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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 RESCHEDULED EVIDENTIARY HEARINGS
ON DEBTOR'S MOTION TO DISALLOW CLAIM AND
CONFIRMATION OF DEBTOR'S PLAN

BEFORE: Judge Paul W. Bonapfel
DATE: July 7, 2016
PLACE: Courtroom 1401
United States Bankruptcy Court
Atlanta, Georgia

APPEARANCES:

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P R O C E E D I N G S

10:00 a.m.

THE COURTROOM CLERK: This is an evidentiary hearing on case number 15-64523, Claudio Pablo Avendano on Plan Confirmation Hearing and also on the Debtor's Objection to Claim of Jerry Austin and Lawson Realty, LLC.

THE COURT: Go ahead.

MS. KIRKLAND: Good Morning, Your Honor. Brandi Kirkland, attorney for the Chapter 13 Trustee. Your Honor, this is the fourth time this Confirmation Hearing has appeared before the Court and Your Honor has heard argument all four times on the matters related to this Chapter 13 case. Your Honor, this case was filed as Chapter 7 on August 3, 2015 and Debtor's counsel filed a motion to convert the case to Chapter 13 and argument was heard on that motion and Your Honor entered an Order converting the case to Chapter 13 on December 16, 2015. The Debtor's proposed Chapter 13 Plan provides for a 100 percent dividend to the unsecured creditors and a monthly plan payment of \$875. As of this morning, the Debtor has fully funded his Chapter 13 Plan. Your Honor at the Confirmation Hearing scheduled for May 11th, it was my understanding from the Court that counsel for the Debtor was to file an Amended and Restated Chapter 13 Plan and Schedules on or before May 25th and then the Trustee had until June 23rd in order to file

1 her objections to the confirmation of that restated Chapter
2 13 Plan. To date, no amendments have been filed with the
3 bankruptcy courts. But out of an abundance of caution, what
4 I did was on June 23rd, I restated the Trustee's pending
5 objections to confirmation and filed them with the Court.
6 There are 19 such objections to confirmation and one of them
7 - the first outstanding objection to confirmation revolves
8 around the Debtor's eligibility to be a Debtor in Chapter 13
9 or in bankruptcy in general. First of all, the Debtor filed
10 his credit counseling certificate on August --

11 THE COURT: Didn't we, didn't we, did we discuss
12 this earlier?

13 MS. KIRKLAND: It's just - it's been reserved.

14 THE COURT: Okay.

15 MS. KIRKLAND: All of the - all of throughout the,
16 throughout the hearings.

17 THE COURT: So I didn't, I didn't earlier dispose
18 of this?

19 MS. KIRKLAND: Not that I'm aware of Your Honor.

20 THE COURT: Okay. Go ahead.

21 MS. KIRKLAND: Okay. The credit counseling
22 certificate was filed on August 14th showing that the Debtor
23 obtained the credit counseling that same day. Honestly,
24 that was approximately two weeks post-petition. And as a
25 result, one of our objections was that the Debtor is not

1 eligible. Also, it came out at the hearing on May 11th that
2 the Debtor did not have a regular source of income which
3 would obviously render him ineligible to be a Debtor in
4 Chapter 13. According to a document provided to me by
5 counsel for the Debtor this morning, it appears that all but
6 one of the Chapter 13 plan payments have been made from the
7 proceeds of the post-petition sale of property of the Estate
8 located in Chile. Which would further indicate what was
9 discussed on May 11th that it in fact does not appear that
10 the Debtor has a regular source of income. The Debtor's
11 proposed Chapter 13 Plan provides for the treatment of the
12 priority claims filed by the Douglas County Tax
13 Commissioner. But the Plan fails to provide for the Douglas
14 County Tax Commissioner to receive their statutory rate of
15 interest on their claim. And unfortunately, in Section --

16 THE COURT: Does that rule apply in 13's too?

17 MS. KIRKLAND: In Section 5.11.

18 THE COURT: What about that one, Mr. Valldejuli?

19 MR. VALLDEJULI: Again, I'm - I've never had that
20 objection filed, but Ms. Kirkland tells me that it's
21 required. Prior to the last Plan being filed that she's
22 talking about, they had, had to list it as secured. Then of
23 course, they would get an interest rate on that. The claims
24 that were - I filed on their behalf because they hadn't
25 filed the claim by the bar date, I'd treat them as priority.

1 So I, I've not looked at that code section, but my question
2 was whether that applies to priority debt. And I've also
3 sent them a second correspondence asking them to review the
4 claims that I filed and if they disagreed they could always
5 amend or substitute their claims if they feel that - and I
6 haven't heard anything back from them. So I'm not saying
7 that she's wrong. I just don't know if that's --

8 THE COURT: Okay.

9 MR. VALLDEJULI: -- if that's a confirmable issue
10 if they're not.

11 THE COURT: Well, the problem - the problem is
12 that they're ad valorem taxes. They are a priority claim.
13 They're also a secured claim.

14 MR. VALLDEJULI: And, and something equating to
15 that, I don't know if it's the same, but I know that in -
16 when the IRS has a tax lien and we treat them as secured, by
17 the real estate or whatever, we are required I know that to
18 give them interest. I don't know that that still applies
19 when they're priority. I certainly haven't put one on my
20 Plan on the priority section.

21 THE COURT: I think there's a provision somewhere
22 that says if a claim is entitled to priority and that it's
23 entitled to the secured claim it gets the better treatment.
24 Are you aware of that, Ms. Kirkland?

25 MS. KIRKLAND: Well --

1 THE COURT: I think it's in the code somewhere.

2 MS. KIRKLAND: -- yes, Your Honor. Actually,
3 several months ago Your Honor heard an objection to claim to
4 a ad valorem tax claim and Your Honor referenced at that
5 time that the Debtor's confirmed Chapter 13 Plan did not
6 provide for the priority tax - or the ad valorem tax claim
7 to receive statutory interest and that as a result that Plan
8 should not have been confirmed. So anytime when Mr.
9 Valldejuli moved their claims up to the priority section, if
10 it does not provide for that creditor to receive the
11 statutory rate of interest, we object as it does not appear
12 to comply with Section 511.

13 THE COURT: Okay, okay. Go ahead. I'm sorry. I
14 just thought I'd - that one might have been - I'm sort of
15 interrupting you to take care of the ones that we might
16 dispose of one way or the other.

17 MS. KIRKLAND: I understand. Unfortunately, I
18 wish I could report to the Court whether the term of the
19 Debtor's Plan exceeds or is under the 60 month limit.
20 Unfortunately, I'm, I'm not able to determine that at this
21 time. The Plan is ambiguous regarding the timing of the
22 sale of the Debtor's real properties. And without that
23 information, I don't know what the term of the Plan is at
24 this time. Also, I discussed the Amended Chapter 13 Plan
25 with the Trustee and unfortunately, we are unable to

1 administer its disbursement terms. The, the Plan as
2 proposed is unique in that for the secured creditors it
3 provides for the creditors to receive a set payment plus a
4 percentage of any additional available funds. The
5 percentage differs between the secured creditors. As
6 mentioned, I did discuss this with the Chapter 13 Trustee.
7 She's administering over 11,000 cases right now and she does
8 not have the resources to administer a Chapter 13 Plan that
9 has that type of language in --

10 THE COURT: That's not a valid objection. I'm
11 sorry. I mean, I, I sympathize --

12 MS. KIRKLAND: I understand that Your Honor.

13 THE COURT: -- with the problem. That is not a
14 valid objection.

15 MS. KIRKLAND: I understand. I'm will move on.

16 THE COURT: I overrule that objection. The
17 Trustee will have to figure out a way to solve that problem.

18 MS. KIRKLAND: Yes, sir. Schedule A, which
19 discloses the Debtor's interest in real properties, appear
20 to have a typographical error. I received an email from Mr.
21 Valldejuli yesterday saying that he intended to correct the
22 typographical error by amending Schedule A. But that his
23 computer had a virus. He was not able to file any of the
24 documents. So although that matter does remain outstanding,
25 it's my understanding from Mr. Valldejuli that he does

1 intend to resolve.

2 THE COURT: But we know what that property is,
3 right?

4 MS. KIRKLAND: It's - yes, I believe so.

5 THE COURT: It's a 161 acres in Chile. Is that,
6 is that the one we're talking about?

7 MS. KIRKLAND: It isn't. It isn't.

8 THE COURT: Oh, we're talking about another one.

9 MS. KIRKLAND: It's a different property.

10 THE COURT: Okay.

11 MS. KIRKLAND: It's a different property.

12 MR. VALLDEJULI: The street address is wrong
13 Judge.

14 THE COURT: I'm sorry, it's what?

15 MS. KIRKLAND: The street address was incorrect.

16 THE COURT: Okay.

17 MS. KIRKLAND: The property description was wrong.

18 THE COURT: All right. Well that, that's
19 immaterial. We don't care about that.

20 MS. KIRKLAND: Our next objection was regarding
21 the good faith of the Plan or lack thereof regarding the
22 Debtor's post-petition transfer of ten parcels of real
23 property located in Chile which was property of the Estate.
24 That property was sold and the title was transferred to that
25 property out of the Debtor's name without notice to any

1 parties in interest and without an opportunity to be heard
2 before the Court. The - we had an objection to confirmation
3 regarding the fact, it appeared the Debtor's Statement of
4 Financial Affairs was incomplete and it appeared that the
5 Debtor's cash on hand and checking account were undervalued
6 on Schedule A. That was resulting from an amendment that
7 was made to the original schedules that were filed and it
8 did not appear - it was not clear as to why the values were
9 decreased. And so we had requested additional information
10 regarding that which we have not yet received.

11 THE COURT: Okay. I'm not going to treat that as
12 a separate objection, but I'll consider that as part of the
13 good faith problem.

14 MS. KIRKLAND: Okay. The other issue regarding
15 the Statement of Financial Affairs being incomplete is
16 regarding the Debtor's testimony at the Meeting of
17 Creditors. He testified that during the two years prior to
18 filing bankruptcy he did transfer some real property out of
19 his name. He testified that he sold the property for less
20 than it's fair market value. And so we had just requested
21 that the Statement of Financial Affairs reflect that pre-
22 petition transfer.

23 THE COURT: All right. Well, that also goes to
24 good faith.

25 MS. KIRKLAND: The Debtor testified at the Meeting

1 of Creditors that he had - and also it appears on the
2 Statement of Financial Affairs that he had a tailoring
3 business. So we had request that his interest in that
4 business be disclosed as an asset and the questions on the
5 Statement of Financial Affairs regarding that business be
6 answered. And the Debtor testified at the Meeting of
7 Creditors that his - all of his real properties were
8 uninsured even though there was a line item on his budget
9 for homeowner's insurance. So we requested that proof that,
10 that all of his real properties were insured. Mr. Avendano
11 also testified at the Meeting of Creditors that he had not
12 filed tax returns since 1998. I did receive yesterday a
13 copy of Mr. Avendano's 2014 tax return, but that's the only
14 tax return that I've received to date. And we had also
15 requested proof that Mr. Avendano was current with all of
16 his post-petition mortgage payments that had come due.

17 THE COURT: Do you have - you do not have a 2015
18 return?

19 MS. KIRKLAND: That's correct, Your Honor.

20 THE COURT: Okay.

21 MS. KIRKLAND: It appeared from the Meeting of
22 Creditors that the Debtor has a savings account with Wells
23 Fargo. He has a security deposit being held by the Douglas
24 County Water. And he has a bank account with Banco de Chile
25 and we had requested all of those be disclosed as assets.

1 And the Debtor testified at the Meeting of Creditors that he
2 had hired a real estate attorney in Chile. And so we had
3 requested that that attorney be appointed as special counsel
4 as it appeared that property of the Estate was being used to
5 pay that attorney or would be used to pay that attorney.
6 Also, according to the Meeting of Creditors, it appeared
7 that the fair market value listed on Schedule A of the
8 Debtor's Liberty Road property was less than, than its
9 actual fair market value. So again, we had requested that
10 that Schedule be amended. And we had also requested that
11 the Debtor's budget reflect his second mortgage payments as
12 well as his expense for property taxes for all three
13 properties. Our final objection to confirmation request
14 that Your Honor either dismiss the case without prejudice or
15 reconvert the case to Chapter 7 based on the Trustee's
16 aforementioned objections to confirmation and the fact that
17 the Debtor's case began in Chapter 7. And that is all that
18 I have at this time, Your Honor.

19 THE COURT: Okay. I'm going to consider all of
20 the objections with regard to improper scheduling or he
21 didn't dot this I, or he didn't cross this T and maybe
22 they're more substantial than that. I'm not saying they're
23 not, but all of that goes to good faith.

24 MS. KIRKLAND: Okay. Thank you, Your Honor.

25 THE COURT: The big issue here, it seems to me, is

1 whether or not we get the property in Chile sold. But, but
2 there are other issues and I'll consider all of them.

3 MS. KIRKLAND: Thank you, Your Honor.

4 THE COURT: The first issue I want to get out of
5 the way is the 109H eligibility based on the credit
6 counseling. Anyone wish to be heard in support of the
7 Trustee's position on that? Okay. I'm going to, I'm going
8 to overrule the Objection to Confirmation on that ground.
9 And the reason is if this case were converted to Chapter 7
10 that wouldn't be a problem, as best I can tell. From the
11 fact that over the past several years I've never seen
12 objection to eligibility of a Debtor under Chapter 7 on that
13 ground raised and I'm sure it has occurred. And so, and it
14 wasn't raised in this case originally, when it was
15 originally filed. So if the Debtor would be able to be - I
16 mean if you can't be a Debtor, you can't be a Chapter 7
17 either. I think from previous - and the objectors are here.
18 Does the Chapter 7 Trustee or the creditor think the case
19 ought to be dismissed because the Debtor is ineligible?

20 MR. HARRISON: No, Your Honor. Our position is
21 that it be converted to a Chapter 7, but not dismissed.

22 THE COURT: Okay. Mr. Gordon?

23 MR. GORDON: Your Honor, our position is also - we
24 have different objections. But our position is also that it
25 be reconverted to a 7 and that the liquidation be orderly

1 and managed by the Court.

2 THE COURT: I understand all that. Mr. Gordon,
3 that wasn't my question. My - I had a simple question which
4 was is it your position that the Debtor is ineligible to be
5 a Debtor in a Chapter 7 case?

6 MR. GORDON: In a Chapter 7 case?

7 THE COURT: Yes.

8 MR. GORDON: Oh, I'm sorry. No.

9 THE COURT: No. Okay.

10 MR. GORDON: He's eligible to be a debtor --

11 THE COURT: Then, then the Debtor, the Debtor is
12 not - is eligible to be a Debtor in this bankruptcy case
13 then the chapter doesn't matter. And my judgment - Mr.
14 Weidenbaum?

15 MR. WEIDENBAUM: Yeah, Your Honor, David
16 Weidenbaum for The United States Trustee. Without
17 determining whether the Debtor is eligible or not eligible,
18 I certainly don't think it would be appropriate to seek
19 dismissal of this case with credit counseling certificate
20 notwithstanding. We have a Trustee who's poised to
21 liquidate assets or administer assets. And we have the main
22 creditor in this case, about the only creditor in this case
23 who is happily looking forward to the Trustee administering
24 those assets. Certainly, I think - and I think Judge Diehl
25 has an opinion on this issue.

1 THE COURT: Well, she does, but that's a different
2 situation. And I agree with that opinion which is we're not
3 going to let the Debtor control this.

4 MR. WEIDENBAUM: That's right.

5 THE COURT: But that, but this is a different
6 situation from her case. Because here we have a case that
7 is filed by a Debtor and nobody cares. Nobody raises the
8 issue when it's in Chapter 7. It gets in to Chapter 13.
9 The Chapter 13 Trustee says, oh, we can't do a Chapter 13
10 because the Debtor is not eligible to be a Debtor. And my
11 point simply is if the Debtor's not eligible to be a Debtor
12 the Debtor's not eligible to be a Debtor and I'll dismiss
13 the case.

14 MR. WEIDENBAUM: Well, I recognize where the
15 Court's coming from. What I'm trying to do is look around
16 the corner in terms of if this case does get reconverted to
17 sort of get in front of an argument that can be made
18 potentially by, by the Debtor. And that I feel like this is
19 a situation where credit counseling certificate
20 notwithstanding, and typically without - you know every case
21 is different. But in cases like this that are filed pro se
22 where the certificate is filed, just happens to be filed a
23 little tardily --

24 THE COURT: This one isn't --

25 MR. WEIDENBAUM: -- my office doesn't bring these

1 motions.

2 THE COURT: -- this is not filed tardily. This
3 is, this - and if your office doesn't know this - this
4 happens routinely in Chapter 13 cases. Okay.

5 MR. WEIDENBAUM: I, I --

6 THE COURT: Doesn't matter - the tardy filing
7 doesn't matter if it's - if they got it pre-petition.
8 Nobody --

9 MR. WEIDENBAUM: -- I, I recognize that Your
10 Honor.

11 THE COURT: -- we all don't care about that. We
12 understand that. That can be fixed. But if it's post-
13 petition counseling, I never see it in Chapter 7s. I
14 frequently see it in 13.

15 MR. WEIDENBAUM: Well, and I, I understand that
16 Your Honor. And I know what goes on in the - with the
17 Chapter 13 Trustees. But I concur with the Court.

18 THE COURT: Okay.

19 MR. WEIDENBAUM: At the end, at the end of the
20 day, I concur with the Court in that dismissal of this case
21 based on the credit counseling issue is just - is just not
22 appropriate.

23 THE COURT: Okay. Ms. Kirkland - Mr. Gordon did
24 you have anything to add?

25 MR. GORDON: I just - for edification, I should

1 just in full disclosure, I was the attorney in that Judge
2 Diehl case Your Honor (indiscernible).

3 THE COURT: I don't care Mr. Gordon.

4 MR. GORDON: So --

5 THE COURT: I know that case. I've read it.

6 MR. GORDON: -- yeah. So I mean I did --

7 THE COURT: I don't need to know that you were the
8 attorney.

9 MR. GORDON: -- I did mention it. But that's the
10 reason I think he's eligible.

11 THE COURT: Mr. Gordon, I -- never mind.

12 MR. GORDON: I'm sitting.

13 THE COURT: All right. Ms. Kirkland, this case
14 started - you don't have to stand up (indiscernible).

15 MR. GORDON: Do I have an opinion Judge?

16 MS. KIRKLAND: No.

17 THE COURT: This case started as a 7, nobody
18 raised the issue until you got involved. And so
19 unfortunately you're too late. If this issue is going to be
20 raised, it's got to be raised early in the case, and as you
21 know from a previous case that I did in the Chapter 13
22 context. So it's not your client's fault, but this was
23 waived before your client got into the case. And so I
24 overrule the Objection to Confirmation on that ground and
25 conclude that the eligibility issue has been waived and it

1 is waiveable. It's no longer an issue in the case. So that
2 solves that problem. Okay now, other objections - and
3 here's the ones I have. So this is the way I've summarized
4 them to what the evidentiary hearing is. There's no regular
5 source of income as the code requires. The Plan does not
6 provide for payment of interest on the ad valorem tax claim.
7 We do not know when the - whether the Plan meets the
8 requirements that it be concluded within 60 months because
9 we don't know whether it can be done because we don't know
10 when these sales are going to occur. And then there are a
11 variety of good faith arguments which include the post-
12 petition transfers, the various problems with the Schedules
13 and Statement of Financial Affairs, and the apparent
14 employment of a real estate attorney in Chile without Court
15 authority. Then there is proof of - there's no proof of
16 insurance on the, on the real estate. I guess it would be
17 the Georgia real estate, right? Because the Plan property,
18 as I understand it is undeveloped. And the no 2015 income
19 tax return. Okay. Did I get all of them summarized?

20 MS. KIRKLAND: Yes, Your Honor.

21 THE COURT: Okay. All right. Other objections?

22 MR. HARRISON: Your Honor I'm going to one, make a
23 proffer to the Court. I've got documentation if necessary.
24 I do have --

25 THE COURT: Why don't you come up here to the

1 podium and tell the court reporter who you are?

2 MR. HARRISON: Victor Harrison on behalf of
3 creditors Jerry Austin and Lawson Realty, Incorporated.

4 THE COURT: Thank you.

5 MR. HARRISON: I do have a insurance declaration
6 page on the collateral property that my clients have notes
7 and deeds to secure debt to secure it. So that particular
8 parcel I can present to the Court. I've got a copy if you
9 need it.

10 THE COURT: It is insured?

11 MR. HARRISON: It is insured.

12 THE COURT: Okay.

13 MR. HARRISON: Now there's two other --

14 THE COURT: So all your, all your collateral is
15 insured?

16 MR. HARRISON: My collateral is insured.

17 THE COURT: Is there other real estate that is in
18 Georgia that is not your collateral?

19 MR. HARRISON: Yes, Your Honor. I believe there's
20 two pieces. I know there's one, but I believe there's two.

21 THE COURT: Okay.

22 MR. HARRISON: The only other thing in addition to
23 what Ms. Kirkland brought up that I will address will be
24 payment. Currently, there are outstanding balances owed to
25 my client. I did receive yesterday at a little bit after 3

1 o'clock a partial payment which would have been the
2 principal and interest for the payment that was due in June.
3 But it did not include the late fees which are outstanding.
4 The July payment is due, however late fees have not been hit
5 yet. They have until the 14th before late fees are incurred
6 again. But currently I got to say that the balance is owed
7 for July because we're here, and it's due on the 4th. And
8 the late fees are also outstanding in the amount of \$152.72
9 and \$21.59.

10 THE COURT: And that's because - when are the late
11 fees due?

12 MR. HARRISON: The payments were due on the 4th of
13 June.

14 THE COURT: Okay.

15 MR. HARRISON: And then if they were not made by
16 the 14th of June then a late fee is incurred. And the
17 payment was received yesterday vis-a-vis a wire to my trust
18 account. So the late fees for June are outstanding.

19 THE COURT: Okay.

20 MR. HARRISON: Otherwise I, I will rely upon --

21 THE COURT: You are otherwise current except for
22 the late fees for June and the July payment?

23 MR. HARRISON: That's correct, Your Honor.

24 THE COURT: Any dispute about that Mr. Valldejuli?

25 MR. VALLDEJULI: No dispute here, Judge.

1 THE COURT: Okay. All right. Any other
2 objections? Mr. Gordon?

3 MR. GORDON: I think almost everything falls
4 within the categories that Your Honor has gone over. I will
5 say about the insurance, we spent most of the time, quite
6 honestly at the November hearing before Your Honor talking
7 about the other two properties that are unencumbered. That
8 are in Villa Rica, Georgia and are uninsured. I already had
9 an auctioneer that appraised them. Your Honor knew they
10 were uninsured. That they were in sort of a hazardous
11 condition and Your Honor's statement was they needed to be
12 sold like yesterday. That was in November and that was
13 actually the impetus for the fast tracking of this was not
14 just so Mr. Harrison could get paid, but because these
15 properties needed to be sold immediately. And nothing's
16 been done. I had an auctioneer that I was ready to employ
17 that had appraised the properties. It was the values from
18 those appraisals that Your Honor used at the hearing in
19 November because no other valuations had ever come forward.

20 THE COURT: Okay. So what's the objection?

21 MR. GORDON: That they're uninsured even today.

22 THE COURT: Okay.

23 MR. GORDON: And that they are various hazardous.

24 THE COURT: That there is - that the Villa Rica
25 real estate is uninsured.

1 MR. GORDON: Two different properties, Your Honor.

2 THE COURT: Two properties.

3 MR. GORDON: Yes.

4 THE COURT: Both in Villa Rica?

5 MR. GORDON: Both in Villa Rica.

6 THE COURT: Okay.

7 MR. GORDON: I mean I have pictures of them.

8 They're, they're very hazardous.

9 THE COURT: And what is, what, what are the other
10 objections Mr. Gordon?

11 MR. GORDON: I think they're all subsumed --

12 THE COURT: I'm sorry, but I, I'm trying to get
13 what the objections are.

14 MR. GORDON: No, as I said at the start. I think
15 otherwise everything's subsumed in the categories Your Honor
16 has just gone over.

17 THE COURT: Okay.

18 MR. GORDON: Mostly good faith, bad faith issues
19 and you know so. If I, I don't think there's anything I can
20 add at this preliminary point.

21 THE COURT: All right. Mr. Weidenbaum, anything
22 else from the U.S. Trustee?

23 MR. WEIDENBAUM: Nothing, Your Honor that's
24 different from what's already been raised. Only to let the
25 Court know that the delay has been concerning U.S. Trustee

1 is interested in this case and supports Ms. Kirkland's
2 objection, Mr. Harrison's objection and Mr. Gordon's
3 objection.

4 THE COURT: Okay. All right. I incorporate as
5 part of four on the term. Further, what is the plan for
6 getting this Chilean property sold and what's it going to
7 produce? I think that fairly raises what might be called a
8 feasibility issue, which nobody I don't think specifically
9 mentioned. Okay, Mr. Valldejuli your turn. Now, I've
10 narrowed the issues for you.

11 MR. VALLDEJULI: And I appreciate that very much.
12 I think they've all got it memorized by now. It took me a
13 long time to get it out last time. I appreciate it. Over
14 the last 45 days or so - no let me back up. I met with - we
15 spent about a day together last - the week before 4th of
16 July, Mr. Avendano and I. And he kind of asked that
17 question that really, really made me think about the whole
18 strategy in this case. And about the paradox that I've
19 kind, that I've kind of created for myself with this Plan.
20 And that is this, he said that if I was making - if I built
21 a business here and I was making enough money to make the
22 Plan payments and the post-petition mortgage payments like
23 my - like it's in my budget, would I have to even sell the
24 property in Chile. And I, I looked at him, I said, well,
25 no. Remember when you got into this there was no income.

1 We've created income since you got in the 13 because we had
2 to address the feasibility. We have the rent that Your
3 Honor discussed before, the \$1200 rent from the mechanic.
4 Since the last hearing, he's got another tenant and he's
5 paying \$450 a month. And I provided Ms. Kirkland with a
6 copy of that lease, I believe. And so we're getting there.

7 So the paradox that I've created is that I'm
8 making regular payments of 875 per month. Now we all know
9 based on the numbers and the amended proofs of claims that
10 were filed that's not sufficient in itself to pay off the
11 arrearages and the tax claims within the 60 month period.
12 So that, that number would have to probably jump up to like
13 950 or something like that. However, the Chilean property
14 was - it was used basically as a, you know, over the 60-
15 month period. We'll be doing the regular payments to comply
16 with the code if it's applicable, under this particular
17 case. Nevertheless, regular monthly payments and then
18 throughout the process we'll sell the properties. Which has
19 of course brought up another problem. As Your Honor is
20 aware, between the - there was an Order that Your Honor
21 entered. Sort of like a drop dead order. Mr. Avendano had
22 to pay X amount of dollars to the first and second mortgage
23 holders for two months or the - by March 31st or the case
24 would be reconverted. Mr. Avendano was down in Chile and
25 things happened rapidly because - and I say things happened

1 rapidly --

2 THE COURT: Hold on. Time out.

3 MR. VALLDEJULI: Yes, sir.

4 THE COURT: I want to, I want to hear all the
5 evidence.

6 MR. VALLDEJULI: Okay. All right.

7 THE COURT: Okay. Right now - and I heard - right
8 now I'm trying to get the contentions of the parties so I
9 know what to look for. Regular source of income issue is,
10 he's now getting rent which is regular income.

11 MR. VALLDEJULI: Right. Correct.

12 THE COURT: Okay. Now what about the interest on
13 the tax claims?

14 MR. VALLDEJULI: I'll be honest with Your Honor,
15 Ms. Kirkland and with this particular case is the only time
16 I have ever gotten that objection. So if it's required,
17 than I'll, I'll have to make the change. I wasn't going to
18 make any changes to the Plan that I filed. I was happy with
19 the Plan that I had filed last time. I think it laid out
20 what I wanted to do. That's why I didn't make any changes
21 to the Plan.

22 THE COURT: All right. Time out. Okay. I think
23 you have to pay interest. And I also think --

24 MR. VALLDEJULI: But if you've ruled on that
25 before.

1 THE COURT: I think that's an amendable problem.
2 Does anybody disagree with that? No. Okay that issue's off
3 the table.

4 MR. VALLDEJULI: Okay. I could, I could make
5 those changes.

6 THE COURT: You will amend the Plan to provide for
7 the payment of interest at the statutory rate on those
8 claims because they are secured claims basically.

9 MR. VALLDEJULI: Which is?

10 THE COURT: It's the Georgia rate. Whatever it
11 is.

12 MR. VALLDEJULI: Okay. (Indiscernible)? Is it
13 about six percent?

14 UNKNOWN SPEAKER: Twelve percent.

15 MR. VALLDEJULI: Twelve percent?

16 UNKNOWN SPEAKER: One percent per month.

17 THE COURT: Well, you can check it out Mr.
18 Valldejuli. That may affect --

19 MR. VALLDEJULI: That's fine.

20 THE COURT: It may to some extent affect
21 feasibility. But presumably that would just mean more
22 property would have to be sold in Chile.

23 MR. VALLDEJULI: Not as to the feasibility? And
24 this is what I'm trying to address. And this is sort of
25 where I got caught up by myself. Let's, let's - for sake -

1 as an example. Well, let's say that Mr. Avendano was a
2 retailer and his inventory was paid for and his shop. And
3 he files for Chapter 13 bankruptcy. And of course his
4 source of income would be the sale of his inventory. Well,
5 or in the cash collateral situation where nobody has a cash
6 collateral. I mean, one could, one could hypothesize the
7 fact that that property in Chile is his inventory. However,
8 it's not going to be paid - it's not going to be sold once a
9 month. It's not going to have income from that once a
10 month. It's going to take him away from Georgia for long
11 periods of time in order to get those things accomplished.
12 However, he either stays here and generates income to pay
13 the Plan or he goes to Chile and he sells his inventory
14 quote, unquote to provide for payment of the Plan. And
15 here's where I'm getting messed up. Is because I - my Plan
16 specifically provides for, and Ms. Kirkland brought it up
17 beautifully - absolutely beautifully. And that's what
18 caught my eye when I read the transcript. And that is that,
19 wait a minute. You either are going to pay the Plan through
20 regular income, which he has enough regular income to do.
21 The 15 - the \$1200 is enough to pay 875, but not enough to
22 live on. Or you sell the properties in Chile and fund the
23 Plan that way. But then again if he's paid selling the
24 properties in Chile, he's away from any generating any
25 income from work here, then obviously the - some of the

1 proceeds from the sale of the property in Chile he needs to
2 use to live on.

3 So how can I have it both ways. Well, I came up
4 with a thought and solution. And I spoke to a colleague of
5 mine about this. And this also will address one of the -
6 Mr. Gordon's objection, that they have no confidence in me
7 not, you know, depleting the Estate of all of it's assets
8 before it gets back to him. And that is that why don't I
9 hire - let Mr. Avendano build his business here and he could
10 explain what he's doing. And at the same time, I could hire
11 a special counsel to do one thing and one thing only. And
12 that is to get the necessary - is to, is to get those
13 properties sold in Chile. I've approached, I've approached
14 Tamara Ogier whose not only is a 7 Trustee. She knows how
15 to do it. She speaks the language. And if she'd be willing
16 to do it. She thinks the case should probably be better off
17 as a Chapter 11 case. But that's something that's not
18 manageable for me. But nevertheless, I would like to maybe
19 hire outside counsel and, and put everybody's concerns to
20 rest. This way Mr. Avendano can stay here, work on the
21 project that he's trying to and that's dividing the
22 warehouse into individual storage units. He's already got
23 people who are interested in actually paying for the
24 renovations of that, but we can't do anything. Our hands
25 are tied. If this gets converted tomorrow anything he does

1 is for nothing. He's even afraid to put another tenant in
2 there because they are going to get kicked out tomorrow. So
3 our hands are kinds of tied. If this case initiated, it was
4 initially started as a 13, which is the biggest sadness in
5 this whole matter. We wouldn't - all these pressures
6 wouldn't be on us.

7 THE COURT: No, if, if we'd started as a 13, Mr.
8 Valldejuli, we'd still be where we are.

9 MR. VALLDEJULI: I'd still have the same
10 pressures. Excuse me, Judge?

11 THE COURT: We'd still be where we are.

12 MR. VALLDEJULI: Well --

13 THE COURT: We'd, we'd still be talking about
14 confirming a Plan.

15 MR. VALLDEJULI: -- absolutely. That's true. I'm
16 not saying that part. I'm just saying that the fear of
17 conversion is different than the fear of dismissal.
18 Dismissal just goes back to the creditors and so on. He's
19 trying to create a business with that, with the, with that
20 storage unit, the facility that he, that he purchased. And
21 but he, but he seems likes he tied to. So everything is
22 sort of like leaning towards there's only one way to
23 liquidate this case and that's by selling the Chilean
24 property.

25 THE COURT: That's the only thing that's on the

1 table Mr. Valldejuli.

2 MR. VALLDEJULI: Well, it's not the only thing.

3 THE COURT: There are, there are two things on the
4 table right now.

5 MR. VALLDEJULI: Right. Uh-huh.

6 THE COURT: One is conversion to Chapter 7.

7 MR. VALLDEJULI: Correct.

8 THE COURT: And the other is a Plan --

9 MR. VALLDEJULI: Uh-huh.

10 THE COURT: -- that the, that the Debtor proposed
11 that says, I'm going to sell the Chilean property.

12 MR. VALLDEJULI: Okay.

13 THE COURT: That he's going to sell it.

14 MR. VALLDEJULI: Correct.

15 THE COURT: Okay.

16 MR. VALLDEJULI: So, so we have to - I have to -
17 It's just difficult to get around the regular income part of
18 the objections and the feasibility part of the objections by
19 doing one or the other. It seems to me you've kind of got
20 to do both.

21 THE COURT: Got to do which?

22 MR. VALLDEJULI: But one person cannot be in two
23 places at the same time. So he needs somebody - I feel that
24 we need somebody else to look at that.

25 THE COURT: No, but --

1 MR. VALLDEJULI: And that would be something that
2 I would, that I would want to do is to file an application
3 to request special counsel. Again, I spoke to Ms. Ogier and
4 I've got --

5 THE COURT: Have you talked to the parties about
6 this?

7 MR. VALLDEJULI: No, this just all kind of just
8 happened. Oh, Your Honor - okay, let's go back to the
9 parties.

10 THE COURT: Yeah, let's, let's talk about the
11 creditors.

12 MR. VALLDEJULI: Because I remember at the last,
13 at the last hearing we were talking about, you know that my
14 job is not really to convince the Court that this will work.
15 It's my job is to convince the, you know the lender that's
16 in Court. Well, once the objectors came into play, I knew
17 that I - I didn't even know if I was - had permission to
18 speak to Mr. Harrison. I mean, I don't know. I've never
19 seen.

20 THE COURT: Oh, come on.

21 MR. VALLDEJULI: I've never seen a Chapter 7
22 Trustee and the, and a creditor united. I've never seen it.

23 THE COURT: Why would you not be able to speak to
24 Mr. Harrison?

25 MR. VALLDEJULI: I'm just saying that. I, I know

1 what the answer is and there's no possibility that I can
2 persuade him.

3 THE COURT: And I would hope you have been in this
4 Court long enough to know that of all the people in this
5 room.

6 MR. VALLDEJULI: Right.

7 THE COURT: The people that - on the creditor or
8 the - that are your adversaries.

9 MR. VALLDEJULI: Uh-huh.

10 THE COURT: The person that I am most likely to be
11 listening to is Mr. Harrison. Why? It's his money. Sort
12 of Mr. Gordon and his firm's money. It's not Ms. Kirkland's
13 money. It's not Mr. Weidenbaum's money.

14 MR. VALLDEJULI: No.

15 THE COURT: United States doesn't have an economic
16 interest in this case. United State and U.S. Trustee have a
17 interest in the system and it - we're working properly and
18 Mr. Weidenbaum is appropriately concerning about that. But,
19 so why would you not talk to Mr. Harrison?

20 MR. VALLDEJULI: Well, maybe I was just being flip
21 when I said that, Judge.

22 THE COURT: Okay.

23 MR. VALLDEJULI: My point is, is that it seemed to
24 me that there'd be no persuasion - there'd be nothing that I
25 could say to, to sway him from his position that he wants to

1 sell the property. And of course, and, and I understand
2 that. Because unlike traditional lenders where they
3 actually lend you the money to purchase the property, this
4 property was owned by Mr. Austin. He just sold it to him.
5 So, you know, if he sells it - if the Trustee sells it for
6 \$100,000 when he owes 600,000, what does he care. He's
7 probably going to make money anyway. So the fact that he's
8 going to take a loss on it, it's probably not going to be a
9 loss at all. And again, that's another part of the equation
10 that, that generally does not appear, is the fact that
11 generally the lenders want things or they want the stream of
12 income. They want to be current. They want the arrearages
13 to be paid. Because it's in their interest to do so.

14 I think the flaw in that is the fact that I don't
15 think it matters to Mr. Austin or not whether the Trustee
16 sells it for 200,000 or 300,000. Anything is going to be
17 gravy for him because there was no money loaned. It was
18 just financed. Which again, is another reason that puts,
19 you know, puts this case in - in a disadvantage coming from
20 a 7 to 13. And that's all I really wanted to illustrate to
21 the Court. Is that certainly I still have to get it
22 confirmed. But again, there's a disadvantage coming from
23 that station for that. So, I mean, I think - I believe that
24 - I had a case before Judge Mullins and I think it went
25 through 3 or 4 confirmations. And the Trustee kept wanting

1 documentation for income, documentation of income,
2 documentation of income. Nothing similar to this situation.
3 But the point was when we went to confirmation the Judge
4 says, you know, if their income is not the same
5 (indiscernible). If they're making the payments and they've
6 been there for six months and they're current with
7 everybody, what kind of proof do you want. I mean not
8 everybody, not everybody has that.

9 I think if we could make it work, but we have to
10 decide - I agree with Your Honor, I have to decide or we
11 have to at least convince the parties that, that the right
12 approach would be that he has to have regular income, which
13 he does, but not enough to feed himself and everything else.
14 And also deal with the sale of the properties which was not
15 always going to be on time. I believe that there is a
16 motion. I've been up - I filed it this morning. It's not
17 for today. But is a motion dealing with the U.S. Trustee's
18 objection which is what I'm wanting and to ratify the sales
19 and full disclosure as to the funds of money. And I
20 (indiscernible) to report that pretty much all, if not,
21 pretty much all of the money that was generated from the
22 sales went to the creditor which it was supposed to be. But
23 it also went to pay the Trustee payments as (indiscernible)
24 which is not the way it supposed to work. But it's the way
25 it works if he going to have to do one or the other. He

1 can't do both.

2 I would request the Court that I get approval from
3 Ms. Ogier to file an application to employ her firm to
4 liquidate the assets. And then, and then, any presentation
5 of feasibility as far as Mr. Avendano to be able to generate
6 income, I think everybody can question him on the stand. I
7 think he's got a real good plan that would work. And an
8 investor interested in doing business with him, but I feel
9 like our hands are tied unless we know - unless we have some
10 free reign to be able to make decisions where we know we are
11 not going to be derailed. And harm some third party or
12 maybe be fraudulent to a third party be entering into a
13 transaction that, that may go south because of the fact that
14 there's a potential Chapter 7 and liquidation involved in
15 the case. That's really all I can say. The other matters,
16 I did tell Ms. Kirkland that all those matters were fixable.
17 The data base that I had unfortunately, it's still with the
18 shop. And I have no been able to file the actual documents.

19 THE COURT: What about the tax returns?

20 MR. VALLDEJULI: Well, the tax returns, we
21 discussed that last time. We gave her the 2014 return. I
22 think it showed, what \$61 worth of income. Just sort of
23 like to pacify the process. But there was no income because
24 Mr. Avendano - he could testify to that - that he's had no
25 income except for generating - except for sales of

1 properties that he's had over the years. But there's been
2 no income generated from the tailor shop. It was at a loss
3 and so on. He's got a very interesting history.

4 THE COURT: So there's no income in 2015?

5 MR. VALLDEJULI: He's had no income since --

6 THE COURT: Okay.

7 MR. VALLDEJULI: -- and we have an - I've prepared
8 an affidavit. I don't know if that's sufficient. Sometimes
9 it is and sometimes it isn't, depending on the Trustee's
10 office, but an affidavit under oath, notarized.

11 THE COURT: Well, we're here on evidentiary
12 hearing.

13 MR. VALLDEJULI: Right. Right.

14 THE COURT: So he can testify to that.

15 MR. VALLDEJULI: Sure. That's fine.

16 THE COURT: (Indiscernible).

17 MR. VALLDEJULI: And I welcome any of the other
18 parties to question the Debtor on pretty much --

19 THE COURT: What about insurance on the other real
20 estate?

21 MR. VALLDEJULI: I'm not aware of - I just pointed
22 out that there is interest on the commercial property which
23 is the only one that has mortgage on it. And I don't know
24 if there's any, any interest on the, on the two Villa Rica
25 properties.

1 THE COURT: Are those unencumbered?

2 MR. VALLDEJULI: I don't recall what the values
3 were on those.

4 THE COURT: Are those unencumbered

5 MR. VALLDEJULI: They're both encumbered, correct.
6 Yeah.

7 THE COURT: And what are they worth?

8 MR. VALLDEJULI: I forgot. Mr. Gordon do you
9 recall what the appraisal said, if you don't mind? It
10 wasn't very much.

11 MR. GORDON: Your Honor the - Neil Gordon. The -
12 this is the same testimony as in November. The auctioneer
13 had given these values. That's where they come from. The
14 one and a half acre property with the structure on it. It
15 was 15,000 to 20,000 was the range given at auction. The
16 other property is on about 4.3 acres with a structure on it.
17 And that value was the range of 17,500 to 22,500. But
18 again, these were back in November. So values is what I was
19 given then. It could be different now. But they were
20 uninsured then.

21 THE COURT: Okay.

22 MR. VALLDEJULI: And I was out there with the
23 auctioneer and nice guy. So I, I believe this valuation to
24 be correct.

25 THE COURT: Okay.

1 MR. VALLDEJULI: But as far as the insurance,
2 there's no insurance on that, those properties.

3 THE COURT: Okay. Anything in response? Call
4 your first witness Mr. Valldejuli.

5 MR. VALLDEJULI: I call Mr. Claudio Avendano, the
6 Debtor to the stand.

7 **CLAUDIO AVENDANO, WITNESS, SWORN**

8 **DIRECT EXAMINATION**

9 BY MR. VALLDEJULI:

10 Q. Morning Mr. Avendano. Tell us what led you to
11 file this, this bankruptcy.

12 A. I was behind in my payments and in default.

13 Q. Payments on, on what, sir?

14 A. On the mortgage on 155 Liberty Road.

15 Q. Tell us what led up to the process as far as what
16 you, when you filed it.

17 A. I, I purchased the building from Jerry Austin. He
18 provided a mortgage. I paid on that mortgage and began a
19 business there. I had, at one point I had some difficulty
20 and Jerry loaned some additional money on my, my living
21 residence. And I sold that and paid him off and continued
22 with this business that I was developing there, by renting
23 small (indiscernible) shopping venue. And I had it filled.
24 And on November before, before Christmas everybody leaves.
25 It was an odd thing that happened. And --

1 Q. Excuse me. Give us a, give us a - give the Court
2 a description of the property at this location.

3 A. The property is just off the expressway on I-20
4 near the Mirror Lake Subdivision which is a golf community.
5 It's two acres of land. It has 7200 square foot building
6 with 20 foot ceilings. It has office space on two floors in
7 it. About 2400 square feet of office space. It's zoned
8 light industrial, but it's in a very commercial area. You
9 know, this is what I've done, my life is the property
10 business and, and I find, you know I figured this was an
11 excellent opportunity for me. And you know, currently, you
12 know, things are turning around once again. And it looks
13 very promising again.

14 Q. Now, before we get to - tell the Court why you
15 have not filed any tax returns since 1998.

16 A. Well, the last time I made income was then. I
17 sold properties down the street here on Trinity Avenue. I
18 had those buildings for 20, 30 years and sold them.

19 Q. Give me a time - like when?

20 A. Like 1998.

21 Q. Okay.

22 A. And just lived off that money and built a business
23 in South America that didn't do so well. Lost a lot of
24 money. So there was no need to file any tax returns.
25 That's the only reason I didn't file.

1 Q. Okay.

2 A. My, my income over the years has been that way. I
3 began with a property in Roswell Road in Buckhead. Then I
4 had a - I built, rebuilt a little pub restaurant on
5 Peachtree Road that I sold to the - to Mike and Clay, the
6 people that have Fellini's Pizza, started them up there.
7 Then I took and bought the properties in Villa Rica. I'm a
8 tailor, but never really generated a lot of income. And I'm
9 a very good tailor. I don't want to speak well of myself,
10 but I'm a tailor. I was since I was a child and my income
11 has been in this way. You know, it takes time sometimes,
12 but - and I'm poised at this point to do that same thing
13 with the property in Chile. These were properties that I
14 paid \$80,000 for but today will become probably one of the
15 best resort areas in South America on the Pacific Coast.

16 Q. Now as far as - you understand the requirements of
17 having regular income?

18 A. Yeah.

19 Q. As - like we've been discussing. Do you have any
20 plan or course of action that you've done since you've filed
21 this case to generate regular income?

22 A. Yeah, yeah. I have a website. It's called Store
23 or Sell It dot com. And I built that. I've been studying
24 this for the past seven or eight - all my life really. I
25 enjoy (indiscernible). And there, there is, I found out

1 just a few weeks ago that there's a company the mimics what
2 I'm doing. It just - it's a start up in California that has
3 been funded \$30,000,000 in their operation. And the idea of
4 that business is storage, a higher level of storage where
5 you have things that you need stored, but instead of you
6 having to haul them to a, to a storage unit, they pick them
7 up. They inventory it for you. And the software that I've
8 developed, you come in and very quickly - a child can do it,
9 my son can do it. It takes a second to inventory everything
10 you have. We pick it up. We store it for you and of course
11 there's a fee. It's a service business.

12 Along with that, in the same website is Store It
13 or Sell It dot com. I put my inventory - I manufactured
14 hand-made clothing like this in Chile for ten years. So I
15 have a large inventory of clothing. I had men's store in
16 Midtown that I basically have kept in storage. But I've
17 inventoried and I have it now up on the website so this
18 hearing going well, I begin selling that. It's a huge
19 inventory. And so I'm a tailor. I can provide the service
20 or the fitting and then from there I'll go back into my
21 tailoring profession. Which today the tailoring profession
22 is cut, make and trim shop say in Chicago or in New York
23 that makes your clothes, you go to the customer's office.
24 You measure them, you send the order then come back with a
25 custom suit and you provide them service. That is, that is,

1 you know, that is what I know how to do. And that is what I
2 was doing when I began with you on the Chapter 13.

3 Then I believe I was told to go to Chile and sell
4 this property, which I did. Which took a great deal of
5 effort. It is not easy to sell property in South America in
6 Chile. The buyers will show up. They'll negotiate with
7 you. It's, it's not an easy function, but we, we sold it.
8 We sold it and not only sold it, but we created a website.
9 We created a community of people down there. Most of these
10 properties we're selling to people in the profession. So we
11 created a community of people there that will now help to
12 sell further properties.

13 Q. Now when you went down there, did you have to hire
14 anybody? Did you have to hire an attorney when you were
15 down there?

16 A. No.

17 Q. Did you have to hire a broker when you were down
18 there?

19 A. No.

20 Q. What's the process there? How do the
21 professionals get paid?

22 A. Well, the attorneys get paid by the buyer.

23 Q. Okay, so.

24 A. And it depends on the agreement that you make.

25 And these were - the two main people that I have down there,

1 one is a geologist for the government. He works for
2 Government Lance. And his job is specifically the reason
3 that he contacted me is because I began about a year ago,
4 knowing my situation was coming, developing resources to be
5 able to sell these properties in Chile.

6 Q. Like subdividing and all that?

7 A. Well, I had already done that. I had already
8 created the subdivision. But now there's more legal things
9 that I had to do down there to, to have it inscribed with
10 the Chilean IRS in order to be able to actually sell
11 individual lots.

12 Q. What else is - last night when you came back from
13 Chile you told me that there was something unique about
14 those properties - that property down there?

15 A. Well, you know like I said, I paid \$80,000 for
16 this, which I'm surprised. It turns out that these
17 properties are next to - will be the vacation area for La
18 Serena, which is just north of Santiago and Chile. It's a
19 beautiful city. Casinos, that sort of thing. It's a
20 vacation spot for Argentina and Brazil. If you have a
21 condominium there, it's just gorgeous. But the land I have
22 is just north of there, about 70 miles north - 70 kilometers
23 north of there. It's in an area that will become, you know
24 the next, the next resort. It's a beach. It is a - it's
25 68,000 hectares which goes all the way to the mountains.

1 It's a private community. You can't buy property there.
2 And it turns out that the property I have is a segregation
3 of that community, making it much more valuable. So you're
4 not going to see, you know low income housing in this area.
5 And along side of that are three islands that are a national
6 park. They are like Galapagos. So you get a lot of foreign
7 travel, a lot of scuba. It will be, it will be - you know,
8 I know that my creditor didn't originally even believe the
9 property exists or if it had any value. And I too wasn't
10 sure of its value, but I can tell you today it is very good
11 property. And --

12 Q. Now didn't you - was there some water, was it
13 Artesian, but didn't you say --

14 A. Oh, it's under one of the largest aquifers.

15 Q. I don't know what that is. What is that?

16 A. It's underground water. There's a river that runs
17 underneath the property so there's, there's water there.
18 There's power that runs along the road. And they're getting
19 - they just built a highway - the new, the north/south
20 highway just got built. So the values have changed
21 dramatically. And these individuals that I have down there
22 recognize that. And they're the people that are helping me
23 with this sale.

24 Q. Is it fair to say that you believe that you
25 wouldn't even have to liquidate all the properties in order

1 to pay out this debt?

2 A. No, no, just a couple. Actually I believe that
3 I'll have enough income from what I'm doing here with the
4 building, with my clothing business. And which, I have a
5 mechanic that just moved in. He's set up. He - his partner
6 backed away and he's asking me to help him run the shop.
7 And since I'm there, I can provide him that, that service.

8 Q. Now how much, how much capital - I mean what, what
9 kind of capital would it take for you to actually do
10 something with this rent, rental unit stuff?

11 A. I'm already set up. I've already had - I had -
12 I've built the site. I built it myself. You can test it,
13 you can run it. It's a remarkable --

14 Q. Have you generated any income since constructing
15 it?

16 A. I have one person that showed up. You know, I
17 haven't advertised before. I have business cards.

18 Q. Of course those things take money.

19 A. Yeah, yeah.

20 Q. You need money to generate (indiscernible).

21 A. Yeah. Yeah, yeah.

22 Q. So do you have a plan on how to generate
23 (indiscernible)?

24 A. Yeah. Well, I mean the idea would be to set up,
25 to get going and then go to Chile and sell a few properties,

1 pay debt - pay additional debt. You know, get this debt
2 paid off. And continue with the business. I believe that
3 I, I can generate enough income from the three business.
4 Four if you include my tenant.

5 Q. When you went to Chile back in March, you don't go
6 down there every time somebody says, oh we got a buyer. And
7 fly down there.

8 A. No, I can't.

9 Q. Tell me the circumstances.

10 A. It was far too expensive to do this trip, but this
11 trip set up the ability. All the primary --

12 Q. But, but - I'm sorry.

13 A. -- yeah, I have to have a few properties ready
14 before I (indiscernible).

15 Q. Well, how many did you - how many were told you
16 were good to go or were pretty good leads?

17 A. We had close to 20 something properties that were
18 supposed to sell. Only ten sold. The issue with selling
19 property in Chile is they have a very strange system. Now I
20 tried, you know, every counsel I could find, I asked if
21 there was a way that I could sell that property without me
22 going down there. As far as I have heard from every
23 counsel, Chilean Consul, it's impossible. There's no way to
24 sell that property without me going down there physically
25 and signing and a notary. So the legal system down there is

1 a little unusual, in which the title search is not done
2 before you sell the property. The title search is done
3 after you sell the property. So you, you sell the property.
4 Then what's called conservador, the record people, they will
5 hold that deed in limbo until the search is done. And that
6 can take between three and six months. So this sale that I
7 did in Chile, I had to have that income right away. And in
8 order to get that done, these people had to buy the property
9 on trust, that it was - without the title search first. And
10 they did. But those very people are now the people that are
11 going to be able - and who will be instrumental, because
12 it's to their best interest to, to have good neighbors. And
13 to build this community, resort community that they're
14 building, with good and valued, you know buyers.

15 Q. Now what did you learn about valuation from the
16 time that you sold the ten properties into if you go back to
17 sell more?

18 A. It's doubled or tripled of what I thought it was
19 worth.

20 Q. Okay. So the advice you got --

21 A. I was very wrong. I was very wrong in my values.
22 They were, they were low.

23 Q. Well, how did you get the valuation for it to
24 begin with?

25 A. I got the valuation from what I could, from what I

1 could gather from previous sales that I could find
2 previously. This last trip, I actually talked to my
3 neighbors around there to find out what they were buying,
4 what they were selling properties for. So I got a more
5 concrete idea of what the real value is.

6 Q. So hindsight would be for the next you know to up
7 the price.

8 A. The next - well, the next I'll have - yeah, I'll
9 have a completely different approach to it. I've been
10 trying to get them to give me a agreements prior to my
11 traveling. It's difficult. And they, they like to see you
12 in the eye. You know, it's like, you know I trust this
13 person. A person comes to me and looks at me says, can I
14 trust you, you know? You know? It's a, it's an unusual way
15 of doing business.

16 MR. VALLDEJULI: I'll let somebody ask him some
17 questions, Your Honor.

18 THE COURT: Who wants to go first?

19 MR. HARRISON: I don't mind.

20 THE COURT: Go ahead.

21 **CROSS-EXAMINATION**

22 BY MR. HARRISON:

23 Q. Mr. Avendano, I'm Victor Harrison. And again, I
24 represent Jerry Austin and Lawson Realty, Incorporated.
25 I've got a few questions and then I'm going to come back to

1 what my notes were. You were originally talking about the
2 property that is on Liberty Road that serves as collateral
3 for the, the notes and deeds to secure debt for my clients.

4 A. Yeah.

5 Q. Is that accurate? Okay. And you stated that the
6 property had been rented and had it filled at some point?

7 A. Yes.

8 Q. When was that?

9 A. In November of 2004, I believe.

10 Q. Two thousand what?

11 A. Four, fourteen.

12 Q. Two thousand fourteen. And then they exited
13 before the end of the year?

14 A. Yeah. You know I bought the property in bad
15 economic times. As you know, things were difficult. So the
16 - when I say rented, I mean these were verbal agreements.
17 What I did is I set up a social media network for them and
18 gave them the space if they could prove to me that they had
19 a viable business and that they were serious. So they would
20 come in and build a shop. If they could do that, I'd say,
21 you can come here and start your business up. And then when
22 you get going, since the income is going to be coming
23 through here, we can - I - we can assure that that I will be
24 getting some kind of rent to pay my obligations.

25 Q. You stated that you were in the real estate

1 business?

2 A. Yeah.

3 Q. Is that fair?

4 A. Not as a - well that might be confusing. I'm not
5 - I've never been in the business of selling as a real
6 estate agent or buying and selling real estate.

7 Q. But you, as a --

8 A. A small time developer.

9 Q. And you are - did you, you rented property out as
10 well?

11 A. Correct.

12 Q. But what you're telling me is that every lease
13 that, when you said that it was rented and there was still
14 were all verbal leases. Is that accurate?

15 A. Correct.

16 Q. And how about security deposits? Did you --

17 A. No, no.

18 Q. No security deposit?

19 A. No.

20 Q. How about rental payments?

21 A. No.

22 Q. Did you receive a rental payment?

23 A. No, no.

24 Q. So when you say it was rented and filled?

25 A. Right.

1 Q. You allowed people to occupy the space and that's
2 it?

3 A. Exactly.

4 Q. All right. So you purchased the property - the
5 Liberty Road Property on November 6, 2013. Is that correct?

6 A. Yes.

7 Q. That time frame.

8 A. Yes.

9 Q. I won't hold you to the particular date.

10 A. Right.

11 Q. Okay. And by November of 2013 until November 2014
12 what did you do with the property?

13 A. That - we were, we built out inside. It looked
14 beautiful. Inside we built a shopping center.

15 Q. Did you lease it?

16 A. Those were the tenants that were - I mean these -
17 if you, yeah.

18 Q. The time frame, November 2013 when you purchase it
19 --

20 A. Yeah.

21 Q. to November 2014 which is --

22 A. No, no, no, no.

23 Q. That year.

24 A. No lease, no lease.

25 Q. No lease. Okay.

1 A. I mean these were just verbal agreements that they
2 were going to do business.

3 Q. The property taxes that came due on the property
4 in 2014 and 2015 you did not pay, correct?

5 A. Correct.

6 Q. You stated that you have two tenants currently in
7 there. A mechanic that's paying you \$1,200 per month.

8 A. Yes.

9 Q. When did that start?

10 A. Before going to Chile. I don't know the exact
11 date.

12 Q. When did you go to Chile?

13 A. Right after - it was, it was on the date of the
14 hearing because I wasn't able to be here.

15 Q. So in May?

16 A. It was the 9th.

17 Q. March? May? What time frame? We've had, we've
18 had meetings or hearings.

19 A. It was before the first of the year. That would
20 have been --

21 Q. So it would have been last year when you went to
22 Chile.

23 A. Yeah, yeah.

24 Q. So the mechanic has been in that place since
25 January of this year? I'm asking you. Has the mechanic --

1 A. Yeah, I don't have that in front of me, but you
2 know, for clarity and for transparency, that I put all this
3 up on a web page. All the dates and the documents and
4 everything on a web page that anyone can go to. And it's
5 Metroecho.com/documentation.

6 Q. Mr. Avendano I, I've never even heard this website
7 before. We're here today doing an evidentiary hearing. So
8 my, my role is to solicit --

9 THE COURT: Hold on. Just ask him another
10 question.

11 MR. HARRISON: Okay.

12 THE COURT: Answer his question. And then if you
13 have something else that needs to be said your lawyer can
14 ask you the --

15 BY MR. HARRISON: (Resuming)

16 Q. Then instead of me trying to tell that it's been
17 since January since that's what you previously said. You
18 tell me when you estimate that the mechanic occupied the
19 premises on Liberty Road.

20 A. You know, I want to be correct. So I - there's a
21 lease. And right now, I can't really, you know mentally
22 remember when, but it was before my trip to Chile.

23 Q. And - all right. So your counsel just handed me
24 two documents which I'm presuming are two leases I was about
25 to inquire with.

1 A. Okay.

2 Q. Now, I've met with you on at least two, if not
3 three other occasions and every time I've asked you for
4 leases. Have you never - did you ever provide these to your
5 attorney prior to today anyhow?

6 A. Yeah. Like I said this is up on - yes. And I, I
7 don't remember you asking me for a lease.

8 Q. I did.

9 THE COURT: Well --

10 BY MR. HARRISON: (Resuming)

11 Q. So let, let's --

12 THE COURT: -- time out. If you'll ask the
13 question instead of testifying.

14 MR. HARRISON: Fair enough, Judge.

15 THE COURT: And if you'll answer his question
16 instead of arguing with him, this will be a whole lot
17 better. You can ask him if that's the lease and if he ever
18 gave you a copy. And if, if you ever asked him for them.

19 BY MR. HARRISON: (Resuming)

20 Q. I want to now discuss first lease. This is the
21 one that's going to be with Steve Gobin, G-O-B-I-N. It's
22 dated December the - I'm not sure. It's 1 4 S T. So I'm
23 not sure what date it's supposed to be, 2015. Irrespective
24 of the actual date, have you received seven monthly payments
25 pursuant to this lease?

1 A. No. He is behind. He's concerned about this
2 case. And he's waiting for the outcome.

3 Q. How many payments have you received?

4 A. Two or three.

5 Q. Prior to today, have you ever provided me or my
6 clients a copy of this lease?

7 A. Well, I provided it to my attorney.

8 Q. Fair enough. I'm going to now go to the second
9 lease with MB Contracting, LLC dated June 17th, 2016. Calls
10 for a payment of \$450. Have you received that payment?

11 A. That first and last month's rent I have received.

12 Q. Other, other than these two leases, has there ever
13 been a written document where you leased a, a portion of the
14 property or in its entirety to a third party?

15 A. I don't think so.

16 Q. So let's go back to November 6, 2013. Okay, the
17 date that you purchased the property or November 2013. That
18 way, again, I'm happy to show you a copy of the promissory
19 note if you don't recall it. Do you recall signing a
20 promissory note at that date?

21 A. Yes.

22 Q. Yes. And you knew that payments were going to be
23 due on the 4th day of each month? Am I correct?

24 A. Correct.

25 Q. You signed one note that was going to be to Jerry

1 - that was to Jerry Austin, correct?

2 A. Correct.

3 Q. The - one second.

4 THE COURT: What's the purpose of this inquiry?

5 MR. HARRISON: I believe it's going to - I'm going
6 to elicit because the second part of our hearing today is
7 going to be regarding attorneys fees. And that they contend
8 that are not allowed under the Proof of Claim.

9 THE COURT: Okay. Is this just - it's in the
10 document, right?

11 MR. HARRISON: It's in the document. If you will
12 allow me to introduce --

13 THE COURT: Is there any dispute about that?

14 MR. HARRISON: Say it again?

15 THE COURT: Is there any dispute about the
16 document?

17 MR. VALLDEJULI: We stipulate that it's a standard
18 note that has that 50 percent (indiscernible).

19 THE COURT: What other - is the note attached?

20 MR. HARRISON: Judge, then I won't take up any
21 more of - much time.

22 THE COURT: Is the note attached to the Proof of
23 Claim?

24 MR. HARRISON: There was - there was a deed to
25 secure debt attached to the Proof of Claim.

1 THE COURT: Is the note attached?

2 MR. VALLDEJULI: I've seen the note, Your Honor,
3 but I don't know that it was attached, but I'm aware.

4 MR. HARRISON: I'll have to look through it in my
5 folder. I don't think it was.

6 THE COURT: But in any event, there's no
7 disagreement about the terms of the note. We can figure
8 that out later.

9 MR. HARRISON: Fair enough, Judge.

10 THE COURT: I don't mean to restrict you, but if
11 there's something that's not an excuse --

12 MR. HARRISON: No, no. As long as they're
13 stipulated then --

14 THE COURT: Well, the statutory attorneys fees
15 aren't stipulated, I don't think.

16 MR. VALLDEJULI: No, they're not stipulated, Your
17 Honor.

18 THE COURT: But if there's any, if there's any
19 fact relevant to that, I guess you can ask him. But if it's
20 in the note, it's in the note.

21 BY MR. HARRISON: (Resuming)

22 Q. I'm going to move now to the Chile property. You
23 stated that the evaluation that you (indiscernible) for the
24 property it came from previous sales, that you determined.
25 Am I correct?

1 A. Well, there are two evaluations. The one prior to
2 me going to Chile and the one afterwards.

3 Q. Okay. And was there ever an appraisal that was
4 conducted by a third party?

5 A. No.

6 Q. Are there any encumbrances on the property in
7 Chile?

8 A. No.

9 Q. Is all the infrastructure that was put onto the
10 property been paid for?

11 A. It's vacant land.

12 Q. I - are there streets?

13 A. There is no infrastructure.

14 Q. Are there streets?

15 A. No.

16 Q. How would you get to a lot then?

17 A. You drive up to it. It is your duty to - Chile's
18 different. You can, you don't have to build the streets.
19 It's very different. It's very odd. This is why it would
20 be very difficult. I'm almost an expert at this. So you
21 can build a subdivision in Chile and you can sell a lot and
22 the entire responsibility for the streets, water, sewer,
23 whatever it is, is no one.

24 Q. Who owns the street?

25 A. I guess I do. I guess I end up owning the

1 streets. It's a, a very different - you know, I've done
2 real estate here for a very long time. And I've done some
3 real estate in Chile. But I can assure you that they're two
4 different methods that are used. Very different.

5 Q. Currently, if the two leases, you have \$1,650 that
6 would be coming in pursuant to the terms of the leases,
7 correct? You have to verbalize.

8 A. Yeah.

9 Q. What other income have you made since January 1 of
10 this year?

11 A. I've done construction work. I have done,
12 primarily it's just been doing work for people that I know.
13 Making a little bit of income here and there.

14 Q. How much did you make?

15 A. I'd have to guess, maybe 5, \$6,000.

16 Q. Since January 1?

17 A. Oh, of this year?

18 Q. Yes.

19 A. Oh, no, no. Not - of this year I was in Chile.
20 And then I've come back here. No, no. Not - you know I'm,
21 again, like he explained. I either work in Chile or I work
22 here. And I'm waiting for this hearing to find out if I can
23 legitimately start my business here.

24 Q. All right. So I'm going to ask again for clarity?

25 A. Yeah.

1 Q. How much have you made since January 1 of this
2 year?

3 A. Other than those leases that you have there, I
4 don't believe there's any other income.

5 Q. Okay. There was a document that was filed this
6 morning, 7:48 this morning. And I perused it because I
7 didn't have time to go into detail. But I'm going to ask
8 you some questions about it and if you know the answers then
9 you tell me. If you don't, then all you need to tell me is
10 that you don't know, okay? In the document, it states that
11 the total sales down in Chile was, and based on my
12 arithmetic was \$38,518.51. Does that sound about accurate?

13 A. That sounds about accurate.

14 Q. And then it states that the sales proceeds wired
15 to the United States was \$16,411.39?

16 A. That's correct.

17 Q. Okay. So if I subtract those two that leaves a
18 balance of \$22,107.12. Do you accept that arithmetic?

19 A. I believe so, yes.

20 Q. Okay. Where is that money?

21 A. It has been spent.

22 Q. What was it spent on?

23 A. Mostly given to you. And to pay the mortgage
24 obligations.

25 Q. So the monthly payments that are due pursuant to

1 the terms of the note, that's what you spent the money on?

2 A. Yeah.

3 Q. Okay. Now, with that arithmetic, you also state
4 in the document that the payments made to creditors was
5 \$17,674.75. So, that's going to leave about 4500. Then we
6 have payments made to Chapter 13 Plan of 4,375. So is it
7 safe for me to say that you spent all of the, the money that
8 was wired to the United States on this or are you telling me
9 that the other 22,000 was used for that?

10 A. The money that was sent to the United States that
11 went to Valldejuli was used to make payments to you as I
12 understand it.

13 Q. That, that would be the 16,000. Am I correct?

14 A. Well, I don't have the numbers in front of me.
15 But I'm saying that the money that was sent here was used
16 for that. There was money that was received in Chile that
17 was used just to be in Chile, to pay for plane fares within
18 Chile, to pay transportation and pay the, the people that
19 are helping me down there. The geologist.

20 Q. Okay. So the 22,000 that I asked you about
21 earlier that you said was used to pay my clients, that's not
22 accurate. The 22,000 that didn't get wired to the United
23 States was used to pay for you to be down in Chile and also
24 for people that you have hired down there.

25 A. Yeah, in some respect. Yeah, there's, there

1 should be a full accounting of that.

2 Q. I, I agree.

3 A. No, there is a full accounting.

4 Q. Okay.

5 A. And on the spreadsheet.

6 Q. The information that was put out on that, the
7 numbers I just went over with you today, when did you
8 provide that to your attorney?

9 A. Sometime ago.

10 Q. Estimate for me, months, weeks?

11 A. I could tell you accurately, if I could see a
12 website. Again, I'm putting this up on, on a web page that
13 he can access. So I don't know exactly. I'd have to just
14 give you a wild guess.

15 Q. What, was it more than, than --

16 A. Which specific information?

17 Q. Well --

18 A. Because it's going up in a different way.

19 Q. Every information that was in there. Did you see
20 the document that was filed or no?

21 A. Which, which document?

22 Q. Okay, then that answers that part. Dealing with
23 the total sales.

24 THE COURT: No it doesn't because you haven't
25 asked him what document you are talking about.

1 MR. HARRISON: The - okay.

2 THE COURT: Well, show him the document.

3 MR. HARRISON: Can I approach?

4 THE COURT: Yes. Is that the motion that was
5 filed this morning?

6 MR. HARRISON: Yes, Your Honor.

7 BY MR. HARRISON: (Resuming)

8 Q. Have you ever seen that document prior to?

9 A. No, I have not.

10 Q. Then I'm not going to ask you anything about the
11 document itself. What I will ask you is if the, the sale of
12 the lots occurred in March. Is that accurate?

13 A. Over a period of time while I was in Chile. First
14 sale occurred right afterwards. And again, all this is
15 clearly documented so the specific time.

16 Q. Okay, for today's purposes I've got to get
17 something --

18 THE COURT: Mr. Avendano the problem is it's not
19 clearly documented. It may be clearly documented where
20 you've got it. But what he's worried about is it's not been
21 clearly documented to him.

22 BY THE WITNESS: (Resuming)

23 A. I got you.

24 THE COURT: So don't argue with him. Answer his
25 question and he wants to know when the property was sold and

1 what happened to the money.

2 BY THE WITNESS: (Resuming)

3 A. Okay.

4 THE COURT: Am I right about that?

5 MR. HARRISON: Yes, Your Honor.

6 THE COURT: Okay. So that's what he's asking.

7 MR. VALLDEJULI: Your Honor?

8 THE COURT: And so it doesn't help to say it's
9 clearly documented somewhere because it's not documented for
10 him.

11 BY THE WITNESS: (Resuming)

12 A. Okay.

13 THE COURT: And it, if it maybe - it maybe on a
14 website. It maybe in your filing cabinet. It maybe in Mr.
15 Valldejuli's head, but the only thing that he has to go on
16 that I know of - tell me if I'm wrong Mr. Valldejuli, is the
17 report that was filed this morning. Is there anything else
18 in the record Mr. Valldejuli?

19 MR. VALLDEJULI: One of the one exhibits that's in
20 the report, it's not in the four pages of the - not in your
21 ten exhibits. I'll just show this to refresh his memory.

22 THE COURT: That's not in the report?

23 MR. VALLDEJULI: It is in the report.

24 THE COURT: It is in the report, okay.

25 MR. VALLDEJULI: It's an exhibit, but not what he

1 just had I believe (indiscernible). So this may refresh --

2 THE COURT: Sure, sure.

3 MR. VALLDEJULI: -- his memory because it has the
4 dates and sales --

5 THE COURT: Sure. --

6 MR. VALLDEJULI: -- and expenses.

7 THE COURT: Is that the last page of the report?
8 What is that? Is that --

9 MR. HARRISON: I believe that's an exhibit, Your
10 Honor. I don't know what exhibit it may be.

11 THE COURT: Exhibit J, page 2?

12 MR. VALLDEJULI: I believe so, Your Honor.

13 THE COURT: It looks like it has the same color as
14 my Exhibit J, page 2.

15 BY MR. HARRISON: (Resuming)

16 Q. When did the sales occur?

17 A. The first sale occurred on March 18th.

18 Q. Okay.

19 A. Second sale, March 18th. Third sale March 30th.

20 Third - fourth sale March - the third sale was for, for five
21 lots. And then the next one is for one lot. And then the
22 last two sales were April 7th. That's all.

23 Q. Since April the 7th when did you provide the
24 information regarding the sales to your attorney?

25 A. Given this was set up shortly after I returned

1 from Chile.

2 Q. Say it again. I didn't hear what you said.

3 A. This was set up shortly after I returned from
4 Chile, the, the spreadsheet. So he would have gotten it,
5 you know, when did I come back? Somewhere in May.

6 MR. HARRISON: Your Honor I don't think I have any
7 further questions for the Witness at this time.

8 THE COURT: Mr. Gordon?

9 **CROSS-EXAMINATION**

10 BY MR. GORDON:

11 Q. Mr. Avendano, I'm Neil Gordon and I'm sure you
12 remember me. I met with you at the Meeting of Creditors
13 originally when you were in Chapter 7. Do you recall who I
14 am?

15 A. Yes.

16 Q. Okay. Thank you. I want to start back, Mr.
17 Avendano with the properties in Villa Rica that came up
18 earlier today. And first do you agree with what I told the
19 Court, that there are two properties in Villa Rica that you
20 own?

21 A. I agree. Yes.

22 Q. And they have no mortgages or other encumbrances,
23 except for maybe property taxes.

24 A. Correct.

25 Q. Okay. Do they have property taxes only on them?

1 A. Probably, yes.

2 Q. Do you know the amount?

3 A. No, I do not. They are very low.

4 Q. Are they listed in your Schedule of Creditors, the
5 property taxes?

6 MR. VALLDEJULI: It's (indiscernible). The exact
7 amount. Sorry Judge.

8 BY MR. GORDON: (Resuming)

9 Q. Do you know what they are listed on your Schedule
10 of Creditors the property taxes for these properties?

11 THE COURT: Do you know, Mr. Gordon?

12 BY THE WITNESS: (Resuming)

13 A. I think in my, my original Chapter 7, I believe it
14 is.

15 Q. Okay. And have any property taxes come due since
16 you filed Chapter 7 on August 2nd I believe of last year?

17 A. I, don't, I don't know. But I'm sure that - I
18 don't know when the taxes are due.

19 Q. Okay. Do you know if you've paid any taxes --

20 A. No, I have not.

21 Q. -- since you've filed on August 2nd?

22 A. No.

23 Q. Okay. So in the 11 months since you've filed, you
24 know that you have not paid any taxes on these properties?

25 A. Yes.

1 Q. Okay. And the property - and I'm going to give
2 you the address of each property, the property on 2191 Andy
3 Mountain Road, you familiar, but that's a correct address?

4 A. Yeah.

5 Q. And that's approximately 1.5 acres, correct?

6 A. Correct.

7 Q. And it has about a 1688 square foot single family
8 structure on it, correct?

9 A. It has a shell, yeah. It's not habitable. It was
10 a burnt house.

11 Q. No, I'm not - I understand its not habitable.

12 A. Okay.

13 Q. I was going to get to that. It's unoccupied, and
14 it's not habitable, correct?

15 A. Correct.

16 Q. And is there any insurance, liability insurance,
17 any kind of insurance on the property?

18 A. No.

19 Q. And from the pictures I'm looking at it does not
20 appear that this structure is secured. In other words
21 somebody could enter it?

22 A. There's a fence around it with a gated lock.

23 Q. The structure, itself?

24 A. Yes, somebody could get in.

25 Q. All right. And have you employed, to your

1 knowledge, a realtor that has this property listed for sale?

2 A. No.

3 Q. And have you employed an auctioneer to sell the
4 property?

5 A. No.

6 Q. And you were at the hearing in November, correct,
7 on your Motion to convert the case the Chapter 13?

8 A. Yes, I was.

9 Q. And there was a great deal of discussion about the
10 prompt sale of these properties?

11 A. Yes.

12 Q. But yet, you've taken no action with respect to
13 this one?

14 A. Well, I understood that - I understood it to be
15 the properties in Chile.

16 Q. All right. Well, if that's your understanding.
17 It's not what the - it reflects, but if that's your
18 understanding, that's fine. Now there is the second
19 property is 8931 Timmons Circle, correct?

20 A. Yes.

21 Q. And that is on approximately 4.29 acres?

22 A. Correct.

23 Q. And that has a single family structure of 1,136
24 square feet approximately.

25 A. I, I don't know for sure. But I think it's

1 smaller than that.

2 Q. But is has that structure on it.

3 A. Yes.

4 Q. And is - and that property structure is also
5 unoccupied and uninhabitable, not habitable?

6 A. Yeah. Correct

7 Q And from the pictures I'm looking at, it doesn't
8 appear to be that the property structure is secure. That
9 somebody could enter that structure.

10 A. It's locked up. It's locked up. You can't get
11 in. And it has a gate around it and it's locked up.

12 Q. And there's also on this property a metal garage
13 type of structure.

14 A. Yeah, a shed.

15 Q. All right. Is there any insurance of any kind,
16 liability, any other kind of insurance on this property?

17 A. No.

18 Q. I'm sorry?

19 A. No.

20 Q. And have you obtained a realtor to list this
21 property for sale?

22 A. No.

23 Q. And have you obtained the services of an
24 auctioneer to sale this property?

25 A. No.

1 Q. And this property is also unencumbered other than
2 maybe property taxes, correct?

3 A. Correct.

4 Q. And have you paid any property taxes on this
5 property since filing on August 2, 2015?

6 A. No.

7 Q. And do you know if your Plan proposes to pay
8 property taxes?

9 A. I'm not aware of the Plan that Valldejuli has set
10 up.

11 Q. Have you reviewed the Plan?

12 A. But of course, it should. Pardon?

13 Q. Have you reviewed the Plan?

14 A. I have not.

15 Q. You have not?

16 A. Is this the Plan, that I have here?

17 MR. GORDON: I don't know what he's holding, Your
18 Honor, but --

19 BY THE WITNESS: (Resuming)

20 A. It's a motion to ratify.

21 Q. No, my question is, you, you have - you are here
22 today to seek confirmation of your Plan - Chapter 13 Plan.
23 I had asked you are you - have you read it and are you
24 familiar with the terms of that Plan?

25 A. My understanding of that Plan is that I am to pay

1 --

2 Q. No, I only asked you have you read it?

3 A. I honestly don't believe I have read it. I've
4 been told about it.

5 Q. Okay. That was my question. Thank you. And what
6 is your proposal for these two unencumbered, unoccupied
7 properties in Villa Rica?

8 A. What would be my proposal?

9 Q. No, what is, what is your plan, what is your
10 understanding of what the Plan provides?

11 A. Well, I would say that, I plan to pay the taxes
12 that are due on it.

13 Q. No, I meant in - is it your proposal to sell them
14 as the Court had directed back in November?

15 A. Well, I had understood that the Court had asked me
16 to sell --

17 THE COURT: Hold on a minute. Hold on. Hold on.
18 What's the questions Mr. Gordon?

19 MR. GORDON: Is it your plan to sell them
20 consistent with the Court's directives back in November?

21 THE COURT: Is the question whether the Plan says
22 that or not?

23 MR. GORDON: He hasn't read the Plan, so I'm
24 asking if that's his understanding.

25 THE COURT: Okay. All right. He wants to know

1 whether you - you're talking about the Villa Rica
2 properties?

3 MR. GORDON: Correct.

4 THE COURT: He wants to know what your plan, what
5 you think your Plan provides with regard to the Villa Rica
6 properties. Did I state that accurately?

7 MR. GORDON: Exactly.

8 THE COURT: Okay. Answer that question.

9 BY THE WITNESS: (Resuming)

10 A. I believe that with the sale of the properties in
11 Chile and with the income there's no need to sell those
12 specific pieces of property. And I see all the properties
13 as being the same. And the ones that are easier and more
14 ready to sell were the ones in Chile. All the work had
15 already been done for that.

16 Q. Okay. So I, I --

17 A. So that's - that's where I spent my energy.

18 Q. All right. I understand your approach. So what
19 are you doing about having properties in Villa Rica insured?

20 A. Well, I - this is my first understanding that I
21 needed to have them insured. I - they were vacant
22 properties. They were worthless in my understanding. So to
23 get them insured, they'll be insured. If I'm required to
24 have them insured.

25 Q. Well, you do recognize that there's potential for

1 liability if a child got onto the property and got hurt.

2 Something like that. You understand that, sir?

3 A. I, I do. But the properties are fairly - my
4 understanding there's a gate around them and you can't get
5 into them. There's no trespassing signs on them.

6 Q. When were you last there at either of these
7 properties?

8 A. Probably day before yesterday.

9 Q. Well, you said it was your understanding that
10 there was a gate, as if you weren't sure. Did I
11 misunderstand?

12 A. Yeah. That's not my understanding. There is a
13 gate around.

14 Q. Okay.

15 A. Yeah.

16 Q. And so for that reason, you have not --

17 A. Well, not only --

18 Q. -- contacted realtors or auctioneers about these
19 two properties?

20 A. Well, I didn't think it was necessary since the
21 sale in Chile was pending.

22 Q. Well, it was just a yes or no. And so for that
23 reason you have not contacted any realtors or auctioneers
24 concerning a sale of the properties in Villa Rica?

25 A. Yes.

1 Q. Okay. Now I have not seen these leases that were
2 referred to today on the commercial property. But I thought
3 I heard you refer to a tenant as a mechanic?

4 A. Correct.

5 Q. As in car mechanic?

6 A. Correct.

7 Q. And how many employees are part of the operation
8 of the car mechanic business?

9 A. Does he have?

10 Q. The tenant.

11 A. The, the tenant is European Auto. His name is
12 Steve Gobin. He has a business here in Midtown that he has
13 had for quite sometime. And the business in - that he's
14 opening there, he's just put in two lifts, rebuilt the area.
15 He had a partner that was going to run the shop and I don't
16 know the particulars of his business and what exactly he's
17 planning on doing. But he's been talking to me about the
18 possibility of me helping him with it.

19 Q. So he uses oil and antifreeze and the normal items
20 that a mechanic uses?

21 A. I would imagine, yes.

22 Q. And that's, those items are now being used at the
23 premises of the commercial property?

24 A. Yes.

25 Q. Have you considered the environmental issues that

1 that presents?

2 A. Well, the property is zoned for that. And he has
3 insurance.

4 Q. No, I understand about zoning. I wasn't asking
5 you about that. Are you aware of any environmental issues
6 that that could present?

7 A. I think that this person has been in business for
8 a long time. By the looks of his shop, and again, there are
9 pictures of his shop. He's a very clean person. So I don't
10 --

11 Q. Let, let me ask the question.

12 A. -- no, I don't, I don't know environmental law.
13 And I don't know --

14 Q. Are you a lawyer of any kind?

15 A. No.

16 Q. Okay. So you don't know any law, correct?

17 A. Correct.

18 Q. All right. Now, but it's not something that
19 you've looked into is what I'm understanding you to say in
20 terms of environmental issues with this tenant?

21 A. Correct.

22 Q. Okay. All right, now have you - excuse me. At
23 the hearing in November that you attended when the Court
24 determined to on a what was stated to be a fast track
25 conversion to Chapter 13, Mr. Valldejuli had represented to

1 the Court that, and I'm looking at the transcript - that if
2 there is a buyer for a piece of property he would move to
3 get it approved and then sell it and then pay the proceeds
4 to the Chapter 13. Did you understand that was the process?

5 A. Yeah.

6 Q. And if you understood that was the process, why
7 did you not follow the process and have motions
8 appropriately filed before this Court with notice to all of
9 the appropriate parties until a hearing could be held and
10 the Court could approve it or not?

11 A. Well, first, I understood that was my attorney's
12 work. I'd understand that his sister has passed away and he
13 had difficulty with that. I had thought that that would be
14 done with the properties in Chile. The properties in Chile
15 were ready for sale. I had people there telling me they had
16 them ready for sale. So I went to Chile to sell them. I
17 had assumed that this was done. I mean from what I see
18 here, it is only now being done.

19 Q. So you thought that when you sold the properties,
20 that somehow or another before you sold them that the motion
21 had already been filed and heard by the Court here?

22 A. Well, I don't understand this, the law and how
23 it's supposed to apply here. But I would have assumed that
24 it was being done correctly.

25 Q. That's my follow up. So you assumed that the

1 motion that we discussed had already been filed and approved
2 by the Court before you conducted these sales?

3 A. Well no. I did not know that it had to be done
4 before or after. I just assumed that --

5 Q. Oh, I see.

6 A. -- the procedure would have been done.

7 Q. You didn't know when it was done, just that it was
8 supposed to be done. You didn't know that it had to be done
9 before the sale, when you knew who the buyer was and so
10 everybody else can know.

11 A. Right. I - in other words, that's why I have an
12 attorney because I don't understand this.

13 Q. And that's what I'm saying. You didn't know that
14 you had to disclose before you sold it, who your buyer was
15 or how much it was being sold. You thought it could be done
16 after the sale?

17 A. I didn't know.

18 Q. When it was too late?

19 A. Yeah.

20 Q. And I thought I heard you make the statement that
21 you had to physically be present.

22 A. In Chile.

23 Q. Yes, for the sales.

24 A. It appears that way. The best that I can find, I
25 have to physically be present for --

1 Q. But you're not a lawyer there either in Chile are
2 you?

3 A. Who?

4 Q. You are not a lawyer in Chile either are you?

5 A. No.

6 Q. And how many lawyers did you consult with in
7 Chile?

8 A. A lot.

9 Q. But you didn't employ or pay any of them?

10 A. No.

11 Q. So none of them were retained by you to give
12 advice on the sales?

13 A. No, but they gave advice nonetheless.

14 Q. And did you specifically let them know, or did any
15 of them specifically understand that you had an issue about
16 whether you could sale without physically being there?

17 A. No, I again, I - what do you mean?

18 Q. I mean is that something you, you--

19 A. Yes. Yeah. No I spoke - from what I understand,
20 lawyers, the counsel, the Chilean Consul in Miami and in
21 Houston and in Washington are lawyers.

22 Q. The Chilean Consul, there's Chilean Consul right
23 here in Atlanta.

24 A. Okay. I'm not aware of that. The counsel from -
25 as I understand --

1 Q. The Chilean - I'm sorry.

2 THE COURT: Mr. Gordon what's the point of this?

3 MR. GORDON: (Indiscernible) because it's just not
4 an accurate statement.

5 BY THE WITNESS: (Resuming)

6 A. It is an accurate statement.

7 THE COURT: Well, if it's not an accurate
8 statement and he doesn't know and you contend he's not a
9 lawyer so he doesn't know. He's not going to help us on
10 that is he?

11 MR. GORDON: Your Honor testimony was given about
12 - from him - solicited by his - elicited by his lawyer on
13 the process for sales in Chile.

14 THE COURT: Right.

15 MR. GORDON: I've got a right to debunk that.

16 THE COURT: Right. You do.

17 MR. GORDON: And I'm doing it. And I'm doing it.

18 THE COURT: So bring in a witness who says that
19 there is no such requirement under Chilean law. You've
20 already shown that he talked to a lawyer. He's talked to
21 counsel, or the Chilean Consul.

22 MR. GORDON: No, I showed he retained no counsel.

23 THE COURT: Well, he retained no counsel. Okay.

24 So how is this helping you?

25 MR. GORDON: Because he's a lay person. As I ask

1 more questions it may come to him what I'm talking about.
2 Because it's hard to believe that he wouldn't have heard
3 this. That he can get an irrevocable power of attorney.

4 THE COURT: I'll hear that argument --

5 MR. GORDON: -- from the counsel in Chile.

6 THE COURT: -- Mr. Gordon. But I don't see how
7 his, how his further testimony on this point is going to
8 help.

9 MR. GORDON: Okay. And were you told that --

10 THE COURT: Your position or his for that matter.

11 MR. GORDON: I'm sorry, Your Honor.

12 THE COURT: Go ahead.

13 MR. GORDON: Can I proceed?

14 THE COURT: Yes. Go ahead.

15 BY MR. GORDON: (Resuming)

16 Q. And were you ever explained that to sell property
17 in Chile you need your second surname as well? Your - in
18 other words your mother's maiden name?

19 A. Of course. You also need, you also --

20 Q. I'm sorry. Was that a yes?

21 A. Yes.

22 Q. And what is that name?

23 A. Lucero.

24 Q. Could you spell that?

25 A. L-U-C-E-R-O.

1 Q. And that's your mother's maiden name?

2 A. That's correct.

3 Q. And do you have the Chilean I.D. number --

4 A. I don't have it with me.

5 Q. -- necessary for sales?

6 A. No, I don't have it with me, but yes, I do have
7 one.

8 Q. And you had to utilize that for the selling
9 process in Chile?

10 A. Correct.

11 Q. And what about the taxes generated from the sales
12 of these properties?

13 A. My properties are exempt from taxes.

14 Q. And why is that?

15 A. Chilean law said so.

16 Q. Again, that's your understanding?

17 A. No, that is I have a written document that
18 declares my property exempt.

19 Q. Is that present in the courtroom or is that
20 attached to the motion that was filed today? Do you know?
21 And if you don't know, that's fine. I'm just asking.

22 A. Yeah. No, I don't know.

23 Q. All right. And why do you believe it would be
24 more cost effective to employ a lawyer here in Atlanta
25 rather than in Chile to navigate the selling process?

1 A. There is no need to have a lawyer in Chile. And
2 the need for the lawyer Valldejuli is asking is only to
3 satisfy the lender and the Court. I mean, I obviously did
4 this fine just a few months ago. There is no need for me to
5 have a lawyer. I understand the law from doing this. I
6 sold property in Chile twice before and I understand the
7 very different and complicated nature of selling something
8 in Chile.

9 Q. And if the Chilean I.D. number was needed by a
10 Trustee to sell property or a third party, you would be able
11 to provide it, correct?

12 A. I would.

13 Q. Yes. And you would cooperate in any sales because
14 you believe that there's going to be enough money if I
15 understood you correctly to pay all of your debts and you'd
16 have something left over.

17 A. There is, there is, I'm not going to cooperate
18 with a, with a sale that is done in bad faith or a sale that
19 is done improperly or a sale that is, that is undervalued,
20 when there are sales pending that are correct and that have
21 been done.

22 Q. The --

23 A. I know, I know what would happen with a power of
24 attorney that you're talking about. And what would happen
25 with that is the attorney in Chile will keep the money and

1 you will never see it.

2 Q. I don't know what kind of lawyers you talked to in
3 Chile, but that's just not true, sir. And I don't think
4 you're qualified to make that statement.

5 MR. VALLDEJULI: Your Honor?

6 THE COURT: Mr. Gordon?

7 MR. GORDON: I'm asking that that statement be
8 stricken.

9 THE COURT: You didn't ask a single thing in your
10 argument.

11 MR. GORDON: I'm sorry?

12 THE COURT: You just argued that he's wrong. That
13 you don't know what lawyers he talks to and you said, and
14 you're wrong. And that's argument and it doesn't help us.

15 MR. GORDON: Well, I was asking that it be
16 stricken.

17 THE COURT: So you - don't - just ask him a
18 question.

19 BY MR. GORDON: (Resuming)

20 Q. The motion that was filed today which I have not
21 looked at, did you yourself personally review that?

22 A. This that I have in my --

23 Q. Before, before you took the stand today?

24 A. I did. This is the first time I've seen it.

25 Q. First time you've seen that either? And this

1 development in Chile, it's in La Higuera. Am I pronouncing
2 that right?

3 A. That's the name of the municipality.

4 Q. Yes. That's the correct pronunciation La Higuera?
5 The H is silent?

6 A. Higuera. The H is silent.

7 Q. All right. And that's about a five hour drive
8 north of Santiago?

9 A. No. Oh, oh, Santiago.

10 Q. Yes.

11 A. More like seven.

12 Q. Seven hours?

13 A. Seven hours.

14 Q. Seven hours. Okay.

15 A. The city is La Serena.

16 Q. I'm sorry, I didn't hear that.

17 A. The city is La Serena. The principal city
18 adjacent to that property.

19 Q. Within that municipality.

20 A. Actually, well, in a sense.

21 Q. And I'm trying to understand what, what - where
22 the lots stand now. The ones that were not sold. We
23 understand ten were sold. But are any of them currently
24 under contract for sale?

25 A. As I understand, there are people interested in

1 buying. But what I have found is that I don't know what's
2 going to happen until I get there.

3 Q. And when are you planning to go?

4 A. Pardon?

5 Q. When were you planning to go?

6 A. I was planning to go as soon as I return. I was
7 going to go back and do the sales. But I'm here now for
8 this because I don't know.

9 Q. And how many sales are we talking about? I'm not
10 sure I understood that.

11 A. Well, the idea - this is, this is the idea. The
12 idea is that we have reverse seasons. So we're going into
13 summer there. January and February is the main vacation
14 season. These properties will go up in value steadily
15 between here and January and February. There'll be a steady
16 stream of sales, continuing between now or if I go back, to
17 January and February. But as the situation stands now I
18 believe that I can make enough income right here without
19 even needing to sell that property.

20 Q. Now, when did you acquire, and I don't know if it
21 was all at once or at different times. When did you acquire
22 these lots down in Chile?

23 A. It was, it would just be a guess. Again, it's,
24 it's documented on the web page, but it would be, I'm going
25 to guess around 2001. Then the subdivision was done a few

1 years after that.

2 Q. All at once, they were acquired all, all together?

3 A. Yes.

4 Q. Okay. So approximately 15 years ago?

5 A. No.

6 Q. You said 2001?

7 A. Yes. Then maybe I'm wrong. But you know it would
8 be, I'm just guessing without the - I would prefer to give
9 you correct number.

10 Q. But what do you think the acquisition year was?
11 Just a year, not a specific date.

12 A. I thought it was 2001, but I don't think it was 15
13 years ago. Do you have it there?

14 MR. VALLDEJULI: Uh-huh.

15 BY THE WITNESS: (Resuming)

16 A. What does it say?

17 MR. VALLDEJULI: Do you mind?

18 MR. GORDON: I don't mind, Your Honor.

19 MR. VALLDEJULI: Two thousand one.

20 MR. GORDON: Two thousand one?

21 MR. VALLDEJULI: Two thousand one, 80 acres.

22 BY MR. GORDON: (Resuming)

23 Q. Okay so that was what you thought, 2001. So about
24 15 years ago then.

25 A. Correct.

1 Q. All right. Now, when did you first attempt to
2 sell any of these lots, list them for sale or register that
3 they are available for sale or advertise them in anyway for
4 sale?

5 A. Well, gosh. I built a website to promote - I
6 began promoting this as soon as I found myself in trouble
7 with my mortgage. I began --

8 Q. How many years ago?

9 A. No, this was couple of years ago.

10 Q. I'm sorry, how many?

11 A. This was in - it would have been in November of
12 2014.

13 Q. Okay, so not quite two years ago?

14 A. Yeah. I began building a website, building
15 contacts, calling people down there. Telling them about it.
16 Trying to find - again talking to attorneys, talking to the
17 Council.

18 Q. And if I understood correctly from what Mr.
19 Valldejuli had represented these ten lots that recently sold
20 were the first ones that have sold since you acquired them
21 15 years ago?

22 A. Correct. They could not be sold until the legal
23 paperwork was done. It's call a ROL. It was done with the
24 IRS, Chilean IRS. They couldn't be sold. So we did that.
25 This last trip we did that. That inscription.

1 Q. And I believe you told me at the Meeting of
2 Creditors back in October that you attended, that you had
3 been trying for at least two years before that to sell the
4 lots and at that point had not had any serious buyers at the
5 price that you wanted, that is.

6 A. I don't know. I don't know what I said to you
7 then.

8 Q. Okay. That's fine. All right, so let me see if I
9 understand - I understand what your understanding is of the
10 Plan. The Plan is to not sell the Villa Rica properties.
11 Is that correct?

12 A. I would prefer not to.

13 Q. And the Plan is not to sell the commercial
14 property or to sell the commercial property in Douglas
15 County?

16 A. I don't believe any of the property needs to be
17 sold in the United States.

18 Q. Okay. So not to sell that? Okay.

19 A. So we can fund this between the sale and the
20 income for property in Chile.

21 Q. I'm going through these. I'm trying to
22 understand, all right. So your understanding is that you
23 won't sell - won't have to sell the Villa Rica properties or
24 the commercial property. That the only properties will have
25 to be sold are the lots down in Chile?

1 A. Yeah, all working well. I mean we'll sell
2 anything that we're required to sell. But the properties in
3 Chile it's an ongoing proposition. It's happening now.
4 There's no need to sacrifice properties here when it would
5 be better to go ahead and bring the income there which would
6 be very difficult for you to manage. And I can bring it
7 here to pay these obligations.

8 Q. Okay, and so, and so that's your understanding of
9 the Plan then. It all evolves around the sale of Chilean
10 lots?

11 A. That's my desire. I'm not sure what Plan
12 Valldejuli has proposed. I haven't seen it.

13 Q. I know, I know. I just meant your understanding
14 of it. I know you haven't read it.

15 A. That's my hope, yeah.

16 MR. GORDON: Okay. Your Honor, that's all I had.

17 MR. HARRISON: I do have a few questions, Your
18 Honor.

19 THE COURT: Okay, define few. Because we need to
20 take a break.

21 MR. HARRISON: Maybe five. But I can, I can maybe
22 five or six.

23 THE COURT: Do you have questions, Ms. Kirkland?

24 MS. KIRKLAND: I do.

25 THE COURT: Okay. Well, let's take a break. Do

1 you all want to take a lunch break or do you want to plow
2 through this?

3 MR. GORDON: My preference is to plow through, but
4 I speak only for myself.

5 THE COURT: One plow through.

6 MR. HARRISON: Plow through.

7 THE COURT: Two plows through.

8 MS. KIRKLAND: I, I second that motion.

9 THE COURT: Three, four.

10 MR. VALLDEJULI: Come back tomorrow, Your Honor.
11 No, plow through, plow through.

12 THE COURT: Okay. Then.

13 MR. HARRISON: I could request if you don't mind
14 maybe five minutes to go to the restroom?

15 THE COURT: Well, that, we're going to do that
16 right now. Because if you hadn't requested it, I was going
17 to request it. So why don't we take about a ten minute
18 break and then we'll come back.

19 THE COURTROOM CLERK: All, rise.

20 [WHEREUPON, there was a break recess taken at 12:06 p.m.]

21 [WHEREUPON, proceedings resume at 12:30 p.m.]

22 THE COURT: Mr. Avendano, if you'll come back up
23 here please, sir. Whose next?

24 MR. HARRISON: Ms. Kirkland can go.

25 THE COURT: Ms. Kirkland?

CROSS-EXAMINATION

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BY MS. KIRKLAND:

Q. Good afternoon, Mr. Avendano. My name is Brandi Kirkland. I'm sure you remember me from the Meeting of Creditors in the Chapter 13 case. I represent the Chapter 13 Trustee. And Mr. Avendano, please remember that you do remain under oath. Sir, you testified earlier today that you were told to sell your properties in Chile. Please explain in more detail how they were marketed for sale.

A. Gosh, it's been a long process. I have - I developed a database that, that I used to build a directory of people in La Serena and in Chile generally. Hotels, people in tourism, and I began sometime ago calling them and just building relationships with them. Over time some people stood out, some people became interested and I just followed up with that and after a while leads became, you know potential sales. And this last trip went down there to basically verify those leads and to prepare the property for sale.

Q. The ten parcels in Chile that you recently sold, do you believe that you sold them for their fair market value?

A. You know I think I sold them a little bit less than I could have, but that's hard to say. I think, you know the market on that particular property is, is changing.

1 It's changing momentarily. Like I said, with the interstate
2 was just built. It's become - it's becoming well known for
3 this, you know, I guess echo-tourism. You know, it has some
4 islands there that are like the Galapagos So you know, I
5 think I sold them for - obviously I sold them for as much as
6 I could.

7 Q. Were those properties sold to independent third
8 parties?

9 A. Yes.

10 Q. How many times have you traveled to Chile since
11 August 3, 2015?

12 A. Just this one time.

13 Q. And that was to finalize the sale of these ten
14 properties?

15 A. Correct.

16 Q. And when was that?

17 A. Again, I wish I - that trip would have been
18 somewhere March 9th, I think was the date of the flight.

19 Q. And real estate attorneys are paid in Chile from
20 the sales proceeds of the lots. Is that accurate?

21 A. No. They are paid separately by the buyer. I
22 mean an arrangement could be made you know where you pay for
23 it, the seller, but these were - the buyer was responsible
24 for their own attorney.

25 Q. Was anyone paid from the sales proceeds of these

1 ten parcels?

2 A. Yes.

3 Q. Who was that?

4 A. These two individuals that had a company. One was
5 the ones I spoke of earlier. The geologist that worked for
6 the government. He, he did a lot of advanced work without
7 me paying him. He staked out the property, incorrectly,
8 come to be known now. But he did some topographical work
9 and he found and looked for buyers in which I told him I
10 would give him a price and then he could give, you know,
11 figure out what he wanted to do with the other.

12 Q. Were those two individuals paid a percentage of
13 the sales proceeds or did they get a set fee?

14 A. It was basically set up. I offered these
15 properties for sale at 2.5 million. And they came back to
16 me saying, you know I've got these people that are going to
17 buy these properties, but we're going to sell it for more.

18 Q. And when you say 2.5 million, is that dollars?

19 A. No pesos.

20 Q. In your estimation and experience selling
21 properties in Chile, how long do you think it will take you
22 to get enough money to pay all of your creditors in full?

23 A. To bring the arrears up, you know I had hoped to
24 return immediately after coming back from Chile to go back
25 and continue the process. We probably would have been, you

1 know on our way by now. And again, the question you're
2 asking is relative. Depending, it's relative when you get
3 down there. You know, so people say they're going to do
4 things and you don't know until after the deed is done so.

5 Q. Right. Based on the sale of the ten parcels in
6 Chile in - are you able to estimate a length of time it's
7 going to take you?

8 A. I had hoped that we'd get, you know get - I had
9 hoped to get Austin and Lawson current on the mortgage
10 within, you know, six months. I, you know I had hoped that
11 I could come with enough income to, to pay every, everything
12 up. Again, it's very relative. Doing business down there
13 is speculative almost. You don't, you know this last time,
14 fortunately these, these people had, you know did come
15 through.

16 Q. Are you in sole control of your finances?

17 A. Yes.

18 Q. You testified earlier that the website that you
19 have created, Store it or Sell It dot com that you had
20 listed your inventory there, your tailor inventory?

21 A. Correct.

22 Q. Have you sold any of that inventory yet?

23 A. No.

24 Q. Your personal expenses, your living expenses, how
25 did you pay those expenses from 1998 until August of 2015?

1 A. Well, I sold this property down on Trinity Avenue.
2 The four buildings that are on Trinity and Spring Street.
3 And I lived off those funds for all this time.

4 Q. When did you sell the Trinity Avenue property?

5 A. Back in 1998 and before.

6 Q. At your Meeting of Creditors in the Chapter 13
7 case, you testified that you sold some real property for
8 less than its fair market value within two years prior to
9 filing bankruptcy. Did you net any proceeds from that sale?

10 A. Net?

11 Q. I'm sorry. After any liens on the property were
12 paid was there any money left over?

13 A. Yeah. That was the property that I borrowed money
14 from Jerry Austin again. And yeah, he took what I owed him
15 and I ended up with a few dollars from that.

16 Q. And did you use that money --

17 A. That was my home.

18 Q. -- in addition to the sale of the 1998 property to
19 live on?

20 A. Yeah, I would imagine, yeah.

21 Q. How do you pay for your current living expenses?

22 A. Well, they're meager, but you know I make income
23 on any way that I can. You know I have two people that,
24 that I do some construction work for, but you understand
25 that I, I just went to Chile. So it's kind of hard for me

1 to, to function here. But at this point, I'm back and
2 things are set up to where I have an inventory plus I have a
3 trade that I can, you know generate good income.

4 Q. What sort of living expenses do you have now?

5 A. Well, you know, besides eating, you know my cars
6 are paid for. I don't have, the only creditors I have, you
7 know, are Austin and Lawson. I'm, I'm low maintenance. I
8 don't have a lot of expenses.

9 Q. The 2014 tax return that your attorney provided to
10 me yesterday, did you file that return with the IRS?

11 A. I haven't mailed it. You know it's for zero
12 income. I didn't see much value in it.

13 Q. You testified earlier today that you had not read
14 the Chapter 13 Plan that was filed in your bankruptcy case.
15 The - there was a Chapter 13 Plan initially filed when your
16 case was converted and two amended plans have been filed
17 since then. Did you sign those Plans?

18 A. I don't believe so.

19 MS. KIRKLAND: That's all that I have, Your Honor.
20 Thank you.

21 THE COURT: Mr. Weidenbaum?

22 MR. WEIDENBAUM: I have a few questions, Your
23 Honor.

24 **CROSS-EXAMINATION**

25 BY MR. WEIDENBAUM:

1 Q. Mr. Avendano, good afternoon. My name is David
2 Weidenbaum. I'm an attorney with the Office of the United
3 States Trustee. I don't, I don't believe we've met, but
4 good afternoon. You testified earlier you were told to go
5 to Chile to sell property. Who told you to go to Chile?

6 A. Well, it was my understanding at the hearing that
7 I was at that I was to sell my assets - sell and pay the
8 obligations that I have.

9 Q. Did someone tell you to actually go down there and
10 start selling property?

11 A. Gosh I - you know, in conversation with my
12 attorney, I think that was, you know the plan that we agreed
13 on. I don't think anyone, you know forced me if that's what
14 you're saying.

15 Q. Who was aware that you were on your way to Chile
16 when you went?

17 A. Well, my attorney.

18 Q. And this in advance of March of 2016?

19 A. Yeah.

20 Q. What do, what do you believe your lawyer thought
21 you were going to do in Chile?

22 A. Oh, sell property to satisfy my obligations.

23 Q. There was a motion filed this morning and you are,
24 you are aware of that, correct?

25 A. The one I have before me?

1 Q. Right.

2 A. Yes.

3 Q. Why do you think it was only filed this morning?

4 A. I know that Mr. Valldejuli's sister died. And I
5 know that it's been difficult for him. I assumed that
6 that's the reason.

7 Q. The first property in Chile that was sold was in
8 March. Is that correct?

9 A. Correct.

10 Q. And so do you think it's reasonable that the
11 motion before the Court was only filed today?

12 A. You know I don't know how this works, so I can't
13 tell you whether it's reasonable or not. What I can tell
14 you is that on my part everything - and I heard you speak
15 about, you know clarity or open. Everything that I have
16 done is, you know is - and I'll continue to do it will be
17 posted so that everything that I do is as transparent as it
18 can possibly be.

19 Q. When you say posted, posted where?

20 A. To a web page. Where the document shows up and
21 the event is documented in chronological order.

22 Q. Has that been - in your opinion, has that been a
23 hallmark of this case so far?

24 A. For my part, yeah.

25 Q. Now you mentioned earlier about a website called

1 Store or Sell It dot com.

2 A. Store It or Sell It.

3 Q. Store It, I'm sorry. Store It or Sell it dot com.

4 When did you establish that website?

5 A. Again, it's documented by I, I it would have been
6 about, about a year ago that I began working on it. It's a
7 complex data base system that allows you to do things that,
8 that are otherwise were not able - we were not able to do
9 before.

10 Q. How much time do you think you've devoted to
11 getting that website up and operational and, and meaningful?

12 A. A lot. It's complex, yes a lot.

13 Q. Is that website mentioned at all in your
14 bankruptcy paperwork?

15 A. I'm not aware. I don't know. I think, you know,
16 Mr. Valldejuli has probably only recently become aware of
17 it. It's been a development process. It's a new business
18 concept. I don't know, I don't know if it is or not. It
19 should be.

20 Q. You're right, it should be.

21 A. It should be. It's a good - it's an excellent
22 income opportunity. It's an incredible --

23 Q. Do you remember mentioning this to your lawyer?

24 A. Yeah, but you know, I've mentioned this to a lot
25 of people and it's - a lot of people don't, don't understand

1 it. Some people do and they go, wow, you know.

2 Q. You're initial - I'm sorry.

3 A. I know most people, they don't understand the
4 technology. I'm sorry.

5 Q. Well, I - I interrupted you sir. I apologize.
6 Your initial paperwork that was filed with the bankruptcy
7 court was actually filed by you and without the filter of a
8 lawyer. Is that correct?

9 A. That's correct.

10 Q. Did you reference that website in the paperwork
11 that you prepared?

12 A. No, at the time it was just being developed. I
13 don't believe I did. I think that was about representing
14 assets. And I did the best that I could to, to fulfill what
15 the requirements were.

16 Q. When you sold the property in Chile, the paperwork
17 that was used, the contracts that you signed, who prepared
18 those contracts?

19 A. The lawyer.

20 Q. Which lawyer?

21 A. There were two or three lawyers. The lawyers for
22 - the way that it works in Chile is that you have a notary
23 that is different from what a notary is here. A notary in
24 Chile is an arm of the Court. So a lawyer prepares the
25 document and it goes to the notary and the notary is

1 actually the person that is preparing the document. And the
2 notary is impartial, is impartial to both sides. So the
3 notary, I learned, the notary you can bring them a document
4 and the notary can change that document at will. Even after
5 you've signed it. Which is the most bizarre thing I've ever
6 heard of. And then that gets recorded. That's the way it
7 works.

8 Q. Was - were you represented at all during that
9 process?

10 A. No.

11 Q. Did you engage a lawyer to review any of those
12 documents?

13 A. No, at no time did I ever pay a lawyer or, or hire
14 a lawyer.

15 Q. Does - do these contracts which were attached to
16 this motion that was filed today, do they make any
17 warranties or representations on behalf of you or this
18 Estate at all to any of these buyers?

19 A. What do you mean by warranty? I mean I am selling
20 the property. I am, I am warranting that the property
21 exist. In Chile I am, you know, responsible for when I
22 transfer a piece of property that it does exist and I'm
23 selling a piece of property that is, you know unreal.

24 Q. Say that there's any sort of environmental or
25 topographical issues with the, with the --

1 A. That - there's a description that I reviewed
2 carefully prior to putting it on there. The description was
3 actually - is actually written by me. Because that's very
4 important to me that I'm not describing the wrong parcel
5 when I'm selling it. Other than that, you know that, that's
6 on me. That's not --

7 Q. But there's been no legal review on behalf of you
8 of any of these documents that you signed?

9 A. Oh, I reviewed every single document --

10 Q. Any legal review. Any lawyer that was engaged by
11 you or by your estate?

12 A. No, no just me.

13 Q. How did you pay for your trip to Chile?

14 A. Out of my bank account.

15 Q. How much money did it cost? How much did the
16 tickets cost?

17 A. There were like \$1200.

18 Q. And you had \$1200 in your bank account?

19 A. I guess, yeah.

20 Q. Who went with you?

21 A. Just me.

22 Q. Where did you stay?

23 A. I stayed with one of the individuals that I had
24 developed a relationship with. And you know, paid him daily
25 to stay in the place. In his apartment basically.

1 Q. Was this person at all involved in the marketing
2 or sale of these properties?

3 A. They were, yeah.

4 Q. And how much did you pay him to stay with him?

5 A. You know he told me to leave it up to, you know my
6 discretion. So I would buy him lunch. I'd buy his
7 groceries. I left a monitor there with him. You know, he's
8 just one of the ones who kind of kindness (indiscernible).
9 And I, I think he probably wanted me to pay him more, but.

10 Q. How did you come - how did you find this person?

11 A. Like I said, I built a - you know sometime ago, I
12 built a couple of websites. I started building contacts
13 down there. And he's one of the people that, that answered
14 my many emails that I was sending down there.

15 Q. What's this person's name?

16 A. Patricio Alvia (ph).

17 Q. And did Mister --

18 A. And he's associated with another fella, a Mayer
19 (ph). Christian Mayer (ph), I think it is.

20 Q. And --

21 A. They had had a corporation that they had formed in
22 order to do this sort of work.

23 Q. Is Alvia, A-L-V-I-A?

24 A. Yeah.

25 Q. Did Mr. Alvia receive any funds from the sale of

1 these properties?

2 A. He, he was, he was sort of like a middle man. I,
3 I put out a broad statement to, to potential buyers that I
4 was offering at, at a good price and that they could do, you
5 know, they could, they could do what they wanted with that
6 sale. And when I got there, he had sold some of it for
7 more, so he got the difference.

8 Q. And how much was that?

9 A. It's written, documented there.

10 Q. You say it's written and documented.

11 A. Yeah, on the - there were several amounts. He,
12 he, he got a certain amount for, for the survey that he did,
13 the, the topographical work that he did. And then he got
14 another amount for the difference. And we negotiated on it
15 at some point. But let's see, he got at one point - Mayer,
16 he got \$4,444 at one point. He got --

17 Q. So what your testimony is --

18 A. -- 148 --

19 Q. -- is that this gentleman who you met with, you
20 stayed with, he received 4,000 and change from the sale of
21 some of the properties.

22 A. Some of the properties, yeah.

23 Q. And we're learning about this today for the first
24 time because you attached to this Motion to Ratify some sort
25 of budget or some sort of accounting.

1 A. Right.

2 Q. You testified earlier that you, you said you've
3 done real estate transactions for a very long time. But
4 then you also testified you've had no income from, since
5 1998. I have a hard time reconciling those two comments.
6 So is it that you haven't done any real estate transactions
7 at all since 1998 until now?

8 A. No. No, I obviously bought the property from
9 Jerry Austin. Prior to that I had a house in Chile that
10 that I sold. And - but it sold - first it sold in Chile
11 and it sold for the same amount of money that I bought so
12 there was no tax implication on that. Brought the money
13 back here. Again, this is all on the web page. Brought the
14 money back here and bought two houses in Villa Rica. One of
15 which - most of which - one of which I sold for the pretty
16 much the same amount of money, maybe less than what I paid
17 for it. So there was no tax implication on that. And the
18 other one's the house that I lived in that I sold. And
19 there, you know, was where I paid Jerry Austin some money
20 that I owed him on a mortgage, then some money he lent me.

21 Q. This house in Chile you just testified you sold.
22 When did you sell it?

23 A. I would have to guess, but it would be five years
24 ago.

25 Q. And did you hire a lawyer at that time?

1 A. No. There was no lawyer involved with that. The,
2 the seller had - the buyer did the transaction.

3 Q. Your bankruptcy paperwork indicates that up until
4 a few years ago, you resided at a property at 3540 Laurel
5 Springs Cove.

6 A. That's correct.

7 Q. Did you own that property?

8 A. I did. That's the property that I sold.

9 Q. And how much did you sell it for?

10 A. Sold for like \$80,000.

11 Q. Was that fair market value?

12 A. I didn't think so, but I had to sell it to pay
13 Jerry Austin.

14 Q. So you were, in other words you were, you were up
15 against - you were desperate and you sold it at a price that
16 may not have been fair market value?

17 A. (Nonverbal response).

18 Q. Is that a yes?

19 A. Yeah.

20 Q. Could that also be described as to how you sold
21 some of these properties in Chile earlier this year?

22 A. You know anytime that the property that was - oh
23 these properties? These recent properties in Chile?

24 Q. Yeah.

25 A. Yeah it's hard to say. It's hard to say. I mean

1 the properties had to be sold. That's - you know, they had
2 to be sold. You know I sold some for, you know, two million
3 and sold some for 4.5. In my opinion, is looking at what
4 the values are now, and then on the other hand, one, one of
5 the agents that I saw down there, tells me about this guy
6 that, that says, you know I've got this property, you know
7 next to you that I'm selling near your property and he says,
8 how much do you want it for? And he says, I want 11
9 million. You know mine are selling for two. And he goes,
10 well, what did you pay. He looks at the records, he had
11 paid 500 thousand, which is, you know, very little money.
12 So this is a area where it's changing quickly. And I
13 believe that the values are, are at about six, you know.

14 Q. But you, you were under some pressure to sell some
15 property --

16 A. Well, yeah.

17 Q. -- to comply with the Court Order.

18 A. Of course.

19 Q. Were you not?

20 A. Yeah, and I was told --

21 Q. And you were down in Chile at a time when all of a
22 sudden there was this opportunity to quickly sell some
23 property. Were you not?

24 A. Well, it was kind of the reverse. The properties
25 had already been - I was - the opportunity came before I

1 went. I didn't go down there to create the opportunity.
2 The opportunity had already been established and then I went
3 to Chile.

4 Q. Now when you were in the process of transferring
5 funds from Chile to the United States, was there a fee
6 involved?

7 A. Actually, that's, that was a big issue because you
8 can't get money out of Chile. It's really difficult.
9 Unless you have an account there how do you transfer it.
10 The first flow of money had to go through Western Union
11 title and there are limits to that. So it was costly, they
12 were very expensive and it was difficult. The second flow
13 of money, I got lucky and the Bank of Chile opened me up a
14 fund there. Both in pesos and in dollars. So now I have a
15 bank account in Chile that permits me to do wire transfers.

16 Q. And so how much do you believe you paid in fees to
17 transfer funds to the United States?

18 A. Well, the first go around, we sent, we sent - the
19 company is called Chile Express, which was basically Western
20 Union version. It comes in on Western Union. We sent - in
21 dollars, we sent \$4,000. And it costed us 170,000 - I mean
22 \$170 to send \$4,000. The next time we sent \$1,450 and the
23 cost was \$53.68.

24 Q. And those fees were paid?

25 A. Yes.

1 Q. Are you married?

2 A. No, I'm divorced.

3 Q. Do you have to pay child support?

4 A. No.

5 Q. So when you were in Chile your son was with your
6 ex-wife?

7 A. No, with my sister.

8 Q. How do you handle expenses for your son?

9 A. He lives with me, you know. We just, like I said,
10 I live very meagerly, but, but we, you know, we, we, you
11 know we're comfortable.

12 MR. WEIDENBAUM: I have no further questions, Your
13 Honor.

14 THE COURT: Anyone else on cross? Redirect Mr.
15 Valldejuli?

16 MR. VALLDEJULI: No, Judge.

17 THE COURT: Okay. You may step down. Thank you.
18 Okay, any other evidence? Any other evidence? I'm sorry.

19 MR. VALLDEJULI: No, Judge. No, Your Honor.
20 That's it.

21 THE COURT: Okay. Any evidence on the opponent
22 side?

23 MR. HARRISON: Judge the only thing that I would
24 inquire with is I spoke with Mr. Gordon previously to coming
25 in here. I don't know if you want me to ask him what he

1 would be doing as a Chapter 7 Trustee or if he can just
2 testify before you at the podium. But I, I think that that
3 would be prudent to the Court's making their decision.

4 THE COURT: Well, what would - what's the proffer
5 of what he would say?

6 MR. HARRISON: I would let Mr. Gordon testify to
7 that.

8 MR. GORDON: For whatever it would be worth, Your
9 Honor - Neil Gordon. It would be simply what my process
10 would be in the Chapter 7. Which of course is a different
11 chapter and different way of handling than this Chapter 13
12 would be. Mr. Harrison wanted to know and for purposes of
13 whether he was objecting to the Plan or not and I know that
14 he preferred it. So if it matters to the Court and I'm
15 happy to do it. I'm here.

16 THE COURT: Well, it's your case --

17 MR. GORDON: I know it's his choice.

18 THE COURT: -- so I.

19 MR. GORDON: What I meant, is I'm happy to take
20 the stand or either.

21 THE COURT: Well, that's --

22 MR. GORDON: If Mr. Valldejuli is going to have
23 questions, I should probably be in the stand.

24 THE COURT: Do you want him to take the stand or
25 what?

1 MR. VALLDEJULI: Let him proffer from here and if

2 I --

3 THE COURT: All right. Let's make a statement --

4 MR. VALLDEJULI: -- need to ask some questions --

5 THE COURT: -- in your place there and then if we

6 have questions maybe we can have answers in your place too.

7 Go ahead.

8 MR. GORDON: Very well, Your Honor. Again, Neil

9 Gordon for the record. I've been pointed as a Chapter 7

10 Trustee in approximately 28,000 cases. Cases are different.

11 This one is more different than most. I met with Mr.

12 Avendano at the Meeting of Creditors. He did not attend the

13 originally scheduled meeting, but I did get to meet with him

14 in October. We talked very cordially, very politely. I

15 found him to be a very polite individual at the Meeting of

16 Creditors and I told him what my initial thoughts were on

17 liquidating and working with him to maximize value not just

18 for his creditors, but for him. In my view based on what he

19 was valuing the Chilean properties at in particular, it

20 appeared this could be a surplus case. And as a surplus

21 case, I felt that I owe a duty to the Debtor as well, after

22 the creditors are paid to maximize the surplus and the value

23 that would go back to Mr. Avendano. And so I had envisioned

24 working very closely with him and very cooperatively with

25 him and not adversarial situation in my mind. Because I

1 think, it sounded to me like we were after the same goal and
2 that was to maximize value and bring back to him as much of
3 it as possible.

4 I believed he wanted the Chilean properties sold
5 first along with Villa Rica in my mind. And I'll get to
6 that. Because I believe he thought that enough could be
7 paid that he could retain the commercial property after all
8 creditors were paid in full. That may have changed in his
9 mind, but that was - my approach started with that premise.
10 What I was going to do and what I did do in fact, was I
11 obtained the service of an auctioneer to look at the Villa
12 Rica properties that were unencumbered except for perhaps
13 property tax liens. I did do that. I did have those values
14 which I shared with the Court in November and again today.
15 And the process would have been and what was expected when
16 you read the transcript from November was that even if it
17 was converted, the Debtor was going to sell those very
18 quickly as well. They're not insured. They represent a
19 liability problem for a bankruptcy estate as well as anybody
20 else out of bankruptcy as long as they remain uninsured.
21 And so it was important to me and remains important that
22 they be sold fairly quickly or else somebody's going to have
23 to advance the money to insure the proper. Which I don't
24 think probably would happen.

25 So I would employ my auctioneer. I would have the

1 auctioneer employment approved by this Court, of course. I
2 would then file a motion to sell at auction and it would be
3 an absolute auction. And those properties would get sold
4 very quickly. As indicated earlier, one property was valued
5 at auction as between 15 and \$20,000 and the other between
6 17,500 and \$22,500. I would envision those to be the first
7 monies that would come into the Estate probably in a Chapter
8 7. In terms of the commercial property, I would work with
9 the secured creditor who is underwater. The first mortgage
10 is underwater. If they wanted to obtain stay relief and
11 foreclose, that's one way it would be handled. But if they
12 wanted, as I understood they did for to Chapter 7 Trustee to
13 market and sell the property, then I would work with them
14 and we would work something out to do that. Again, in a
15 cooperative spirit, but this time cooperating with, more
16 with the secured creditor.

17 But the Chilean property - or I shouldn't say
18 property, properties, because there are a lot of lots that
19 we're talking about. We did not know any of them had been
20 sold until the May 11 confirmation hearing. I was not at
21 that. I read the transcript. Mr. Bargar from my office was
22 there and he spoke and addressed the Court. And really was
23 just monitoring it. And it's because of what, what came out
24 of that, that everyone got alarmed about these sales taking
25 place. It is true that if I sale properties it's going to

1 be more expense than the way Mr. Avendano is doing it
2 because number one I'd have to comply with the bankruptcy
3 code. I am not selling properties without filing an, a
4 motion before this Court for authority to sell them with the
5 proposed buyer and sale prices or any item, any lot being
6 sold. I am not selling properties without an order of this
7 Court. So on the one hand, if you're following the
8 bankruptcy code and rules it's more expensive than if you
9 don't. I understand that. And I'm going - but I have no
10 discretion. I'm going to have to follow the bankruptcy code
11 and rules. And that I would do.

12 My, my - what I had envisioned, and I think it's
13 important by way of background to understand that my law
14 firm is about 170 lawyers. We have a large international
15 law department. One of my partners chaired the
16 International Law Committee of American Bar Association. We
17 have relationships with the law firms in Chile. I spoke to
18 no less than five lawyers in Chile about the process, giving
19 them the background of this case. And I had developed in
20 very - just a few days after the Meeting of Creditors, I had
21 already developed a sort of outline of how I would have to
22 proceed. My idea was that I would work with Mr. Avendano.
23 That we would work together, get the best price for each of
24 the lots, but that he would sign an irrevocable power of
25 attorney before the Consul of Chile in Atlanta on Sequoyah

1 Drive about five houses from where I grew up. And that
2 would authorize the law firm that is going to manage the
3 sales without either of us having to go to Chile. They
4 would be able to do it.

5 The law firm is The Carey Firm. It's the largest
6 law firm in Santiago Chile. The lawyer I've mainly dealt
7 with is Marcos Rios. Although I talked to a Ricardo Reveco
8 as well from that firm and at least one other lawyer in that
9 firm. The idea would be that they would manage it. That
10 they would be employed as special counsel. Instead of
11 employing an Atlanta attorney as special counsel, we would
12 employ a Chilean firm as special counsel to manage the sale
13 process. With that irrevocable power of attorney, it could
14 be done in very much in the manner that Mr. Avendano
15 described except he wouldn't have to be there. And I
16 wouldn't have to be there. They could manage it. These are
17 the most reputable lawyers in the world. They are very
18 active in the International Law Committee, the American Bar
19 Association. They speak fluent English. I've had no
20 problem communicating with any of them.

21 That would be, now there were a couple of things
22 that would have been needed and we talked about that today.
23 One would be the second surname of Mr. Avendano which he
24 provided today, which is the mother's maiden name. They
25 apparently in Chile they have, they have two last names and

1 one of them is the mother's maiden name. And that is the
2 reason that comes up, Your Honor. That's how legal
3 documents are in fact done in Chile. That's the difference.
4 And then the Chilean I.D. number, it's not like our social
5 security number here, but it's the closest thing I can think
6 of the way it describes it. But it's very specific to the
7 individual and so Mr. Avendano has his own Chilean I.D.
8 number. Some call it an RUT number. But with that we could
9 manage the process from Atlanta. It would be economical.

10 The special counsel would not be paid without a
11 Court order, after application to the Court for payment of
12 their services. That give the Court, that gives Mr.
13 Valldejuli, it gives anybody else an opportunity, the U.S.
14 Trustee, of course, to see what is being charged and whether
15 it's reasonable and whether it's cost effective. The top
16 lawyers at this law firm, which is the top law firm in Chile
17 charge nothing like the law firms in this country. It's
18 much, much lower. If I could translate this into dollars,
19 their partners charge between \$320 and \$400 an hour. That's
20 the very top senior most experienced lawyers are at \$400 an
21 hour, U.S. dollars. And associates are at far less starting
22 at \$170.

23 So I had a handle on, on the process. I just
24 never got started because the Motion to Convert got filed.
25 Mr. Valldejuli and I had not spoken. It got filed and then

1 the hearing got held. But the process is going to be
2 transparent if I'm in charge. It's required to be and it
3 would be. It's going to be transparent to Mr. Harrison. He
4 will be - I've had no problem communicating with him. I
5 don't know why Mr. Valldejuli doesn't. But I have had no
6 problem reaching him, talking to him. And he calls me and
7 lets me know. The U.S. Trustee is going to know. Mr.
8 Valldejuli will know and I would expect that I would be
9 working very closely with his client and he would know
10 everything I'm doing before anything gets filed with the
11 Court so that if they have a problem, they can raise it
12 before it ever comes before the Court. But the process
13 would be a very efficient one in my mind.

14 Not all lots have the same value. And I think Mr.
15 Avendano alluded to this. So some are going to sell sooner
16 and for more than others. They are not all exactly going to
17 be of the same value. But this is, this is a process that
18 we, we - and a structure that I had in place and that I
19 would follow. And as I said, nobody, not the Chapter 7
20 Trustee, his attorney, special counsel, no one's getting
21 paid without Court approval, fully transparent. And if
22 monies come in, we can look at interim distributions as
23 necessary. But I see it as a very effective process. In
24 terms of the cost, I can - it doesn't make any sense at all
25 to hire special counsel here. Special counsel should be

1 hired in Santiago where fine law firms are and cost less
2 than the attorneys in this country. And it's much more
3 efficient and to manage the process. I can assure you that
4 no attorney here who's not an expert in Chilean real estate
5 law is going to do this without themselves employing Chilean
6 lawyers to advise. Wouldn't even think of it.

7 Now it might make sense for Ms. Ogier to come in
8 and replace Mr. Valldejuli as counsel if that's what he
9 wants. And, and maybe that makes perfect sense, but it
10 makes no sense for her to be employed as special counsel and
11 then her have to then employ Chilean counsel which is what
12 would happen in this case because that's what I'm going to
13 do. And they would manage the money. And although that Mr.
14 Avendano would be directly involved with me in the process
15 of selling lots and in the amount that they are sold for, he
16 would not, I repeat, he would not touch any of the money.
17 The money would go straight from Chilean special counsel who
18 would have the power, irrevocable power of attorney to this
19 bankruptcy estate. They also understand they can't deduct a
20 single dollar in fees or costs. It has to come to the
21 Trustee and the applications have to be filed. They fully
22 understand that. These are all American law school trained
23 lawyers that are down there. And there's no problem with
24 it.

25 THE COURT: Well, I don't think they necessarily

1 have to get paid. They don't have to convert to pesos into
2 dollars and then bring it to the United States and then
3 bring it back and pay them. I don't see why that has to
4 happen.

5 MR. GORDON: Well, it's the way I discussed it
6 with them, Your Honor.

7 THE COURT: I understand. But I don't see why
8 that has to happen.

9 MR. GORDON: Okay. But Your Honor, that is the
10 process that I intended to follow with respect to all these
11 properties working with everybody. I don't normally object
12 in Chapter 13 cases once they are converted. And what
13 happened here was largely driven by --

14 THE COURT: Hold on. We don't really care whether
15 you do or --

16 MR. GORDON: Okay.

17 THE COURT: -- do not or what. We wanted to know
18 what you would do in a 7.

19 MR. GORDON: Correct. I'm sorry. I forgot that
20 I'm not here making my proffer.

21 THE COURT: Right. Okay. Any questions you want
22 to ask Mr. Valldejuli?

23 MR. VALLDEJULI: No.

24 THE COURT: Anybody else?

25 MR. HARRISON: No, Your Honor.

1 MR. GORDON: Any questions from the Court? If not

2 --

3 THE COURT: You may have a seat.

4 MR. GORDON: Thank you.

5 THE COURT: Thank you. All right. Any other
6 evidence?

7 MR. HARRISON: No, Your Honor, not, not on my end.

8 MS. KIRKLAND: No, You Honor.

9 MR. VALLDEJULI: No, Your Honor.

10 MR. WEIDENBAUM: No, Your Honor.

11 THE COURT: Okay. All right. Argument, Mr.
12 Valldejuli?

13 **CLOSING ARGUMENT BY MR. VALLDEJULI**

14 MR. VALLDEJULI: Your Honor, this, this case was
15 initiated by Mr. Avendano's desire to preserve that
16 property, the commercial property. He erroneously filed a
17 7. There's no doubt - and I've read the transcript of the
18 341 and I know that there was always a good discourse with
19 Mr. Gordon and the Debtor. There's never been an issue with
20 some the pleadings the way they were written, indicate that
21 I somehow, because I filed the Motion to Convert on a
22 Sunday, I was doing something to thwart or personally attack
23 Mr. Gordon which was, was far from the truth. What I'm
24 looking at is a, is a situation where it's a - probably one
25 of the most straight forward 13 cases as far as what it's

1 trying to accomplish. It's trying to repay arrearages,
2 preserve an asset that's overvalued that has value. Well,
3 been told to preserve a estate that has value and make
4 enough income to pay back the existing debt and get out of
5 it. What it would take for Mr. Avendano to complete this 13
6 is to pay the arrearages, continue with the ongoing mortgage
7 payments, repay the unpaid property taxes, resume the - any
8 property taxes that come due. And if that's done through
9 ongoing income with the sales of the properties, he's out.
10 He can be out in 26 months, he could be out in 30 months -
11 be out.

12 What the Trustee proposes, and it sounds great. I
13 mean sign me up. But the problem is this, is that surplus
14 case, yes. Maximize value, sure. But there's no control.
15 We would get out by paying the arrearages and paying the
16 ongoing payments and he's out of bankruptcy. Back in the
17 real world. And if he defaults again, they foreclose again,
18 he looks for another remedy. The Chapter 7 Trustee is of
19 course has to sell all the assets until all the debt is
20 paid. We've got a obviously, an undervalued secured piece
21 of property. So for 600,000 some odd thousand dollars, the
22 value is 300 and some odd dollars. Three hundred something.
23 It doesn't matter what he sales that for because they're
24 going to get the bulk of the money anyway. It's just how
25 many parcels of the Chilean property - we could probably in

1 the 13 if, again done properly, and again there won't be any
2 non-disclosure issues anymore. I can promise you that. I
3 hope the Court knows me well enough that I boo-boo once,
4 it's not going to happen again. If anything it's going to
5 be more forth-right and there's going to be a lot more,
6 there's going to be - it's going to be done properly on
7 that.

8 But anyway, 10 percent, or not even 10 percent, 15
9 percent of the, of the inventory could be sold to make this
10 whole case payout. Even, or maybe less, depending on the
11 value. That's not - the Trustee just doesn't stop when he's
12 got that. He's probably going to go through all the parcels
13 to make sure that everybody gets 100 percent or whatever.
14 My client does have to pay \$630,000 to get out of his 13.
15 The Trustee does. If there's unsecured creditors, there's
16 not going to be a surplus until everything he's built is
17 gone. Every one of those properties is sold. No control.
18 So although the process was broken, going in on the sales
19 and the disclosure, that's not - that should, and I hope
20 it's not enough for them to follow the same process.

21 I think Mr. Gordon raises a good point.
22 Substitution of counsel as opposed to that. And I think he
23 raises good point, that you do probably need somebody if the
24 Debtor is not going to go - doesn't want to go down to
25 Chile. There has to be cooperation. But cost, cost, cost.

1 It's always going to be instrumental because the more debt
2 you add on to disposing of these assets, the less he's going
3 to end up with at the end. Surplus, sure, but what is a
4 surplus? I've seen one case that was administered that,
5 that I think the Trustee had to give up 15 percent of his
6 fees just to pay a domestic relation Debtor. Everything
7 else was a, was a fee. I've seen it too often. And I'd
8 like to have a little control. Sure you can come in and you
9 can object. But realistically, it, it doesn't very often go
10 in the favor of, of the objecting party, when a Trustee's
11 asking for fees. At least not in my experience.

12 It's a simply process. I could be out of the
13 picture. It doesn't matter. What I care about is that when
14 he walks, when he walks out of bankruptcy, he gets the
15 remedy that he intended to file. And that is to keep the
16 property, to make, to start a business, to pay back his
17 debts and get out. Not to liquidate every asset that he has
18 and end up with nothing. Yeah, he won't have any debt, but
19 he also won't have any, any retirement. He won't have
20 anything. Because once the trustee starts, and I'm not just
21 talking about Mr. Gordon, I'm taking about the process in
22 general. That's their job, Judge. It's not - I'm not being
23 personal. It's their job. If there's an unsecured creditor
24 out there and there's an asset to pay them with, they're
25 going to just liquidate everything. They don't stop at one,

1 they continue and continue. That to me is just patently
2 unfair and that's what will happen.

3 Now, I like Mr. Gordon's game plan. It sounds
4 wonderful. It really does. It sounds efficient, it sounds
5 fine. Again, you look at the cost later. So why can't we
6 look at it from the standpoint as why can't we just hire him
7 and have him sell 30 parcels. We'll give you 30 parcels.
8 You sell them. You come back and tell us how much it cost.
9 Keep it in a 13. Let him do everything he said, that the 7
10 Trustee would do, but turn the money over to the 13 Trustee.
11 In other words, why can't he do that for us. And then we'll
12 see what's the cost associated with it. Heck then even the
13 13 Trustee might be in a position to object if he thinks
14 it's excessive. Well, let's, let's try it, let's try it out
15 where everybody benefits without having to, to throw away
16 the baby out with the bath water. There's no reason this
17 man has to walk out of this courthouse poor without anything
18 else. There is an in between. I can be out of the picture,
19 he can be in the picture as an assistant. He law firm can.
20 I can, I - it doesn't matter. But I think he deserves a
21 chance to try it, but not in the guise of a Chapter 7
22 because once it's in 7 it's always going to be in 7. I -
23 keep it in a 13. Let the creditor - let's do what they plan
24 to do and let's see what they can do with the property as
25 opposed to what we have done so far. And that's what I hope

1 the Court rules on.

2 THE COURT: Thank you.

3 **CLOSING ARGUMENT BY MS. KIRKLAND**

4 MS. KIRKLAND: Brandi Kirkland, attorney for the
5 Chapter 13 Trustee. Your Honor, even if this case hadn't
6 been filed as a Chapter 13 initially, there's no way I could
7 recommend a Plan for Confirmation that a Debtor hasn't seen
8 and hasn't signed. In this particular case, I believe the
9 Court has sufficient evidence to determine that the Plan was
10 not filed in good faith. It's not a feasible Plan and the
11 case should either be reconverted to Chapter 7 or dismissed
12 without prejudiced.

13 THE COURT: Thank you.

14 MS. KIRKLAND: Thank you Your Honor.

15 THE COURT: Who's next?

16 **CLOSING ARGUMENT BY MR. HARRISON**

17 MR. HARRISON: Judge, I've only got a few points.
18 Victor Harrison on behalf of creditors Jerry Austin and
19 Lawson Realty, Incorporated. The - based on the testimony
20 that was presented today, it's been clear that Mr. Avendano
21 has had no income during 2016. Based on the testimony that
22 has been proffered, there has been no income since 1998 so,
23 we're in our 17th year of no income. There's - the Plan
24 requires a amended or the payment to the Trustee of 875.
25 But there's the first mortgage that's in place of 3,054.47,

1 second mortgage 431.69. There's late fees because they - he
2 has not paid on time. And there certainly has been no
3 evidence presented of how he will be able to pay the first
4 mortgage and the second mortgage without liquidation of the
5 property down in Chile. And the only thing that was going
6 through my head was taking from Peter to pay Paul. And I'm
7 not going to give you the rest of the statement because it
8 may not be appropriate. But nonetheless, at the end of the
9 day I think we're - my creditors are going to end up being
10 short or at least certainly potentially short.

11 The - based on the numbers that were presented
12 this morning, and before I go into those numbers, I want to
13 deal with one thing that I think impacts part of both mine
14 and my client's view on this case. And that is this morning
15 at 7:48 is the motion that was filed. And the reason that's
16 important is every single hearing that I've been before Your
17 Honor something has been filed after 10:00 the night before.
18 So luckily I go into my office early enough where I can
19 print it. I was able to peruse it quickly, but that's it.
20 And I think that's a pattern. So it's hard for us to
21 address the issues before Your Honor because we don't know.
22 It just got hit with us. But irrespective of that issue is
23 the sales based on the numbers that were presented. Thirty-
24 eight thousand five hundred and eighteen dollars and fifty-
25 one cents. And I went over this with Mr. Avendano. The

1 reason I did that is this, the amount that was wired was
2 \$16,411.39. Twenty-two thousand - so more than one half of
3 the sale, \$22,107.12 stayed back in Chile. Paid people -
4 don't know whom. Paid for airplane tickets.

5 Mr. Avendano has stated that he has no income.
6 Therefore it's paying for his food. It's paying for his
7 utilities. And all that, I don't begrudge somebody from
8 trying to exist but at the same time I don't think that that
9 complies with what is required in this particular Plan. The
10 - it's been 56 days since our last hearing and it wasn't
11 until 7:48 this morning that we received that document. You
12 made it clear to the, Mr. Valldejuli and I spoke with him
13 after we left the courtroom and I asked for particular
14 things. I did not receive a telephone call. I did not
15 receive an email. And I did not receive a direct email
16 regarding his filing that came directly from the Clerk's
17 Office. I don't know how to state that, but we - the
18 automatic email. Fifty-six days, no communications.

19 So then it goes back to something that Mr.
20 Avendano said. He said that down in Chile that the sales
21 are dependent upon trust. And I agree. But here in the
22 United States our deals are also depended upon trust. And
23 the reason I brought up about the filings every single time
24 is my client, nor do I have trust in anything that they are
25 proposing for the sale. We have been dealing with this

1 bankruptcy for 11 months. Prior to that our client had been
2 dealing with the not getting paid for almost a year. In
3 which case he was told by Mr. Avendano, I have these lots
4 down in Chile I'm going to sale. So we're going back to -
5 and he testified earlier, he stated that it was in November
6 of 2014 when that occurred. So we're almost at 2 years of
7 my client hearing that, but instead they are owed 12, 13
8 months worth of outstanding payments. And even though it
9 was stated earlier it wasn't by Mr. Avendano, but Mr.
10 Valldejuli, he stated that no money was loaned. The
11 property was just financed. Well, I've done many, many real
12 estate transactions. And I would certainly disagree with
13 that kind of a reasoning. My client could have sold the
14 property to a third party, received the cash and invested
15 it. Instead, he did loan the money.

16 THE COURT: Maybe it's good he didn't invest it
17 given the recent stock market.

18 MR. HARRISON: Not since 13, that's when it sold.
19 He would have made a lot more. But I understand what you're
20 saying. Certainly if he had done it in 2007. But it's real
21 money to my clients. This isn't something that's small, you
22 know. Not only that, they're not get payments on time now.
23 We're owed for the month of July. We're owed for the late
24 fees for the month of June. We received the June payment
25 yesterday because the hearing was today. There is no trust.

1 The communications I've had in the last 56 days regarding
2 this case has been with Mr. Gordon. He explained to me what
3 his role was going to be. What he would do if he was
4 selected to - for it to be converted back. I went over that
5 information with my client. That's our motion.

6 THE COURT: That's really not in the evidence. I
7 don't think.

8 MR. HARRISON: Fair enough. Nonetheless, we are
9 again moving for it to be converted back to a Chapter 7.

10 THE COURT: Okay.

11 MR. HARRISON: There's no faith in the process
12 with it being in the 13.

13 THE COURT: Okay. Mr. Gordon?

14 **CLOSING ARGUMENT BY MR. GORDON**

15 MR. GORDON: Your Honor, Neil Gordon. I have a
16 lot of cases as the Trustee that get converted to Chapter
17 13. It's part of the process. I rarely stay involved in
18 the case after its been converted. I let it run its course
19 with the Chapter 13 Trustee. And was really doing that here
20 in this case. Mr. Bargar happened to be down at the
21 courthouse and he stopped in at the confirmation hearing on
22 May 11th and so he learned when everybody else did about all
23 these unauthorized sales of the property. And the Court
24 heard from him that, that day as well. And he reported it
25 back to me and I reported it to the U.S. Trustee because

1 that's what we're supposed to do and they already knew about
2 it because I think Ms. Kelly was already in the courtroom
3 that day.

4 That's what concerned me the most. Was the
5 integrity of the court process. Your Honor's authority not
6 being respected in the way that this took place. And
7 anybody that knows me knows that that's first and foremost
8 with me as a lifetime practitioner before this Court is
9 integrity of the court system. And that's what I was most
10 concerned about. I was also concerned having read the
11 transcript again in the November hearing and then the May
12 11th hearing that Your Honor repeatedly talked about putting
13 this on a 60-day fast track. And the main thrust at that
14 was to get those two properties in Villa Rica that were
15 unencumbered and uninsured sold and they would have been if
16 I had stayed in as the Trustee. And here we are eight
17 months later and about a year - almost a year after the case
18 was filed and they're still uninsured. And there's no
19 intention to even sell them. Or apparently do anything with
20 them other than just let them sit there. Those are
21 unencumbered, they are not the collateral of the first
22 mortgage holder on the commercial property and so that would
23 be money available to pay the Estate in general. And those
24 are our main concerns.

25 Mr. Harrison and I had no problem talking

1 throughout the course of this case when it was in a Chapter
2 7, when it was in a Chapter 13. He did want to know how I
3 was going to do it. And I did explain to him much as I did
4 today with the this proffer. And I understood that they
5 wanted the case reconverted. That they had lost complete
6 confidence in the Debtor and Mr. Valldejuli because of what
7 had happened previously and the lack --

8 THE COURT: None of that's in the evidence either
9 Mr. Gordon.

10 MR. GORDON: I'm sorry, Your Honor, what's not?

11 THE COURT: This is argument about whether the
12 Plan meets the legal standards. You're talking about your
13 conversations with other parties in the case and cooperation
14 and no problem getting in touch with him and none of that's
15 in the evidence.

16 MR. GORDON: All right. That goes back to the May
17 11th transcript where, which is really why I'm here is
18 because the Court instructed that I should be here to
19 explain my - what I would do as a Chapter 7 Trustee. So I'm
20 --

21 THE COURT: And you've done that. I understand
22 that.

23 MR. GORDON: I apologize for retracing that.

24 THE COURT: Okay.

25 MR. GORDON: But in any event, that, that's really

1 what's most concerning here is the integrity of the system
2 and the process and it was violated in a lot of different
3 ways and that's just not, not tolerated. I can tell you
4 that if a Trustee ever did that they wouldn't remain on the
5 panel. They would be removed from all their cases. And it
6 should be any different if you're handling it without a
7 trustee. You should still follow the code. Should still
8 respect this Court's authority and not act without an order
9 of this Court. That's my main concern. The rest of the
10 issues other than the lack of insurance on those two
11 properties, I leave for the Chapter 13 experts which I am
12 not. Thank you Your Honor.

13 THE COURT: Thank you.

14 **CLOSING ARGUMENT BY MR. WEIDENBAUM**

15 MR. WEIDENBAUM: Very briefly, Your Honor. Your
16 Honor, I was here for the November 17th hearing on the
17 Debtor's Motion to Convert and Your Honor was pretty clear
18 about this case needed to be on a fast tract. I think I was
19 directed to contact Ms. Townsend and Ms. Kirkland to give
20 them an update about this case to see about scheduling the
21 Meeting of Creditors in an expedited way and to get the
22 confirmation hearing going because I think Mr. Harrison at
23 that point made it very clear that his clients are real
24 people and this is important for them to pay their bills.
25 And I think the Court recognized that at that time and the

1 Court's direction, I think made a lot of sense. I was not
2 here May 11th, but my colleague was here as Mr. Gordon
3 pointed out.

4 Ms. Kelly did report to me right away about what
5 transpired at that hearing. And we were amazed about what
6 transpired at that hearing. We went ahead and got our hands
7 on a transcript very quickly, Your Honor. And then I sat
8 and watched and waited and I could not believe there was
9 nothing on the record since then to indicate what was sold,
10 to who it was sold, when, where, why, how - nothing, no
11 accounting. Until eventually, I just had to file something
12 because there is a problem here, Your Honor. And it does
13 impact directly the integrity of this process.

14 When we see a lawyer whose been involved in this
15 case from day one say that he has not had any contact at all
16 with Debtor's counsel about the salient issues, it really -
17 it's just not the way this process is supposed to work. I
18 saw the pleading that was filed this morning and I think
19 there's a lot of unanswered questions that stem from it.
20 And they go directly to the heart of whether this Plan can
21 be confirmed. Whether it was filed and is put before this
22 Court in good faith. And I submit that Your Honor, I can't
23 say that it is. And I can't see how the Court can see that
24 it is.

25 So Your Honor I just - I'm amazed about the status

1 of this case. I think it's very upsetting about where we
2 are. And I commend Mr. Avendano. I think he testified
3 credibly today. I believe his testimony. I think he was
4 forthright and responsive. But I think there's - this is a
5 situation where there's a, just apparent lack of
6 transparency. I mean the Debtor testified he didn't even
7 read and sign the Plan. How can that Plan be confirmed?
8 Mr. Avendano testified that thousands of dollars went to
9 this individual who he stayed with during this process. We
10 didn't - this is news. We didn't know about this. This is
11 unacceptable. So Your Honor, I come before the Court I
12 believe that the Plan should not be confirmed. I believe
13 that the case should be reconverted to Chapter 7. And I
14 stand in support of the arguments that were before the Court
15 by Ms. Kirkland, Mr. Harrison and Mr. Gordon.

16 THE COURT: Thank you. Anything else Mr.
17 Valldejuli?

18 **CLOSING ARGUMENT CONTINUED BY MR. VALLDEJULI**

19 MR. VALLDEJULI: Yeah, just a couple of things. I
20 don't know, how probative it is, but I don't like to be -
21 sit there and listen to some of the things that were said.
22 As far as the last bit of items, the motion I filed was not,
23 was not supposed to be heard today. It wasn't part of what
24 was being heard today. It tangentially was because it dealt
25 with, it dealt with the, the disclosure of the properties,

1 which is one of the supplemental things. But it wasn't
2 intended to be heard. That matter is hopefully will be
3 heard. I did schedule a hearing for it specifically because
4 I didn't know what would transpire today. But either way it
5 needs to be heard whether it's a 7 or 13. The timing of
6 things Judge, I - you know I wasn't going to say anything,
7 but they're just pushing me to the point where after we left
8 in May, a week later I'm down in Florida seeing my sister,
9 watching her die for two weeks. June is hell, okay. In
10 Florida, family members, the second oldest, five kids, I
11 mean five siblings, all right. It was not a good time in my
12 life. I'm the stoic one. But you know, sometimes one
13 doesn't prepare themselves. And I went into a major
14 depression. And I am sorry that everything's not Johnny-on-
15 the-spot on these things. There's no excuse for not filing
16 the applications. There were certain times, under certain
17 pressure. I made the wrong choice to try to protect client
18 because if he didn't pay the mortgage payments by that due
19 clause it'd be in the Chapter 7. All right. So it wasn't
20 lack of respect. It wasn't lack of disregarding the Court.

21 Not only that Judge, but there are remedies for
22 properties that are sold at an estate that can be remedied
23 later as long as there is disclosure. I agree with Mr.
24 Weidenbaum that the disclosure is not complete. But yet his
25 objection was filed yesterday. I'm sure there wasn't any

1 method to that madness. It's just because nothing was on
2 the docket. His objection to me seems the more real than
3 anything because it is unusual that something should be on
4 the docket. I hope I explained it. And I hope there is
5 some - nobody should care anymore after this. It's done.
6 But you know there are reasons.

7 Mr. Avendano, as he said, he's a, he's a
8 gentleman. He's an honest man. My - anything I may have
9 done wrong to screw up the process benefitted him and it
10 benefitted the creditors. If they don't want monthly
11 payments anymore I'll go back to that original thing. Let
12 the Trustee through, let Mr. Gordon, through his firm, sell
13 30 properties and we'll stop paying the ongoing mortgage
14 payments until he does that. Because evidently they're more
15 concerned about the big money than the monthly payments.
16 You know we've been compliant. We've been through the Plan
17 payments and we've made that. It's just a matter of getting
18 on board and getting back on course as to getting this thing
19 done right. And I think for the benefit of all involved,
20 that I, and for myself as well, is that maybe I've just
21 reached a point where I'm just think, I've just - what's
22 been going on in my life that this is just so petty that I
23 don't, I've almost lost the will to care about it. But
24 again, I'm still his lawyer and I want somebody to represent
25 him property, if I cannot. But nevertheless, those are my

1 thoughts. And we can certainly replace me. There's no
2 problem with that. If that's the only issue. And it seems
3 to always come down to that. Trust in me and me not trust -
4 and me not respecting the process. Well, we wouldn't have
5 gotten this far had we not had something in the law going
6 for us. Thank you, Judge.

7 THE COURT: Okay. Let's take about a five minute
8 break and I'll figure this out.

9 THE COURTROOM CLERK: All, rise.

10 [WHEREUPON, there was a break recess taken at 1:40 p.m.]

11 [WHEREUPON, proceedings resume at 1:52 p.m.]

12 THE COURT: Please be seated. All right, we're
13 here with regard to the question of confirmation of the
14 Debtor's Plan, the Second Amended Chapter 13 Plan filed on
15 May 11, 2016 at Docket number 75. This is a difficult case.
16 And I'm going to go through some of the history which will
17 explain what I mean by that. It is a difficult case. I
18 appreciate the help, the work of the lawyers in the case on
19 all sides and the advocacy today at this hearing and the
20 clients have been well served. For the reasons that I'll
21 state in just a minute, I don't think I can convert this
22 Plan and we'll have to reconvert it to Chapter 7. So this
23 will be the Court's findings of fact and conclusions of law
24 pursuant to Federal Rule 52(a) of the Rules of Civil
25 Procedure and Bankruptcy Rule 7052 which incorporates that

1 rule and is applicable to this contested matter under
2 Bankruptcy Rule 9014.

3 The - to put this in context, the case started as
4 a Chapter 7 case. The Debtor has a commercial property
5 that's encumbered by first and second mortgage in favor of -
6 can't keep all the names straight, Mr. Harrison's clients.
7 It might be enough to pay the first, there's not enough to
8 pay the second on that. It's pretty much undisputed. There
9 is property in Chile unencumbered. There are two
10 unencumbered properties in Villa Rica. There is inventory
11 apparently of suits and maybe a website or some sort of
12 software that's been under development as well. So those
13 are the assets. The, the only, the only creditors in the
14 case are the two mortgage holders and the ad valorem taxes
15 on the, on the real properties in the United States. And as
16 in most bankruptcy cases actually nobody much cares about
17 the tax people because everybody knows and understand sooner
18 or later they got to get paid in full. If you sell the
19 property, you're going to have to pay it. If you do a Plan
20 you're going to have to pay it. They come first no matter
21 what. So they're not really a big player usually in Chapter
22 11, 13 or 7 cases for that matter.

23 So the problem is there is an, there's an
24 arrearage on the first and second mortgage. The Debtor is
25 in default. There's a substantial arrearage and the

1 Trustee, when it's in 7, does what Chapter 7 Trustees do.
2 Proceeds to begin the, you know planning the liquidation of
3 the properties. At that point the Debtor seeks to convert
4 it to Chapter 13 and we had a hearing on that Motion on
5 November 17th. And I, I go through these hearing because it
6 puts in context at least the way I saw the issues and, and I
7 think they're the way you all saw the issues. But at the
8 hearing the question is whether to permit the conversion to
9 go forward.

10 And the, the argument is that the Debtor can't do
11 it. The Debtor can't do it because the Debtor doesn't have
12 income in the Chapter 13 case and that gets into the Plan is
13 not feasible. And, and the arguments are, well there's
14 going to be rental income from the commercial property and
15 there's this property in Chile and we can use income from
16 that to fund the Plan and there's this property in Villa
17 Rica and, so we can something. And, and it's better, the
18 argument is from the Debtor, what the Debtor can do is a
19 better result for the creditors than Chapter 7 liquidation.

20 But part of the, leading up to that one of the
21 questions was this is Mr. Valldejuli, all - he says, all of
22 the Debtor's sources - this is at page 26 of the November
23 17th transcript - all his sources of income that we have
24 potentially with the exception of two - I'm not sure what
25 this is - is all going to be for - we can't do anything.

1 The Court - so the income is the rental income? Mr.
2 Valldejuli - that'll be one. So rental income is one source
3 of income. The other source of income is that he had
4 contracted with a company where he would be paid to do
5 exclusive alterations for a national clothing company.
6 Okay. This is in November and the idea is there's going to
7 be - that's going to happen. Then Mr. Valldejuli goes and
8 says that that would be a three year contract at \$5500 a
9 month. And then Mr. Valldejuli says, he only needs - this
10 is at page 27 - Mr. Avendano only needs to generate about
11 less than \$6,000 a month in order to pay the ongoing - he
12 means expenses - to pay the arrearages and do just like a
13 Chapter 13 does. So that's the, there's a need for \$6,000 a
14 month to, to make it happen apparently.

15 And then this gets to what is, I think the real
16 issue in this case. After further colloquy, and this is
17 page 32, this was my observation. Mr. Avendano needs to get
18 working and get this property in Chile sold. At least
19 enough to pay off this creditor or these creditors, and
20 enough to pay Mr. Gordon his commission and his attorney's
21 fees which can be minimized if we do that. That did not
22 mean, do it without Court authority. So there's further
23 colloquy and the question what to do and then at page 34, I
24 said, the feasibility looks very thin. Meaning whether this
25 will work. That what feasibility is all about. At 36 after

1 more colloquy, this is the Court again, maybe you could get
2 the two pieces of property sold - which is the Villa Rica
3 property - work a deal with Lawson Real Estate to get some
4 Chilean property - think I meant sold - and use the cash for
5 make the American properties - cash from the American
6 properties to make a dent in the arrearage. Mr. Valldejuli,
7 exactly. I mean and that's, that's the first intent is to
8 do that. It's in the (indiscernible).

9 Page 40 talking about the inventory. After
10 colloquy between The Court, Mr. Gordon and Mr. Valldejuli
11 the Court says, maybe they, meaning the inventory, the
12 suits, or the (indiscernible) goods, or whatever it is -
13 maybe they can get sold quickly. All this is consistent
14 with the idea that, you know, this needs to be on a fast-
15 track because the alternative to liquidation, the
16 alternative of liquidation brings certainty and, and
17 eliminates feasibility issues. Page 45, again, I said to
18 Mr. Valldejuli, you don't think the creditors would favor a
19 Plan that said, I'm going to sell the American property as
20 quickly as I can, get about 20 grand and would use it to
21 either ask counsel for both creditors how does he want his
22 creditors to divide up the money. I made the further maybe
23 not nice comment thereby putting him in a conflict position
24 between his two clients. Mr. Valldejuli, I would love that.
25 I would love cooperation from the creditor to be able to do

1 that. Well, you don't need the creditor's cooperation to do
2 that.

3 Then at page 48. Okay, so this is the end and we
4 now get into the end of the November 17th hearing. And I -
5 I'm going to permit the conversion because I think the
6 Debtor ought to have a chance to try to get value out of and
7 save the property that he wants to save. He has a
8 theoretical right to propose a plan in good faith. There is
9 a general right to convert. No real allocation of bad
10 faith. And I said, it appears that - Mr. Harrison was
11 arguing that the Debtor had filed in bad faith because he
12 filed to prevent foreclosure. I indicated that a lot
13 debtors file for that reason and that was not a - did not
14 show bad faith. And then continued, that, it appears that
15 the Debtor filed bankruptcy in order to pay both of the
16 creditors in full. And that will either happen in a 13 or
17 we're going to find out something that we don't currently
18 know about those Chilean properties. I'm taking the Debtor
19 at his word that there's property there and that it's worth
20 something and that it can be liquidated. Now having said
21 that, that the case can be converted it needs to be on a
22 fast-track. And then, we're almost through with November
23 17th.

24 I'm sometimes concerned that I go too far in
25 comments like this, but I figure it's, it's better for

1 people to know what I'm thinking and what I expect for them
2 to be able to win then for them to guess at it. So at the
3 same time, it's not for me to tell lawyers how to run their
4 cases. But here's what I said, what Mr. Valldejuli needs to
5 do is rethink his Plan because there's going to be a big
6 problem with feasibility from what I've heard so far, with
7 income and getting that property leased. With regard to the
8 Chilean property - well - this is page 53 both of these -
9 well we really don't know what the Chilean property is.
10 Somebody says we might be able to sell it or we're going to
11 sell it. We're going to need to know chapter and verse,
12 documents produced so that the creditors, Mr. Harrison is
13 convinced and his clients are convinced that there is
14 property there, that it is going to be sold. And in the
15 meantime it seems to me unless there's some reason to keep
16 the Timmons or whatever it is and the Andy Mountain property
17 - the best I recall that's the Villa Rica properties - that
18 ought to be sold like yesterday.

19 And then, here's the conundrum for me in this case
20 - 55 - I think it's appropriate to give the Debtor a chance.
21 If the Debtor is serious about getting this done, the Debtor
22 can probably get all of this done faster than a Trustee.
23 And then I asked a rhetorical question, Mr. Avendano, you
24 want to do it in a 13, fine, have at it, but you have got to
25 make it happen. And you've got to make it happen within the

1 time frame that works the same way that a Chapter 7 would
2 work. That's what I said on November 17th. So the case got
3 converted, the Plans got filed. I think there was some
4 reasons, appropriate reasons that we continued this once.
5 I'm not sure. Did we continue the confirmation hearing once
6 in this case?

7 THE COURTROOM CLERK: Yes, Your Honor.

8 THE COURT: Okay.

9 THE COURTROOM CLERK: It was continued from the
10 original date of January 27th because there, there - the
11 Meeting of Creditors that was scheduled on an expedited
12 basis was scheduled for January 4th and could not be
13 attended.

14 THE COURT: Okay.

15 THE COURTROOM CLERK: By the Debtor's counsel, I
16 believe.

17 THE COURT: All right. So we rescheduled that and
18 then we rescheduled this Hearing from January?

19 THE COURTROOM CLERK: Your Honor --

20 THE COURT: When was it originally schedule for?

21 THE COURTROOM CLERK: Your Honor ordered this
22 hearing be set at the May 11th confirmation hearing.

23 THE COURT: Oh, so we had a confirmation hearing
24 in May.

25 THE COURTROOM CLERK: That's correct.

1 THE COURT: That went forward and then we provided
2 additional time. Okay.

3 THE COURTROOM CLERK: Yes, Your Honor. We --

4 THE COURT: Oh, that's right. Because here we
5 are. We're now at the May 11th confirmation.

6 THE COURTROOM CLERK: That's correct.

7 THE COURT: All right. So at that hearing there
8 is - problems aren't resolved. People still have
9 objections. They're still sort of the same objections. And
10 I said at page 28 after hearing arguments, I've got two
11 choices and I'll hear from the parties, one I can just
12 convert it today or reconvert it to Chapter 7 or I guess I
13 meant, that should be, I can just confirm it. Two,
14 reconvert it to Chapter 7 or two we have an evidentiary
15 hearing and I'll go through all of this. But my problem
16 with an evidentiary hearing is I'm not optimistic that if
17 that evidentiary hearing is no more definitive and no more
18 specific than all of this, it's not going anywhere." I'm
19 editing all of this because I think the court reporter has
20 made some mistakes. But I thought part of the idea here was
21 to give Mr. Avendano some time to get these properties sold.
22 That would maybe clear up this problem and everybody would
23 be happy and off we would go and these little issues
24 wouldn't matter like amendment of the schedules, when he got
25 his credit counseling. Forty-three - and we're talking

1 about, among other things, the fact that by then we know
2 that some of the properties have been sold. There is an
3 issue related to that - meaning the good faith issue - of
4 transparency.

5 As Mr. Harrison points out, nobody knows anything
6 about this. We don't know who th purchasers are. We don't
7 know what's been sold and that's troubling. On the other
8 and this is part of what's driving decision, if you're right
9 and if this can, and if this can all get done - meaning Mr.
10 Valldejuli - this probably makes better sense - meaning
11 Chapter 13 - than having it in a Chapter 7 despite all of
12 these problems. But these problems are going to torpedo
13 this Chapter 13 if there is not transparency and if there is
14 not, you know, some sort of communication. And then, no
15 great mystery about this - Mr. Harrison may or may not
16 appreciate me speaking into his words. But here's what he
17 had to say, my client's point of view is whoever is going to
18 get them paid off the quickest. They've been pretty
19 consistent about that I think. There's no ill will. And
20 then number - page 49. The answer to his question - the
21 answer to that question is, if Mr. Valldejuli and Mr.
22 Avendano are right and they can get this property sold, if
23 number one, and if number two they would get it done, that's
24 the best route for your client getting paid, I think. And
25 here's Mr. Harrison's answer - I don't disagree with that.

1 The Court - but the problem is nobody's confident that
2 that's going on.

3 And so here we are. We rescheduled - we scheduled
4 a hearing on confirmation for today and to consider what
5 objections to confirmation depending, would, would still be
6 remaining. And all of them are still remaining. But the
7 one that is the most critical, it seems to me is the
8 requirement of 1326, oops, 1325(a)(6) which is, the Debtor
9 will be able to make all payments under the Plan and to
10 comply with the Plan. The Plan provides for monthly
11 payments and the Debtor also has to live and there is no
12 evidence that the Debtor can make the payments under the
13 Plan unless the properties are sold in some way.
14 Liquidation plans, the case law in this is not particularly
15 favorable to debtors. The case law is - requires a great
16 degree of specificity and, and there's often a lot of talk
17 about speculation and it's mere speculation and so forth and
18 so on. And there's some feeling on so courts perhaps that
19 Chapter 13 is about a payment from income and not a
20 liquidation.

21 Well, I don't agree with the proposition that you
22 can't use Chapter 13 for liquidation. And I, and I come
23 back - the reason that I permitted the case to be converted
24 and the reason that I, that I provided additional time to
25 have a hearing on conversion was because I thought Chapter

1 13 could properly be used in this context to have a result
2 that would be beneficial for everybody. And, but to do that
3 would require, would require in the face of opposition,
4 would require a convincing showing that basically it's going
5 to work. It would require a showing of a marketing plan in
6 the context of this case, in the history of this case. It
7 still seems to me I can think of no reason at all that two
8 parcels of property that have vacant, unoccupied structures
9 on them, that are unencumbered have not been sold. I, I
10 just cannot think of a single reason that that has not
11 happened. The evidence didn't show any. Other than, you
12 know, gee, maybe if we can just, we can, we can make enough
13 out of income where we don't have to sell them.

14 Well, maybe that's true but as I pointed out in
15 one of the previous hearings, income, bankruptcy is not
16 always about the, about having a good choice. It's about
17 less bad choices. And not insuring the properties, Mr.
18 Gordon properly points out or questioned, you know, what
19 about liability insurance? What if, what if some child
20 walks through there. Well, it's locked or there's a fence.
21 Well, and there's a no trespassing sign. Well, yeah. I can
22 see some ten-year old kid, you know, paying attention to a
23 no trespassing sign and thinking, oh gee, I better not go in
24 there. Maybe that precludes liability. I don't know. But
25 the problem is there's just, I can't think of any reason

1 that those properties were not sold. And that would have
2 produced money that could have gone immediately to pay
3 creditors. It might have made, you know, Mr. Harrison's
4 clients, maybe they're really wanting to get - move forward
5 on this thing. But, you know, you give them something maybe
6 they'll give you some more time to try to figure things out.
7 Maybe I'll give you more time to try to figure things out if
8 there's progress being made.

9 The Chilean properties, there's testimony about
10 what - about how hard it is to sell in Chile. It's
11 complicated, it's difficult. I sort of accept that. I
12 accept that it's different. If it's that complicated, Chile
13 has more problems with its economy than I would have thought
14 because I don't see how any - we would certain have -
15 Americans would find it difficult to operate under that kind
16 of a system. I'll just put it that way. Maybe that's the
17 way it is and maybe they get along with it and they think
18 it's fine. And if so, that's okay. But I, it's just
19 difficult to believe that it's that hard. In any event, if
20 it is, still the feasibility requirement in the context of
21 the discussions at the previous hearings would have been
22 that there would be presented today, actually arguably a
23 plan modification would set out specifics of how the Chilean
24 property is going to be liquidated. We can get pass that.
25 We do a lot things in Chapter 13 that aren't exactly in the

1 Plan or we let people tell us what they're going to do and
2 then amend the Plan to conform with it. But there is, but
3 today it's the same, it's where we were before. There's
4 property in Chile, it's hard to sell, but I'm going to do
5 it. There's no when, there's no how much.

6 As the, as the evidence came out today, maybe this
7 would - maybe this is just American and maybe I don't
8 understand the, the market in this part of Chile. But
9 without infrastructure, at least from an American
10 standpoint, it's hard to see selling subdivided lots. It's
11 not like selling vacation lots, you know, at - up in the
12 mountains somewhere or at the beach somewhere where there
13 is a subdivision and a clubhouse and a pool and roads, and
14 utilities are in and, you know you buy a lot, you can build
15 a house. Here you've got to build your own road. And so
16 that's - but apparently there have been some properties that
17 have been sold. But, again, there's just, there's just no
18 specificity and other than, you know, I've got property. I
19 can get it sold. I'm going to get it sold and I just,
20 there's nothing that builds confidence that this is going to
21 happen now.

22 The idea that was raised of finding somebody to
23 take charge of the sale of these properties, excellent idea,
24 great idea. The idea of Mr. Gordon being the person to do
25 that since he's already started the process, don't know

1 whether it would be legally permissible, but nevertheless,
2 another great idea. And that could really make a whole lot
3 of sense. That's not what the current Plan says. Current
4 Plan doesn't say that. And it's been a lot time since May
5 to talk about that and see if that's something that, that
6 people would find, you know - you don't think my guy will do
7 it. What if we put somebody else in charge or it's just,
8 again, Mr. Valldejuli decided this is being the best way to
9 get this property sold and to save cost was to have the
10 Chapter 13 Debtor do it. And I - there's no basis in this
11 record for me to disagree with that, that that's the best
12 way to do it. That's why I let this, that's why I converted
13 the case. And that's why I set this hearing down for an
14 evidentiary matter. But the problem is I, I'm - the Debtor
15 has not met the burden of showing that that's going to
16 happen in a timely and predictable and proper way.

17 There still seems to me to be some type of, gee,
18 you know, I really don't want - I really don't want to sell
19 the Villa Rica property because I don't think I'll have to.
20 And that just - that indicates to me that there's not a
21 serious dedicated effort to liquidate these properties which
22 is necessary for this Plan to work. So - and then the
23 further problem in that regard, and this goes to the
24 integrity of the Court and the post - the unauthorized post-
25 petition sales. And, and as Mr. Gordon has properly pointed

1 out and that is, it's an absolutely no-no that would result
2 in the removal of, of office from any Chapter 7 Trustee that
3 did such a thing or worse, possibly worse. But debtors are
4 debtors and debtors don't always do exactly what they're
5 supposed to do. And, and as I indicated in the previous
6 hearings, you know, that's a problem we could probably get
7 over. We wouldn't be happy about it. We could probably get
8 over it, if it, if it looked like it really made sense to go
9 forward with this.

10 As I've already indicated, it didn't. But - it
11 doesn't. But complicating the problem is that the sales
12 took place in April. We're at a hearing in May. Sales took
13 place in April, we're in a hearing in May. They reported at
14 that hearing. In today's world, I don't understand why that
15 information couldn't have been transmitted, you know by Mr.
16 Avendano to Mr. Valldejuli before that May 11th hearing and
17 then, you know the numbers could have been reported at that
18 hearing. Or even if they weren't, you know, May 11th is the
19 hearing and nothing happens. And I understand and I
20 sympathize with, with personal events. Life happens even
21 when one is practicing law and I, I'm sympathetic to that.
22 And I'm sorry about that. But still, there's no accounting
23 until the day of the hearing, the morning of the hearing.
24 And the accounting, even then doesn't answer all of the
25 questions, as far as I can tell. Maybe it's there

1 somewhere. But I can't figure out where the money went.

2 There's 30 something thousand dollars in sales and
3 16,000 got to the United States and I don't know where the
4 rest of it went. At least not from the document. There's I
5 think 37 or \$38,000 of lots sold under paragraph ten and
6 then it says, paragraph 11 says, sixteen thousand and change
7 is sent to the United States. And it says - in paragraph
8 ten the end says, and an excel spreadsheet reflecting
9 reports of the sales and expenses is Exhibit J. Well,
10 that's the document we was talking about during the hearing.
11 And it shows expenses in dollars, as best I can tell of
12 being about \$5,300 and change. So I don't know where the
13 money went. That 5,300 includes the 4,444 that Mr. Mayer
14 got. Maybe I'm missing something, but - so that, I mean
15 that just to me indicates an inability to make this case
16 work in accordance with the bankruptcy rules - perspective
17 inability. And I've already said, I, I think the, in the
18 overall context of the case, I don't like to make this type
19 of observation, but the, the failure to sale the Villa Rica
20 property I would say is at best an exercise of not the best
21 business judgment, in the context of this case.

22 Maybe that sort of goes to good faith of really
23 trying to make it happen. I don't know. But, again it all
24 relates to, it all relates to the central question in this
25 case which is feasibility. Will this Chapter 13 case result

1 in payment of these creditors within a reasonable period of
2 time? And my answer to that is I cannot find that from the
3 evidence. In part, I find that because of all the reasons
4 I've said and I also think that, Mr. Avendano really doesn't
5 want to sell this property. There is possibilities of other
6 income, the leases, the tailoring business, the Store It
7 Sell website, but there's no - I mean there's no projections
8 about that. There's no indications of how much is going to
9 come in from that or what's going to be done. And that's
10 just, it's, it's not enough to establish that the Debtor is
11 going to have income coming in.

12 And I understand the issues and the difficulties
13 of, well I can't really do anything. I can't lease up the
14 property because of the uncertainties of being in Chapter
15 13. I understand that. But if, but - and I understand
16 that, that Mr. Avendano said, as he testified, that he's
17 been waiting to see whether, whether this goes forward, the
18 Chapter 13 goes forward to see whether he can legitimately
19 start his business. I sympathize with that. I wish that I
20 did not have to make the ruling that I'm making because I
21 would like to have Mr. Avendano be able to start his
22 business. But that, but Chapter 13 is not about starting a
23 new business. Chapter 13 is about taking what you have with
24 regular income from what you have and moving forward. It's
25 not about, you know, well I've decided I'm going - you have

1 to have regular income. So I guess in part, I can't confirm
2 it because of an absence of a showing of regular income.
3 But the, the real problem is that I don't see that the
4 Debtor can make the payments. And the Plan doesn't specify,
5 as Ms. Kirkland points out, the Plan doesn't specify when
6 the payments are going to be made, so there's, there's
7 really no timetable or schedule for payments under the Plan.

8 And then, just as in final observation. I don't
9 understand why there wasn't a 2015 tax return filed. I can,
10 I guess, I won't - I just don't understand it. If there's
11 really no income, file the tax return that says there's
12 really no income and it eliminates the problem. Otherwise -
13 because otherwise it would put me in the position of having
14 to evaluate whether or not there really was income. And I
15 have difficulty because Mr. Avendano is, I think, I'm not
16 sure about this either is also, when that tax return is not
17 filed it puts me in the position of having to, having to try
18 to become a tax lawyer. Because I'm not sure about this,
19 but I think that under the Internal Revenue Code,
20 disposition of or receipt of gain from the disposition of
21 asset is gross income. If it's gross income, you've got to
22 file a tax return. Even if you lose money on the
23 transaction. You've got to file a tax return because the
24 Debtor has gross income in excess of the amount of the
25 exemption, which I think is the standard.

1 Well, Mr. Avendano has testified he had three or
2 four or five transactions during this 19-year, 18, 17-year
3 period, he hasn't filed any tax return. He said, well I
4 didn't have to because there were no tax implications.
5 Could be no tax implications. Maybe absolutely right about
6 that, but I think you still got to file a tax return. No
7 penalty if there is no tax due. But our issue in the
8 Chapter 13 world for 2015 is not whether there's a tax due,
9 it's not whether there's a penalty. It's whether there is a
10 requirement to file it. I heard no evidence that Mr.
11 Avendano had any income during that period of time.
12 Although he has had some in 2016, apparently. Somehow from
13 doing various things which several people tried to figure
14 out what and got answers which were, just things and I can
15 get by. So maybe that, maybe none of that happened in 2015.
16 In any event, I can't confirm the Plan. And so I have to
17 reconvert it. I hope that the parties, meaning Mr. Gordon
18 and Mr. Avendano, will work cooperatively together to try to
19 effect sales of property that marshal the assets in a way
20 that makes sense. And that preserves whatever interests Mr.
21 Avendano may have.

22 That may be difficult in the context. It may be
23 difficult to get into a - effectively to cure and
24 reinstatement situation here, but it's not beyond. Creative
25 people could maybe figure out a way to make that happen

1 anyway in the Chapter 7. Probably take the lender's
2 cooperation to make that happen. So that means maybe it
3 won't happen. But anyway I can't worry about that. The - I
4 can't convert this Plan. I mean I can't confirm this Plan
5 and so therefore, I have to convert it. So, that will be
6 the ruling of the Court. Ms. Gordon - Ms. Kirkland could
7 you present a proposed order.

8 MS. KIRKLAND: Yes, Your Honor.

9 THE COURT: Let Mr. Harrison, Mr. Gordon, Mr.
10 Weidenbaum - you'll have to - I don't reappoint the Trustee.

11 MR. WEIDENBAUM: No, Your Honor.

12 THE COURT: Okay.

13 MR. WEIDENBAUM: If you can - we'll make sure it's
14 in the Order that the Court directs my office to do --

15 THE COURT: To appoint --

16 MR. WEIDENBAUM: -- to appoint --

17 THE COURT: -- to appoint a Trustee. You might
18 want to submit your application to him, Mr. Gordon. See if
19 he'll reappoint you. And let Mister - I just said who you
20 were.

21 MR. VALLDEJULI: Valldejuli.

22 THE COURT: Valldejuli. I knew it had a J in
23 there somewhere. That's okay. At a hearing yesterday, I
24 consistently, throughout the hearing, used the wrong name
25 for one of the lawyers that I've known for about 20 years.

1 The only good thing about it was apparently, Judge Diehl had
2 done the same thing. So at least I don't have to answer to
3 her. All right, we also have on for today, the issue of
4 attorneys fees. I propose not to deal with that today until
5 we see how all this liquidation works out.

6 MR. VALLDEJULI: I'll object to that, Your Honor.

7 THE COURT: I'll, I'll reserve. We'll just mark
8 that one, reset upon request Ms. Mason.

9 THE COURTROOM CLERK: Okay.

10 THE COURT: My request. No, anybody, anybody can
11 ask for it to be reset. You needed - Mr. Valldejuli was
12 your objection, you've got standing in this case because
13 this looks like a surplus case. So you do have standing.

14 MR. VALLDEJULI: Well, I'm sure Mr. Gordon will be
15 objecting.

16 THE COURT: Okay.

17 MR. GORDON: No, I agree with what you said Your
18 Honor. If I get reappointed. I had told Mr. Weidenbaum the
19 same thing. And Mr. Harrison and I believe Debtor has
20 standing.

21 THE COURT: Right. So anyway. But the Trustee is
22 also responsible for sorting out claims. So anyway I'm
23 going to, I'm just going to reserve ruling on that
24 currently. We'll mark it, reset upon request, which means
25 effectively it's stayed, sort of until somebody wants it to

1 be heard. You can also, if you want, you can withdraw your
2 objection and you'd still have a right - I'll let you
3 withdraw it without prejudice.

4 MR. VALLDEJULI: Sure. Yeah, that's probably what
5 I'll do.

6 THE COURT: All right. Then, then, you can
7 withdraw it without prejudice.

8 MR. VALLDEJULI: Sure.

9 THE COURT: And if you want to file it at a later
10 point, thank you. That will help us clean up our docket a
11 little bit.

12 MR. VALLDEJULI: Well, I'll talk - before I - I
13 could talk to Mr. Gordon if he agrees with my position, then
14 we can - there's no sense in him filing another one.

15 THE COURT: Well, that's true.

16 MR. VALLDEJULI: If he's going to file one. We
17 can talk about that.

18 THE COURT: All right. I'm going to leave it as,
19 reset upon request. You do what you want to with it. The
20 objection to claim is reset upon request.

21 MR. VALLDEJULI: We can see about that. I have
22 one question. It's kind of --

23 THE COURT: Yes?

24 MR. VALLDEJULI: -- strange. Ms. Kirkland, the
25 money paid into the Plan, since I don't have --

1 THE COURT: Is it paid? Is there money in the
2 case now?

3 MS. KIRKLAND: There is Your Honor. The Trustee
4 has \$5,250 on hand and there's no direction in the Plan
5 regarding what to do regarding attorneys' fees if the case
6 is dismissed or converted.

7 THE COURT: What do you want me to do with it?

8 MR. VALLDEJULI: Well, that's why I was asking.

9 THE COURT: What does Mr. Avendano want me to do
10 with it?

11 MR. VALLDEJULI: Well, we - I'll file an
12 application obviously for my fees and like I said, the hope
13 was that get them paid and then I can get paid. So I don't
14 know. I have no, no thoughts on (indiscernible) to do that
15 because normally - the way the Plan is right now is that all
16 the money would be disbursed in that ratio.

17 THE COURT: To them? It's not going to them.

18 MR. AVENDANO: Your Honor, if I had to propose, I
19 would say to the Douglas County Tax Commissioner.

20 THE COURT: You do not have the ability to do
21 that.

22 MR. AVENDANO: Well, that's what I would --

23 THE COURT: And it can't - it's not going to the -
24 this does not involve you, actually. Mr. Weidenbaum is
25 about to tell us why.

1 MR. WEIDENBAUM: Well, I think Your Honor, the
2 money should be turned over to Mr. Gordon and we can deal
3 with this upon application. And --

4 THE COURT: I don't think it goes to Mr. Gordon.
5 Ms. Kirkland, maybe you would like to explain Harris versus
6 (Indiscernible) to us.

7 MR. GORDON: I'm familiar with the case Your
8 Honor. I know how - what your's saying. There is a
9 difference here.

10 THE COURT: It doesn't go to the Trustee, does it?

11 MR. GORDON: Well, there's a difference here
12 because those are post-petition earnings.

13 THE COURT: Yeah. What are these?

14 MR. GORDON: This arises from pre-petition
15 property.

16 THE COURT: Well, we don't know what it is do we?

17 MR. GORDON: No. But it's the proceeds of pre-
18 petition property.

19 THE COURT: Could be.

20 MR. GORDON: I think. But I'm not sure what it
21 actually is.

22 THE COURT: Good point.

23 MR. WEIDENBAUM: Well, my point was that it, Your
24 Honor for the time being the funds would be held in trust
25 until we can determine the source of the funds and, and then

1 perhaps have an opportunity to discuss the, the course the
2 case should take in terms of where the funds should go.

3 THE COURT: Good, he makes a good point Mr.
4 Valldejuli.

5 MR. VALLDEJULI: I have no. Listen, I wasn't
6 expecting any. I was just, I knew it would come up later -
7 -

8 THE COURT: No, if it was post - if it's - to the
9 extent it's post-petition earnings it belongs to Mr.
10 Avendano. To the extent it's proceeds from the sale of the
11 Chilean property, it belongs to Mr. Gordon. And it's free
12 and clear.

13 MR. VALLDEJULI: And therefore, well I think --

14 THE COURT: Which means it's subject to your claim
15 and his.

16 MR. VALLDEJULI: Right. I, I think that's pretty
17 clear. I mean, I - the motion I guess, I can do the
18 schedule a motion to ratify the sale or I don't know what
19 you want me to do with that. I still need, I still need,
20 the Court needs still to ratify it. And of course --

21 THE COURT: What do you want to do about the, you
22 want to ratify the sale or not?

23 MR. VALLDEJULI: I think there's still - Mr.
24 Weidenbaum was right. There's still some gaps in there. I
25 just didn't have enough documents to fill the gaps and there

1 are more questions. So I could either deal with Mr.
2 Weidenbaum, who I prefer to deal with. Well, no only
3 because you're the tough guy. As far as what documents will
4 satisfy him to - as far as where the money's going.

5 THE COURT: All right. The order of conversion
6 will state that the Trustee is directed to turn over the
7 property to the Chapter 7 Trustee as appointed by the United
8 States Trustee to hold in trust pending determination of who
9 is entitled to the money.

10 MR. WEIDENBAUM: Yeah, I think that's appropriate,
11 Your Honor.

12 MR. VALLDEJULI: I do too. I do too.

13 THE COURT: And with regard to the motion to
14 ratify, you file a motion, you want to schedule it for a
15 hearing. Schedule it for hearing.

16 MR. VALLDEJULI: Okay.

17 THE COURT: I'd talk to Mr Gordon. If he's going
18 to oppose it --

19 MR. VALLDEJULI: No, I'll talk to him.

20 THE COURT: -- or if Mr. Harrison is going to
21 oppose it, or if Mr. Weidenbaum's going to oppose it. We
22 can have a status conference at the time you schedule it,
23 but we probably won't have a hearing on it. But so I would
24 suggest that you talk to them and see what they want to do
25 about.

1 MR. GORDON: I mean, I interpret that, Your Honor,
2 as sort of a request for a nunc pro tunc approval of the
3 sales.

4 MR. VALLDEJULI: Sure.

5 THE GORDON: But I think it should just be reset
6 upon request. We've got to figure out what exactly --

7 THE COURT: It hasn't been set yet, so.

8 MR. GORDON: That's right, set upon request.
9 Excuse me.

10 THE COURT: So if you - it's his motion. He can
11 do whatever he wants to.

12 MR. GORDON: That's right.

13 MR. VALLDEJULI: Well, I'll, I'll go along with
14 that. I mean that makes more sense.

15 THE COURT: So I think he ought to talk to
16 everybody. And quite frankly we can get it all straightened
17 out as far as the purchasers go. You know, you probably, I
18 mean what are you going to do? Go back and file law suits
19 in Chile to avoid unauthorized post-petition transfers.
20 Probably not. So, you know, these are probably done deals,
21 move on. Now, what affect that has on anything else in the
22 case is another issue.

23 MR. GORDON: No, that's not going to happen, Your
24 Honor. You're right. We'd have to go through Chilean
25 insolvency court to even do what you just - it's not going

1 to happen.

2 THE COURT: Yeah. So I'd do, you know. I've
3 already given lots of advice in this case. But my --

4 MR. VALLDEJULI: You might find me in lot 68 with
5 an umbrella in about a week, so.

6 THE COURT: My thinking, my thinking might be, you
7 know, just clean up the record and do an order that approves
8 those sales just for the peace of mind of those purchasers.
9 If they even know they have a problem, which they probably
10 don't.

11 MR. GORDON: I'm sure they don't.

12 THE COURT: They probably don't have a problem
13 anyway. Because there's probably nothing filed in Chile.

14 MR. GORDON: There's not - they're not going to
15 know.

16 THE COURT: Chile. Is it Chile? Am I saying that
17 right?

18 MR. VALLDEJULI: Chile.

19 THE COURT: Chile? Slipped into my old
20 pronunciation there. Okay, anything else we need to do
21 today?

22 MS. KIRKLAND: No, Your Honor. Thank you.

23 THE COURT: Okay. Thank you all very much.

24 MR. VALLDEJULI: Your Honor, again, thank you so
25 much for the opportunity. I appreciate it.

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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 167 represent a true and correct transcript of the audio recording given to me by Beth Brown of the Office of the United States Trustee, 75 Ted Turner Drive, SW, Suite 362, Atlanta, GA. This transcript 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 3rd day of August, 2016


Felicia A. Harris