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

IN RE:) Chapter 13
)
CLAUDIO P. AVENDANO,) Case No. 15-64523-pwb
)
Debtor.)

TRANSCRIPT OF HEARING ON RESCHEDULED CONFIRMATION OF PLAN

**BEFORE: Judge Paul W. Bonapfel
DATE: May 11, 2016
PLACE: Courtroom 1401
United States Bankruptcy Court
Atlanta, Georgia**

APPEARANCES:

Counsel for Debtor Richard K. Valldejuli, Jr.
Valldejuli & Associates, LLC
2199 Lenox Road, N.E.
Atlanta, GA 30324

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P R O C E E D I N G S

9:30 a.m.

THE CLERK: Confirmation case is case number 15-64523, Claudio Pablo Avendano. This is for confirmation.

MS. KIRKLAND: Good Morning again Your Honor. Brandi Kirkland, attorney for Chapter 13 Trustee. Your Honor, you may recall this case. You've heard argument on it several times. Both when it was a Chapter 7 and since its conversion to Chapter 13. This case was filed as a Chapter 7 on August 3rd of 2015. It converted to Chapter 13 on December 16th of 2015. The motion to convert the case to Chapter 13 was opposed by other parties in interest. The matter was heard by Your Honor at which time it was revealed the Debtor has approximately 160 individual parcels of real property located in Chile that he would like to sell and use to fund his Chapter 13 Plan. Obviously, I was not present at the hearing on - in the Chapter 7 case, but it's my understanding from the other parties that while Your Honor did grant the Motion to Convert that Your Honor wanted a, sort of a fast track to be placed on the case. If these properties were going to be sold, that they be sold, the case be paid off and, and let's move on.

Your Honor heard argument on the confirmation hearing March 9th from all parties in interest and the confirmation hearing was reschedule to this morning. Last -

1 the Trustee filed dozens of objections to confirmation back
2 in February. Almost all of which still remain outstanding.
3 There has been a - I, I checked the docket in this case at
4 11:30 last night. Nothing had been filed to resolve the
5 Trustee's objections to confirmation. But when I came in
6 today, counsel for a creditor in the case informed me that
7 this morning an Objection to Claim had been filed, an
8 Amended List of Creditors had been filed, an Amended Chapter
9 13 Plan had been filed and the Debtor's Pay Advices had been
10 filed. I obviously have not had an opportunity to review
11 those. I don't know what, if any, objections to
12 confirmation they resolve. But I can tell you that we still
13 have, Your Honor allow the - my client to preserve her
14 eligibility objection in this case due to the Debtor's
15 failure to obtain pre-petition credit counseling. His case
16 was filed on August 3rd of 2015. He obtained credit
17 counseling on August 14th of 2015. It's my understanding
18 from Mr. Valldejuli that Mr. Avendano still has not filed
19 his tax returns and other than that, we had requested proof
20 that the Debtor is current with all post-petition mortgage
21 payments and all of the other objections to confirmation.
22 I'm not sure, what if anything the Amendments that were
23 filed this morning resolve. I'm requesting that the case
24 either be reconverted to Chapter 7 or dismissed.

25 And the Debtor's - I did want to mention one other

1 thing regarding funding. The Debtor's Chapter 13 Plan does
2 provided for monthly payments of \$875. Mr. Avendano paid
3 \$875 to the Chapter 13 Trustee on January 20th and we have
4 not received anything since. However, Mr. Valldejuli did
5 provide me proof that apparently Mr. Avendano went online
6 and made three payments of 875 today. So, if, if those
7 clear that would bring him current through today. In spite
8 of that, however, and given the outstanding issues in this
9 case, Your Honor, I'm requesting, as I mentioned that Your
10 Honor either reconvert the case back to Chapter 7 or dismiss
11 the case.

12 THE COURT: Okay. Thank you.

13 MS. KIRKLAND: Thank you, Your Honor.

14 MR. HARRISON: Morning Judge. Victor Harrison on
15 behalf of Jerry Austin, creditor and Lawson Realty
16 Incorporated. I'm not going to reiterate our support once
17 again of the Chapter 13 Trustee except for we are not
18 desirous of having it dismissed. We are desirous to have it
19 converted back to a Chapter 7. At two --

20 THE COURT: Your clients have a mortgage on a
21 residence? Have I got that right?

22 MR. HARRISON: Your Honor, it's commercial
23 property that --

24 THE COURT: On commercial property?

25 MR. HARRISON: -- my understanding is the Debtor

1 may be residing in the property but --

2 THE COURT: Okay.

3 MR. HARRISON: -- we, we've discussed that. But
4 at 2:32 this morning Debtor's counsel filed several
5 documents that, while my secretary was there early enough to
6 provide copies for me to review, I've looked at them
7 briefly, but I was at the gym. I grabbed them and here I
8 am. But based on my quick arithmetic, at 875, which is what
9 they are proposing and it appears that they are also
10 disputing our amended claim that, that was filed on March
11 the 10th. So this morning at 2:30 we get the Objection to
12 the Amended Proof of Claim. But based on their numbers, not
13 mine, because again, we, we don't agree with their numbers,
14 it's higher. But their numbers, there is going to be a
15 shortage at the end of the 36 months of \$31,450.67. Now
16 what they do provide for is my clients to get extra or 65
17 percent in one case and 15 percent of the other of
18 additional funds.

19 Based on my quick reading, it appears the Chapter
20 7 Trustee is going to get paid first. Then based further on
21 my reading is Debtor's counsel will be able to get paid and
22 reduce our payments. So I don't think that the numbers are
23 even accurate. Then I think it's going to go down because
24 Debtor's counsel will be paid. But, that's a \$31,450.67
25 haircut that they're trying to impose. And this goes back

1 for well over a year that I've been dealing with it.
2 Because originally I was going to foreclose on the property
3 on August 4th, 2015. And that's when the day before Debtor
4 filed Chapter 7. So for at least one year, I know, that
5 it's been, being told that the property in Chile's going to
6 sell. And that may or may not occur. I have no reason to
7 believe that it is at this point. If it was going to, I
8 would think that it would have occurred within one year.

9 Therefore, we reiterate our request to have this
10 converted back to a Chapter 7. If there is property down in
11 Chile, which I'm taking it at face value that there is, the
12 Chapter 7 Trustee would be able to liquidate and then have
13 my clients paid.

14 THE COURT: Okay.

15 MR. HARRISON: Further, one additional point.
16 Again, I represent two clients. The, the first mortgage
17 holder is an individual by the name of Jerry Austin. He,
18 he's not a large bank. He's a - one guy. And as of
19 yesterday, because I inquired with him, he has not received
20 the payment for May that was due. Debtor's counsel stated
21 that - or actually his client, that he sent the money
22 yesterday vis-á-vis either a wire or either a direct
23 deposit. I don't know exactly how he, he did it. I have
24 not - I did send an email to my client to see if I could get
25 confirmation for him to update it. As of this morning I

1 have not received a response so I can't speak intelligently
2 whether or not something hit overnight. But I can tell you
3 as of yesterday at about 4:00 nothing had hit.

4 THE COURT: Now is that payment the regular
5 installment payment?

6 MR. HARRISON: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. HARRISON: That, that would be the payment
9 that was due in --

10 THE COURT: For May?

11 MR. HARRISON: -- in May. Yes.

12 THE COURT: Okay.

13 MR. HARRISON: So - but again. He's been sitting
14 out there since August. Is it - you know going on ten
15 months now. And we have received about three payments now.
16 February, March, April. I misspoke, four payments.

17 THE COURT: Okay.

18 MR. HARRISON: Assuming that it actually hit.

19 THE COURT: Okay. Thank you.

20 MR. HARRISON: Thank you.

21 MR. BARGAR: Good Morning, Your Honor.

22 THE COURT: Go ahead.

23 MR. BARGAR: Mike Bargar on behalf of Arnall
24 Golden Gregory. The firm previously represented the Chapter
25 7 Trustee. I, I think everything that we would represent

1 has been represented to the Court. I would note that this
2 case was supposed to have been placed on a fast track back
3 at the conversion, the Motion to Convert hearing. The Court
4 had shortened the notice period for the 341 calendar. It
5 had also requested or, or included in the order that the
6 Confirmation Hearing be set for 60 days after the Order
7 converting the case was entered. Sixty days would have been
8 February and we are in May now. We would ask the Court, to
9 the extent the Court concludes that it is appropriate to
10 either convert or dismiss the case that the case be
11 converted to a Chapter 7 case and not dismissed.

12 THE COURT: Okay. Thank you. Mr. Valldejuli,
13 what's the status here?

14 MR. VALLDEJULI: The Trustee's current with the
15 payments. The - excuse me, they weren't posted yet. But I
16 have the receipts from the online. Mr. Harrison will find
17 out that his client did, in fact receive a deposit. Ms. -
18 my client deposited it into Mr. Austin's account directly
19 the funds to pay the May. So we're current with post-
20 petition mortgage payments from the time of conversion, once
21 that's acknowledged that that has been paid. Everything
22 that we were required to do under the Chapter 13 Plan has
23 been done. The factors that remain are as follows: There
24 is, there is, - the, the Court was concerned of the fact
25 that Mr. Avendano had not filed income taxes since 1998

1 because his claim is that he never had any income to
2 declare. He's been living off of - he'd been living of at
3 that time from money that he earned from a sale of property.
4 And he had no, he's had no regular income, and he wasn't
5 required to file taxes. That's - the Debtor's here. He can
6 explain that if he wants, but this year he'll finally filing
7 taxes, but he hadn't been. He has not been employed and
8 earned enough money to, to do that. He's basically just
9 been doing the real estate transactions.

10 THE COURT: Doing what real estate transactions?

11 MR. VALLDEJULI: Just, just he earned some money
12 years back. That's how he bought the property from, from
13 Mr. Austin and so on. But that's what he'd been living on
14 until, I guess about a year or two years ago. Anyway, I,
15 I'm not going to speak to that right now. That's a - I mean
16 that's - he, he's not required to file the income taxes
17 because he's had no income. That's my proffer. I mean he
18 can talk about that - as far as documents that were filed.

19 THE COURT: Who, who - not required to file for
20 what years?

21 MR. VALLDEJULI: That's - the last income tax that
22 he filed is --

23 UNIDENTIFIED SPEAKER: Nineteen --

24 MR. VALLDEJULI: Since 1998.

25 UNIDENTIFIED SPEAKER: Ninety --

1 THE COURT: Okay. Does he have income now?

2 MR. VALLDEJULI: Through our efforts. I don't
3 know if it would be - it would be - an accountant would say
4 it's income since it's a sale of real estate to foreign
5 country. But that's not for me to say. His income right
6 now is, is, is generated from, from the, from the rent that
7 the tenant is paying in the property --

8 THE COURT: That's income.

9 MR. VALLDEJULI: Judge, it's a start, okay. I'm,
10 I'm just telling you, yes, he has income. It, it's not the
11 end of the year yet.

12 THE COURT: Okay. Go ahead.

13 MR. VALLDEJULI: All right. Now --

14 THE COURT: So he hadn't filed any return. He
15 didn't file a return for 2015?

16 MR. VALLDEJULI: That is correct.

17 THE COURT: Or '14?

18 MR. VALLDEJULI: That is correct.

19 THE COURT: Or '13?

20 MR. VALLDEJULI: That is correct.

21 THE COURT: Okay.

22 MR. VALLDEJULI: Now the, the documents that were,
23 that were filed. In the last hearing there was a, a the
24 Trustee went through some of the outstanding, outstanding
25 objections. The taxes, of course, were important. The

1 funding was important. The credit counseling issue we'll
2 take up some day. And the proof of post-petition mortgage
3 payments was important. The - although he had no income six
4 months prior to filing the Court's suggested, but, but
5 prefer that it's, it is part of the requirement of the code
6 to file a Means Test or a B22, whatever they call it these
7 days. B22-C was then - that was filed. A Verified
8 Statement of Payment Advices that showed he had no income
9 six or 90 days or 60 days prior to filing. Again, just
10 housekeeping stuff.

11 The Amendment to the Plan, well, let me back up a
12 second. The last time we were in Court, there was Plan that
13 provided - that updated all the dollar amounts that had to
14 be paid to the two major creditors which was, of -- I, I
15 don't know - which is Mr. Austin and Lawson, and Lawson
16 Realty. And those were based on the Proof of Claim that was
17 filed by, by Mr. Harrison. And so we had 44,000 on one and
18 10,000 some on the other. Well, unbeknownst to me that he
19 had amended the claims to add the 15 percent default
20 attorney fees that are on every - that every mortgage note
21 has. So he added 15 percent to the unpaid principal balance
22 to each claim, which would have been - now, now claim number
23 - from Mr. Austin is 124,000 instead of 44 and the claim for
24 Lawson Realty is 14,000 instead of 10.

25 Even if I had been perfect, even if I had every

1 document, every tax return, there would have been a terms
2 objection. Because now I'm dealing 124,000 plus the other.
3 So it doesn't matter what I did or didn't do. This case is
4 not confirmable today. It wouldn't be confirmable because
5 of the Amended Proof of Claim. And what law he was basing
6 his, his reasoning on, I have no clue. But it's pretty
7 clear that since 1988 there's a lot of case law out there in
8 this jurisdiction that states that you don't get paid, turn
9 15 percent of the, of, of the principal unpaid balance in a
10 bankruptcy (indiscernible). So I've got to object to that.
11 That I've scheduled the hearing out for, for January - I'm
12 sorry for June. So we can't really do anything until that's
13 resolved in, in my opinion. And then the other things can't
14 get resolved as well. So, fine. Put it all on, put it all
15 on me, put it all on my client. We're conforming, we're
16 complying. There's some housekeeping things to be done.
17 But we've done more --

18 THE COURT: Well, well a Plan was filed this
19 morning?

20 MR. VALLDEJULI: Yeah. And, oh, let --

21 THE COURT: Okay.

22 MR. VALLDEJULI: -- me tell you what the Plan
23 does.

24 THE COURT: Tell me what that Plan provides for?

25 MR. VALLDEJULI: All right. The last Plan, the,

1 the Amended Plan that we're talking about last time, I, I
2 had - I put in there because I don't think Mr. Gordon's fees
3 had been in, been - I'm sorry, the - well Mr. Gordon is the
4 Trustee. His fees hadn't been approved yet. So I put in
5 language that, that upon approval, he'll get paid, blah,
6 blah, blah.

7 THE COURT: All right. So what are the Trustee's
8 fees?

9 MR. VALLDEJULI: Of the - you approved 11,900 and
10 some odd dollars.

11 THE COURT: All right.

12 MR. VALLDEJULI: I'll tell you exactly.

13 THE COURT: It doesn't need to be exact. So
14 that's 11,000 for the Trustee's fees?

15 MR. VALLDEJULI: Correct. All right.

16 THE COURT: Okay.

17 MR. VALLDEJULI: And then, and then one of the
18 things I, I was, I was thinking about is that all the money
19 that we're paying into the Plan, \$875 a month just make the
20 regular payments, are all going to go up to 19 and 11,913
21 are all going to go to Mr. Gordon as administrative expense
22 unless I say otherwise. Unless I propose otherwise. So
23 what I did in order to be fair, if I - if this was a Chapter
24 13 case where I've paying - where I've provided to pay my
25 attorney fees a certain dollar amount and not, and, and get

1 paid before any secured creditor gets paid, there would be
2 objections out the yin-yang. I mean there would be
3 objections everywhere, not good faith, I shouldn't be paid.
4 Even though law says --

5 THE COURT: Okay, time out. Time out.

6 MR. VALLDEJULI: Yeah.

7 THE COURT: I, I just want --

8 MR. VALLDEJULI: What I provided for.

9 THE COURT: I want, I want to know what the Plan
10 proposes to do.

11 MR. VALLDEJULI: I, I propose to --

12 THE COURT: I don't want to know why.

13 MR. VALLDEJULI: That's fine.

14 THE COURT: I don't know, I, I don't --

15 MR. VALLDEJULI: Okay, okay.

16 THE COURT: -- right now, I just want to know what
17 it says is going to be paid.

18 MR. VALLDEJULI: From the monthly payments --

19 THE COURT: Eleven thousand to the Trustee.

20 MR. VALLDEJULI: Okay. Of the 875 dollar monthly
21 payments, the Trustee will disburse 20 percent of that
22 amount to, to AGG - Arnall Golden & Gregory.

23 THE COURT: Okay.

24 MR. VALLDEJULI: Sixty-five percent of the, of the
25 875 will go to Mr. Austin.

1 THE COURT: Wait a minute.

2 MR. VALLDEJULI: Towards his arrearage claim.

3 THE COURT: Time out. I wrote a hundred percent
4 to AGG.

5 MR. VALLDEJULI: Twenty percent.

6 THE COURT: Twenty percent.

7 MR. VALLDEJULI: Yes.

8 THE COURT: Okay.

9 MR. VALLDEJULI: Sixty-five percent of the monthly
10 installment will go towards the arrearage of Mr. Austin.
11 And fifteen percent of the payment will go to Lawson Realty
12 towards their arrearage. That plus the - I, I hope the
13 Trustee fee is 5.25 because that's how I used to calculate
14 it. At four in the morning their system isn't up.

15 THE CLERK: You want to take a quick break and
16 (inaudible).

17 THE COURT: Yeah. Let me just take a break --

18 MR. VALLDEJULI: Sure.

19 THE COURT: -- let me deal with the 10:30
20 calendar.

21 [WHEREUPON, there was a break recess taken at 10:38:04]

22 [WHEREUPON, proceedings resume at 10:38:33]

23

24

25 THE COURT: All right, Mr. Valldejuli you're back.

1 MR. VALLDEJULI: Sure. I felt that was fair so
2 they wouldn't have to wait to get paid towards their
3 arrearage claim.-

4 THE COURT: All right now. Time out.

5 MR. VALLDEJULI: Yes.

6 THE COURT: Remind me, the Austin claim is how
7 much?

8 MR. VALLDEJULI: The Austin claim --

9 THE COURT: Maybe Mr. Harrison can --

10 MR. VALLDEJULI: -- before their Amended claim --

11 THE COURT: -- okay. Let me - hold up --

12 MR. VALLDEJULI: -- it was 44,000.

13 THE COURT: -- let me - let me ask.

14 MR. VALLDEJULI: Yes.

15 THE COURT: Mr. Harrison what's the amount of Mr.
16 Austin's claim?

17 MR. HARRISON: In my opinion? All right. Because
18 he's disputed it so.

19 THE COURT: I, I want to - tell me what - I want
20 to know what you think the payoff is first of all.

21 MR. HARRISON: As of February the 16th of this
22 year it was 603,345.62.

23 THE COURT: Okay, and, and that includes
24 principal, interest and attorney's fees?

25 MR. HARRISON: That's correct.

1 THE COURT: And so what's the principal?

2 MR. HARRISON: Four hundred and ninety thousand,
3 two ninety-eight thirty-one.

4 THE COURT: And the interest?

5 MR. HARRISON: And I misspoke. There, there's an
6 additional factor of late fees.

7 THE COURT: Okay.

8 MR. HARRISON: Interest through December the 14th,
9 was thirty-two - which, I don't know why we picked, that.
10 Oh that's the order they converting. Thirty-two thousand
11 two-eleven ninety three.

12 THE COURT: Okay.

13 MR. HARRISON: Late fees in the amount of
14 \$2,138.13. Attorney fees in the amount of 78,697.25.

15 THE COURT: Okay. Now what's the arrearage claim
16 or what are the terms of the payment of this debt?

17 MR. HARRISON: There was a monthly installment.
18 Is that --

19 THE COURT: Okay. How, is, is it - when does it
20 mature?

21 MR. HARRISON: In 2039.

22 THE COURT: Okay.

23 MR. HARRISON: January the 4th.

24 THE COURT: So it's a long-term obligation?

25 MR. HARRISON: That's correct.

1 THE COURT: So what's the pre-petition arrearage?

2 MR. HARRISON: It's 124,692.04.

3 THE COURT: And what is that based on?

4 MR. HARRISON: That will be based off of monthly
5 payments that were obligated to be paid up until the date of
6 the conversion. Interest that was owed up until the date of
7 the conversion, late fees up until the date of the
8 conversion and included in that number is the attorney's
9 fees that was provided by the contract.

10 THE COURT: Okay, so what's the amount of all of
11 those things?

12 MR. HARRISON: One twenty --

13 THE COURT: No, no, no - divided.

14 MR. HARRISON: Uh --

15 THE COURT: The - what are the month - what's the
16 amount of the monthly payments that are due?

17 MR. HARRISON: Oh, I have to - amount of the
18 monthly payment is.

19 THE COURT: Okay, time out. Maybe I can do it
20 this way. The total is 124.

21 MR. HARRISON: Yes.

22 THE COURT: How much of that is attorney's fees?

23 MR. HARRISON: That part I can give you easily,
24 78,697.25.

25 THE COURT: So that's about 46,000 in pre-petition

1 arrearage other than attorney's fees? Right?

2 MR. HARRISON: I, I trust your - yes.

3 THE COURT: Okay.

4 MR. HARRISON: I believe that's going to be
5 somewhere accurate.

6 THE COURT: And what do you think it is Mr.
7 Valldejuli?

8 MR. VALLDEJULI: Well, basically Your Honor, his
9 first Proof of Claim before he added the statutory 15
10 percent, which was 40,000. My Plan, my Plan --

11 THE COURT: I just want to, Mr. Valldejuli --

12 MR. VALLDEJULI: My Plan is 40,000, 44,000 --

13 THE COURT: Just hold on.

14 MR. VALLDEJULI: Fourteen --

15 THE COURT: Just tell me what you think the
16 arrearage amount is.

17 MR. VALLDEJULI: Forty-four thousand.

18 THE COURT: Forty-four?

19 MR. VALLDEJULI: Four-four, nine hundred point
20 six-six.

21 THE COURT: Okay. Thank you.

22 MR. VALLDEJULI: You're welcome.

23 THE COURT: All right now. So Mr. Austin what's
24 the -- I mean Mr. Harrison what's the - I forget the name of
25 your company - Lawson? Is that his name?

1 MR. HARRISON: That - the second creditor?

2 THE COURT: Yes.

3 MR. HARRISON: Yes, Your Honor, it's Lawson Realty
4 Incorporated.

5 THE COURT: Okay, so what's it's, what's the -
6 what's the Lawson claim?

7 MR. HARRISON: The total amount, I, I think that's
8 really what you're looking for, is 29,568.63.

9 THE COURT: Okay.

10 MR. HARRISON: Included in that number is going to
11 be \$3,856.78 for attorney's fees.

12 THE COURT: Okay.

13 MR. HARRISON: Do you want the late fees and the
14 interest or do you want me --

15 THE COURT: No, that's --

16 MR. HARRISON: -- figure out what --

17 THE COURT: -- that's good.

18 MR. HARRISON: -- what the --

19 THE COURT: Now what's the, what's the arrearage?

20 MR. HARRISON: Fourteen thousand nine hundred and
21 eight dollars, three cents.

22 THE COURT: And does that include this 3856 for
23 attorney's fees?

24 MR. HARRISON: It does.

25 THE COURT: So that's about 11,100 without the

1 attorney's fees? Okay. Mr. Valldejuli what --

2 MR. HARRISON: Yes.

3 THE COURT: -- what do you think the Lawson
4 arrearage is?

5 MR. VALLDEJULI: Ten thousand four twenty-five
6 point two one.

7 THE COURT: Okay. All right. Now so are there,
8 are there any other creditors or is this it?

9 MR. VALLDEJULI: There, there are tax claims in
10 about - close to \$8,000 for Douglas County.

11 THE COURT: Okay. And other than that, that's it?

12 MR. VALLDEJULI: Yes, Your Honor.

13 THE COURT: Okay. Okay, so how - what, the Plan
14 is to pay \$875 a month?

15 MR. VALLDEJULI: Yes, Your Honor.

16 THE COURT: And then what? Because --

17 MR. VALLDEJULI: And then, and then --

18 THE COURT: -- because if I add 11,000 for the
19 Trustee's attorneys.

20 MR. VALLDEJULI: Uh-huh.

21 THE COURT: And 8,000 for ad valorem taxes and
22 45,000 round number is your number for Mr. Austin.

23 MR. VALLDEJULI: Right.

24 THE COURT: And 10,000 round number is your
25 numbers for Lawson Realty, I get 74,000 which is more than

1 60 times 875.

2 MR. VALLDEJULI: Right, right.

3 THE COURT: And that is the current Plan?

4 MR. VALLDEJULI: No. The other part of the Plan
5 which has not changed is that along with the regular monthly
6 payments set forth in paragraph two, the 875, the property
7 will be funded from sale proceeds from the properties in
8 Chile. Anything - any available from the, the sale will be
9 paid into the Plan and once those monies are received and
10 let's say, let's say 10,000 comes in from that source, then
11 again, Trustee will disburse 20 percent of that to the
12 Chapter 7 Trustee, 65 percent of that to the, Mr. Austin and
13 15 percent of that to Lawson Realty.

14 THE COURT: And what's the timetable for these
15 sales?

16 MR. VALLDEJULI: Well, the timetable for the
17 sales, there is, there's - we've already - there have been
18 ten sales of - there was 30 - 30 properties reserved. Ten
19 have been sold. We're going to be filing a, a report with
20 the Court. The money is all accounted for. That money was
21 used to pay post-petition, pay the Trustee fees and his
22 living expenses.

23 THE COURT: Wait a minute. Say that again.

24 MR. VALLDEJULI: The funds, the funds --

25 THE COURT: How much? What's been - properties

1 have been sold?

2 MR. VALLDEJULI: Yes, Judge.

3 THE COURT: Okay. And is there an order
4 authorizing that?

5 MR. VALLDEJULI: There's no order, Judge. I was
6 going to be submitting or preparing a motion to, to ratify
7 the sales. It, it's a - what, what the Court doesn't -
8 what's difficult to understand is that --

9 THE COURT: It is difficult to understand sale of
10 estate property without a court order. I agree with you.

11 MR. VALLDEJULI: It will all be - okay. The - one
12 of the things that we were - the, Mr. Avendano was down in
13 Chile for over a month. And in that month, and in that
14 month it's, it, it - well, the - it's not an easy process to
15 try to sell those properties down there. There were 30
16 properties that were, that they had buyers. Ten actually
17 closed. I will be filing a motion to ratify those. The
18 amount of money that came in from those sales will also be
19 accounted for --

20 THE COURT: How much was that?

21 MR. VALLDEJULI: The total on that amount was
22 about 24,000. This is after expenses, after, after -
23 26,666.

24 THE COURT: And where is that money now?

25 MR. VALLDEJULI: Well it's been - some is still in

1 Mr. Avendano's account. The other's been spent for paying
2 the Trustee fees and the post-petition mortgage payments on
3 the, for the Debtor. I mean for the two mortgage lenders.
4 And again, the reason for the ratification, and of course
5 we'll have -- we were - our fees as the Court indicated is
6 that for we - to prepare some sort of a motion to have an
7 open-ended order because there's 161 properties; ten have
8 been sold; six of them sold to one individual. I have the
9 contracts. I couldn't pull up the contracts because they're
10 online and they were coded last night. But I'll be getting
11 that prepared for the Court. All the money is being, is
12 being paid - is being made available to the creditors that
13 are here. The big money will come when the larger - when,
14 when - we've learned a lot of things while Mr. Avendano was
15 down there. The pricing, he doesn't have to go through a
16 broker anymore. He'd made a lot contacts down there. The
17 banking situation - almost 20 percent of the monies were,
18 were eaten up just in bank transactions to try to get the
19 money to the United States. So the money can be paid to
20 the, to Mr. Austin and Lawson Realty and, and for me to hold
21 for the Trustee.

22 So it, it's not - we've learned a lot in the last,
23 in the last 30 days while he was down there. He plans on
24 going back there probably another two or three weeks and
25 hopefully there'll be a substantial amount of properties

1 that will be sold that will be yielding, hopefully in the
2 neighborhood of \$90,000.

3 THE COURT: What is it that makes it permissible
4 to do all this without notice of a hearing?

5 MR. VALLDEJULI: Well, I agree with Your Honor.
6 It's probably a, a jump in the system there. There, there
7 should have been, I should have, I should have requested the
8 motion to allow to sell property and then ratify it. But it
9 all happened so quickly and it was overseas. And things
10 just didn't work out as orderly as the would probably here
11 in the States where there's a formal closing and this and
12 that and, and the other. It was sort of a --

13 THE COURT: Do any of the other parties --

14 MR. VALLDEJULI: -- sort of like mishmash.

15 THE COURT: -- does, does the Trustee even know
16 about this?

17 MR. VALLDEJULI: No, no, I don't believe she does.

18 THE COURT: Do creditors know about this?

19 MR. VALLDEJULI: I, I've kept in communication
20 with the potentials that was going on with Mr. Harrison, but
21 that's it. And what he was down there for and how many
22 properties were on there. But I have actually the list, how
23 much each was sold for, who the buyers are, and copies of
24 the contracts. I did not have that until a week ago when
25 Mr. Avendano came back. But going forward it'll be - it'll,

1 it'll - when the bigger money comes in as opposed to just
2 the small amounts, the other thing we realize is that the
3 properties could be sold for a little bit more. There is a,
4 a, there's, there's a lot of interest in the properties and
5 some other properties nearby that are, are selling a little
6 bit more. So we - Mr. Avendano went down there, again, sort
7 of like a fish out of water. Not completely out of water,
8 but there, there are schemers down there. You just got to
9 make sure that you get the right ones and the representation
10 is usually for the buyer and not necessarily the seller down
11 there.

12 But, but I, I - we were able to comply with, with
13 the Plan. There was no money. As long as we staying in the
14 Plan everything has to be accounted for. It's nothing,
15 nothing that's coming in is not going to pay the creditors.
16 If it, if it, if - had we not sold any of those properties
17 they wouldn't have been paid any of their post-petition
18 payments or the Trustee. So it is all going towards the
19 same place. And that's, that's his - but it will --

20 THE COURT: Well, this raises a question whether
21 there is any regular monthly income?

22 MR. VALLDEJULI: Well, that's the whole point of
23 this case. That's always been a problem, Your Honor is the
24 fact that the regular monthly income was going to be
25 generated for. He can't - well, there's other things that

1 we have on the horizon. But the first thing that came up
2 was his - him able to be able to rent the space for \$1500
3 for mechanic who's working in the commercial space. That
4 was his only source of income until - from the time I came
5 into the case. He also did some miscellaneous jobs here and
6 there. He sold some clothing. These are all the kind of
7 things I brought up to the Court when we, when we moved to
8 convert the case. This was not an easy situation where he
9 had a steady job and was getting a paycheck. There was a
10 lot of, you know, basically, just moving forward and doing,
11 doing what we can. But we are doing it. And the, I mean
12 the Court should recognize that everything that I set out to
13 do.

14 THE COURT: I can't recognize that Mr. Valldejuli.

15 MR. VALLDEJULI: Well, at least to --

16 THE COURT: And, and the reason is there's no
17 there, there.

18 MR. VALLDEJULI: Right.

19 THE COURT: There's, there's no money? There's
20 no, there's \$20,000 that's been sold apparently. There's no
21 report of it. There's no money - we've had some payments
22 made this morning or last night. How, how, how can I, I
23 don't understand how I can be aware of these things in this,
24 context. Well, I got two choices. And I'll hear from the
25 parties. One, I can just convert it today. Two, to

1 reconvert it to Chapter 7 or, two we have an evidentiary
2 hearing and I'll go through all of this. But my problem
3 with an evidentiary hearing is I, I'm not optimistic that,
4 if, if it - if that evidentiary hearing is a, is another -
5 is no more definitive and no more specific than all of this,
6 it's, it's not going anywhere. I thought part of the, part
7 of the idea here was to give Mr. Avendano some time to get
8 those properties sold that would maybe clear up this problem
9 and everybody would be happy and off we would go and these
10 little --

11 MR. VALLDEJULI: That's right.

12 THE COURT: -- issues wouldn't matter. Not
13 necessarily the issue of selling without court approval,
14 because that's, that's a major problem it seems to me.
15 That's a major problem. So, any other thoughts from
16 anybody? Well, you've got the podium. You can give me any
17 --

18 MR. VALLDEJULI: Oh, well --

19 THE COURT: -- further thoughts if you want.

20 MR. VALLDEJULI: -- what I, what I, what I'll
21 propose to the Court is to, to, rectify the procedural
22 process is, I would just file a motion to, to validate the
23 sales, present the, the contracts. The income, the
24 expenses, and how the money was spent.

25 THE COURT: Full accounting?

1 MR. VALLDEJULI: Sure, sure, sure -absolutely.
2 And, and again, this is not - we're not, I'm in some
3 indirect way the fast track for people seemingly, you know,
4 against everything that Mr. Avendano has to do, probably
5 subconsciously or - there's been a lot of pressure put on us
6 to, to perform, perform, perform. In, in light of the
7 Chapter 7 Trustee have these duties nobody would be pushing
8 to performing. He'd do it at his leisure. And then, and
9 you know if things sell, they sell. I'm put under this,
10 this high pressure to perform, perform, perform just to keep
11 him from going back to probably a Trustee who probably
12 couldn't even figure out how to sell these properties
13 because it's taking us so much and he's a native. I mean
14 he's a, he's, you know from that country. American, but I
15 mean he, he's from Chile. I mean, I know what's, what it
16 entails to sell those properties.

17 The only two properties that are, that are here
18 in, in - the three properties that are here in Georgia I
19 don't know why Mr. Harrison thinks that it would better.
20 The second mortgage is wholly unsecured. They're not going
21 to get any of the interest. I mean there's a lot things
22 that I could do in this case that would affect his clients,
23 and I'm not. I'm paying - you know, we're trying to do the
24 right thing. This pressure leads to - there was a Court
25 order that said we had to do something by a certain period

1 of time or else it's converted. You know, we performed.
2 Part of that ability to perform was being able to get money
3 here from the sell of property Chile. I'm not saying it's
4 an excuse. I'm just saying that if I was given a little bit
5 more wiggle room, little bit more room to breathe, not every
6 five minutes. Even when they're being paid, they're against
7 me. They're against us.

8 I haven't filed an application for fees yet. I've
9 not even entered the petition to be paid because I'm relying
10 on the fact that I'll get paid when everybody else does.
11 I'm putting his interests over mine. That doesn't mean
12 anything to this Court. I understand that. That's my
13 personal choice. But nothing I do seems to get to the
14 chance that I - because I'm trying to protect his interest,
15 I have to protect his client's interests. I have to.
16 They're just important me because if they're not happy, he
17 can't succeed. And I'm put under all this pressure and
18 they're still, still, still keep it coming at me. We're
19 still not doing it right. Yeah, I messed up. I should have
20 gotten a Court order, but the money went to them. It's not
21 going anywhere else. When the bigger sales come in - when -
22 we've learned a lot. We can sell the property for more, we
23 can, we can circumvent commissions that he's been paying
24 right now.

25 The banking situation has been taken care of

1 because he's not going to have to pay exorbitant fees to get
2 money into this country. Western Union is ridiculous. I
3 mean, and wiring is nonexistent to, to from a foreign bank
4 to another - to a bank here. All that has been resolved.
5 There's been a lot of learning process. I can't report
6 anything possible. I don't anybody cares. They just want
7 the check. But even then, they care. So I'd love to sit
8 down and have a, and have Mr. Avendano tell you exactly
9 what's it like down there. Exactly what the sale process
10 is. What the negotiations are. And we're getting, we're
11 getting good at it. Nobody else can be - can, can learn
12 from the training that we've had. Not a 7 Trustee or
13 anybody else. And if the 7 Trustee did it, I guarantee you
14 all that, that would be sold for a fraction of what it, what
15 it could be sold for. Yes, I want them to get paid. And
16 yes, I want it to quickly.

17 I gave the Court a year, year and a half that we
18 would have it done and I'll stick with that. January is the
19 big, is a, a big vacation season for down there. People are
20 all over. Okay, that's January, we're in June right now.
21 God forbid I'd ask for four months or five months. But
22 nevertheless, this is the pressure I'm under. And I'm, and
23 when I'm under - and he's under pressure, I'm under
24 pressure. I've got, there's got to be performance. Yeah, I
25 made a mistake. I made a mistake. I should have gotten a

1 Court order. But I didn't make a mistake in, in at least
2 the intention was to get his clients paid. make Mr. Harrison
3 happy. I'd love him nothing better than to send me a nice
4 email and say I'm glad things are going okay. They will
5 never happen. That's just the nature of our business. But
6 all I've got is you Judge. You've seen that there's
7 progress. That's all I have. There is four against me and
8 I got you. That's - but not - not that you're with me or
9 against me. But you're the, you're the body whose going to
10 --

11 THE COURT: I try not to take sides Mr.
12 Valldejuli.

13 MR. VALLDEJULI: I understanding. I, I didn't
14 mean it quite that way. I'm just saying that that's, that's
15 all I have plead to. And, and I apologize, but I will make
16 an accounting for it. And its, believe me, there's been
17 nothing taken from this estate that would be - the Court
18 should know me well enough, I hope personally, that
19 nothing's been done. There's no hanky panky here.
20 Everything that has been brought in has been going to them.
21 Yeah, I took, I should, I, I took - I took a shortcut. I
22 apologize and I'll rectify that.

23 THE COURT: Mr. Austin?

24 MR. HARRISON: Harrison, on behalf of Mr. Austin.

25 THE COURT: I'm --

1 MR. HARRISON: That's okay.

2 THE COURT: -- I'll get it right sooner or later.
3 I promise.

4 MR. HARRISON: Judge, the first thing I want to,
5 I, I think it's been mischaracterized that I'm against him.
6 I don't have anything against him or for him. All I want is
7 my client to be paid. I've had two communications with
8 counsel, two. One is when I agreed to continue something
9 with - because the Judge had ordered that it be within those
10 time frames. His sister was having some sort of medical
11 procedure and I'm never going to object to somebody that
12 needs to be with a family member for a medical. That's
13 first communication. Second communication was dealing with
14 insurance. The last hearing on March the 9th is when - hey,
15 you got this short window of opportunity to get insurance.
16 It was not obtained. I said it has not been obtained. I'm
17 going to get it. Then he brings in his previous attorney
18 that I dealt with, with the foreclosure issues who states
19 I'm going to get policy today. That's it. That's the only
20 communications. He's never communicated with me and for me
21 to be against him. That has never occurred. So, I, I think
22 that was mischaracterized and I'm, I'm not overly
23 appreciative of that characterization.

24 As far as the, the selling of the property, I
25 can't speak intelligently whether or not, I don't if that's

1 fair market value or if it's not fair market value.
2 Previously, back in March when we had the hearing, you had
3 said, get information, circulate it amongst the three.
4 Let's make sure that it's fair market value. Who you
5 selling it to? Are they - is it a arms-length transaction,
6 is it not an arms-length transaction? We don't know. So
7 that may very well be top dollar, it may be bottom dollar,
8 it may be that he's selling it to his second cousin on his
9 mother's side. I don't know. I'm not trying to make
10 accusations that that is occurring. But nothing's been
11 presented.

12 As far as the, the money is concerned, he presents
13 his client as the victim, but I got to tell you, I'm looking
14 at my clients as the victim. I've got an individual who's
15 out, based on his numbers, \$45,000 that was owed that he has
16 thwarted in every step saying, oh, work with me. I'm going
17 to sell this property in Chile. Goes on for months.
18 Finally, we started to foreclose and then he files for
19 bankruptcy says, oh you got to trust me. We're going to
20 sell this property down in Chile. My client's still out
21 \$45,000. So it's kind of hard for me to look at his client
22 as the victim when I understand that we're the creditor, but
23 it's still an individual. Lawson Realty is three people.
24 And they're out 10,500 roughly. So, that, that's the only
25 thing I'm going to add to it is --

1 THE COURT: Well if we convert to Chapter 7, they
2 may be out their entire amount, right?

3 MR. HARRISON: I think that there's more equity
4 that's - when you - we're the only creditors.

5 THE COURT: In the real - in, but there's - is
6 there equity in the real estate?

7 MR. HARRISON: Based on their numbers, I think
8 that it, they tried to make it even.

9 THE COURT: Based on your numbers.

10 MR. HARRISON: On, on, on my numbers for the
11 security for my collateral?

12 THE COURT: You're the, you're the guy who has a -
13 as a --

14 MR. HARRISON: I understand.

15 THE COURT: -- real estate broker, he should know
16 what the value is.

17 MR. HARRISON: The collateral for the, my
18 creditors?

19 THE COURT: Right.

20 MR. HARRISON: It's upside down.

21 THE COURT: Okay.

22 MR. HARRISON: There is not. But we're the only
23 two creditors.

24 THE COURT: So if there's, if there's - so you got
25 to get money out Chile?

1 MR. HARRISON: And I think that will occur.
2 Otherwise, we're going to be forced to foreclosure and we're
3 still an unsecured creditor. We're the only creditors.

4 THE COURT: No, but I mean, that's what I mean.
5 If you -- who's going to foreclose?

6 MR. HARRISON: No, no, no. On, on our collateral
7 not Chile property. We don't have anything to do with Chile
8 property.

9 THE COURT: No, no. What I'm saying is if you, if
10 you foreclose on your collateral who's - first of all, who's
11 going to foreclose?

12 MR. HARRISON: I would - in this current situation
13 probably Lawson Realty.

14 THE COURT: Would foreclose?

15 MR. HARRISON: Originally it was going to be Jerry
16 Austin, but I would probably switch it up now. And then
17 have him confirm the sale. I mean, if we're outside of
18 bankruptcy that's what would happen.

19 THE COURT: Okay.

20 MR. HARRISON: And then I'd have Jerry Austin sue
21 him on the note. So, --

22 THE COURT: And then how are you going to collect
23 it?

24 MR. HARRISON: I, I would presume that he would
25 relocate down to Chile in which case my client

1 (indiscernible). Because trying to domesticate a foreign
2 judgment in collections, I mean you're going to eat up more
3 than the, the damages. So - but if not, then we'd see.

4 THE COURT: Okay. So how does a Chapter 7 case
5 help Lawson Realty?

6 MR. HARRISON: Because I believe at that point
7 it's going to be liquidated. I believe that they're going
8 to go --

9 THE COURT: What's, what's going to be liquidated?

10 MR. HARRISON: The Chile property. There's also
11 two properties that --

12 THE COURT: Okay, so you think that there is a way
13 to get money out of Chile?

14 MR. HARRISON: I, I, I assume that there's there.
15 He says there's 150 lots.

16 THE COURT: Okay. All right.

17 MR. HARRISON: So, I mean on his - based on his
18 values there's three hundred grand. You know maybe,
19 375,000. There's also two properties in Douglas County, not
20 my collateral. Two other properties that are, are worth
21 negligible amounts. Okay. It's something very small, but
22 it has valuation. All that property would be sold and even
23 if my clients are unsecured for, you know, the second
24 mortgage holder --

25 THE COURT: Right.

1 MR. HARRISON: -- he's going to get paid.

2 THE COURT: Right. Out of the Chilean property.

3 MR. HARRISON: And/or the Douglas County
4 properties.

5 THE COURT: Well, how much is the Douglas County
6 property worth?

7 MR. HARRISON: Not my collateral. I'm, I, I've
8 never gone by to look at them, but I'm guessing somewhere
9 20, 25,000 --

10 THE COURT: Okay.

11 MR. HARRISON: -- for the two. And, and that's
12 speculating, but I, I think that's going to be somewhere
13 accurate.

14 THE COURT: Okay. All right. Thank you.

15 MR. HARRISON: Thanks.

16 THE COURT: Mr. Bargar?

17 MR. BARGAR: Your Honor, the, the sale of the
18 property was news to me like it was to everyone else in the
19 courtroom. But just, you know, three quick things stood
20 out. One, they have violated the Bankruptcy Code. I'm not
21 sure. I, I am by no means a Chapter 13 expert and some
22 would say I'm not even close to Chapter 7 expert. But I'm,
23 I don't know how this plan could be confirmable when, when
24 the Debtor is not complying with the rules and the code.
25 The, the second point that stood out is that payments have

1 been made to post-petition creditors without Court
2 authority. It is not just that sales occurred, but they
3 mentioned that they hired a broker. No employment
4 application was filed to hire the broker. No fee
5 application was filed to pay the broker. And then also, it,
6 as it, if, if I heard Mr. Valldejuli correctly, there were
7 additional fees in transferring the funds and no application
8 was filed to pay those fees. Those were administrative
9 expense claims just like my client's claims are. Just like
10 the Chapter 13 Trustee's claims are. And for yet another
11 reason they have not complied with the code.

12 The, the third thing that stood, stood out to me
13 is that the, the Debtor on his own proffer that his
14 attorney's proffer has no income to fund the Plan. And
15 again, I am not a Chapter 13 expert, but I would think that
16 that would create serious issues in confirming the Chapter
17 13 Plan if there is no regular income to, to fund. And it
18 calls into question the validity of being able to pay \$875 a
19 month. It would seem to me that that \$875 a month is really
20 coming from sales of the property. So I wonder if there's
21 some double counting going on here as far as the, the Plan
22 goes.

23 Again, Your Honor, with, with all that being said,
24 I do think that it would appropriate to have this case
25 converted to a Chapter 7 case. Our firm, Arnall Golden

1 Gregory has very skilled and talented real estate brokers
2 who sell property all over the world. I do not know whether
3 they have sold property in Chile. But I presume that they
4 are smart enough to figure out how to do that. How to do
5 that efficiently. And in a way that would allow for a
6 meaningful distribution to the general unsecured creditors
7 in this case.

8 THE COURT: Ms. Kirkland do you have anything to
9 add?

10 MS. KIRKLAND: Thank you, Your Honor. No, I would
11 just agree with what's been proffered by both creditors'
12 counsels. Regarding the income issue, we - I did not file
13 an objection on behalf of my client regarding that
14 particular eligibility issue. The testimony at the Meeting
15 of Creditors was the Debtor was receiving income from the
16 storage business and rental income. We requested proof of
17 that income. And based on that testimony we did not file an
18 eligibility objection. However, given the, the proffers
19 that have been made to the Court today, it does appear that
20 the Debtor does not have a regular source of income and the,
21 the sale of these 10 parcels of real property in Chile, you
22 know, the proceeds that were received were partially used to
23 pay for the Debtor's living expenses which now that makes
24 sense. I mean obviously he doesn't have any other source of
25 income. It also make senses as to why the Debtor hadn't

1 made a Plan payment since January and then all of a sudden
2 made three payments at once, because he used the money from,
3 from those - the sale of those properties. So, I would
4 agree with what's been proffered and, and would just add why
5 there was no eligibility issue brought by the Chapter 13
6 Trustee was because of, of the testimony that we received at
7 341. Thank you, Your Honor.

8 THE COURT: All right. We'll have a evidentiary
9 hearing on confirmation. And I'll take all this into
10 account. It's not (indiscernible) burden Mr. Valldejuli.
11 As I see it there's a feasibility problems of how it's going
12 to happen and when it's going to get sold. An eligibility
13 problem with whether the Debtor has regular income. And
14 then there's the problem of compliance with the Bankruptcy
15 Code. And argument that disregarding the provisions of the
16 Bankruptcy Code with regard to notice and hearing and the
17 disposition of estate property that, that concludes
18 confirmation because I don't usually talk about this one
19 much, but well, I suppose it's, it's sort of a - the Plan
20 has been proposed in good faith. I guess that's what it is.
21 I, there's not a specific Chapter 11. Chapter 11, I think,
22 in a Chapter 11, 1129(a)(2) requires the proponent of the
23 Plan to comply with applicable provisions of the Bankruptcy
24 Code. It's not a requirement to the Chapter 13 case,
25 strangely.

1 But, anyway, then there's, there's an issue
2 related to that of transparency. As Mr. Harrison points
3 out, nobody knows anything about this. We don't know who
4 the purchasers are. We don't know what the - what's been
5 sold. And, and the lack of transparency is, is just
6 troubling. It's troubling. It, it's like, you know, trust
7 me but I'm not going to give you any of the details and it
8 will all work out. Don't worry about it. And apparently,
9 accordingly to Mr. Harrison, that's kind of been what
10 they've been hearing for some time now. Which gets
11 frustrating to a creditor. On the other hand, you know,
12 the, the, and this is part of what's driving my decision is
13 if you're right and if this can all get done this probably
14 makes better sense than having it in a Chapter 7, despite
15 all of these problems. But, but these problems are going
16 torpedo this Chapter 13 if there is not transparency and if
17 there is not, you know, some sort of, of communication. I,
18 I'm not going get into who's communicating with whom.
19 That's why I'm just going to have an evidentiary hearing
20 and, and we'll just figure all of this out. But, that's,
21 that's troubling also.

22 You are right Mr. Valldejuli. Maybe if you've
23 heard me say this before when I've represented the Debtors
24 my general view of the world was, I can't solve my client's
25 problem unless I can solve the problems of my creditors or

1 these creditors. So I appreciate that attitude. That's a
2 good attitude. But they do not have any confidence in your
3 client. And that, and, and it's not helping that lack of
4 confidence when they don't get any information. So, they've
5 got to be, in my judgment, I'm not going to tell you how to
6 run your case, but it would seem to me that - now I'm going
7 to tell you how I would run your case. But it would seem to
8 me that it would make sense, you - to try to convince them
9 that you're going to be able to get all of this done before
10 you have to try to convince me.

11 So from that standpoint, Mr. Bargar, if, if you
12 all, your firm is interested in participating, I'd, I'd want
13 to know exactly how and what the Trustee would propose to do
14 to deal with this problem. I don't know whether the
15 Trustee's given any thought to it. I don't know whether the
16 Trustee, but, you know, the, the assertion that we know what
17 we're doing, which I respect, maybe, maybe not. And how
18 much is it going to cost. So forth and so on. But that's
19 part of the consideration of what's in the best interest to
20 creditors in this case, I think, and the Debtor. Arguably,
21 there's a surplus in this case. If the Debtor's right,
22 there is a surplus. That gives the Debtor an interest in
23 the case administration.

24 So, Ms. Mason, what's our calendar look like?

25 THE CLERK: How soon?

1 THE COURT: When - how soon do you want to have
2 the hearing on the creditor's side, Mr. Harrison?

3 MR. HARRISON: Judge, I - you have to excuse me
4 for my naivety. This is not my area of expertise. Am I,
5 what is my participation in the evidentiary hearing?

6 THE COURT: You don't have to participate.

7 MR. HARRISON: Okay.

8 THE COURT: You're welcome to participate. We
9 have, we have these issues that I've identified based on
10 what you all said. There may be more. But the one issue is
11 feasibility. Will this work? The Plan as drafted as I
12 understand it, theoretically, technically complies with the
13 bankruptcy code probably. Because it provides for payments
14 to creditors out of regular income which presumably comes
15 from the lease and it provides for a liquidation of assets
16 to pay the claims - the arrearage claims in full. And to
17 continue the regular monthly payments. So that is, at least
18 theoretically confirmable. The question is will it work?
19 Is there all that property in Chile? Can it be sold? Can
20 this Debtor sell it? Will all of that stuff come in? And,
21 and is it going - is it going to work? That's a feasibility
22 problem. If they can't get it done, if they won't get it
23 done, if it won't be enough, if they won't raise enough, if
24 the value of the property is not enough to pay it, all of
25 those things go into that feasibility analysis, I think. So

1 that's one issue.

2 The other issue is whether there is regular income
3 which is more of a technical issue. And maybe it's a legal
4 issue too, I don't know. But he doesn't have any
5 employment. So apparently there is a tenant and that's
6 providing income. Is that sufficient to meet the
7 requirement that the individual have regular income? I
8 suppose that's a legal issue. First question is what are
9 the facts? Is that no matter - is that the right fact? And
10 then the second question is assuming that there is regular
11 income from a lease, but no regular income from employment
12 and a Plan that couples all of that with liquidation of
13 assets is that a confirmable Plan? Maybe that's a legal
14 issue. I think the Courts go different ways on all of these
15 issues.

16 And then there's the issue of compliance with the
17 Bankruptcy Code. And that relates to the sale of
18 properties, the employment of professionals, the payment of
19 professionals, meaning the brokers, commissions, all of that
20 stuff without notice and a hearing, which probably doesn't
21 comply with the code. And the question is whether in the
22 circumstances it can be ratified for some reason. That's
23 the other issue. There may be more.

24 MR. HARRISON: The two --

25 THE COURT: Whether you're entitled to your

1 statutory attorney's fees is a, is a legal issue. I don't
2 know whether there is enough in the Chilean property to pay
3 that out or regardless or not.

4 MR. VALLDEJULI: I wouldn't -- I have a --

5 THE COURT: Well, if there's not then we might as
6 well resolve that issue. Because if you're entitled to
7 that, next case.

8 MR. VALLDEJULI: I think that issue - I would the
9 Court to resolve that issue, certainly. Either the same day
10 or right now it's scheduled for, in June. I don't know if
11 you want the evidentiary hearing after that. Because it
12 certainly makes a - as far as feasibility and all those
13 other items, certainly 124,000 as opposed to 40,000 is a, is
14 a big hurdle for me to overcome --

15 THE COURT: Yeah, but you don't get over that. I
16 mean --

17 MR. VALLDEJULI: I agree.

18 THE COURT: So when's that scheduled for?

19 MR. HARRISON: Based on the notice that was filed
20 this morning, I, I believe he's right. June 22nd and, and I
21 will be in town that day. I'll have to do my own research
22 because while he cited some cases, this is not my area of
23 expertise.

24 THE COURT: Right.

25 MR. HARRISON: What I do know is that my client is

1 not going to want to continue to pay me to attend hearing,
2 after hearing, after hearing. Because every time this gets
3 delayed --

4 THE COURT: I understand.

5 MR. HARRISON: -- so, we've got to weigh that out.
6 I know that the rest of this month -- I, I leave Thursday -
7 today is Thursday? A week from tomorrow. And I'll be out
8 of the country until the 30th of May which is Memorial Day,
9 so really the 31st would be the first day that I am able to
10 be back. And then I know that there is a period of time in
11 June where I'm going to be in Wyoming vacation with my, with
12 my family. Otherwise --

13 THE COURT: This will be easier to resolve --

14 MR. HARRISON: (Indiscernible)

15 THE COURT: -- if you're not here.

16 MR. HARRISON: Pardon me?

17 THE COURT: This will be easier to resolve if
18 you're not here.

19 MR. HARRISON: Well, I, I can tell you my --

20 THE COURT: I'm teasing.

21 MR. HARRISON: -- well my client's point of view
22 is whoever is going to get them paid off the quickest.

23 THE COURT: Right.

24 MR. HARRISON: That's the way that we want to go.

25 THE COURT: And that's what you want to do. Well,

1 you know that's the whole question here.

2 MR. HARRISON: And as far as the technical
3 question --

4 THE COURT: And, and, there, and there, and the
5 answer to that question is if, if Mr. Valldejuli and Mr.
6 Avendano are right and they can get this property sold, if,
7 if number one. And if, number two, they would get it done,
8 that's the best route for your client getting paid, I think.

9 MR. HARRISON: I, I don't disagree with that.
10 That, that --

11 THE COURT: But, but the problem is nobody's
12 confident that that's going on.

13 MR. HARRISON: I just remember my contracts
14 professor. If its and butts were candy and nuts we would all
15 have a Merry Christmas.

16 THE COURT: No question.

17 MR. HARRISON: And for a last year we haven't.

18 THE COURT: Right. I understand. And, and so
19 then the question is, you know, how long is it going to take
20 Mr. Bargar's firm to get this done and at what cost.

21 MR. HARRISON: I, I agree.

22 THE COURT: That, you're, you're now, I understand
23 you, you don't visit us much in the bankruptcy court, but
24 one of the things you are now learning is that it takes some
25 bankruptcy lawyers awhile to learn this - in bankruptcy

1 there are no good solutions.

2 MR. HARRISON: Just less bad.

3 THE COURT: There are only less bad ones for
4 everybody often. So, you know, and that's why I come back
5 to this point which is Mr. Valldejuli and Mr. Avendano need
6 to convince you and your client that this is what's going to
7 happen. And that it is in your best interest. I don't know
8 how you do that. Maybe the distrust is so high that it'll
9 never happen and, but that's what needs to happen. Mr.
10 Bargar's firm can wait to get paid. They're used to being
11 in bankruptcy. You're - so all of this comes back to what
12 are you expected to do to participate in the hearing. And
13 the answer is you're entitled to participate fully, object
14 to their evidence, present your evidence, cross-examine
15 their witnesses, make all the points that you've made in the
16 context of a full evidentiary development of all of these
17 facts. But you're not required to do any of it. All right.
18 So you're back, when are you back from - you're back
19 Memorial Day?

20 MR. HARRISON: Yes, Your Honor. I'll be back,
21 available the 31st which I believe is a Tuesday.

22 THE COURT: Okay. That won't matter, because some
23 of us won't be here that week.

24 MR. HARRISON: Ah, I understand.

25 THE COURT: Maybe we'll be in the same place where

1 you're coming back from. So that looks like we're in to
2 June. When's that - the hearing on the claim is schedule
3 for when?

4 THE CLERK: June 22nd.

5 THE COURT: What, what --

6 THE CLERK: How much time do we think it would
7 take?

8 THE COURT: It's probably going to take a couple
9 of hours.

10 THE CLERK: We can do it after 2:00 p.m.
11 (inaudible).

12 THE COURT: How about June 24th? That's a Friday.

13 MR. HARRISON: Your Honor, that particular day is
14 my - I've to be down for my 30th reunion. So I'd prefer to
15 not have to miss that.

16 THE COURT: Well, I understand that. Your 30th,
17 you don't look old enough to be having a 30th. Is this your
18 kindergarten --

19 MR. HARRISON: I, I tell my wife that all the
20 time.

21 THE COURT: Is this your kindergarten, this your
22 kindergarten class?

23 MR. HARRISON: Exactly. She doesn't believe me
24 when I say that.

25 THE COURT: Well, how about July 7th? The week

1 after that is - I've got the Federal Judicial Center. That
2 is a program to teach me how to do this better than I do.

3 MR. VALLDEJULI: Can we do it after that?

4 THE COURT: Some people would say that they have
5 not done a very good job so far. Anyway so that means the
6 next week is out. So Thursday, the 7th of July?

7 MR. HARRISON: I, I think I'll be here. I've got
8 to leave the next day. My wife's got a Judge's conference
9 in Monterey, California that we're going to, but, but I'll
10 be there that day. The, the, the ones that we continue that
11 day.

12 THE COURT: Mr. Valldejuli does that work?

13 MR. VALLDEJULI: Yeah I got no life, Judge. With,
14 with, with, with dying relatives and being short-staffed,
15 I'll be here. I'm not going anywhere.

16 THE COURT: Okay. Mr. Bargar?

17 MR. BARGAR: Your Honor, I'm not sure that my
18 client would want me to be here, but that works for me.

19 THE COURT: Okay. All right. July 7th, 10
20 o'clock. And that'll be hearing on confirmation, it will be
21 a hearing on the objection to the claim which will be
22 removed from the whatever calendar it's on.

23 THE CLERK: Okay. Take it off of the 22nd?

24 THE COURT: Now, is the Plan that is currently
25 filed the Plan that we're going with?

1 MR. VALLDEJULI: Yes, the, the only change - this
2 is something my client just brought up earlier. The only
3 thing I want to look at and - is, is the, is the amount of
4 the \$10,000, but yes, yes.

5 THE COURT: All right.

6 MR. VALLDEJULI: That is - I don't plan on
7 changing anything else.

8 THE COURT: If you need something to look at
9 here's what we'll do. Ten, ten days, what's today? The
10 11th?

11 THE CLERK: The 11th.

12 THE COURT: Fourteen days - by May 25th, file an
13 Amended and Restated Chapter 13 Plan as whatever it is that
14 combines everything that's ever been done, so we have on
15 piece of paper to look at. Okay.

16 MR. VALLDEJULI: Okay. Now, within the context of
17 the, of the with the (indiscernible). I don't understand
18 everything that's been done.

19 THE COURT: Well, I haven't looked at the current
20 Plan.

21 MR. VALLDEJULI: Correct.

22 THE COURT: I don't know whether it says we amend
23 the Plan by changing paragraph 3 or - what I'm saying, if
24 there, if there's already one document that we can all look
25 at and say that's the Plan, fine, you don't have to do

1 anything else.

2 MR. VALLDEJULI: Okay, so if, if there's something
3 else, have it done by then.

4 THE COURT: But if you're going to add something
5 else, or you want to clarify something, whatever it is, get
6 it done by May 25th.

7 MR. VALLDEJULI: Okay.

8 THE COURT: And I want one piece of paper that has
9 all of the Plan provisions in it.

10 MR. VALLDEJULI: Understood.

11 THE COURT: Okay. That's May 25th. Then,
12 objections to that Plan need to be filed by - when are we
13 having the hearing?

14 THE CLERK: Pardon?

15 THE COURT: When's the hearing?

16 THE CLERK: The, the hearing will be --

17 THE COURT: July what?

18 THE CLERK: July the 7th.

19 THE COURT: Okay. Objections to that Plan will
20 need to be filed by, let's say June 23rd. Thursday, June
21 23rd. Does that work for you? You got, does that give you
22 enough time to --

23 MR. HARRISON: That would give me plenty of time,
24 Your Honor.

25 THE COURT: Okay. And, and then any briefs that

1 you all want to file, I, I won't schedule a specific time
2 for briefs, but generally if you file them a couple of days
3 before the hearing, I'll be able to look at them. If you
4 file them the day of the hearing or the night before the
5 hearing or the morning of the hearing at 2:00 it is unlikely
6 that I will be able to read it before the hearing starts.

7 MR. VALLDEJULI: The (indiscernible), but we're
8 still on for June 22nd on the objection to --

9 THE COURT: No, that's postponed.

10 MR. VALLDEJULI: -- that's been moved to --

11 THE COURT: Do them all at the same time.

12 MR. VALLDEJULI: Okay. To July 7th? Okay.

13 THE COURT: Was there a pre-petition notice given
14 of this?

15 MR. HARRISON: Yes, for the attorneys fees?

16 THE COURT: Yes.

17 MR. HARRISON: Yes, Your Honor. That was done.

18 THE COURT: For both of them?

19 MR. HARRISON: Both, or, no, I, I have to look. I
20 can tell that there definitively was for Austin. As far as
21 Lawson, there may not have been because originally I was
22 foreclosing for Austin.

23 THE COURT: Well, the question is whether a cure
24 and reinstatement eliminates the attorneys fees. Other
25 than, you get actual attorneys fees.

1 MR. VALLDEJULI: I think --

2 THE COURT: Correct?

3 MR. VALLDEJULI: Yes and I think the easy, the
4 easier question to ask without having to go into all of the
5 statutory language is that is, is this an oversecured or
6 undersecured piece of property. Because then if it's
7 undersecured and we've all said it is, it's not going to
8 ever happen. As far as getting statutory attorney fees.
9 It's just not going to happen.

10 THE COURT: Well, I don't want to --

11 MR. VALLDEJULI: I mean that's just what the law
12 says.

13 THE COURT: -- well --

14 MR. VALLDEJULI: And Judge Bihary's order was
15 based on, was, was a dealing with property and was over,
16 oversecured --

17 THE COURT: Well there's two questions. There two
18 - the other question is whether if it's done pre-petition
19 even if it's not secured it's allowable as an unsecured
20 claim.

21 MR. VALLDEJULI: I think Judge Drake ruled on that
22 one as well. But that's not --

23 THE COURT: Okay. Well I don't, I do not know the
24 answer. I know there is an 11th Circuit case on it that you
25 will not like.

1 MR. VALLDEJULI: Okay, I do not.

2 THE COURT: Because it, it does not definitively
3 resolve this issue. But it's the one that says if you give
4 the notice pre-petition, you pretty much got a claim. I
5 think, I think. But, and the 11 - and I think that, I think
6 the 11th Circuit it said that, that it's only allowed as
7 secured to the extent that the fees are reasonable.

8 MR. VALLDEJULI: Correct. I think reasonableness
9 is --

10 THE COURT: And so that maybe the 11th Circuit
11 does not resolve the question of in that context what
12 happens to the remaining part of the claim or whether it's
13 allowable as an unsecured claim. And that case does not
14 resolve the question of whether if you have a cure and
15 reinstatement provision the, that provision can be used to
16 cure and reinstate. And I think Judge Bihary has an opinion
17 on that.

18 MR. VALLDEJULI: That is correct.

19 THE COURT: Because I think it was a case that I
20 was the Debtor's counsel in. Actually, my partner was.

21 MR. VALLDEJULI: Your, your law firm was involved,
22 yes.

23 THE COURT: Okay. All right. Anything else we
24 can do on this today?

25 MR. HARRISON: No, Judge.

1 THE COURT: Okay. We'll see you all on July 7th.

2 MR. VALLDEJULI: Thank you, Judge.

3 MS. KIRKLAND: Thank you, Your Honor.

4 MR. HARRISON: Thank you.

5 THE COURT: That was nice and - I think we'll just
6 do a docket entry that puts all these deadlines in it.

7 THE CLERK: Fine.

8 THE COURT: You all will not get any further
9 notice.

10 MR. HARRISON: Okay.

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C E R T I F I C A T E

STATE OF GEORGIA)
COUNTY OF FAYETTE)

I hereby certify that the foregoing audio recording was transcribed by me; that pages 1 through 58 represent a true and correct transcript of the digital audio recording given to me by David Weidenbaum, Office of the United States Trustee, 75 Ted Turner Drive, Room 362, Atlanta, GA 30303. This transcription was done to the best of my ability and is true and accurate to the best of my knowledge based on what I heard on the audio recording itself.

This 28th day of May, 2016.



Felicia A. Harris