

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

In Re:	:	
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CLAUDIO PABLO AVENDANO,	:	CASE NO. 15-64523-PWB
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Debtor.	:	CHAPTER 7
	:	
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	:	
NEIL C. GORDON, Trustee for the	:	
Estate of Claudio Pablo Avendaño,	:	
	:	
Movant,	:	CONTESTED MATTER
	:	
v.	:	
	:	
CLAUDIO PABLO AVENDAÑO,	:	
	:	
Respondent.	:	
	:	
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**NOTICE OF FILING OF ANALYSIS OF FUTURE EFFORTS TO ADMINISTER AND TO CLOSE BANKRUPTCY CASE.**

COMES NOW Neil C. Gordon, as the Chapter 7 Trustee (the “**Trustee**”) of the bankruptcy estate (the “**Estate**”) of Claudio Pablo Avendaño (the “**Debtor**”) and, as directed by this Court’s Order (Doc. No. 201) entered August 30, 2019, files this *Notice of Filing of Analysis of Future Efforts to Administer and Close Bankruptcy Case*.

**CURRENT STATUS OF CASE**

Filed claims of Jerry Austin, Lawson Realty, and Douglas County (excluding the withdrawn claims of Douglas County) total \$278,058.01(USD)<sup>1</sup>. This amount does not include the filed claim of Arnall Golden Gregory LLP (“AGG”) (which relates to a previously approved fee application and which will be included in the amount listed below for the administrative expenses of Debtor’s counsel) or the filed claim in the amount of \$25,000.00(USD) of Debtor’s former counsel Richard Valdejuli.

<sup>1</sup> In a surplus, solvent bankruptcy case, creditors are also entitled to interest on their filed claims.

Based on existing receipts of over \$490,000.00(USD) disbursements of \$415,064.13(USD), as shown on Form 2 of the last Trustee's interim report (Doc. No. 188)<sup>2</sup>, and anticipated disbursement to creditors (\$278,058.01(USD)), to AGG (current fees as of the end of August \$119,440.32(USD)), to the Carey firm as Trustee's special counsel in Chile (current fees \$35,271.26(USD)), to Trustee's accountant (\$10,000.00(USD)), and to tax authorities (\$40,000.00(USD)), disbursements will likely exceed \$1,060,000.00(USD). The minimum commission on a \$1,060,000.00(USD) disbursement case is \$55,050.00(USD) (and the commission is an additional 3% of any amounts disbursed over \$1,060,000.00(USD)).

AGG current fees and expenses as of the end of August of 2019 are \$119,440.32(USD). The Carey firm's current fees are \$35,271.26(USD).

Chile tax liability is expected to be \$0.00 under Chilean law.

The Auctioneer commission is to be paid by the buyer of the lots.

U.S. accountant Spence Shumway has expected fees of \$10,000.00(USD) for analysis of tax consequences and for preparation of U.S. tax returns for the estate.

U.S. tax liability is expected to be between \$0.00 and \$25,000.00(USD) (if the lots in Chile are sold for the higher value expected above the minimum bid).

Georgia tax liability is expected to be between \$0.00 and \$15,000.00(USD) (if the lots in Chile are sold for the higher value expected above the minimum bid).

The bankruptcy estate currently holds \$76,741.38(USD).

### ***SCENARIO 1 – Possible Small Surplus Case if Debtor Ceases Quixotic Litigation***

If the lots in Chile are sold as an assemblage, the minimum bid is \$335,500.00 (USD), but the lots are expected to bring \$577,200.00 (or more) (USD).

If Debtor ceases to undertake activities that require Trustee and his counsel and his special counsel in Chile to continue to expend time and efforts in litigation, AGG's administrative expense claim to close this case will be between \$130,000.00(USD) and \$140,000.00(USD), and the Carey firm's administrative expense claim will be between \$45,000.00(USD) and \$50,000.00(USD).

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<sup>2</sup> Form 2 (Doc. No. 188) shows disbursements of \$435,064.13, but one disbursement of \$20,000.00 was for a return of earnest money and is non-compensable.

(This will include any tax return preparation needed in Chile. Expected tax liability in Chile is zero.).

**The total of the above amount to be paid from the Bankruptcy Estate is a minimum of \$278,058.01 + \$55,050.00 + \$130,000.00 + \$45,000.00 = \$508,117.18(USD).**

**The accountant fees are expected to be \$10,000.00(USD) and the amount of the tax liability in the U.S., if the auction sale brings \$577,200.00(USD), will be \$25,000.00(USD) federal tax and \$15,000(USD) state tax. This brings the amount to be paid from the Bankruptcy Estate to \$558,117.18(USD).**

If Trustee is permitted to sell the lots as an assemblage without interference from the Debtor, this is likely to be a surplus bankruptcy case since the estate currently holds \$76,741.38(USD), and the sale of the lots will result in an additional deposit of between \$335,500.00(USD) and \$577,200.00(USD). The Trustee's professionals in Chile expect that the auction in Chile will result in the higher auction bid of \$577,200.00(USD) (or more). The auction can be conducted and concluded within a few months and with closing and sale costs limited to those associated with a sale to a single buyer of the entire assemblage.

***SCENARIO 2 – Likely no Surplus Case if Debtor is Unsuccessful in his Litigation and Trustee is Required to Litigate to Convince Court in Chile that Lots Should be Sold as an Assemblage***

If Debtor continues his past practice of litigating with the Trustee at every step and failing to cooperate with the Trustee, and if Debtor continues such litigation and appeal efforts in the court in Chile, AGG's administrative expense claim to close this case will be between \$200,000.00(USD) and \$230,000.00(USD), and the Carey firm's administrative expense claim will be between \$80,000.00(USD) and \$100,000.00(USD). (This will include any tax return preparation needed in Chile. Expected tax liability in Chile is zero.). Total MINIMUM increased fees to counsel is between \$70,000(USD) to \$100,000(USD) for AGG and between \$35,000(USD) and \$55,000(USD) for Carey. This contemplates a multi-year process of litigation and appeals.

The total amount to be paid from the Bankruptcy Estate will therefore increase to a minimum amount of  $(\$278,058.01 + \$55,050.00 + \$200,000.00 + \$80,000.00 + \$10,000.00 + \$40,000.00 =)$  \$663,108.01(USD) or a likely higher amount of  $(\$278,058.01 + \$55,050.00^3 + \$230,000.00 + \$100,000.00 + \$10,000.00 + \$40,000.00 =)$  \$713,108.01(USD).

Assuming Debtor is unsuccessful in his litigation efforts and Trustee is permitted to sell the lots as an assemblage and the higher expected bid price is made, the amount the estate will have on hand is \$577,200.00 (or more if the auction brings more) plus \$76,741.38(USD), which is \$653,941.38(USD).

In summary, if Debtor continues to litigate and continues to cause the Trustee to incur administrative expenses, this will likely not be a surplus case.

***SCENARIO 3 – Creditors not Paid in Full if Debtor is Successful in Litigation and Trustee is Required to Sell Lots in Chile on a Piecemeal or Lot-By-Lot Basis***

As stated above, if Debtor continues to litigate, the total amount to be paid from the Bankruptcy Estate will be between  $(\$278,058.01 + \$55,050.00 + \$200,000.00 + \$80,000.00 + \$10,000.00 + \$40,000.00 =)$  \$663,108.01(USD) or a likely higher amount of  $(\$278,058.01 + \$55,050.00 + \$230,000.00 + \$100,000.00 + \$10,000.00 + \$40,000 =)$  \$713,108.01(USD).

If Debtor successfully convinces the court in Chile that lots shall be sold by the Trustee on a piecemeal basis (after the Trustee litigates this issue due to the poor judgment involved in such a decision), the sale of the lots WILL NOT result in proceeds sufficient to pay all claims and will take several years. Under such a procedure, the best lots will be sold first, and the remaining lots will then have reduced values. In other words, the Trustee's professionals do not believe that selling the lots separately can possibly result in a surplus case. Also, the administrative costs of selling lots piecemeal will result in an increase in administrative expenses. Therefore, the Trustee

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<sup>3</sup> The \$55,050.00 figure representing the Trustee's commission will likely increase since the amounts disbursed by the estate exceed \$1,060,000.00.

and his special counsel in Chile will have no choice but to litigate with the Debtor to try to maximize the sale proceeds by selling the lots in Chile as an assemblage.

A series of lot-by-lot sales will take many years and will involve closing costs associated with each sale and attorney fees in the United States and in Chile. Administrative expenses will be much higher under this scenario, as the sale of each lot will have to be documented. The overall value of the lots is at risk due to future events such as an earthquake, other natural disaster, or an economic recession.

Debtor testified at his 341 meeting that he had tried for some years unsuccessfully to sell at a value of \$4,000.00(USD) per lot. The unauthorized sales that took place during the chapter 13 case reflected sales of less than \$4,000(USD) per lot even before deducting closing costs.<sup>4</sup> Debtor's "Motion to Ratify Sale of Real Property" (Doc. No. 90) indicates (at pp. 4-5) that Debtor (without authorization) sold ten (10) lots in 2016. Only two of those lots sold for more than \$4,000.00 each. [Footnote 2 of Doc. No. 90 states: "Lots closer to the main road are more desirable, thus more expensive."]. Six (6) lots sold for less than \$3,000.00 each (with a single sale of five (5) lots to one buyer). And two (2) lots sold for \$3,703.70 each. After closing costs, only a portion of the sale proceeds of these piecemeal sales of lots made it to the United States. Referring to Doc. No. 90 and the exhibits thereto, at a hearing on July 7, 2016, the Court stated:

There's 30 something thousand dollars in sales and 16,000 got to the United States and I don't know where the rest of it went. At least not from the document. There's I think 37 or \$38,000 of lots sold under paragraph ten and then it says, paragraph 11 says, sixteen thousand and change is sent to the United States. And it says - in paragraph ten the end says, and an excel spreadsheet reflecting reports of the sales and expenses is Exhibit J. Well, that's the document we was talking about during the hearing. And it shows expenses in dollars, as best I can tell of being about \$5,300 and change. So I don't know where the money went. That 5,300 includes the 4,444 that Mr. Mayer got. Maybe I'm missing something, but - so that, I mean that just to me indicates an inability to make this case work in accordance with the bankruptcy rules - perspective inability. And I've already

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<sup>4</sup> And the lots sold by Debtor without court authorization were some of the higher value lots.

said, I, I think the, in the overall context of the case, I don't like to make this type of observation, but the, the failure to sale the Villa Rica property I would say is at best an exercise of not the best business judgment, in the context of this case.

Doc. No. 101, Transcript of July 7, 2016 Hearing at p. 155, lines 2-21.

At \$4,000(USD) per lot and 155 lots, the maximum obtained would be \$620,000 before closing costs. The Trustee's professionals in Chile value the lots sold as an assemblage at between \$335,500.00(USD) and \$577,200.00(USD). All of the evidence is consistent with the estimates by the Trustee's professionals regarding the value of the lots. However, selling the lots piecemeal after litigation will not result in any surplus and will result in a distribution of less than 100% to creditors.

To conduct individual sales, each sale would need to be approved by the court, or, if a general authorization can be obtained to sell the lots individually, counsel in Chile would still need to inform the court of the sales. There would be transaction costs for each individual sale that would be, in the aggregate, significant. Sales of real estate property in Chile need to be granted by a public deed and then registered in the Real Estate Registrar. Each individual parcel would need to have its own public deed and its own registration, at a cost of at least \$250.00(USD) per transaction. In addition, each individual sale price and conditions would need to be negotiated, with the corresponding attorney's fees. There would be continuing costs to advertise the properties on the market. Also, it would take a significant amount of time to sell all of the lots individually, of at least a few years, in which attorney's fees and other transaction costs would continue to accumulate. These lots are in a rural, desert area, and a developer buying the complete property as an assemblage could make the investments necessary to sell the lots on more attractive terms.

Respectfully submitted this 13th day of September, 2019.

ARNALL GOLDEN GREGORY LLP

*Attorneys for Trustee*

By: /s/ William D. Matthews

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**CERTIFICATE SERVICE**

This is to certify that I have mailed a copy of the Trustee's *Notice of Filing of Analysis of Future Efforts to Administer and Close Bankruptcy Case* by electronic mail to:

Office of the United States Trustee  
362 Richard B. Russell Bldg.  
75 Ted Turner Drive, SW  
Atlanta, GA 30303  
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Claudio Pablo Avendaño  
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[claudio@metroecho.com](mailto:claudio@metroecho.com)

This 13th day of September, 2019.

/s/ William D. Matthews

William D. Matthews