

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

In Re

CLAUDIO PABLO AVENDANO,	:	CASE NO. 15-64523-PWB
	:	
Debtor.	:	
-----	:	
CHAPTER 7 NEIL C. GORDON,	:	
	:	
Trustee for the	:	
Estate of Claudio Pablo Avendano,	:	
Movant,	:	
-----	:	
	:	
V.	:	
DOUGLAS COUNTY TAX : COMMISSIONER,	:	
RENEE TAYLOR,	:	
and : CLAUDIO PABLO AVENDANO,	:	
Respondents.	:	
-----	:	

**DEBTOR’S OPPOSITION TO MOTION FOR AUTHORITY TO (I) SELL PROPERTY OF THE ESTATE FREE AND CLEAR OF ALL LIENS, INTERESTS AND ENCUMBRANCES AND (II) DISBURSE CERTAIN PROCEEDS AT CLOSING.**

COMES NOW, the above captioned Debtor, in opposition to Trustee’s motion thereof shows this Honorable Court the following:

**Background - Dismissal of Debtor’s attorney - Pro Se status**

1.  
Debtor's attorney has withdrawn and this objection is filed pro se. Debtor prays for the consideration of the court and time to secure proper council.
2.  
Debtor, in error, filed for Chapter 7 bankruptcy on August 3, 2015
3.  
Attorney Richard Valdijulli was retained and the case was converted to Chapter 13 by order entered on December 16, 2015, whereupon a fast track approach was requested by this court to have creditors paid to date.
4.  
The debtor is a tailor by trade, but historically has made his income through real estate transactions. His work consists of adding value to real estate over time. Long term projects that culminate in what can best be termed an "income transaction". Detail of income history at <http://www.metroecho.com/history>

5.

The culmination of years of work is a project and subdivision in Chile, which is ready to mature. Value was added by way of subdivision, websites, contacts, and associates made over the previous year and culminated in pending sales ready for closing.

6.

At the time of conversion to Chapter 13, the Debtor was earning income through his tailor business, and lease income of the 155 Liberty Road property.

7.

Conditions of the conversion to Chapter 13 required certain payments be made to Creditors in a timely manner by a combination of the sale of real estate and income.

8.

Debtor promptly complied, with a combination of income, and property sales in Chile paid all requested obligations. Debtor was poised to close on additional pending sales, that would have paid off all obligations due to creditors.

9.

All documentation for these sales expenses were posted online, in real time, by the Debtor, and for Richard Valdejulli to present to the court.

Richard Valdejulli did not file documentation as required by the Chapter 13 procedure.

10.

A visual presentation (See at <http://www.metroecho.com/history>), of Debtors income history was prepared by the Debtor and given to Richard Valdejulli to present to this court.

Richard Valdejuli did not present to the court this information, nor had updated the payment plan reflecting the upcoming full payment to Creditors to be submitted to this court.

11.

Creditors along with the Chapter 7 trustee aggressively push to re-convert from Chapter 13 to Chapter 7

12.

Due to the death of Debtor's Attorney's sister, proper documentation was not filed to this court.

13

Case was re-converted to Chapter 7 on July 13, 2016

**Background - False assertion by Creditors - Creditors requirement of dismissal of Debtor's attorney prior to negotiation - Creditors refusal to negotiate .**

14.

At the re-conversion hearing, Chapter 7 trustee, and creditors attorney make the false complaint that no attempt was made by Richard Valdejulli to confer and negotiate with creditors.

15.

After re-conversion to Chapter 7, Debtor is given permission to speak and negotiate directly with Chapter 7 trustee.

16.

On August 17, 2016 Debtor calls Creditors attorney, Victor Harrison to see what accommodations can be reached to settle this case. Debtor is informed that he can not negotiate with him since Richard Valdejulli is counsel of record in this case.

17.

In the morning of August 18 2016, Debtor sends email to the principal Creditor Jerry Austin, email gives stating various reasons why it would be best to settle this case rather than to continue litigation. Jerry Austin calls Creditor that same day, and tells Creditor to contact his attorney Victor Harrison to see what accommodations can be reached.

This same day in the afternoon, Neil Gordon sends an urgent email to Richard Valdejulli, where he falsely claims he is unable to contact Debtor. The email states that he, Neil Gordon will be coming on Tuesday, with Victor Harrison, and Victor's Harrison's agent Mike Patterson to change the locks on the property at, 155 Liberty Road, used as a residence by the Debtor.

18.

Tuesday August 23,2016, over the objections of the Debtor, 4 persons arrive at 155 Liberty Road to change locks, representing the Creditors and the Chapter 7 trustee, Neil Gordon (Chapter 7 trustee), Pamela Bicknell (Assistant to Neil Gordon), Victor Harrison (Attorney for the Creditors), and Mike Patterson (Agent of Victor Harrison) are present.

At this time Debtor has the first opportunity to speak with Victor Harrison and again is told he can not negotiate with Debtor unless the attorney of record withdraws. Debtor explains to Victor Harrison that he I withdraw council first thing in the morning.

19.

The following day August 24, 2016 Debtor travels into Atlanta to sign documents for the withdrawal of council.

20.

On August 31, 2016 Debtor made several phone calls and sent several emails to both Jerry Austin (principal creditor) and Victor Harrison (attorney) in the hopes to establish some form of negotiated settlement. Creditors attorney refuses to negotiate settlement of this case.

### **Background - Timmons Circle property originally filed as exempt - Creditors secondary loan agreement and sale of Debtors residence - Debtors current living accommodations**

21.

November 6 2013 Purchase property 155 Liberty Road from Jerry Austin (Creditor). Purchase price \$595,000.00k financed by \$497,000.00 Jerry Austin (1st creditor) and \$22,600.00 Lawson Realty (1st creditor and realtor).

21.

On July 11, 2014, Creditor Jerry Austin provided a short term loan of \$55,000.00 at 15% interest rate, including \$4,272.00 in points, origination fees and settlement charges. This note was secured by Debtor's personal residence at 3540 Lawrel Springs Cove, Villa Rica, Georgia and payable on August 1,2016

22.

November 18, 2016 Debtor's home was sold to pay off \$55,000.00 mortgage to Jerry Austin (creditor)

23.

Debtor moved into commercial property 155 Liberty Road. This along with the Timmons Circle property, became the Debtors form of residence.

24.

8931 Timmons Circle along 155 Liberty Road was originally filed as exempt in the Chapter 7 petition and was later amended in the Chapter 13 petition by Richard Valdejulli. The Timmons property is under construction by the debtor, lacks electricity, but provides bath and shower facilities for the Debtor.

25.

This property is of little value to the estate, yet provides essential living requirements to the creditor, and should be attended to last in this liquidation process.

26.

Debtor is unqualified to make a statement on law but does note that 11 U.S.C. § 522, does not specifically describe residential property as singular, " in real property or personal property that the debtor or a dependent of the debtor uses as a residence "

**Background - Auctioneer is not of caliber to properly sell- Property values have not been ascertained through proper appraisal.**

27.

On July 28 Chapter 7 trustee requested that Mark Manly of Weeks Auction Group Inc be retained for the sale of properties Timmons Circle and Andy Mountain Road.

28.

Mark Manley is a recent employee of Weeks Farm Machinery Auction, of Moultrie, Georgia. Calls made to him disconnect (hang up) when transferred to his office. This auction does not have proper visibility and should not be used for the sale of property of the estate.

28.

Creditors have long term relations in this region, Mark Manley is of this region and is inappropriate for the sale of these properties.

29.

Debtor during his ownership has improved the Timmons Circle and the Liberty Road property. The pillar upon which the rapid sale at auction of the Debtor properties stands on is a false and low tax evaluation. Tax evaluation describe the property as 1.5 acres rather than the 2 acres it truly is. The property has 2400 sq/ft of office, and a building warehouse footprint of 7,2000 sq/ft, the two acres are completely fenced. The insurance evaluation for the building alone is \$575,300.00, when you add to this to the two acres paved parking, fence and location next to exit 29 on I-20, a proper appraisal will show a far higher value. If a proper sale of this property were conducted proceeds will pay all outstanding obligations.

**Background - False portrayal of Creditor as poor and elderly - Rejected lease offered in negotiation.**

30.

Jerry Austin was portrayed, by his attorney as an elderly man, that needs this income.

31

Both Creditors Jerry Austin and Eddie Lawson are principal players in the Douglas County economy. They are both millionaires.

32.

Creditors frantic push to re-convert this to Chapter 7, in the face of getting timely payments in Chapter 13, points to the potential use of this court simply do get the property back in a Yoyo fashion.

33.

On August 31 2016, as part of the negotiation offered by the Debtor was a lease on the property by Southland Machinery, a heavy equipment dealer with three locations in Alabama. The lease offers payment of mortgage obligation plus taxes and insurance.

This offer would promptly give principal Creditor Jerry Austin the income he is described as needing. This offer was not even considered by the Creditors or their attorney.

34.

In an emailed response to this offer August 31 2016, Creditor, Jerry Austin stated, "He can purchase in front of the courthouse where it will be sold". Indicating his unwillingness to negotiate, and showing no need of this income.

## **Debtor's Statement**

I am 62 years old, I live with, and care for my 12 year old child.

In Chapter 13 I have proven I can pay my obligations far quicker than the Chapter 7 trustee can. Legal fees are now higher than the original past due debt that initiated the foreclosure in the first place.

A fact which has not been presented is that I came to this court pushed by a wrongful foreclosure brought by these Creditors.

I have given my inheritance, and my home to the purchase of this property, 155 liberty Road, where I have my business and now live.

Without an attorney my focus is now is on this legal work, which I am incompetent to do. I am penniless, and helpless while attorneys take my assets in the form of legal fees.

Richard Valdejulli, I am told, is one of the best attorneys in this field. After the re-conversion to Chapter 7, he buys my son and I dinner, pats me on the back and says, "expect a large bill from me, good luck, Neil Gordon will now have you for dinner."

He then becomes even more unresponsive than he was before.

The reason I do not have tax returns since 1998 is because my income has always come via long projects, I make income differently.

In Chapter 13, I quickly paid what was requested of me. Then, my only two creditors take extraordinary efforts to prevent me from paying them.

My attorneys sister dies and I am thrown under the bus.

Why would my creditors under value this property for so far less than what I paid for it?

Why would they make such efforts to prevent me from paying them the mortgage we agreed upon?

I pray for any and all consideration.

## **Conclusions:**

Debtor's estate has far more assets than liabilities and is able to pay Creditors as agreed.

The property/mortgage 155 Liberty Road is NOT "underwater", and is the only cause of this bankruptcy.

Debtor has proved income, and Debtor could have provided a prompt repayment of accounts under Chapter 13.

In order to negotiate with the creditor's, at their suggestion, and the insistence of the Creditor's Attorney, the Debtor's attorney was dismissed. Then Creditors refuse to negotiate.

There has been complicity by the Creditor in the previous business activities of the Debtor, that set the stage of the current Debtor situation.

Creditor's are looking for a "Court House Sale" and have no interest for the income of the mortgage agreement, therefore the hurried sacrifice sale of these two minor properties is unwarranted.

Professional hired to auction these properties does not have the infrastructure necessary to obtain the best price for the estate.

Creditors are engaged in an effort to intimidate the debtor, that these actions that are costly and do not serve to the benefit of the estate.

Until this matter is concluded, 8931 Timmons Circle along 155 Liberty Road both fall under exempt assets of the Debtor.

**Wherefore:**

Debtor objects to Chapter 7 trustee's motion on the grounds, that,

The Timmons Circle property falls under the residential requirements of the Creditor, and should be considered as such.

The hurried, or "fast track" sale of these minor properties is unwarranted.

Prior to sale, a proper appraisal should be conducted to ascertain the correct value of properties..

If properties are to be sold, that qualified agents of national reputation sell these properties, that can show no association with the Creditors.

Respectfully submitted,

Claudio Avendano Debtor

Claudio Avendano  
PO Box 401, Winston Georgia 30187  
404 520 3333  
claudio@metroecho.com

CERTIFICATE SERVICE

This is to certify that I have mailed a copy of the  
**DEBTOR'S OPPOSITION TO MOTION FOR AUTHORITY TO (I) SELL PROPERTY OF THE ESTATE  
FREE AND CLEAR OF ALL LIENS, INTERESTS AND ENCUMBRANCES AND (II) DISBURSE CERTAIN  
PROCEEDS AT CLOSING.**

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:

Office of the United States Trustee 362 Richard B. Russell Bldg.  
75 Ted Turner Drive, SW  
Atlanta, Georgia 30303

Neil Gordon, Chapter 7 Trustee  
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