

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF GEORGIA ATLANTA  
DIVISION

IN RE: )

CASE NO. 15-64523-PWB

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CLAUDIO PABLO AVENDANO

CHAPTER 7

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Debtor

**CONFLICTS OF INTEREST OF THE TRUSTEE**

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**MOTION FOR AN ALTERNATIVE COURSE OF ACTION  
(TWO PARTS, BACKGROUND AND PROCESS)**

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**RECONSIDERATION OF TRUSTEE'S MOTION FOR APPOINTMENT OF REAL ESTATE  
BROKER AND FOR APPROVAL OF PAYMENT OF ADVERTISING COSTS**

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COMES NOW Claudio Avendano (DEBTOR) and not an attorney, presents this pro se motion to the best of his capacity, and so respectfully shows this Court as follows:

## CONFLICTS OF INTEREST OF THE TRUSTEE

1. There are two potential conflicts that have recently come to my attention ,

a. [Services provided by the Daniel Bradfield of the law firm of Arnall Golden Gregory in 2010, for the Debtor](#), specific to the properties in Chile. (exhibit)

b. The Creditors attorney Victor Harrison represented my ex wife, in a property deal, as part of my divorce. (exhibit)

2. My ex-wife, has a particular interest in the estate's Timmons Circle property and requested sale by the Trustee. This property is a critical addition to her adjoining 40+ acre tract. Mr Harrison had been instrumental in transferring this land to her, in my divorce. A Creditor/Trustee combo with motives that may to have alternative motives to the proper execution of this case. Attorney Valdejulli remarks, at the the July 7, 2016 confirmation hearing, "**I have never seen a creditor and Trustee united.**" [Page 32 of the transcript](#).

**3. I asked why would the creditors wish to push so hard to abandon a Chapter 13 where they are getting paid on time and at a higher price, then push to sell the property for less.** In this case the only Debt is the secured property sold and financed by the Creditors. My concern was that the 155 Liberty Road buyer may have been associated to the creditors. Not only would the sale price would be unimportant, since the full values would be eventually paid to the creditors, but the creditor could sell to family or friend. The property was sold in a quick unadvertised sale. The creditor could easily contact friends to buy the property for less, and still get paid full price. I filed a motion pointing out the familial names of the only buyer that was presented by the Trustee, but my motion was ignored. This creditor/seller problem was pointed out by Attorney Valdejulli at the July 7, 2016 confirmation hearing. [Page 34 of the transcript](#)

4. In [a memorandum](#) (November 21,2016), I pointed, to the local nature of the buyers, and of my involvement with a closed interconnected political community in Douglas County - to the interference in my business activities by individuals of this community prior to bankruptcy. I speculated that this intervention may have had potential ties to the Creditors.

### **5. Summary to the conflicts of interest**

**In the continuation of this motion, I will show that the Trustee has not acted in a manner expected of a Trustee, but in such way to convert the estate into administrative fees.**

**That in particular when a surplus estate is entrusted to a Trustee, in a Chapter 7 case, the Debtor is left without any access to funds to properly hire council and defend from improper activities of the Trustee.**

**I respectfully request that this Court find an alternative to this Trustee. That the Trustee provide a stated amount to pay. That open and advertised sales be conducted either via a**

directed method sale by this Court, a return to the Chapter 13 which had been successful, or a Chapter 11.

## MOTION FOR AN ALTERNATIVE COURSE OF ACTION

(TWO PARTS, BACKGROUND AND PROCESS)

<http://metroecho.com/transcript>

### 6. BACKGROUND (TO THE CONVERSION)

Will show that Debtor, had a working plan, that was not properly presented to the Court, causing a Chapter 13 to be converted to a Chapter 7 liquidation. That the Debtor has had far more financial interest than the Debt owed to the Creditors. That the debtor presented all documentation timely, to his attorney, but this information was not properly presented to the Court. That Debtors attorney never indicated that there were any issues with his non compliance. At the time of conversion the Court recognized this as a surplus case and the Debtors standing in this case.

### 7. PROCESS (BY THE TRUSTEE AFTER THE CONVERSION)

Will show that the Chapter 7 Trustee failed to follow his own assurances of working with the Debtor, to sell properties in Chile, and to preserve the Debtors business. The trustee instead followed a path that would extend the debt, not timely pay creditors, abandoned assets that could have been sold, and then annihilated the Debtors business. The Trustee then took the most optimum path to delay this case, and increase administration fees with willful disregard of the Debtor's estate.

# BACKGROUND

8. On June 29, 2015 the Creditor Jerry Austin, executed a wrongful foreclosure, not permitting the Debtor the 30 day notice required under their mortgage agreement. Thus setting into motion the events that have placed this case where it is today. I respectfully ask this court to consider Massachusetts v. Environmental Protection Agency (549 US 497, 2007), as the U.S. Supreme Court cites "all for the want of a horseshoe nail" as an example of a possible chain of causation initiated by the creditor.

Exhibit wrongful foreclosure <http://metroecho.com/foreclosure>

9. With more assets than debt, in August of 2015, accelerated by the Creditors wrongful foreclosure, Debtor rushed and mistakenly filed a Chapter 7.

10. On October 15 2015, Richard Valdejulli made an entry of appearance and the case was converted to Chapter 13 by order entered on December 16, 2015.

11. I was told by my attorney I could now lease the commercial property, and I began operating both my tailoring and the storage business. Attorney Richard Valdejulli and I discussed a plan I had been working on prior to coming to this Court, to preserve my two businesses, storage (storeitorsellit.com) and tailoring. To pay obligations via income, and the retail sale of assets in Chile.

Storage Business <http://storeitorsellit.com/>

Tailoring Business [Claudio Avendano Tailors](#)

12. Although this was the plan we had agreed to, this was not what was presented to the Court. I was also not informed of other amendments to the plan made by my attorney.

13. Several months before the bankruptcy I been developing relationships in Chile to be able to sell properties there. I created two marketing websites in order to search out buyers for these Chilean properties. I had pending offers in Chile ready for sale, and individuals were in place to produce a stream of income from the retail sale of properties.

Marketing Website <http://metroecho.com/at/cl/la-serena>

Property Website <http://puntachoros.com/>

14. Valdejulli offered to pay for my flight to Chile, I told him I had enough to cover the trip. A flight was scheduled for March 9, 2016 to prepare the property for sale, and conduct the first sales in order to pay creditors. Prior my travel date I expressed my concerns to my attorney that I would miss the confirmation scheduled for March 9 2016, he said “ **I can handle this hearing, you just go to Chile, and kick butt!**”.

15. I went to Chile on March 9, 2016 and was there till April 14, 2016. I went directly from Santiago to La Serena where I was met at the airport by Patricio Alvia and Christian Mayer. These individuals along with other realtors had buyers ready to purchase several lots of this subdivision. During the time in Chile I followed the instructions of my attorney to the letter, and provided sales information in detail, and in real time. I would wire to him the proceeds, and he paid timely all required obligations.

Documentation of sales was presented to my attorney in real time, images of documents were taken at closing and then uploaded, and spreadsheets would graphically detail all transactions. None of this was presented to the Court by my attorney.

Example of single sales documentation <http://metroecho.com/node/336>

Spreadsheet of accounting <http://metroecho.com/sites/default/files/sheet%20of%20sales.jpg>

Graphic of lots and sales

<http://metroecho.com/sites/default/files/LOTS%20SOLD%20MAY%202016.png>

16. Only after I returned from Chile would I begin to understand that documents and procedure had not been followed. At the May 11 2016 hearing, I learn he had not “handled” this at all. The court provides additional time, and Valdejulli tells me there is no problem. There was a third hearing pending for July 7, 2017, I would discover that my attorney still did not file the sales we had been conducting in Chile, nor had he obtained initial approval.

[The hearing March 9 hearing is continued for May 11 2016](#)

17. The court points to transparency, and good faith as the principal issues in this case, and reason for not confirming. The emails attached show that I was fully transparent, and timely with information to my attorney. I relied on my attorney, I was told by my attorney that all was well with the case. I expected all information was conveyed to the Court, as the law required. I never had any notice from my attorney that there might be any issues.

[This email exchange with Valdejulli of sales in Chile](#)

18. I came to the July 7, 2016 confirmation hearing completely unaware there was any problem at all, as can be seen by the exchange of cell phone text messages between attorney Valdejulli and myself from the period from my return from Chile, to the date of the hearing.

[Cell messages from when I returned from Chile to the July hearing](#)

19. Even while I sat in Court I did not fully understand the issues. Only this month when I was able to read the transcript, did I understand that documentation had not been filed, and that the plan presented did not include any of the aspects Valdejulli and I had agreed upon. That the plan my attorney, and I had discussed and executed was not what was presented to the Court. I had not seen nor signed what my attorney was presenting to the Court. My attorney would tell me up to the date of the July 7, 2016 hearing that all was well.

[91- Gordon- I had not read the plan, had no clue what it said. I was going only by what my attorney was instructing me.](#)

[98- Kirkland - did you sign those plans - I dont believe so](#)

20. As to the complaint by the Chapter 13 Trustee, that the repayment plan was too long and over too many months. While I was in Chile I had presented to Valdejulli additional sales offers, at lower prices. These sales could have paid all the arrearage, and made the mortgage whole. Valdejulli advised me not to sell, to wait and stick with the plan. In fact, besides not filing documentation, all of the objections presented in the proceedings of the confirmation hearing were trivial. I could have waited in Chile for any amount of time for the proper ratification of sales, and we could have paid any amount the Creditors and the Court had requested.

I had established a strong income stream, Valdejulli knew this, and I think Neal Gordon was also well aware of the increased values of these properties.

[Email presenting additional sales offers](#)

[List of sales offers presented in 2017](#)

21. In my examination by David Weidenbaum, I learn that one of the most valued assets, the **storitorsellit.com website and business** were not included in the plan. I also learn for the first time that the Chapter 13 plan had not been reviewed, or signed by me.

Pages 99 [101- Weidenvaum Storeitorsellit should have been on the plan](#)

## PROCESS

22. At the conversion hearing the Chapter 7 Trustee, Neil Gordon, gave assurances that he was the best course for both the estate and the creditors. That if converted he would work closely with the Debtor to sell properties in Chile, pay mortgage and preserve my business.

Transcript July 7, 2016.

Page [113 Gordon deuty I owe the creditor , max value working closely](#)

Page [114- Gordon that he could retain the commercial property](#)

23. The conversion was granted and the Neil Gordon was re-appointed on July 18, 2016. Administered as a Chapter 7 liquidation, the Trustee promptly decided not to collaborate with the Debtor and ignored any and all sales I presented to him. The outcome has been needless losses, abandoning, or selling assets at below value, and has only served the purpose of delay, and generating excessive administrative fees for the Trustee. This was pointed out at the July 7, 2016 hearing, by attorney Valdejulli.

[125-valdejulli- Trustee will liquidate everything into fees](#)

24. 11 U.S. Code § 704 - Defines the first duties of the trustee as - (1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible **with the best interests of parties in interest.**

25. At the start of this proceeding I had only two secured creditors arising from the purchase of a single property 155 Liberty Road, I had no unsecured creditors. A first Mortgage to Jerry Austin with an original amount of \$497,000.00 and the second to Lawson Realty of \$22,600.00.

26. At the Chapter 13 confirmation hearing (July 7, 2016), I had met all obligations to the Chapter 13 agreement in a timely manner. Attorney Valdejulli stated he had failed to file documentation to the court due to his sisters death.

[137-Valdejulli- sister in florida- major depression](#)

[124-Valdejulli-booboo onece , not going to happen again](#)

27.. This case may have been best suited as a Chapter 11. This was pointed out at the confirmation hearing (July 7, 2016) where Attorney (Valdejulli) stated that in the event this court did not wish him to continue with this case, he had a possible Chapter 11 plan to be conducted by a separate attorney. Nonetheless the court agrees that the same can be done with a Chapter 13 as long as there is transparency and proper documentation is filed with the Court.

[145-Court- give the debtor a chance debtor can get this done faster than the trustee](#)

[149-Court I dont agree that you cant use Chapter 13 for liquidation](#)

28. Chapter 7 Trustee, Neil Gordon, presented himself as the most effective manner to preserve Debtors business, sell the properties in Chile, and to conclude this “surplus” case.

**Gordin: “Working with him to Maximize value, not just for his creditors, but for him.... As a surplus case I felt that I owe a duty to the Debtor as well... to maximize the surplus.. I had envisioned working very closely with him and very cooperatively with him.”**

(This has proven **not** to be true.)

[113 Gordon duty I owe the creditor , max value working closely](#)

29. **Gordon: “I believe he thought that enough could be paid that he could retain the commercial property after all creditors were paid in full. “**

[114- Gordon that he could retain the commercial property](#)

30. I have presented sales offers we still had pending from Chile, multiple times to in various ways only to be ignored.

[List of sales offers presented in 2016- 2017](#)

[August 31 2017 email with no response to these sales](#)

[August 22 2017 email again about selling property in Chile.](#)

31. On August 9, 2016, Neil Gordon (Chapter 7 Trustee), filed MOTION FOR AUTHORITY TO SELL, two of my other properties in Villa Rica, Georgia by a farm equipment auction house in Moultrie, Georgia. Although the trustee made a big issue that this sale had not been done sooner, it would be over a year later, on [September 13, 2017 Trustee would close on the sale of this property.](#)

32. At the July 7, 2017 confirmation hearing much was said about a “fast track” approach that required these properties sold because they were uninsured. Never did my attorney mention that this “fast track” had anything to do with these properties, nor that the insurance issue was significant. We promptly insured the commercial property, but no advice was given to these other properties, which would have been a minor issue to insure.

33. Although I was not clear of the legal significance of “fast track”, I understood we were to “fast track” sales to pay Creditors. We had properties ready to sell in Chile, I had every reason to believe that selling properties we had ready to sell was faster than looking for possible buyers. I was not told otherwise by my attorney, in fact he urged me to, **“go to Chile and kick butt”** and I did as told. The clear fault is that my attorney never made the Court aware of this plan, nor alerted me of any negative issues with the plan we had undertaken, causing the case to be converted needlessly to a Chapter 7 liquidation.

34. One of the major contentions at the conversion hearing was that my attorney did not communicate with creditors.

35. After the confirmation hearing I contacted the creditors to see if we could negotiate some sort of payment arrangement. I understood that now Neil Gordon would work with me to sell these properties and keep my business. Since Valdejulli would refuse to act, I pursued negotiations to get creditors paid.

36. Around August 17, 2016 creditors, and creditors attorney stated they would negotiate a payment arrangement, but only if I withdrew my attorney. (Valdejulli) withdrew from the case. Valdejulli described this was to be temporary, only for me to negotiate with creditors.

37. After my attorney (Valdejulli) withdrew, creditors refused to negotiate.

38. Attorney (Valdejulli) would not return to the case. He suggesting to me that it would be best for me to continue as pro se, in the now converted Chapter 7.

39. I then presented a proposal for a lease, which would have paid the mortgage, while we processed the sales in Chile.

[Intent to lease 155 Liberty Road](#)



September 6 2016 [Email Re: Building Jarrod Plunkett Steve Cotton- LEASE OPTION](#)

40. Neil Gordon, instead of performing according to his statements made at the conversion hearing, to “**retain the commercial property**”. The Trustee would quickly present a suspect buyer, sell the commercial property, and abandoned my business assets which could have been sold to pay debt. Then he evicted the newly established businesses, and sold the only secured property, my residence, and place of business.

41. On August 26,2016 Neil Gorgon, Chapter 7 Trustee, proposes to sell the property at, 155 Liberty Road, Villa Rica, Douglas County, Georgia, to potential associates of the creditors. It had also been noted, there was a potential problem with having the creditor being the same as the seller. The seller is really not loaning the money, he will get paid regardless for the sale.

Transcript page [34- Valdejulli Creditor as seller can be an issue](#)

42. The Trustee did not appraise the secured property (155 Liberty Road). Despite my opposing motion, an order permitting the sale for \$475,000.00 was entered on October 24 2016.

[DOC 119 Opposing motion to the sale](#) (exhibit)

[Doc 126 Order approving the sale](#)

43. The [original amount of the promissory note](#) for the sale this property was \$497,000.00. The Trustee paid the creditors \$380,000.00 ([Doc 126](#)) of the proceeds. **By proceeding with this sale first, instead of processing the properties we had ready for sale in Chile, the Trustee did not pay debt obligation in full and created for the first time unsecured creditors.**

44. If this property had been appraised and properly advertised, the amount of this sale, together with the amounts we had paid during the Chapter 13, (Paid to Creditors \$17,674.75 Paid to Chapter 13 plan \$4,375.00) would have possibly been enough to pay off all debt obligations, and eliminated the need of the Trustee altogether. The sales in Chile would have been additional assurance that all Debt was paid. This sale left the second mortgage unsecured, together with a balance due from the first mortgage a total of \$44,600.00.

\$497,00.00	Original amount of the first mortgage November 2013
\$22,600.00	Original amount of the second mortgage November 2013
\$517,600.00	Total due on filing date.
\$22,049.75	Less amount paid into Chapter 13
\$475,000.00	Less amount of sale (155 Liberty Road)
\$497,049.75	Total Amounts paid

\$20,550.25 would have been left of debt without taking into account payments to equity made since the originating date of November 2013

By selling the commercial property the Trustee removed all income opportunities for the estate. Trustee abandoning assets, and ignoring the other properties we had available or pending for sale. The Trustee assured that all debt would not all debt obligations would not be paid. Assuring, continued unsecured debt, and continued administrative fees.

45. If the 155 liberty Road property had been advertised and sold in regular form on the open market the value received alone would have been in excess of all debt, and thereby ended the proceeding, and any additional administrative fees by the Trustee.

46. It was my understanding that the Trustee would act with the **"with the best interests of parties in interest"**, he had asserted the same at our hearing. Instead he had just done the opposite. Since I had far more interest in this case, I did not expect a behavior so contrary to the word "Trust", in actual detriment of the interest of all other parties of interest. The tenants with established businesses on the property, and the estate. At this point, I lost all trust in the Trustee, and would expect he would design all future activity only to his best interest, and would work only to increase his fees as much as possible.

20. Since the re-appointment of this Trustee, I have attempted many times to have him sell pending offers we have had in Chile. These sales could have been conducted by a specific power of attorney without the need of greater administrative costs. Since the properties in Chile are of a far greater value than the debt, pending sales could have been sold, my business, assets, and tenants businesses could have gone un-affected.

[List of sales offers presented in 2016- 2017](#)

[August 31 2017 email with no response to these sales](#)

[August 22 2017 email again about selling property in Chile.](#)

47. I continued to find ways to settle this case, I requested a "payoff" amount from the Trustee, to no avail. If we had an amount to pay we could present this amount to investors, place properties on an open sale, and settle this case.(exhibit)

48. I having been unsuccessful convincing the Trustee to execute sales in Chile or to provide a payoff amount, I hired attorney Timothy Stapleton to see if he could be more successful in processing sales we had pending

49. Initially it appears the Trustee will work with Ted Stapleton...

**" There has been no decision yet on how to market the lots in Chile but initially at least the Trustee will not auction them off. The Trustee is committed to, and has a duty to, market the properties in a commercially reasonable manner and get the best value for the lots. The offers you provided have been given to the Trustee's attorney in Chile."**

[William Matthews September 2017,](#)

50. After several attempts to have the Trustee give us an amount to pay so we might present investors in Chile to pay off and close this case [trustee refuses to communicate further on January 4, 2017](#)

51. I then proceeded to address the superiors of the Trustee, and the Office of the Trustee in Washington, in hope that they would address the behavior of this Trustee, also with no apparent success.

52. Two years have elapsed since the Trustee, Neil Gordon, was re-appointed, he has consistently refused our sales offers. The Trustees methods, have abandoned assets, ignored sales, and increased administrative costs - all actions having the effect of delaying payment of debt. Causing the most harm to the estate, myself, and my family. The methods used by the Trustee have and will continue harm the estate, and are contrary to the concept of the Trustee.

53. I recall when I presented my second (Pro Se) motion to convert to Chapter 13, at our hearing, this court had stated that the Chapter 7 conversion could have been a mistake. If the duty of the Trustee is “**with the best interests of parties in interest**”, to care for the estate, and timely pay obligations, the Court’s opinion clearly appears to be true.

#### **54. CONCLUSION**

**I respectfully request...**

- a. The Trustee not be permitted to continue with this case, and the case be returned to a Chapter 13 administered by (Theodore Stapleton).**
- b. If the Trustee must continue with these sales in Chile, an appraisal be conducted.**
- c. That an accounting of the administrative fees of the Trustee be presented, along with creditors remaining claims, be presented to this court to approve or reject, and a set sum be provide that can be paid.**
- d. That a competitive and open sale of individual properties be conducted. Available to any and all realtors, with a higher commission paid. Selling only sufficient property to pay obligations, and not a full liquidation as planned by the Trustee.**

**Any alternative that may provide a stated amount to pay and conduct sales either via a directed method sale by this Court, a return to the Chapter 13 which had been successful, or a Chapter 11.**

## **RECONSIDERATION OF TRUSTEE'S MOTION FOR APPOINTMENT OF REAL ESTATE BROKER AND FOR APPROVAL OF PAYMENT OF ADVERTISING COSTS**

Trustees motion points to a desire by the Trustee to sell this land at auction. Doing so would greatly reduce the potential value of this land.

The Trustee has not demonstrated he has these properties ready for sale in Chile, and has not made clear to the court what legal hurdles are still required to accomplish these sales. Alternatively we have presented sale offers to the Trustee that are ready for execution, and have been rebuffed by the Trustee.

The Trustees request for \$2,000.00 (U.S.) to cover the costs of notices and advertisements is inappropriate. All real estate agents in Chile work on a commission basis, and include advertising as part of the commission paid.

The Trustee falsely suggests Mr. Bertolino's has "experience and expertise". Mario Bertolino is a veterinarian, and a politician, the firm of Comercial Bertolino Ltda, has no website, and can not be found in searches for realtors in the La Serena area, or elsewhere in Chile. (exhibit)

Mr. Mario Bertolino, a politician, would have an incentive to work contrary to the best interest of the estate by selling these properties at far below market values, to his associated political allies. This is a general rule of Chilean political behavior.

Chile is famous for "under the table" deals, only an open market sale, open to all realtors with an ample commission paid, would guarantee proper advertising, and protect the estate from corrupt activity.

**Recent estimates of the value of these properties range around the 3 million dollar range. If sold at auction the outcome of the sale could be less than 10% of its real value.**

Attached please find a list of far more qualified Realtors in Chile. (exhibit)

As a general rule, realtors in Chile work on 2% commission from the seller, and 2% from the buyer.

**I respectfully request...**

**a. The Trustee not be permitted to continue with this case, and the case be returned to a Chapter 13 administered by (Theodore Stapleton).**

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