


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

IN RE:)	CHAPTER 7
)	
CLAUDIO PABLO AVENDANO,)	CASE NO. 15-64523-PWB
Debtor.)	
)	
NEIL C. GORDON, Trustee for the)	
Estate of Claudio Pablo Avendano,)	CONTESTED MATTER
)	
Movant,)	
V.)	
)	
JERRY E. LAWSON,)	
LAWSON REALTY, LLC,)	
DOUGLAS COUNTY TAX)	
COMMISSIONER, and)	
CLAUDIO PABLO AVENDANO,)	
Respondents)	


 2016 OCT 11 AM 9:07
 U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT
 OF GEORGIA

DEBTOR'S OPPOSITION TO TRUSTEE'S MOTION FOR (I) APPROVAL OF BIDDING AND AUCTION PROCEDURES, (II) AUTHORITY TO (A) SELL REAL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, AND (B) DISBURSE CERTAIN PROCEEDS AT CLOSING, AND (III) TURNOVER OF COMMERCIAL PROPERTY PRIOR TO CLOSING OF PROPOSED SALE

COMES NOW, the above captioned Debtor, in opposition to Trustee's motion thereof shows this Honorable Court the following:

1.

Creditor Jerry Austin filed a wrongful foreclosure against the Debtor by not providing the 30 day period prior to comply as required by the promissory note. "That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means." (Finlay v. Oxford Const. Co., 138 Ga.App. 49, 225 S.E.2d 495), "While the due that stated in the second security deed does indicate a conflict with the due date in the note, **the terms of the note must govern.** "

2.

Attorney Victor Harrison, was called and made aware of this the wrongful nature of the foreclosure prior to the sale scheduled at the courthouse and stated he did not care and would proceed nonetheless.

3.

Due to the Creditors initial wrongful foreclosure, Debtor, looked for but had insufficient time to find counsel, and incorrectly filed, pro se, a petition for relief under Chapter 7 on August 3, 2015.

4.

The Debtor filed this Chapter 7 case in order to stay the wrongful foreclosure of commercial property allowing him time to repay the mortgage arrearages. The property is located at 155 Liberty Road, Villa Rica, GA 30180 (the "Property"), which serves as Debtor's place of business and residence.

5.

The property at 155 Liberty Road is part of a far larger estate that includes two other properties in Georgia and a subdivision of 160 lots in Chile of **values far greater** than the amounts due to creditors.

6.

The property at 155 Liberty Road is **incorrectly** valued at \$374,370.00 based on the 2014 Douglas County Property Tax Assessments. Debtor's ownership interest in the Property is subject to two (2) separate deeds to secure debt as follows:

(a) Jerry E. Austin holds the first mortgage in the principal amount of \$497,400.00, with a pre-petition payment arrearage of approximately \$38,486.28.

(b) Lawson Realty, LLC holds the second priority mortgage in the principal amount of \$22,600.00, with a pre-petition payment arrearage of approximately \$3,200.00.

7.

On October 5, 2015, Jerry E. Austin filed a Motion for Relief from Stay ("Motion") (Doc No. 18) seeking to recover the Property for cause, including lack of adequate protection and that the Property was not necessary for effective rehabilitation.

8.

Upon receiving the Motion, it became clear to the Debtor that he had filed the wrong Chapter and again sought legal counsel.

9.

Debtor's retained attorney Richard Valdejulli and motion to convert to Chapter 13 was granted by Order entered on December 16, 2015 [Doc. No. 43].

10.

Conditions of the conversion to Chapter 13 required certain payments be made in a "Fast Track" manner to Creditors, by a combination of the sale of real estate, and income.

11.

Debtor promptly complied, with a combination of income, and property sales in Chile and timely paid all requested obligations by this court. Not brought to the Court's attention was that the Debtor was poised to close on additional pending sales, that would have paid off all obligations due to creditors.

12.

Although the full payment to cure debt was presented to Debtor's attorney, it was suggested by Mr Valdejulli that it would be best to stick with the plan and not sacrifice additional property that would have been sold for prices of below market value.

13.

Between March and July of 2016 Debtor made all payments required by the court, totalling to the amounts of \$17,674.75 directly to the Creditors and \$4,375.00 to the Chapter 13 Plan.

14.

Due to the specific abilities of the Debtor, between March 7, 2016 to April 7, 2016 the Debtors Chilean business generated \$38,518.00 in gross sales. Not a speculative sales, but proven and regular events producing income in amounts exceeding those indicated on the plan proposed.

15.

There are 150 lots remaining in Chile to be sold, with several pending sales. At the rate of the last sale of \$6428.00 this totals to \$964,285.00 more than sufficient to pay obligations. Properties are undervalued and could represent a far higher value. If only 15% of these lots are sold in one year this equals \$12,500.00 per month over a six year period. This additional regular income added to rental income already provided is an amount more than sufficient to pay Debtor obligations, and show total feasibility under a Chapter 13 plan as required by 11 U.S.C. § 1325(a)(6)

16.

Debtor was stopped from the performance of his business in Chile and of paying Creditors by the Creditors extraordinary action to re-convert to Chapter 7

17.

The sales in Chile and the income stream indicated is not speculative, and has been clearly proven. Debtor can continue to generate regular and sufficient income to satisfy any feasibility requirements of any just re-payment plan proposed.

18.

The question of feasibility of the plan is of concern to the Court. Debtor had regular rental income, some income from Tailoring and other local sources. The Court was not made aware that the Debtor is uniquely able to generate more than sufficient income through a "Cure by Sale" method that is recognized by this Court. http://www.ilnb.uscourts.gov/sites/default/files/opinions/Otha_Isaac.pdf

19.

Judge Lundin has written that a sale of property should satisfy the requirements of §109(e). See, Lundin, Chapter 13 Bankruptcy, §9.11. He argues that if a sale of inventory by business produces income that will satisfy the regular income requirement, why not a sale of real estate, or a business?

<https://www.wicb.uscourts.gov/sites/default/files/chambers/svk/LouJones/Gustafson%20Outline.pdf>

20.

Due to the many misleading statements presented to the Court, as well as Debtor's attorneys failure to timely file documentation, the Chapter 13 plan was not confirmed, the Case was re-converted to Chapter 7 on July 13, 2016 [Doc. No. 91], and Trustee was re-appointed on July 18, 2016 [Doc. No. 93]

21.

At the July 7, 2016 hearing the Debtor's attorney made the valid point that Creditor was the seller of the property, and may have little interest at what value the property sells.

22.

In statements made to the Debtor, the Creditor expressed that he is interested in a "Court House Sale", with the ability of taking the property back.

23.

There is reason to believe that this purchase is by a buyer that is close to the Creditor. That the sale may in fact be a roundabout way of returning the property to the Seller/Creditor. This leaving the Creditor with unsecured debt created by a sale for a price lower than the original purchase price, and real value of the real estate. As well as the mounting additional legal fees due to the conversion back to Chapter 7.

24.

In the past, several representatives of Creditor, Jerry Austin have attempted to present below purchase price offers to the Creditor. Since the Debtor can generate more than enough regular income by the sale of properties to "Cure by Sale", these offers were never accepted.

25.

Several emails have been sent to the Chapter 7 Trustee, requesting information about the purchaser, and other bidders, so that Creditor may investigate to see if there might be an improper relation. This information has not been forthcoming nor offered by the Trustee by the time of this filing.

MISREPRESENTATIONS BY THE CHAPTER 7 TRUSTEE, AND COLLUSION WITH THE CREDITOR TO UNLAWFULLY TAKE THE CREDITOR'S BUSINESS.

26.

At the original Chapter 7 meeting of creditors, as well as at all subsequent hearings, the Chapter 7 Trustee recognized that it was the Debtor's wish to keep the properties in the United States and pay obligations from the sales of properties in Chile, and stated he was best qualified to do so.

27.

At the July 7,2016 hearing, The Chapter 7 Trustee stated that he had the ability to sell the properties in Chile at a reasonable cost. **Contrary to this assertion, the sale of the properties in Chile by the Trustee is a long and complicated matter requiring translation of all documents of this case and a new Court case initiated in Chile.**

28.

The sale of the properties in Chile by the Chapter 7 Trustee will require most, if not all of funds from the sale of the United States portion of the estate to fund this foreign legal action.

29.

The Debtor has sales pending in Chile, and has sent several emails requesting for the Chapter 7 Trustee to give him evaluations of the cost of conducting these sales. No response to these emails has been received as of the date of this filing.

30.

Chapter 7 Trustee falsely stated he could conduct sales in Chile via the Atlanta Consul and recognizing this is not possible is now proceeding with this sale of the Debtor's residence and place of business. In so doing shutting down Debtor's business, and only source of local income.

31.

Chapter 7 Trustee has made no allowance for the assets of the estate that are in the 155 Liberty Road property to be sold, as well as, no provisions for the pending state of homelessness of the Debtor, and his son, created by this act.

32.

On August 23,2016, over the objections of the Debtor, Neil Gordon (Chapter 7 trustee), Pamela Bicknell (Assistant to Neil Gordon), Victor Harrison (Attorney for the Creditors), and Mike Patterson (Agent of Victor Harrison), come to 155 Liberty Road to change locks, and take control of the Debtor's business without the Court's approval.

33.

These actions by the Chapter 7 Trustee working with the Creditors, have compromised the Debtor's income, chased away one tenant and further complicated Debtor's ability to fund insurance, maintenance and other proper care required to obtain the highest value possible for the Liberty Road property.

34.

The Chapter 7 Trustee working with Creditors is making economic conditions for the Debtor as harsh as possible, debilitating the Debtor's domestic income and therefore his ability to convert to Chapter 13 pursuant to 11 U.S.C. §706 and Bankruptcy Rule 2 1017(f) and 20012. Evolving these sales in this manner will only create more unsecured debt from legal fees generated, and a path not to the benefit of the estate.

The potential state of homelessness this sale will create for the Debtor, gives the appearance that the Chapter 7 Trustee with the Creditors guidance are working to complicate the affairs of the Debtor to such a degree to create conditions where the Debtor will be unable to properly attend to the defense of his rights in this case.

35.

Along with this objection Creditor has filed a motion to reconvert this case from Chapter 7 to 13 pursuant to 11 U.S.C. §706 and Bankruptcy Rule 2 1017(f) and 20012

CONCLUSION,

The sale of this property will needlessly harm the Debtor and his business. The property is the Debtor's residence and a trustee may not sell this property under § 363(b) or (f) without the Court providing "adequate protection"14 to an "entity that has an interest" in the property to be used, sold, or leased, if such entity has requested such protection. 11 U.S.C. § 363(e). A debtor and lease tenants qualify as an "entity" that may invoke § 363(e). See 11 U.S.C. § 101(13), (15), (41); see also § 542(a); Yoon v. Minter-Higgins, 399 B.R. 34, 36 (N.D. Ind. 2008); In re Trujillo, 485 B.R. 238, 250 (Bankr. D. Colo. 2012).

This sale violates 11 U.S.C. § 363 as it will not pay creditors loans on the property and no formal bidding did occur for the sale.

Debtor, Creditors and the estate are better served under Chapter 13

WHEREFORE, Debtor respectfully requests that the Court:

- (a) Not grant the Sale Motion;
- (b) Not approve Trustee's proposed Bidding and Auction Procedures, and proposed sale of the Commercial Property, following Notice to all creditors and parties in interest of this Sale Motion, the date of the hearing and Auction;
- (c) Not authorize the proposed sale to be consummated immediately as allowed by Federal Rules of Bankruptcy Procedure Rule 6004(h);
- (d) Not Grant Trustee authority to close the proposed sale of the Commercial Property, to disburse certain proceeds in connection with the closing, and to approve the Trustee's reservation of funds and surcharge rights, as set forth in this Sale Motion;
- (e) Not Direct that Debtor turn over the Commercial Property prior to any closing of the sale and leave it in a clean, broom-swept condition; and
- (e) Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Claudio Avendano', with a long horizontal line extending to the right.

Claudio Avendano Debtor

OCT, 11, 2016

Claudio Avendano
PO Box 401, Winston Georgia 30187
404 520 3333
claudio@metroecho.com

Certificate of Service

I, Claudio Avendano, certify that I served a copy of this..

DEBTOR'S OPPOSITION TO TRUSTEE'S MOTION FOR (I) APPROVAL OF BIDDING AND AUCTION PROCEDURES, (II) AUTHORITY TO (A) SELL REAL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, AND (B) DISBURSE CERTAIN PROCEEDS AT CLOSING, AND (III) TURNOVER OF COMMERCIAL PROPERTY PRIOR TO CLOSING OF PROPOSED SALE

by First Class United States Mail, with adequate postage prepaid, to the following persons or entities at the addresses stated:

Office of the United States Trustee
362 Richard B. Russell Bldg.
75 Ted Turner Drive, SW
Atlanta, Georgia 30303

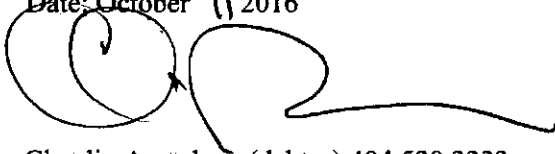
Neil Gordon, Chapter 7 Trustee
Arnall Golden Gregory, LLP
171 17th Street, Suite 2100
Atlanta, Georgia 30363

Douglas County Tax Commissioner
8700 Hospital Drive
Douglasville, GA 30134

Jerry E. Lawson and Lawson Realty, LLC
C/o Victor J. Harrison Harrison & Horan, P.C.
3150 Golf Ridge Boulevard Suite 101
Douglasville, GA 30135

I certify the foregoing is true and correct

Date: October 11 2016



Claudio Avendano (debtor) 404 520 3333
PO Box 401 Winston, Georgia 30187