

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

IN RE:

CASE NO. 15-64523-PWB
CHAPTER 7

* CLAUDIO PABLO AVENDANO
* Debtor

* NEIL C. GORDON, Trustee for the Estate

OPPOSITION TO TRUSTEE'S MOTION TO SELL - WRONGFUL
PRACTICE OF CREDITOR, DEBTOR'S ATTORNEY AND TRUSTEE

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

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BACKGROUND

I am 64 years old, a single parent with a young child, I had made a living as a small time real estate developer, and I had no debt.

I purchased a property at 155 Liberty Road, in Douglas county, financed by the Seller and real estate agent, the two creditors in this case, the owner/sellers of the property Jerry Austin and the Realtor Lawson Realty.

On this property I originated a tech based business, which was disrupted by unusual activities of a racketeering nature.

With two failures to launch retail ventures on the property, I fell behind on my mortgage.

I leased out portions of the property, initiated an online storage facility, and continued my tailoring business. I developed marketing plans to sell a 160 acre subdivision, in Chile, I set up a sales infrastructure of websites, and agents to sell these lots.

I was wrongfully foreclosed upon by the Creditor, not providing me the 30 day requirement under our agreement. In a rush caused by this wrongful foreclosure I made the mistake of filing a Chapter 7.

My mistake was corrected by attorney Valdejulli, by conversion to a Chapter 13. I followed my attorneys' instructions and went to Chile to sell pending sales to pay my Chapter 13 obligations. I am assured by my attorney that he will attend to the requirements of the Court during my trip to Chile.

During the Chapter 13 repayment plan, all payment obligations were timely met, and if permitted to continue, would have preserved the mortgage, income, assets and my business.

Upon my return from Chile, My attorney had failed to properly present our plan, file required documentation, and delivered documents not reviewed, or signed by me to the Court. Over our objections the case is converted to a Chapter 7, under the direction of Neil Gordon.

At Court, the Chapter 7 Trustee provides assurances that he can do the same as was done under the Chapter 13. He states at our hearing that he will sell Debtors properties that are pending in Chile. He will preserve the Debtors business, tenants, and property purchased at Liberty Road.

The Trustee promptly does the opposite - quickly sells the property, abandons the business, other assets, evicts the tenants, and my son and I.

In this course...

-By the request of the Creditors, my attorney withdraws so that an agreement can be reached directly between the Debtor and Creditor.

-Creditors refuse any type of agreement, and my attorney will not return to the case.

-Without an attorney, I request a reinstatement of the Chapter 13, which is denied.

-A valid lease is offered to the Trustee, by the future buyers, that would pay the mortgage, which the Trustee refuses.

-Pending sales in Chile are offered to the Trustee which the Trustee refuses.

-The Liberty Road property is offered to suspect buyers, and then quickly sold.

-Trustee abandons many assets that would pay debt.

-Trustee abandons business, and evicts tenants.

-Trustee will sell Liberty Road property and hold 90k of the sales proceeds.

-Unsecured creditors are created, for the first time by the Trustee.

The assurances of the Chapter 7 Trustee in Court, were that he would work with the Debtor to pay his creditors, and preserve his business, the Trustee refused sales, and did the opposite of what he claimed in Court.

The Chapter 7 Trustee has delayed, and avoided a resolution, thereby increasing his administrative fees, and severely damaging the Debtor's estate. The process has caused my son and I needless distress for more that two years. The actions of The Chapter 7 Trustee eliminated the Debtors ability to produce income, and is now reducing an estate that far exceeded debt into nothing, all while increasing his administrative fees.

Several months after the sale of my property and eviction, when I stabilize my living situation, from homeless to housed, I again try to have the Trustee to act on the sales we had pending in Chile. The trustee will not act. I then engage his superiors, and hire an attorney to present sales to the Trustee, the trustee refuses to accept our sales.

When a debtor comes to bankruptcy there are several alternatives to pay obligations, protect agreements, and permit Debtor to continue his business. This Case was successful in this respect as a Chapter 13, but may have been a Chapter 11. The distinction is unimportant in these Chapters, for it is clear that the objective is a method for keeping the status quo of commercial agreements, and/or alleviating the Debt burden of the Debtor that he may continue with his business activity.

The conversion of Bankruptcy law by an experienced Trustee, in collaboration with Creditors, to eliminate Debtors income bearing assets, to stress the Debtor, all to enrich the Creditor, reduce Debtor's estate to nothing, and to enrich the Trustee via administrative fees, one would think, this is not the intent of this law.

In this Case there is a line of conduct that starts when the creditors wrongfully foreclosed, and thus ensued a filing in error of a Chapter 7, which is then converted into a Chapter 13, where all obligations were timely paid.

The Chapter 7 Trustee and law firm, coordinating with Creditors push and succeed in having the case re-converted to a Chapter 7. At which hearing the Chapter 7 Trustee assures he will do what the law intends to preserve assets and the Debtors business, but does the opposite.

A request for dismissal of the the Chapter 7, or other remedy would have been sought, had the Trustee not made assurances in court that he would preserve the Debtor's business, and keep the secured property.

The burden for the cause of the needless destruction of the Debtors business, and his estate rests on...

- (1) The Creditors initial wrongful foreclosure.
- (2) The failure of his attorney to properly file documentation and advise his client.
- (3) The Trustees refusal to process sales offered to him, and the precise path he took which created unsecured debt, only to increase administrative fees for the Trustee and his law firm.

This motion respectfully requests that these individuals be made responsible, provide compensation, and be assessed a punitive amount for their above actions, which are what has caused the current adverse condition of the Debtor's estate, and harm to Debtors livelihood.

I am not an attorney, if this case is directed to an alternate course, an attorney would proceed as directed.

CONFLICTS OF INTEREST OF THE TRUSTEE

1. This case is further complicated by two potential conflicts, that I have been advised should be brought to the attention of this Court,

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

b. The Creditors attorney Victor Harrison represented my ex wife and transferred property of the Debtor, as part of his divorce, with property of the estate. (exhibit)

2. My ex-wife, has a particular interest in the estate's Timmons Circle property. This property is a critical addition to the 40+ acre tract that was given to her through the divorce, Mr. Harrison was her attorney.

These fact's could be an issue as would create alternative motives for a Creditor/Trustee combo to adversely influence 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](#). (DOC 101)

3. In Court I asked why would the Creditors push so hard to abandon a working Chapter 13 where they are getting paid on time, upholding the agreement we had. Only to push the Chapter 7 to quickly sell the property for less. This is because the Creditor offered the property as a combination of a low interest mortgage and a higher sales price. The enticement for the original sale was the low interest mortgage, and if he can force a sale of the property by the Chapter 7 Trustee, the mortgage is gone and he still gets full price. Even better if the property can be sold to a friend or family, in which case he would be paid twice for the same property.

The only Debt I had was is the secured property, which was sold and financed by the Creditors.

When the 155 Liberty Road was quickly sold by the Trustee, I described the potential that the buyer may have been associated with the creditors. If so, the sale price would be unimportant, since they knew the Debtor had more than enough to pay all obligations under the mortgage agreement. If the creditor could sell to family or friend, he would in a sense retain the property and still get paid for it, in essence having been paid twice.

The property was sold in a quick unadvertised sale. I filed an opposing motion pointing out the familial names of the only buyer that was presented by the Trustee. This creditor/seller problem was also pointed out by Attorney Valdejulli at the July 7, 2016 confirmation hearing.

[Page 34 of the transcript](#) (Doc 101)

4. In [a memorandum](#) (Doc 136- November 21,2016), I described.
 - a. A closed interconnected political community in Douglas County -
 - b. The adverse interference in my business activities by individuals of this community prior to bankruptcy, and the cause of two failed startups .
 - c. The wrongful foreclosure by the Creditors that precipitated the Debtors mistake of filing a pro se Chapter 7. [Memorandum](#) (DOC 139)

5. Summary - Conflicts of interest

When a surplus estate is mistakenly 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 adverse activities of the Trustee. A large estate can become ripe picking for a Trustee wishing to convert an estate into administrative fees.

If one of the properties entrusted to the Trustee was the only source of income of the Debtor, and is his residence, when sold first, then the Debtor would be left homeless and without income, and unable to hire proper Council to defend his estate.

If the Trustee had prior knowledge of the higher values of the properties in Chile, via his firms attorney [Daniel Bradfield](#), or debtors ex-wife, information which was not available to Debtor, it would have been to the Trustees best financial interest, to quickly sell the income generating assets at Liberty Road Property. Ignoring other sales presented to him, compromising the Creditors ability to hire Council, then taking the longer, and more costly course of an international action.

At the conversion hearing, the Trustee assured this Court that he would work with the Debtor to preserve his business, and the Liberty Road property. The Trustee told the Court that he could do the same, as could have been done via a Chapter 13.

At the conversion hearing, and at several opportunities after, I have presented pending sales we had ready to close to the Trustee, only to be ignored. These sales could have been simply done via a specific power of attorney without the needless administrative fees now generated.

A stream of these sales would have satisfied the mortgage or paid off the property entirely. This would have preserved my business, assets, and the tenants' business that were on the property.

Trustee repeatedly ignored the sales we had pending, abandoned all business property and inventory, knowing the debtor would have no way of protecting these valued assets which could have been sold to pay obligations.

The Trustee created the precise conditions to take a surplus case with no unsecured creditors, into a case that now for the first time has unsecured creditors. The Trustee has needlessly prolonged this case to the effect of increasing his administrative fees.

SUMMARY - PRACTICE OF DEBTOR'S ATTORNEY AND ACTIVITY OF THE TRUSTEE

<http://metroecho.com/transcript>

6. PRIOR TO THE (July 13,2017) RE-CONVERSION TO CHAPTER 7

I (Debtor), had purchased 155 Liberty Road, Villa Rica, Ga., creating the only two creditors of this case. At this location I developed a [unique storage business](http://storeitorsellit.com/pickup) model. <http://storeitorsellit.com/pickup> Debtor operated from this location a tailoring business, newly established storage business, and leased space to other tenants. Debtor created a successful marketing plan that was producing retail sales of properties in Chile. This plan had been coordinated with attorney Valdejulli.

Attorney Valdejulli did not properly file this plan at Court, filed unsigned documents without the debtors knowledge, and did not seek approval for the sales, causing a working Chapter 13 to be converted to a Chapter 7 liquidation. The Debtor has, and had far more financial interest than the Debt owed to the Creditors.

The Debtor presented all documentation timely to his attorney. Although given numerous opportunities to correct the filings, Attorney Valdejulli did not file documentation as required to the Court. Attorney Valdejulli never indicated that there were any issues, nor alerted Debtor of this non compliance.

The Chapter 7 Trustee stated assurances to work with the Debtor, to sell properties in Chile, and to preserve the Debtors business.

When the Creditor presented a lease that would have provided sufficient income to pay mortgage obligations, while properties in Chile were sole, the Trustee rejected this lease.

The Trustee instead, followed a path that would extend the debt, not timely pay Creditors, he abandoned assets that could have been sold, and annihilated the Debtors business, and income opportunities. The Trustee took the most optimum path to delay this case, and increase administration fees with willful disregard of the Debtor's estate.

TIMELINE - CHAPTER 13 PRIOR TO CONVERSION

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. Doc 120 Filed 10/11/16 <http://metroecho.com/foreclosure>

9. With far more assets than debt, in August of 2015, accelerated by the Creditors wrongful foreclosure, Debtor rushed and mistakenly filed a Chapter 7. At the 341 meeting Debtor was given assurances by the Trustee Neil Gordon, that he could sell the properties in Chile to pay obligations and would preserve Debtors business.

10. I was then convinced by attorney Richard Valdejulli that the Chapter 7 Trustee would not do as he promised, and that a Chapter 7 was the wrong path. **Valdejulli explained that he and the Trustee were friends** and had worked together for many years, yet warned me that this particular Trustee was dangerous, and would convert all assets into administrative fees, other attorneys I called also warned me of the same. 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. Valdejulli told me I could lease the commercial property, and operate 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 attorney Valdejulli presented to the Court, nor was I informed of other amendments to the plan made by my attorney.

13. Several months before the bankruptcy I had developed 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 to pay creditors. Prior to 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 my 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.

Images of documents were taken at closing, and then uploaded online, 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 selling property in Chile would I begin to understand that documents were not filed and procedure had not been followed. At the May 11, 2016 hearing, I learn Valdejulli 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 for the sales, yet he will assure me this is not an issue.

[The hearing March 9 hearing is continued for May 11 2016](#) Doc 70 Filed 03/31/16

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](#) EXHIBIT

18. I came to the July 7, 2016 confirmation hearing completely unaware there was any problem, 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](#) EXHIBIT

19. Even while I sat in Court I did not fully understand the issues. Only much later 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. Doc 101 page 91](#)

[98- Kirkland - did you sign those plans - I dont believe so Doc 101 page 98](#)

20. 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 to the unsecured properties. We promptly insured the commercial property, but no advice was given to these other properties, which would have been a minor issue to insure.

21. Although I was not clear of the legal significance of “fast tract”, 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. My attorney never made the Court aware of this plan, nor alerted me of any negative issues with the plan we had undertaken.

22. 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. 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. If required, I could have waited in Chile for the proper approval or ratification prior to sale, and we could have paid any amount the Creditors, and the Court had requested.

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

[Email presenting additional sales offers](#) EXHIBIT
[List of sales offers presented in 2017](#)

23. 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. The storeitorsellit.com website was designed for the Liberty Road property and was part of the business abandoned along with the sale of the property by Neil Gordon.

[Weidenbaum Storeitorsellit should have been on the plan](#) Doc 101 Page 101

ACTIVITY OF THE CHAPTER 7 TRUSTEE, AFTER THE JULY, 13, 2016 CONVERSION

24. 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. Doc 101

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

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

25. The conversion was granted, and the Trustee, 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 for the estate, by abandoning, or selling assets at below value, and has only served the purpose of delay, generating excessive administrative fees for the Trustee. This was pointed out at the July 7, 2016 hearing, by attorney Valdejulli.

Transcript July 7, 2016. Doc 101

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

26. 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. In this surplus case, the Debtor was the party of greatest interest, and the Trustee is misserving the estate.**

27. 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.

28. 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 the death of his sister, this is difficult understand since this death occurred well after the sales in Chile.

Transcript July 7, 2016 DOC 101

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

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

29. 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 a good outcome can come through a Chapter 13 as long as there is transparency, and proper documentation is filed with the Court.

Transcript July 7, 2016 Doc 101 pages

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

[150-Court - I provided additional time to have a hearing on conversion was because I thought Chapter 13 could properly be used in this context to have a result that would be beneficial for everybody.](#)

30. Chapter 7 Trustee, Neil Gordon, presented himself as the most effective agent 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.)

Transcript July 7, 2016 Doc 101

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

31. Gordon: “Because I think, it sounded to me like we were after the same goal and that was to maximize value and bring back to him as much of it as possible. I believed he wanted the Chilean properties sold first along with Villa Rica in my mind. Because I believe he thought that enough could be paid that he could retain the commercial property after all creditors were paid in full.”

Transcript July 7, 2016 Doc 101

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

32. I have presented to the Trustee sales offers we had pending from Chile, multiple times, and 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 emailed again about selling property in Chile.](#) EXHIBITS

33. On August 9, 2016, only days after making assurances of preserving debtors business, and to pay debt by selling property in Chile, 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 had made a big issue that this sale had not been done sooner, it would be over a year later that it would be sold. During this time the property would not be advertised, nor given for sale to a realtor as a fair market sale. on [September 13, 2017 Trustee would close on the sale of this property and at far below market.](#)
Doc 162 Filed 10/03/17

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 Neil Gordon would work with me to sell these properties, and keep my business. Since Valdejulli would refuse to act, I pursued negotiations with the two Creditors to get them 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, and 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. He also pointed out, that although it sounded unfair, he would be paid from the proceeds generated by the Chapter 7 Trustee.

39. I then presented to the Trustee a proposal for a lease, which would have paid the mortgage, while the Trustee processed the sales we had pending in Chile. The Trustee would reject this offer.

[Intent to lease 155 Liberty Road](#)

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

40. The Trustee, instead of performing according to his statements made at the conversion hearing, to “**retain the commercial property,**” the Trustee quickly presented a suspect buyer, and proceeded to sell the commercial property. He evicted the newly established tenants with

ongoing businesses, and sold the only secured property, my residence, and place of business. In effect vaporizing inventory, income, and abandoning assets that could have been used to pay debt.

41. On August 26, 2016 - Neil Gordon, 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 to the Court, 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 Doc 101 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](#)

[Doc 126 Order approving the sale](#)

43. The [original amount of the promissory note](#) for the sale this property was only \$22, 000.00 more that what the property was sold for. 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), and a proper sale of the remaining Andy Mountain property would have certainly been enough to have paid off all debt obligations, and would have eliminated the need of the Trustee altogether.

The pending sales in Chile, I had presented to the Trustee would have been additional assurance that all Debt was paid. Instead , this sale left the second mortgage unsecured.

\$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 the promissory note of November 2013.

In addition if we take into account the later [sale of the Andy Mountain Rd property](#) this would have only left \$4,600.00 of debt. If we take into account payments to equity under an amortization, debt has been paid, only the Trustees' administrative fees remain.

Trustee vowed to sell other properties first, but would not sell anything until almost one year later. Andy Mountain Road would be sacrificed for only \$15,950.00 (September 2017)

By selling the commercial property first, the Trustee deliberately removed all income opportunities for the estate. Trustee abandoned inventory and business assets and ignored the properties we had pending for sale in Chile. The Trustee assured that debt obligations would remain as unsecured debt, providing a basis for his 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 ending the proceeding, and any need for a Trustee to generate administrative fees.

46. It was my understanding that the Trustee would act **"with the best interests of parties in interest,"** he had asserted the same at our hearing. Instead he had 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 detriment to the Debtor, and contrary to the Trustees statements in Court.

The Tenants with established businesses on the property were also "parties in interest". In my opinion the Trustee had broken his own word as stated in Court. I lost all trust in the Trustee, and would expect the Trustee to design all future activity only to his best interest, and would work only to increase his fees as much as possible.

47. 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 that the debt, pending sales could have been sold, my business, assets, and tenants businesses would have been unaffected.

[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 I 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 Theodore Stapleton, to see if he could be more successful in persuading the Trustee to close 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, to present to investors in Chile to pay off, and close this case [trustee refuses to communicate further on January 4, 2017](#)

“we will not respond further to you and will object to any BR 2004 exam requests. Feel free to fly to Santiago to take the examination of our special counsel to try and get an estimate of their fees should the court permit it. I am not going to provide estimates in a case this fluid just so the debtor can resume objecting to everything and running up even more fees. We will wait for the appearance and a solid, credible explanation of how a homeless debtor can payoff the creditors and the estate. “

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, and this petition is ongoing.

52. Over 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 to harm the estate, and are contrary to the stated concept of a Trustee.

53. There is every reason to believe that the properties in Chile have a value of between 1 and 3 million dollars. If the estate is continued to be administered by the Trustee, these properties will be sold for far below value, and an incentive is created for the Trustee to sell for an amount only sufficient to cover the administrative expense payable to him, to eliminate any surplus returning to the Creditor, of his estate.

54. When I presented my second (Pro Se) motion to convert to Chapter 13, at our hearing, this Court 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.

CONCLUSION

There is no one that has knowledge of this case that thinks I filed a Chapter 7, as a voluntary liquidation. It has been made clear from the start this was an error which was corrected by the conversion to Chapter 13, which would have not failed had my attorney filed documents as required, and properly advised his client. This case is no way voluntary on the Debtors part, and clearly has taken a path contrary to the purpose of bankruptcy protection. The Debtor requests' the dismissal of this case, or a remedy as outlined below.

In [a memorandum](#) (Doc 136 - November 21,2016), I described a culture of payoffs, and close relations between what should be adversaries in Court, and how this could lead to the manipulation of Justice in Douglas County. How the county in which I had my business was a closed political network that could have been the direct cause of this bankruptcy.

First of all, this case was precipitated into an improper filing by the Creditors wrongful foreclosure.

I have no way of explaining why my attorney, with a good reputation, did not file required documentation, filed documents without my consent, and did not advised me of any issues there may have been with the Chapter 13.

The intersection of long lasting relations between adversaries in a Court, a Trustee that has well known skills to enhance administrative fees, a county with a culture of payoffs, and a surplus estate, could be fertile grounds for activity that may not be as expected by law.

The Trustee , after first making assurances in Court to work with the Debtor, to preserve Debtors business, and assets, instead has done the opposite. Intentional or not, the Trustees activity assured the creditor would be devastated. As the Trustee put it, he doesn't know how a *"homeless debtor can payoff the creditors and the estate."* He would also know that a *"homeless debtor"*, would have difficulty hiring council, and that any activity by Debtor or Debtors council would only increase his administrative fees. The Trustee refused to coordinate with the Debtor to close pending sales, which would have paid all obligations. When the Debtor did hire an attorney to present sales to the Trustee to pay obligations, the Trustee waisted time, and then refused to act.

When Willie Sutton was asked "Why do you rob Banks" he replied, "Because that is where the money is."

I have come to notice how powerful this Court is, that it can favor a stressed Creditor by eliminating debt obligations, or can strip others of their estate.

A surplus case such as this, in the hands of a Trustee, with a reputation for generating high fees, who makes false assurances in court, and fails to act in the best interest of the parties of interest, a Debtor can find himself in greater distress than before filing for protection, and his estate will be converted into needless administrative fees in favor of the Trustee.

I have contacted almost every bankruptcy attorney in the hope they would stand against this particular Trustee, and correct this issue, due to his reputation, “evil” as one attorney put it, none has yet accepted to challenge Neil Gordon.

As one attorney explained, “Bankruptcy is a small pond, Neil Gordon is the big fish you don’t mess with.”

A Trustee so aggressive, and able in generating fees from an estate, would pose a threat to the other attorneys, and other cases in the pond, if they do not cower to his actions.

If not corrected - Cases such as mine only serve to teach all the “little fish” that this is the status quo for what to expect from a powerful Chapter 7 Trustee, and will only promote this behavior.

I respectfully request this Court to order and require compensation for the wrongful foreclosure, malpractice, willful annihilation of my business, and estate. That this Court will impose strong punitive measures on the Creditors, Attorney, and Trustee as the responsible cause of the mismanagement of this estate.

Actions that may direct the conclusion of this case in a manner more consistent with the protection of the Debtor as this law was intended.

Wherefore Debtor respectfully requests...

a. The case be dismissed, or administered in any other manner the court may find more appropriate.

b. That this Court order the an amount of recompense, and punitive damages for the following activity of the parties involved in the mismanagement, and abuse of this estate, the harm caused to the Debtor, his business, and family:

The Creditors: Their wrongful foreclosure that initially pushed this case into a Chapter 7.

Debtor's Attorney: The failure of attorney (Valdejulli) to properly file documentation during the Chapter 13, negotiate with creditors, and wrongly advise Debtor.

The Trustee: The false assurances by the statements of the Trustee in court of preserving the Debtors business, and his further conduct in ignoring sales presented to him, against the best interest of the Debtor's estate.

In the alternative...

If a Trustee must continue with these sales in Chile, that an accounting of the Trustees administrative fees, creditors remaining claims, and all communications between Creditors, attorney Valdejulli, and the Trustee be presented and a sum be established by this Court.

That only sufficient sales be conducted to pay debt obligation.

[The current values of these lots is between 7M and 15M CLP, or in dollars this is between \\$11,254.00 to \\$24,150.00 per lot.](#)

The individual sales of the 150 lots, be conducted with a sales price not less than our most recent offers of 5M Chilean pesos or \$7,500.00 US dollars for each lot.

If this case must continue as a Chapter 7, a reasonable fair market amount to be paid to real estate agent and attorney involved with the sale, should be established prior to processing each sale.

That all sales occur as a competitive, and open sales of individual lots. That sales be made available to any and all realtors, presented to Bartolino, with a total cost per sale not higher than 7-10% of the sales price.

**Claudio Avendano
Debtor**

CERTIFICATE SERVICE This is to certify that I have mailed a copy of this Objection to by depositing in the United States mail a copy of same in a properly addressed envelope with adequate postage affixed thereon to assure delivery to:

**Neil C. Gordon Georgia / William D. Matthews
171 17th Street, NW, Suite 2100 Atlanta, GA 30363**

**Victor J. Harrison Harrison & Horan, P.C. 3150
Golf Ridge Boulevard Suite 101 Douglasville, GA 30135**