

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

IN RE:)	
)	
CLAUDIO PABLO AVENDANO,)	CHAPTER 13
)	
Debtor.)	CASE NO. A15-64523-PWB
-----)	-----
CLAUDIO PABLO AVENDANO,)	
)	
Movant,)	
)	CONTESTED MATTER
vs.)	
)	
JERRY AUSTIN &)	
LAWSON REALTY, LLC,)	
)	
Respondent.)	

**NOTICE OF REQUIREMENT OF RESPONSE TO OBJECTION TO CLAIMS OF
JERRY AUSTIN (CLAIM NUMBER 2-2) AND LAWSON REALTY, LLC (CLAIM 3-2;
OF DEADLINE FOR FILING RESPONSE; AND OF HEARING**

PLEASE TAKE NOTICE that the above-named Debtor has filed an Objection on May 10, 2016 to the above referenced claims seeking an order disallowing said claim.

Your rights may be affected. You should read these papers 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 requested, or if you want the court to consider your views, then on or before **June 3, 2016** you or your attorney must:

- (1) File with the court a written response, explaining your positions and views as to why your claim should be allowed as filed. The written response must be filed at the following address:

**Bankruptcy Clerk's Office
1340 Russell Federal Building
75 Ted Turner Drive, SW
Atlanta, GA 30303**

If you mail your response to the Clerk for filing, you must mail it early

enough so that the Clerk will **actually receive** it on or before the date stated above.

(2) Mail or deliver a copy of your written response to the Objector's attorney at the address stated below. You must attach a Certificate of Service to your written response stating when, how, and on whom (including addresses) you served the response.

If you or your attorney does not file a timely response, the court may decide that you do not oppose the relief sought, in which event the hearing scheduled below may be cancelled and the court may enter an order disallowing your claim as requested without further notice and without a hearing.

If you or your attorney file a timely response, then a hearing will be held in Courtroom 1401, U.S. Courthouse, 75 Ted Turner Drive, SW Atlanta at 10:00 AM on June 22, 2016. You or your attorney must attend the hearing and advocate your position.

This 11th day of May, 2016.

Valldejuli & Associates, LLC
2199 Lenox Road, Suite A
Atlanta, GA 30324
(404) 636-9957

_____/s/_____
Richard K. Valldejuli, Jr.
Attorney for Debtor
GA Bar No: 723225

IN THE UNITED STATES BANKRUPTCY COURT
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vs.)	
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JERRY AUSTIN & LAWSON REALTY, LLC,)	
)	
Respondent.)	

**OBJECTION TO PROOF OF
OF JERRY AUSTIN (CLAIM NUMBER 2-2)
AND LAWSON REALTY, LLC (CLAIM NUMBER 3-2)**

COMES NOW, the above-captioned Debtors, and hereby file this objection to the proofs of claim filed by **Respondents** and in support thereof, shows the following:

1.

Respondent **JERRY AUSTIN** (“Austin”) holds a mortgage note secured by a first position deed to secure debt on Debtor’s commercial property located at 155 Liberty Road, Winston, Douglas County, GA 30187.

2.

Respondent **LAWSON REALTY, LLC** (“Lawson”) holds a note secured by a second position deed to secure debt on Debtor’s commercial property located at 155 Liberty Road, Winston, Douglas County, GA 30187

3.

Both Austin and Lawson are represented by the same counsel, Victor Harrison (“Harrison”) in this Chapter 13 case.

4.

On February 18, 2016, Harrison filed a proof of claim on behalf of Austin for mortgage arrearages needed to cure pre-petition default totaling \$44,900.66. Said sum represented 14 regular payments each in the amount of \$3,054.47 plus 14 late fees each in the amount of \$152.72 (Claim No. 2-1).

5.

On March 10, 2016 Harrison amended Austin’s proof of claim calculating a new arrearage amount of \$124,692.04 needed to cure pre-petition default (Claim No. 2-2).

6.

It is unclear how Harrison arrived at that number¹, but what is clear is that he added \$78,697.25 to the \$44,900.66 amount on Claim 2-1 for Georgia² statutory attorney's fees of 15% of the outstanding principal and interest owed.

7.

Harrison followed the same direction with Lawson’s Claim. On February 18, 2016 Harrison filed a proof of claim on behalf of Lawson for arrearages needed to cure pre-petition default totaling \$10,425.21 (Claim No. 3-1) and March 10, 2016 Harrison amended Lawson’s proof of claim increasing it to \$14,908.03³ (Claim 3-2). Again, calculating 15% of the principal and interest owing as Georgia statutory attorney's fees provided for under the Note.

¹ \$44,900.66 plus \$78,697.25 totals \$123,597.91. Not sure how the additional \$1,094.13 was calculated.

² See O.C.G.A. § 13-1-11

³ \$10,425.21 plus \$3,856.78 15% attorney’s fees total \$14,281.99. Not sure how the additional \$626.04 was calculated.

8.

This is Bankruptcy 101. So much so, that in my 28 years of practice, I have not seen a lender attempt to calculate a boiler plate, 15% attorney fees default provision to its claim. Not even when the creditor is oversecured, which, by Harrison's own proffers to the Court in prior hearings, is not the case here.

MINI BRIEF IN SUPORT OF DISALLOWING
ATTORNEY'S FEES CLAIM UNDER O.C.G.A. § 13-1-11
IN A REORGANIZATION PLAN

The validity of a claim for Georgia statutory attorney's fees is a question of Georgia law, the enforceability of a claim for attorney's fees in a Bankruptcy proceeding is a question of federal bankruptcy law⁴ Bankruptcy courts in Georgia have considered the effect of cure and reinstatement on creditors' claims under O.C.G.A. § 13-1-11 and have held that the creditors were not entitled to the Georgia statutory attorney's fees claim. *In re Davis*, 77 B.R. 313 (Bankr.M.D.Ga.1987) ; *Midland Mutual Life Insurance Co. v. Masnorth Corp. (In re Masnorth Corp.)*, 28 B.R. 892 (Bankr.N.D.Ga.1983) (hereinafter referred to as "*Masnorth I*"); *Midland Mutual Life Insurance Co. v. Masnorth Corp. (In re Masnorth Corp.)*, 36 B.R. 335 (Bankr.N.D.Ga.1984). Former Bankruptcy Chief Judge Joyce Bihary's Memorandum Opinion and Order in *In re Centre Court Apartments*, 85 BR 652 (Bankr. N.D. Ga 1988) provides a great reference for an analysis of the effect of Federal Bankruptcy Law on a claim for Georgia Statutory Attorney's Fees

⁴ See *Security Mortgage Company v. Powers*, 278 U.S. 149, 154, 49 S.Ct. 84, 85, 73 L.Ed. 236 (1928); *Security National Bank v. Cotton (In re Atlanta International Raceway, Inc.)*, 513 F.2d 546, 548-549 (5th Cir.1975).

WHEREFORE, based on the foregoing, Debtor prays that an Order be entered sustaining Debtor's objection to Austin's Claim No. 2-2 and Lawson's Claim No. 3-2.

This 10th day of May, 2016.

Valldejuli & Associates, LLC
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Atlanta, GA 30324
(404) 636-9957

_____/s/_____
Richard K. Valldejuli, Jr.
Attorney for Debtor
GA Bar No: 723225

CERTIFICATE OF SERVICE

This is to certify that I have this day served all parties in the foregoing matter with a copy of the foregoing “***Objection to Proof of Claim of Jerry Austin (Claim 2-2) and Lawson Realty, LLC, LLC (Claim No. 3-2) and Notice of Requirement of Response; of Deadline for Filing Response and of Hearing***” by ECF Transmission and/or Email to.

Brandi L. Kirkland, Esq.
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Chapter 13 Trustee
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Lawson Realty LLC
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Jerry Austin
c/o Victor Harrison, Esq.
Harrison & Horan PC
3150 Golf Ridge Blvd, Ste 101
Douglasville, GA 30135

This 11th day of May, 2016.

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_____/s/_____
Richard K. Valldejuli, Jr.
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