

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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

OBJECTION TO CLAIMED EXEMPTIONS

COMES NOW, Neil C. Gordon, Chapter 7 Trustee (the "Trustee") for the bankruptcy estate of Claudio Pablo Avendano (the "Estate"), and files this *Objection to Exemptions* ("Objection"), and in support thereof shows this Honorable Court the following:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

Background

2. Debtor filed a voluntary petition for relief under Chapter 7 of Title 11 U.S.C. (the "Petition") on August 3, 2015 (the "Petition Date"), thereby initiating Case No. 15-64523-PWB (the "Case"). On or about January 20, 2016, Trustee was appointed to the Case as interim Chapter 7 Trustee, pursuant to 11 U.S.C. § 701(a)(1).

3. Also on the Petition Date, Debtor filed under penalty of perjury his *Statement of Financial Affairs* and Schedules "A" through "F" and Schedules "I" and "J" (collectively, the "**Sworn Schedules**").

4. On August 4, 2015, Trustee was appointed to the Case as the interim Chapter 7 trustee, pursuant to 11 U.S.C. § 701(a)(1).

5. The original meeting of creditors was scheduled for September 8, 2015, pursuant to 11 U.S.C. § 341(a) (the "**341 Meeting**"), at which time, Debtor failed to appear, so the 341 Meeting was rescheduled to October 15, 2015.

6. Trustee conducted and concluded the 341 Meeting on October 15, 2015, at which time, he became the permanent Chapter 7 Trustee, pursuant to 11 U.S.C. § 702(d).

7. Trustee filed his *Application to Appoint Attorney for Trustee* [Doc. No. 24] requesting authorization to employ Arnall Golden Gregory LLP ("**AGG**") as attorneys for Trustee that was approved by the Court [Doc. No. 27].

8. Pursuant to the first page of the Petition filed on the Petition Date, Debtor listed his residence address as "155 Liberty Road, Villa Rica, Douglas County, Georgia 30180" (the "**Liberty Road**").

9. On November 15, 2015, Debtor amended Schedules "A," "B," and "C" of the Sworn Schedules [Doc. No. 37] (the "**First Amendment**").

10. Pursuant to Schedule "A" of the First Amendment, Debtor scheduled his sole ownership interest in three real properties, including (a) Liberty Road described as commercial property; (b) house and 1.5 acre lot located at 3191 Andy Mountain Road, Villa Rica, Douglas County, Georgia 30180 ("**Andy Mountain**"); and (c) Residential 4.29

acre lot located at 8931 Timmons Circle, Villa Rica, Douglas County, Georgia 30180 (“**Timmons Circle**,” and collectively with Liberty Road and Andy Mountain, the “**Properties**”).

11. Pursuant to Schedule “B” of the First Amendment, debtor scheduled (a) Cash in the amount of \$48.00 (“**Cash**”), (b) a single checking account with a balance of \$1,000.00 (“**Account Funds**”), (c) a 2010 Toyota Yaris with a value of \$5,000.00 (the “**Yaris**”), (d) a 1997 Toyota Tacoma with a value of \$2,000.00 (the “**Tacoma**”), (e) a rusted out Ice Cream Van with a value of \$500.00 (the “**Van**”), (f) a rusted out GMC Truck with a value of \$500.00 (the “**Truck**”), and (g) Books and Antiques with a value of \$5,000.00 (“**Books & Antiques**”).

12. On October 3, 2016, Debtor filed an *Amendment to Schedule C Amending Allowable Exemptions* [Doc. No. 118] (the “**Second Amendment**”).

Trustee’s Objections to Exemptions Claimed in the Second Amendment

13. Pursuant to O.C.G.A. § 44-13-100(b), the State of Georgia has opted out of the federal exemption scheme and follows its own state-provided exemptions as set forth in O.C.G.A. § 44-13-100(a).

14. Pursuant to Rule 4003(b) of the Federal Rules of Bankruptcy Procedure, the Trustee and other parties have only thirty (30) days from the conclusion of the 341 Meeting or within thirty (30) days after any amendment to the list or supplemental schedules is filed, whichever is later, to file any objection to exemptions.

15. The deadline to object to the exemptions claimed in the Second Amendment is November 2, 2016. Therefore, this Objection is timely filed.

16. Pursuant to Second Amendment, (a) Debtor claimed the following exemptions:

(i) a full exemption in the Account Funds of \$1,000.00 under O.C.G.A. § 44-13-100(a)(6);

(ii) an exemption in the Yaris of \$5,000.00 under O.C.G.A. § 44-13-100(a)(3);

(iii) an exemption in the Tacoma of \$2,000.00 under O.C.G.A. § 44-13-100(a)(6);

(iv) an exemption in Books and Antiques of \$5,000.00 under O.C.G.A. § 44-13-100(a)(6); and

(v) a homestead exemption in Timmons Circle of \$21,500.00 under O.C.G.A. 44-13-100, and

(b) Debtor has claimed no exemption in the following:

(i) Cash;

(ii) Liberty Road;

(iii) Andy Mountain;

(iv) the Van; and

(v) the Truck.

17. Under O.C.G.A. § 44-13-100(a)(1), a debtor may exempt debtor's aggregate interest, not to exceed \$21,500.00 in value, in real property that the debtor uses as a residence (the "Homestead Exemption").

18. Under O.C.G.A. § 44-13-100(a)(6), a debtor may exempt debtor's aggregate interest, not to exceed \$1,200.00 in value plus any unused amount of Homestead Exemption (the "Wild Card Exemption").

First Objection:

19. Timmons Road is not the Debtor's residence. Furthermore, Debtor previously testified that Timmons Road was uninhabitable. Transcript of hearing held on July 7, 2016 at pages 70-71. See attached as Exhibit "A" incorporated herein by reference. Therefore, Debtor is not entitled to claim a Homestead Exemption in Timmons Road, as it was neither his homestead nor inhabitable by anyone. Thus, Trustee hereby objects to any claim of Homestead Exemption in Timmons Road.

Second Objection:

20. Debtor has claimed a total Wild Card Exemption of \$8,000.00. If Debtor is permitted to claim the full Homestead Exemption of \$21,500.00 in Timmons Road, then Debtor is only permitted a Wild Card Exemption of \$1,200.00, which Debtor has grossly exceeded by \$6,800.00. Therefore, Trustee hereby objects to any claim in the Wild Card Exemption.

21. Alternatively, if Debtor is permitted to claim the Homestead Exemption in Timmons Road, then he must either (a) reduce the total Wild Card Exemption claimed in the other assets to \$1,200.00 and pay to the Estate the non-exempt value of the other assets listed in the Second Amendment totaling \$6,800.00 plus those not listed in the Second Amendment, including the Cash of \$48.00, the Van valued at \$500.00 or the

Truck also valued at \$500.00, creating total non-exempt equity of \$7,848.00, or (b) reduce the amount of the permitted Homestead Exemption claimed by \$7,848.00.

Third Objection:

22. Trustee objects to any and all other exemptions claimed to the extent they exceed the allowable exemptions under O.C.G.A. §44-13-100(a). Moreover, this Objection shall be a continuing objection in anticipation of any amendments that may or may not resolve this original Objection, without the need for filing new objections.

WHEREFORE, having filed this Objection, the Trustee prays that the Objection is sustained, and that the Trustee have such other and further relief as the Court deems just and proper.

Respectfully submitted,

ARNALL GOLDEN GREGORY LLP

By: /s/ Neil C. Gordon

Neil C. Gordon

State Bar No. 302387

Attorneys for Chapter 7 Trustee

171 17th Street, N.W., Suite 2100
Atlanta, Georgia 30363-1031
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EXHIBIT "A"

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.

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Debtor.)
_____)

NOTICE OF HEARING

PLEASE TAKE NOTICE that Neil C. Gordon, the Chapter 7 Trustee (the "Trustee"), has filed his *Objection to Claimed Exemptions*.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the aforesaid *Objection to Claimed Exemptions* in Courtroom 1401, Richard B. Russell Federal Building, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303 at 10:00 a.m. on November 21, 2016.

Your rights may be affected by the Court's ruling on this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.). If you do not want the Court to grant the relief sought in this pleading or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two (2) business days before the hearing. The address of the Clerk's Office is: Suite 1340 Richard B. Russell Federal Building, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303. You must also mail a copy of your response to the counsel for the Trustee, Neil C. Gordon, Arnall Golden Gregory LLP, 171 17th Street, N.W. Suite 2100, Atlanta, Georgia 30363-1031.

ARNALL GOLDEN GREGORY LLP

Dated: October 24, 2016

By: /s/ Neil C. Gordon
Neil C. Gordon, State Bar No. 302387
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Atlanta, Georgia 30363-1031
(404) 873-8596 / Email: neil.gordon@agg.com
Attorneys for Chapter 7 Trustee

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing *Objection to Claimed Exemptions and Notice of Hearing* by depositing in the United States mail a copy of same in a properly addressed envelope with adequate postage affixed thereon to assure delivery to:

Office of the United States Trustee
362 Richard B. Russell Building
75 Spring Street, SW
Atlanta, GA 30303

Claudio Pablo Avendano
P. O. Box 401
Winston, GA 30180

This 24th day of October, 2016.


/s/ Neil C. Gordon
Neil C. Gordon