



IT IS ORDERED as set forth below:

Date: October 24, 2016

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re:

CLAUDIO PABLO AVENDANO,

Debtor.

CASE NO. 15-64523-PWB

CHAPTER 7

NEIL C. GORDON, Trustee for the
Estate of Claudio Pablo Avendano,

Movant,

CONTESTED MATTER

V.

JERRY E. AUSTIN,
LAWSON REALTY, LLC,
DOUGLAS COUNTY TAX
COMMISSIONER, and
CLAUDIO PABLO AVENDANO,

Respondents.

ORDER

Before the Court for hearing on October 20, 2016 (the "**Hearing**"), came the

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, Interests, and Encumbrances, and (B) Disburse Certain Proceeds at Closing, and (III) Turnover of Commercial Property Prior to Closing of Proposed Sale [Doc. No.113] filed on September 26, 2016 (the "**Sale Motion**") pursuant to 11 U.S.C. §§363(b) and (f) by Neil C. Gordon, Chapter 7 Trustee ("**Trustee**") for the bankruptcy estate of Claudio Pablo Avendano ("**Debtor**"). In the Sale Motion, Trustee seeks authority, pursuant to 11 U.S.C. §§ 363(b) and (f), to sell (the "**Sale**") that certain commercial real property known generally as 155 Liberty Road, Villa Rica, Douglas County, Georgia 30180 (the "**Commercial Property**") as set forth in paragraph 23 of the Sale Motion and to make certain disbursements requested therein. With the Sale Motion, Trustee presents a *Trustee's Purchase and Sale Agreement* (the "**Contract**") which set forth the provisions of the Sale of the Commercial Property to Greg Daniel ("**Mr. Daniel**") for the purchase price, subject to no commission, of \$415,000.00 (the "**Purchase Price**") of which twenty thousand (\$20,000.00) had already been provided to Trustee as a good faith earnest money deposit (the "**Good Faith Deposit**"). Pursuant to paragraph 23 of Sale Motion, Trustee invited all other bids qualified by submission of a cash bid exceeding the present Contract by at least \$12,000.00 (the "**Overbid Protection Amount**") and supported by earnest money of at least \$20,000.00.

Also in the Sale Motion, Trustee requested an order compelling Debtor to turn over the Commercial Property prior to the closing of the proposed sale (the "**Closing**"). It appears to the Court that all creditors and parties in interest were given notice of the Sale Motion and Hearing and the opportunity to object to the Sale Motion.

Debtor filed, *pro se*, his *Opposition to Trustee's Sale Motion* [Doc. No. 119] on October 11, 2016 ("**Debtor's Objection**"). On October 19, 2016, creditors Jerry E. Austin ("**Mr.**

Austin") and Lawson Realty Inc. (collectively, "**Austin & Lawson Realty**") filed their response in support of Trustee's Sale Motion [Doc. No. 121]. No other objections or responses were filed by any party.

At the Hearing, Neil C. Gordon appeared as counsel to Trustee. Also present were Debtor, Victor J. Harrison ("**Mr. Harrison**"), counsel to Austin & Lawson Realty, Marty P. Ochs, counsel to the United States Trustee, Mr. Daniel, and John J. McManus ("**Mr. McManus**") counsel to Jarrod M. Plunkett ("**Mr. Plunkett**"), who was also present at the Hearing. Prior to the Hearing, Mr. McManus on behalf of Mr. Plunkett presented Trustee with a qualifying letter for the Overbid Protection Amount and an official bank check for the earnest money deposit of \$20,000.00, and Mr. Plunkett became the only Qualified Bidder, besides Mr. Daniel.

At the Hearing, Mr. Gordon presented to the Court, without contradiction, the Bidding Procedures, as defined in the Sale Motion, and represented that Mr. Plunkett and Mr. Daniel were the only Qualified Bidders. The Court found the Debtor's Objection to be without merit and overruled it. No other creditor or party in interest was present at the Hearing or filed an objection to the Sale Motion. The Bidding Procedures and Auction Procedures as set forth in the Sale Motion were approved, and Trustee conducted an auction outside the presence of the Court (the "**Auction**").

Following the Auction, the Hearing reconvened and Trustee presented Mr. Plunkett as the successful bidder at a bid price of \$475,000.00 (the "**Successful Bid Price**"), subject to no realtor commission. Mr. Daniel will stand as the backup bidder at a bid price of \$472,000.00 (the "**Backup Bid Price**"), subject to no realtor commission. Based upon the presentations at the Hearing, the record in the case, the stipulations by the parties, and good cause having been

shown, it is hereby

ORDERED that the Debtor's Objection is OVERRULED, the Sale Motion is GRANTED, and Trustee is authorized to sell the Commercial Property to Mr. Plunkett at the Successful Bid Price at the earliest date that the Sale of the Commercial Property can be closed and the possession thereof surrendered. It is further

ORDERED that Trustee is authorized and directed to return to Mr. Daniel his Good Faith Deposit in the amount of \$20,000.00. It is further

ORDERED that, if for any reason, Mr. Plunkett does not or is unable to close on the Sale, Trustee is authorized to sell the Commercial Property to Mr. Daniel immediately thereafter at the Backup Bid Price. It is further

ORDERED that Trustee is authorized and directed to disburse at the Closing from the net proceeds \$380,000.00 to Mr. Austin as a partial payment on the first mortgage note (the "Austin Partial Payment"). The Austin Partial Payment shall be made payable to Jerry E. Austin, care of Mr. Harrison, and delivered to Victor J. Harrison, Esq., Harrison & Horan, P.C., 3150 Golf Ridge Boulevard, Suite 101, Douglasville, Georgia 30135. It is further

ORDERED that, as agreed at the Hearing by Trustee and Mr. Harrison, as counsel to Mr. Austin, Trustee is authorized and directed to either endorse over to Debtor the two lease payment checks from tenant NB Contracting totaling \$900.00, or return them to NB Contracting upon proof that NB Contracting has reissued such payment amount directly to Debtor¹. It is further

ORDERED that within two (2) weeks of entry of this Order and prior to the Closing on the Sale, Debtor shall turn over the Commercial Property, leaving the Commercial Property with all fixtures and appurtenances remaining attached thereto, and removing all personal property

¹ Proof of NB Contracting's reissued check payable directly to Debtor in the amount of \$900.00 is attached hereto and incorporated herein by reference.

therefrom. It is further ordered that any personal property remaining thereafter shall be deemed abandoned by Debtor. It is further

ORDERED that Fed. R. Bankr. P. 6004(h) shall not apply to this Order, which shall be effective immediately so that the Trustee may proceed *instanter* with the sale of the Commercial Property closing, at which time the gross sale proceeds shall be paid to the Trustee pursuant to this Order, and those disbursements requested by the Trustee in the Sale Motion as modified herein are authorized to be made.

[END OF DOCUMENT]

Prepared and presented by:

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Read by:

OFFICE OF THE U.S. TRUSTEE

By: /s/ Marty P. Ochs
Marty P. Ochs
State Bar No. 091608
[Signed by Neil C. Gordon with "express
Permission granted on October 21st, 2016.]
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BANK OF NORTH GEORGIA
64-7029/2811

1229

N.B. Contracting, LLC.
3496 W. Stewarts Mill Road
Douglasville, Georgia
770-312-7067

10/20/2016

\$ **900.00

CLAUDIO AVENDANO

PAY TO THE
ORDER OF

Nine hundred and 00/100 ***** DOLLARS

CLAUDIO AVENDANO
STORAGE AND SALES SOLUTIONS
PO BOX 401
WINSTON, GA 30187 USA

R Marshall

REPLACEMENT CHECK FOR CK:1169 & 1218 2MC

⑈001229⑈ ⑆26170290⑆ ⑆005087182⑈

N.B. Contracting, LLC.

10/20/2016

CLAUDIO AVENDANO

1229

REPLACEMENT CHECK FOR CK: 1169 AND 1218

900.00

Checking

REPLACEMENT CHECK FOR CK:1169 & 1218 2MONTHS RENT ⑆005087182⑈

DISTRIBUTION LIST

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