

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

In Re:)	
)	CASE NO. 15-64523-PWB
CLAUDIO PABLO AVENDANO,)	
Debtor.)	CHAPTER 7
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JARROD M. PLUNKETT,)	
Movant,)	
)	
v.)	
)	
CLAUDIO PABLO AVENDANO,)	
NEIL C. GORDON, Trustee for the Estate of)	
Claudio Pablo Avendano,)	
Respondents.)	
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NOTICE OF HEARING

PLEASE TAKE NOTICE that JARROD M. PLUNKETT has filed an EMERGENCY MOTION TO ENFORCE AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY and related papers with the Court seeking an order directing Debtor comply with the Court's prior Order, that Debtor vacate real property, and that the stay be modifying such that Movant can enforce his state rights.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion in Courtroom 1401, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303 at 10:30am on October 15, 2016.

Your rights may be affected by the court’s ruling on these pleadings. You should read these pleadings carefully and discuss them 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 these pleadings 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 business days before the hearing. The address of the Clerk's Office is Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Spring Street, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the motion for relief from the automatic stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

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EMERGENCY MOTION TO ENFORCE AND
MOTION FOR RELIEF FROM THE AUTOMATIC STAY

COMES NOW, Jarrod M. Plunkett, Movant (hereinafter “Plunkett” or “Movant”), by and through undersigned counsel and shows this Honorable Court the following:

1.

Debtor Claudio Pablo Avendano (hereinafter “Avendano” or “Debtor” or “Respondent”) filed his voluntary petition for relief under Chapter 7 in the Northern District of Georgia Atlanta Division on August 3, 2015.

2.

On October 24, 2016, this Court entered an Order on the Chapter 7 Trustee's Motion to Sell Property [docket entry no. 126]. In said Order, the Court overruled Debtor's Objection to the Trustee's Motion to Sell as meritless and directed the Trustee to sell the Property to the Movant, Mr. Plunkett, such that the sale could be closed and possession thereof surrendered.

3.

As of the date of this Emergency Motion to Enforce and Motion for Relief from the Automatic Stay, the sale has closed and yet the Debtor has refused to surrender possession of the property to Mr. Plunkett, in direct opposition to this Court's Order.

4.

Mr. Plunkett, therefore, brings this Emergency Motion to Enforce and Motion for Relief from the Automatic Stay to request that this Court issue an Order (1) directing the Debtor to comply with the Court's Order of October 24, 2016, (2) directing the Debtor to vacate the Property, and (3) modifying the automatic stay such that Mr. Plunkett can enforce his state law rights, including dispossessing the Debtor of the Property. As shown in the Court's Order of October 24, 2016 and in this Motion, good cause is shown for the relief sought.

WHEREFORE, Movant prays that a hearing be scheduled in this matter, that Debtor be directed to comply with the Court's prior Order, that Debtor be directed to vacate the Property, and that the automatic stay be modified such that Movant can enforce his state law rights. Movant also prays that the fourteen (14) day stay provided for in Federal Rule of Bankruptcy Procedure 4001(a)(3) be waived, and for such other and further relief at the Court deems just, proper, and equitable.

Respectfully submitted,

This 10th day of November.

/s/
John J. McManus
GA Bar No. 497776
Attorney for Movant
John J. McManus & Associates, P.C.
4500 Hugh Howell Road
Suite 510
Tucker, GA 30084
(770) 492-1000 [tel]
(770) 492-1100 [fax]
jmcmanus@mcmanus-law.com

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of Movant's Emergency Motion to Enforce and Motion for Relief from the Automatic Stay and Notice of Hearing thereon on November 10, 2016 via U.S. first class mail with sufficient postage affixed thereto to the following persons or entities:

David S. Weidenbaum
Marty P. Ochs
Office of United States Trustee
362 Richard B. Russell Building
75 Ted Turner Dr., S.W.
Atlanta, GA 30303

Claudio Pablo Avendano
P.O. Box 401
Winston, GA 30187

Claudio Pablo Avendano
155 Libery Rd.
Villa Rica, GA 30180

[sent via U.S. first class mail and Fedex]

Neil C. Gordon
Chapter 7 Trustee
Arnall Golden Gregory LLP
17 17th St., N.W.
Suite 2100
Atlanta, GA 30363-1031

This 10th day of November, 2016.

/s/

John J. McManus
GA Bar No. 497776
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