lots at a price of 2 million Pesos each (see Exhibit “C”). That would yield 60 Million Pesos, which, at the exchange rate in March 2016, would be \$88,800.00 US Dollars.

### **Trip to Chile to set up sales of the Subdivided Lots**

9.

On March 29, 2016, Mr. Avendano flew from Atlanta directly from Santiago to La Serena where he was met at the airport by Patricio Alvia, a Broker who would be assisting buyers in preparing the Promise of Sale agreements, and making sure they get registered with the Registration Property Clerk. He is also the topographer who would be staking out the properties for the buyers. As it turned out, only ten (10) Subdivided Lots were actually sold.

### **Subdivided Lots Sold**

10.

The identity of the buyers, their relationship to Mr. Avendano, the Lots sold and the purchase prices are as follows:

#### **Exhibit D.**

**Date:** March 18 2016 – **Lot # 77:**

Purchaser: Munizaga Giadrosich Pedro Enrique

Relation to Debtor: None

Price: 2.5M pesos or **\$3,703.70 dollars**

#### **Exhibit E.**

**Date:** March 18 2016 - **Lot #80**

Purchaser: Ramirez Munizaga Loreto Alehandra

Relation to Debtor: None

Price: 2.5M pesos or **\$3,703.70 dollars**

**Exhibit F.**

Date: March 30 2016 - Lot #'s 112, 113, 114, 115, 116

Purchaser: Claudio Alfredo Gacitua Cavagnaro

Relation to Debtor: None

Price: 10M pesos or **\$14,814.81 dollars**

**Exhibit G**

Date: March 30, 2016- Lot # 55

Purchaser: Maria Gabriela Gutierrez Santelices

Relation to Debtor: None

Price: 2M pesos or **\$2,962.96 dollars**

**Exhibit H.**

Date: April 7, 2016 - Lot #57

Purchaser: Cecilia Rosa Aranda Olguin

Relation to Debtor: None

Purchase Price: 4.5M pesos or **\$6,666.67 dollars**

**Exhibit I.**

Date: April 7, 2016 - Lot #41

Purchaser: Jocelyn Andrea Peralta Salinas

Relation to Debtor: None

Purchase Price: 4.5M pesos or **\$6,666.67 dollars**

An Excel Spreadsheet reflecting an “at a glance” reports of the above sales and expenses as well as a Parcel Map identifying Lots sold are attached hereto as “**Exhibit J**”.

11.

**Sale Proceeds wired to US**

3-18-16	Chile Express (Western Union)	\$ 4,031.00 (5 money Orders)
3-19-16	Chile Express (Western Union)	\$ 1,450.00
4-4-16	Wire Transfer from Bachile	\$ 8,500.00
4-4-16	Wire Transfer from Bachile_	<u>\$ 2,000.00</u>
	Total	<b>\$16,411.39</b>

**Payments Made to Creditors:**

Wire Trasnfer to Harrison & Horan 3-28-16	\$ 5,800.00
Wire Trasnfer to Harrison & Horan 3-28-16	\$ 1,520.94
Wire Trasnfer to Harrison & Horan 4-15-16	\$ 3,207.19
Wire Trasnfer to Harrison & Horan 4-15-16	\$ 453.27
Account Deposit to Austin 5-10-16	\$ 3,207.19
Wire transfer to Harrison & Horan 7-6-16	<u>\$ 3,486.16</u>
Total	<b>\$17,674.75</b>

**Payments made to Chapter 13 Plan:**

Trustee Payments 5/11/16	\$1,750.00
Trustee Payment 5/12/16	\$ 875.00
Trustee Payment 6/29/16	\$ 875.00
Trustee Payment 7/15/16	<u>\$ 875.00</u>
<b>Total</b>	<b>\$4,375.00</b>

**Account Balance BanChile: \$2,846.69**

**WHEREFORE**, based on the foregoing facts, Debtor prays that the Court enter an order (a) finding that the Debtor proceeded with these sales in good faith, (b) approving the aforementioned sales of Subdivided Lots (c) authorizing the payment of ordinary costs associated with said sales, (d) authorizing Debtor’s expenses for travel (e) authorizing the Debtor’s retention of any remaining proceeds after payments of post-petition mortgage installments made to Austin and Lawson totaling \$17,674.75, after payments to his Chapter 13 Plan in the sum of \$4,375.00 and the amount on deposit with Bachile in the amount of \$2,846.69 as necessary living expenses and (f) granting such other relief as is just and proper.

This 7<sup>th</sup> day of July, 2016.

Valldejuli & Associates, LLC  
2199 Lenox Road, Suite A  
Atlanta, Georgia 30324  
(404) 636-9957

\_\_\_\_\_/s/\_\_\_\_\_  
Richard K. Valldejuli, Jr.  
Ga. State Bar # 723225  
Attorney for Debtor

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served all parties in the foregoing matter with a true and correct copy of the foregoing Addendum to *Debtor's Motion to Convert Chapter 7 Case to a Case Under Chapter 13* by consent of the parties, the following have received an electronic copy to:

Office of the United States Trustee  
362 Richard B. Russell Federal Building  
75 Ted Turner Drive, SW  
Atlanta, GA30303

Neil C. Gordon  
Arnall, Golden & Gregory, LLP  
Suite 2100, 171 17th Street, NW  
Atlanta, GA 30363

I further certify that the following have received by United States Mail, in a properly addressed envelope with adequate postage thereon to:

Jerry E. Austin  
c/o Victor J. Harrison  
Harrison & Horan, P.C.  
Suite 101, 3150 Golf Ridge Boulevard  
Douglasville, GA 30135

Lawson Realty LLC  
4857 Yeager Road  
Douglasville, GA 30135

I further certify that the following have received by e-mail to:

Victor J. Harrison  
Harrison & Horan, P.C.  
Suite 10, 3150 Golf Ridge Boulevard  
Douglasville, GA 30135  
[vharrison@westgalaw.com](mailto:vharrison@westgalaw.com)

This 7<sup>th</sup> day of July, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
Richard K. Valldejuli, Jr.  
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Attorney for Debtor

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