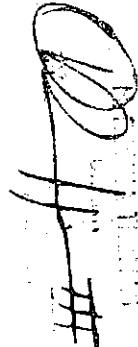


IN THE UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF  
GEORGIA ATLANTA DIVISION

IN RE: )  
CHAPTER 7 )  
CLAUDIO PABLO AVENDANO, ) CASE NO. 15-64523-PWB  
Debtor. )



2016 OCT 11 AM 9:04

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA

DEBTOR'S MOTION TO CONVERT CHAPTER 7 CASE TO A CASE UNDER  
CHAPTER 13

COMES NOW, the above captioned Debtor, and pursuant to 11 U.S.C. §706 and  
Bankruptcy Rule 2 1017(f) and 20012, hereby exercises his right to re-convert his Chapter 7  
case to a case under Chapter 13, and in support thereof shows this Honorable Court the  
following:

1.  
Creditor Jerry Austin filed a wrongful foreclosure against the Debtor by not providing the 30 day period prior to comply as required by the promissory note. "That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means." (Finlay v. Oxford Const. Co., 138 Ga.App. 49, 225 S.E.2d 495). "While the due that stated in the second security deed does indicate a conflict with the due date in the note, **the terms of the note must govern.** "
2.  
Attorney for the Creditor, Victor Harrison was called and made aware of the wrongful nature of the foreclosure prior to the sale scheduled at the courthouse and stated he would proceed nonetheless.
3.  
Debtor, looked for, but had insufficient time to find counsel, and incorrectly filed, pro se, a petition for relief under Chapter 7 on August 3, 2015.

4.

The Debtor filed this Chapter 7 case in order to stay the wrongful foreclosure of commercial property allowing him time to repay the mortgage arrearages. The property is located at 155 Liberty Road, Villa Rica, GA 30180 (the "Property"), which serves as Debtor's place of business and residence.

5.

The property at 155 Liberty Road is part of a far larger estate that includes two other properties in Georgia and the bulk of the estate being a subdivision of 160 lots in Chile.

6.

The property at 155 Liberty Road is **incorrectly** valued at \$374,370.00 based on the 2014 Douglas County Property Tax Assessments. Debtor's ownership interest in the Property is subject to two (2) separate deeds to secure debt as follows:

(a) Jerry E. Austin holds the first mortgage in the principal amount of \$497,400.00, with a pre-petition payment arrearage of approximately \$38,486.28.

(b) Lawson Realty, LLC holds the second priority mortgage in the principal amount of \$22,600.00, with a pre-petition payment arrearage of approximately \$3,200.00.

7.

On October 5, 2015, Jerry E. Austin filed a Motion for Relief from Stay ("Motion") (Doc No. 18) seeking to recover the Property for cause, including lack of adequate protection and that the Property was not necessary for effective rehabilitation.

8.

Upon receiving the Motion, it became clear to the Debtor that he had filed the wrong Chapter and again sought legal counsel.

9.

The Debtor is a Tailor by trade, but has made most of his income by the transaction of real property. Debtor's incorrect Chapter 7 filing inadvertently prevented him from his primary source of income the sale of 160 lots in Chile. ( <http://www.metroecho.com/history> )

10.

At the time of filing the Debtor was collecting rental income, operating a tailor business and other work in the Atlanta area. Contracted to and providing tailoring services to Commonwealth Proper, a custom clothing concern with locations in Atlanta and Philadelphia.

11.

On October 25, 2015, Richard K. Valdejuli, filed on behalf of Debtor a Motion to Convert Chapter 7 Case to a Chapter 13 [Docket No. 21] ("Motion to Convert").

12.

On December 16, 2015 the Court entered an order granting the Motion to Convert to Chapter 13. Requesting "it needs to be on a fast track", and that property be sold quickly.

13.

In order to comply to with the Court's request, on March 9, 2016, Debtor closed his tailor business, travelled to Chile to execute sales of properties ready for closing in Chile.

14.

Between March and July of 2016 Debtor made all payments required by the court, totalling to the amounts of \$17,674.75 directly to the Creditors and \$4,375.00 to the Chapter 13 Plan.

15.

Between March 9, 2016 and April 9, 2016 Debtor generated \$38,000.00 in gross income. This became the current income source for the debtor as defined by

"the average monthly income from all sources that the debtor receives"

This is a long term business project that involves associates, and other infrastructure that has shown to provide regular and sufficient income as described in U.S. Code § 101

16.

Debtor had several additional lots pending to sell that would have paid off all mortgage obligations due to Creditors and had planned to return to Chile to finalise these sales.

17.

In spite of receiving payments as required, Chapter 7 Trustee and Creditors on June 23, 2016, once again objected to the confirmation of the Chapter 13. Debtor was stopped from the performance of his business in Chile and of paying Creditors by the Creditors extraordinary action to re-convert to Chapter 7.

18.

Motion to ratify the sales in Chile was filed on July 7, 2016

19.

Due misleading statements presented to the Court, and the Debtor's attorneys failure to timely file documentation (due to a death in his family), the Chapter 13 plan was not confirmed. The Case was re-converted to Chapter 7 on July 13, 2016 [Doc. No. 91], and Trustee was re-appointed on July 18, 2016 [Doc. No. 93]

20.

The question of feasibility of the plan is of concern to the Court. Debtor had regular rental income, some income from Tailoring and other local sources. The Court was not made aware that the Debtor is uniquely able to generate more than sufficient income through a "Cure by Sale" method that is recognized by this Court.

[http://www.ilnb.uscourts.gov/sites/default/files/opinions/Otha\\_Isaac.pdf](http://www.ilnb.uscourts.gov/sites/default/files/opinions/Otha_Isaac.pdf)

The chapter 13 plan did and would provide for "immediate sale or refinancing".

"Some suggest that there should be trustee or other administrative oversight of the marketing and sale process. E.g., In re Anderson, 28 B.R. 628, 629-630 (S.D. Ohio 1982)." Oversight by the Chapter 13 trustee would be most welcome, by the Debtor. That all future documentation be provided timely to this court

21.

Judge Lundin has written that a sale of property should satisfy the requirements of §109(e). See, Lundin, Chapter 13 Bankruptcy, §9.11. He argues that if a sale of inventory by business produces income that will satisfy the regular income requirement, why not a sale of real estate, or a business?

<https://www.wicb.uscourts.gov/sites/default/files/chambers/svk/LouJones/Gustafson%20Outline.pdf>

22.

On August 9 2016 Chapter 7 Trustee filed a 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

23.

On September 8, 2016 Debtor filed an objection to the Chapter 7 Trustee's motion to sell. In this objection Detor shows that the Creditors do not seek nor need the money from the monthly payments. Instead their efforts are to have the property they sold returned to them. **That Creditors did not require the "Fast Track" to pay obligations as ordered in the Chapter 13 conversion.**

24.

At the hearing held September 13, 2016 Debtor presented a tenant, Southland Machinery, willing to pay an amount equal to mortgage payment, taxes and insurance.

25.

At the hearing and out of Court afterwards, Debtor and representative of Southland Machinery petitioned the Chapter 7 Trustee to operate the business of the Debtor and lease to Southland Machinery to the benefit of both the estate and the creditor. To no avail. 11 U.S.C. § 721.

#### **INABILITY OF CHAPTER 7 TRUSTEE TO BEST ATTEND TO THE ESTATE**

25.

Over \$23,000.00 in payments have been made to the Creditors while in Chapter 13. The Chapter 7 trustee is operating in "Fast Track" mode selling for below market value, and by unqualified persons, portions of the estate required by Debtor for habitation and business in violation of 11 U.S.C. § 522

26.

At the July 7, 2016 hearing Chapter 7 Trustee stated that he understood how to sell the estate properties located in Chile. That it could be done locally through a Consul in Atlanta. **This is false, and not possible.**

27.

The actual process requires complicated legal filings in Chile. A procedure that will be uncertain and speculative. Such action will further deplete domestic portions of the estate, required to pay creditors. An attempt to sell properties in Chile by the Chapter 7 Trustee would only serve to convert the value of the estate into legal fees.

28.

Several calls and emails have been sent to the Chapter 7 Trustee to see how properties now pending for sale in Chile can best be attended, **without reply.**

29.

Trustee has stated in court that that the cost of selling individual properties may be too costly, yet after repeated request will not divulge what that cost may be.

**TRUSTEE TAKES OVER THE DEBTOR'S BUSINESS WITHOUT COURT'S CONSENT**

30.

On or about September 6 2016, Without the consent of the Court, the Chapter 7 Trustee took over the business of the Debtor. He intimidated a one tenant into moving out. He then began requesting and receiving rental amounts from the tenants to be paid over to the Trustee, in violation of the bankruptcy code. 11 U.S.C. § 721.

31.

Rental income confiscated by the Chapter 7 Trustee was used by the Debtor to operate the lease portion of his business, pay utilities, maintenance, and insurance for the tenants and estate property at 155 Liberty Road.

32.

After several unanswered calls and emails requesting Chapter 7 to pay Insurance from the funds of rental income confiscated. Trustee choose to insure himself and insurance was canceled.

33.

Trustee is acting on behalf of the Creditors to make economic conditions for the Debtor as harsh as possible, in an attempt to debilitate Debtor's ability to convert to Chapter 13 pursuant to 11 U.S.C. §706 and Bankruptcy Rule 2 1017(f) and 20012, evolving these sales to generate legal fees, and not to the benefit of the estate.

**THE BULK OF THE ESTATE AND INCOME POTENTIAL OF THE DEBTOR IS IN CHILE. NEW LAWS ENACTED MAKE THIS PORTION OF THE ESTATE NOT REASONABLE TO BE ATTENDED BY A CHAPTER 7 AND DEBTOR'S BUSINESS IS MORE ABLE TO PROTECT THE ESTATE AND PAY CREDITORS OBLIGATION**

34.

Debtor has specific skills that can better preserve the value of the estate and repay creditors.

35.


Debtor has clearly shown that these sales are not speculative. Debtor has the ability to perform and pay obligations quickly with his business in Chile, and has been stopped from doing so in Chapter 7.

36.

The Debtor is otherwise qualified to be a Debtor under Chapter 13 pursuant to §109(e) of the Bankruptcy Code and is financially able, from payments of future income and/or liquidation of other assets, to allow for an effective reorganization.

RESPECTFULLY SUBMITTER

OCTOBER 11, 2016

  
CLAUDIO AVENDANO

404 520,3333

**Certificate of Service**

I, Claudio Avendano, certify that I served a copy of this..

**DEBTOR'S OPPOSITION TO TRUSTEE'S MOTION FOR (I) APPROVAL OF BIDDING AND AUCTION PROCEDURES, (II) AUTHORITY TO (A) SELL REAL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, AND (B) DISBURSE CERTAIN PROCEEDS AT CLOSING, AND (III) TURNOVER OF COMMERCIAL PROPERTY PRIOR TO CLOSING OF PROPOSED SALE**

by First Class United States Mail, with adequate postage prepaid, to the following persons or entities at the addresses stated:

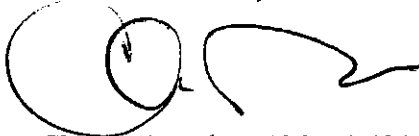
Office of the United States Trustee  
362 Richard B. Russell Bldg.  
75 Ted Turner Drive, SW  
Atlanta, Georgia 30303

Neil Gordon, Chapter 7 Trustee  
Arnall Golden Gregory, LLP  
171 17th Street, Suite 2100  
Atlanta, Georgia 30363

Jerry E. Lawson and Lawson Realty, LLC  
C/o Victor J. Harrison Harrison & Horan, P.C.  
3150 Golf Ridge Boulevard Suite 101  
Douglasville, GA 30135

**I certify the foregoing is true and correct**

Date: October 11, 2016



Claudio Avendano (debtor) 404 520 3333  
PO Box 401 Winston, Georgia 30187