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SC Court of Appeals



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July 28, 2022

Via Electronic Filing

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Vanessa Richardson v. Ditech Financial, LLC, et al.
Court Case No.: 2021-CP-10-05261
Appellate Case Number 2022-000660
B&S File No.: 21-09233 CXLIT01

Dear Ms. Kitchings:

First, attached for e-filing are copies of the undersigned's notice of appearance on behalf of the Respondent and certificate of service by mail regarding the above referenced appeal.

Second, I write in follow up to the Clerk's May 20 and June 9, 2022 deficiency letters from your office and sent to the purported Appellant, Vanessa Richardson. The deficiency letters noted, *inter alia*, that the appeal was instituted by a non-licensed attorney, Bakha Yawuti El. Appellant was asked to cure these deficiencies, or it was noted that the appeal would be dismissed. The purported Appellant, Vanessa Richardson, did not respond or cure the deficiencies. Instead, on June 19, 2022, Bakha Yawuti El (again acting as a non-licensed attorney) sent a letter claiming to be Ms. Richardson's power of attorney.

On June 27, 2022, your office advised that "this appeal will be held in abeyance pending bankruptcy" and ordered Ms. Richardson to provide a status update every sixty (60) days. By way of status update, enclosed please find the following documents filed in the United States Bankruptcy Court for the District of South Carolina:

1. Order filed July 8, 2022, which dismisses Ms. Richardson's adversary proceeding against LoanCare, LLC and Ditech Financial, LLC (Bankruptcy Case number 22-80017-dd).
2. Order filed July 12, 2022, which grants in rem relief to LoanCare, LLC regarding foreclosure of the subject property (pending in SC Civil Action No.:

2017CP1004109. This order was filed in Ms. Richardson's Chapter 13 Bankruptcy case number 22-00542-dd.

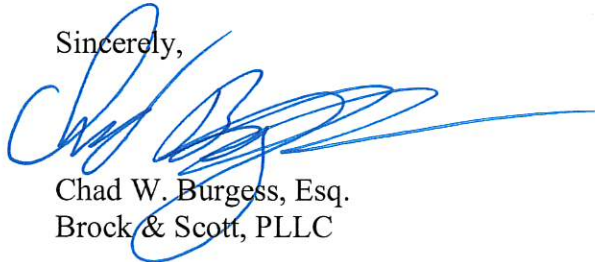
The order dismissing the adversary proceeding was entered due to the same concerns raised by this court regarding Bakha Yawuti El's actions purportedly on Ms. Richardson's behalf as a non-licensed attorney. The order granting in rem relief details Ms. Richardson's history of bankruptcy filings to avoid foreclosure, finding the same to be a "scheme to delay", and grants in rem relief over the property for a period of two years to prevent further delay.

In light of these orders, the previous deficiencies raised by your office can, and should, be addressed by this Court. In response to the Court's deficiency letters, Bakha Yawuti El asserts SC Code §62-8-212 provides him with authority to represent Ms. Richardson in the appeal.

While SC Code §62-8-212 grants broad authority regarding claims and litigation, the statute does not allow him to engage in the unauthorized practice of law by representing Ms. Richardson as her counsel in this appeal. The Bankruptcy Court dismissed Ms. Richardson's adversary proceeding because it was brought by Mr. El as power of attorney for Ms. Richardson and because no attorney appeared to represent her in the action despite ample opportunity being given for an attorney to be retained on behalf of Ms. Richardson.

This appeal should similarly be dismissed absent an appearance by a South Carolina licensed attorney to represent Ms. Richardson in the appeal. Thank you so much for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chad W. Burgess", with a long horizontal flourish extending to the right.

Chad W. Burgess, Esq.
Brock & Scott, PLLC

Enclosures

cc: Vanessa Richardson, P.O. Box 22591, Charleston, SC 29413; also at: 1143 Hamlin Road
Mount Pleasant, SC 29466

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re,

Vanessa Shevell Richardson,

Debtor(s).

Vanessa Shevell Richardson,

Plaintiff(s),

v.

LOANCARE, LLC
Ditech Financial, LLC,

Defendant(s).

C/A No. 22-00542-DD

Adv. Pro. No. 22-80017-DD

Chapter 13

**ORDER DISMISSING ADVERSARY
PROCEEDING**

THIS MATTER is before the Court on the Rule to Show Cause requiring Plaintiff Vanessa Shevell Richardson and Bakha Yawuti El (“El”) to appear before the Court to show cause why the above-captioned adversary proceeding should not be dismissed.¹

A Chapter 13 petition was filed for Richardson on March 1, 2022. The petition was submitted electronically and includes Richardson’s electronic signature and handwritten signature. Her expired Beginners Permit issued by the state of South Carolina was submitted as proof of identity for the filing party. After the Court issued a Rule to Show Cause in the main bankruptcy case for Richardson’s failure to file a certificate of credit counseling, El, rather than Richardson, responded with an Objection, Motion to Waive Credit Counseling, and a “Durable Financial Power of Attorney” (“POA”) filed in support.² The POA is dated February 12, 2019, and lists the following authorizations for El on behalf of Richardson:

¹ ECF No. 4.

² ECF No. 26, C/A No. 22-00542-dd, filed Mar. 30, 2022. The Court makes no finding at this time as to the validity of the POA.

POWER TO MANAGE PROPERTY – To maintain, repair, improve, invest, manage, insure, rent, lease, encumber, and in any manner deal with any real or personal property, tangible or intangible, or any interests therein, that I now own or may hereafter acquire, in my name and for my benefit, upon such terms and conditions as my attorney-in-fact shall deem proper.

....

LEGAL ADVICE AND PROCEEDINGS – To obtain and pay for legal advice, to initiate or defend legal and administrative proceedings on my behalf, including actions against third parties who refuse, without cause, to honor this instrument.

On April 8, 2022, El initiated this adversary proceeding on behalf of Richardson, attacking the enforceability of any interest defendants claim as a result of a note bearing Richardson's name allegedly secured by a mortgage on property that she owns. El signed and filed the complaint as:

Subscribed and affirmed, without prejudice, and with all rights reserved.

Bakha Yawuti El, P.O.A. of Vanessa Richardson, real Party in Interest

Principal, by Special Appearance not General, in Propria Persona, proceeding Sul Juris.

Bakha Yawuti El, P.O.A. for Vanessa Richardson

Signature of Affiant

The adversary proceeding cover sheet (Official Form B1040) includes "P.O.A. Bakha Yawuti El, non-Attorney" in the spot reserved for "attorney" and is signed by El as "Bakha Yawuti El, non-Attorney, P.O.A. of Vanessa Richardson."

On May 2, 2022, the Court issued a Rule to Show Cause requiring Richardson and El to appear before the Court to demonstrate why this adversary proceeding should not be dismissed because a power of attorney may not serve as counsel to a plaintiff. A hearing was held on June 21, 2022, where El and Travis Deion Bey appeared on behalf of Richardson, who was not present.³ Counsel for Defendant LoanCare, Ashley Stanley, also appeared. At the conclusion of the hearing, the Court ordered Richardson and/or her representatives to obtain legal counsel by July 1, 2022,

³ At that hearing, Travis Deion Bey represented he is also an attorney in fact for Richardson under a durable power of attorney. The Court makes no finding at this time as to the validity of any such document.

or the case would be dismissed without further notice or hearing. If an appearance was made, a continued hearing would be held on July 6, 2022.⁴

Although a timely attorney appearance was not made, no dismissal order was entered prior to July 6, 2022. On that date, El, Bey, and Vincent Mack, appeared before the Court on behalf of Richardson, who again was not present, and asserted they have power of attorney.⁵ No licensed attorney appeared for Richardson or any of her representatives. At the hearing, the parties present on Richardson's behalf requested appointment of a guardian *ad litem* for Richardson pursuant to Fed. R. Civ. P. 17.⁶ El subsequently filed a pleading titled *Objection and Motion to Extend Stay Rule 362 Disabled Debtor*, which includes a Rule 17 request.⁷ This pleading attached a "Special Power of Attorney" dated July 5, 2022, purporting to grant El, Bey, and Mack, authority to attend the meeting of the creditors.⁸

Rule 17(c) establishes requirements to represent minors and incompetent persons in federal court actions. For individuals "with a representative," Rule 17 provides "[t]he following representatives may sue or defend on behalf of a minor or an incompetent person: (A) a general guardian; (B) a committee; (C) a conservator; or (D) a like fiduciary." Fed. R. Civ. P. 17(c)(1). An "incompetent person who does not have a duly appointed representative may sue by a next friend or by guardian *ad litem*. The court must appoint a guardian *ad litem* – or issue another appropriate order – to protect a minor or incompetent person who is unrepresented in an action." Fed. R. Civ. P. 17(c)(2); *see also* Local Civ. Rule 17.01 (D.S.C.) ("Representation of minor and incompetent parties in a civil action shall be in accordance with Fed. R. Civ. P. 17(c)."). A decision

⁴ This hearing was held before the Hon. David R. Duncan.

⁵ Other matters were scheduled for hearing that day in the main bankruptcy case, C/A No. 22-00542-dd. The hearing judge was the Hon. Helen E. Burris.

⁶ Made applicable to this proceeding pursuant to Fed. R. Bankr. P. 7017.

⁷ ECF No. 18, filed Jul. 7, 2022.

⁸ The Court makes no finding at this time as to the validity of any such document.

to appoint a guardian *ad litem* under Rule 17(c) is within the discretion of the trial court. *Fonner v. Fairfax Cnty.*, 415 F.3d 325, 330 (4th Cir. 2005). “When read in the context of Rule 17(c)(1), which provides examples of acceptable ‘representatives,’ it becomes clear that the phrase ‘unrepresented in an action’ under Rule 17 does not refer to whether the party has counsel. Rather, whether an incompetent person is ‘unrepresented in an action’ refers to whether that person has a Rule 17-type representative.” *Mondelli v. Berkeley Heights Nursing & Rehab. Ctr.*, 1 F.4th 145, 149–50 (3d Cir. 2021). Thus, “[t]he function of the representative or guardian *ad litem* is to make decisions concerning the litigation on behalf of the minor or incompetent person, and not necessarily to represent the person as an attorney.” 4 Moore’s Federal Practice, *Civil* § 17.21 (2022).

“In all courts of the United States the parties may plead and conduct their own cases personally or by counsel . . .” 28 U.S.C. § 1654. “Accordingly, federal courts have repeatedly held that ‘[t]he right to litigate for oneself . . . does not create a coordinate right to litigate for others.’” *Scarboro v. United States*, C/A No. 5:21-CV-161-FL, 2022 WL 1377843, at *1 (E.D.N.C. May 3, 2022) (quoting *Myers v. Loudoun Cnty. Pub. Sch.*, 418 F.3d 395, 400 (4th Cir. 2005)). “This is true even where a party, considered incompetent under Federal Rule of Civil Procedure 17(b) and related state law, could permissibly have his or her claim ‘asserted’ by a representative pursuant to Rule 17(c).” *Id.* (emphasis in original) (footnote omitted) (citing *Myers*, 418 F.3d at 400 & n.5); *see also Berrios v. N.Y.C. Hous. Auth.*, 564 F.3d 130, 133 (2d Cir. 2009) (“These principles apply equally with respect to non-attorneys’ attempts to bring suit on behalf of adults who are not competent to handle their own affairs . . .” (citations omitted)).

The fact that a minor or incompetent person must be represented by a next friend, guardian *ad litem*, or other fiduciary does not alter the principle embodied in § 1654 that a non-attorney is not allowed to represent another individual in federal court litigation without the assistance of counsel. If the representative of the minor or

incompetent person is not himself an attorney, he must be represented by an attorney in order to conduct the litigation.

Berrios, 564 F. 3d at 134; *see also Tierney v. Unique Mgmt. Servs., Inc.*, No. 2:15-4385-DCN-BM, 2016 WL 2893127, at *3 n.** (D.S.C. Apr. 12, 2016), *report and recommendation adopted*, C/A No. 2:15-CV-4385 DCN, 2016 WL 2853459 (D.S.C. May 16, 2016) (non-attorney parents may not litigate the claims of their minor children in federal court (citing *Myers*, 418 F.3d 395, 401 (4th Cir. 2005)). These principles are applicable to adversary proceedings initiated in the bankruptcy court. *See In re Brooks*, 583 B.R. 443, 445 (Bankr. W.D. Mich. 2018) (relying on 28 U.S.C. § 1654 to dismiss an adversary proceeding filed on the minor's behalf by her father after counsel was not obtained); *In re HRN Grp., LLC*, C/A No. 18-63282-WLH, 2020 WL 423294, at *2 (Bankr. N.D. Ga. Jan. 27, 2020) (citing 28 U.S.C. § 1654 to dismiss an adversary proceeding filed by a limited liability company after counsel was not obtained); *see also In re Zakarin*, 602 B.R. 275, 286 (Bankr. D.N.J. 2019) (relying on 28 U.S.C. § 1654 to conclude that a complaint filed on behalf of a law firm by an attorney who was not licensed to practice in that court was of no effect).

There is nothing in the record to evidence that El or the other individuals who appeared on Richardson's behalf are licensed attorneys admitted to represent parties in this Court. Even assuming these individuals have authority to act as Richardson's power of attorney or made an adequate record to be appointed as Richardson's guardian *ad litem*, serving those roles does not allow them, as a matter of law, to act as Richardson's counsel and litigate on her behalf. *See Mondelli*, 1 F.4th at 149-50 (distinguishing between "represented" for Rule 17 purposes and "represented" by counsel in an action before the court). A non-attorney is not allowed to represent another individual in federal court litigation without the assistance of counsel. 28 U.S.C. § 1654.

The Rule to Show Cause was issued two months prior to this hearing, advising Richardson and her representatives that this matter would be dismissed unless certain conditions were met. At the initial hearing, Richardson's representatives were again advised that the adversary proceeding would be dismissed without legal representation. The Court has again considered arguments and objections at a second hearing and finds that dismissal is appropriate. Despite being afforded opportunities to obtain counsel, Richardson and/or those appearing on her behalf failed to obtain counsel admitted to practice in this Court to represent her in this matter. As applicable law indicates, granting any relief pursuant to Rule 17 requested in the *Objection and Motion to Extend Stay Rule 362 Disabled Debtor* as it relates to this adversary proceeding – assuming the Court could find the record necessitated such relief – would not remedy the issues that are the reason for the dismissal.

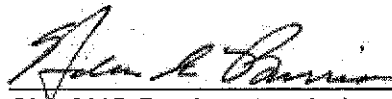
IT IS, THEREFORE, ORDERED that pursuant to the Rule to Show Cause issued on May 2, 2022, and after due notice and an opportunity to be heard on two occasions, Plaintiff Vanessa Shevell Richardson and her representatives have failed to show cause why this adversary proceeding should not be dismissed as a result of the failure of an appearance by an attorney admitted to practice before this Court on her behalf. Therefore, the above-captioned adversary proceeding is dismissed pursuant to 28 U.S.C. § 1654.

AND IT IS SO ORDERED.

FILED BY THE COURT

07/08/2022




Chief US Bankruptcy Judge
District of South Carolina

Entered: 07/08/2022

Notice Recipients

District/Off: 0420-2
Case: 22-80017-dd

User: admin
Form ID: pdf01

Date Created: 7/8/2022
Total: 8

Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:

dft LOANCARE, LLC
dft Ditech Financial, LLC

TOTAL: 2

Recipients of Notice of Electronic Filing:

tr James M. Wyman 13info@charleston13.com

TOTAL: 1

Recipients submitted to the BNC (Bankruptcy Noticing Center):

pla	Vanessa Shevell Richardson	557 East Bay St	PO Box 22591	Charleston, SC 29413
db	Vanessa Shevell Richardson	557 East Bay Street	PO Box 22591	Charleston, SC 29413
intp	Bakha Yawuti El	Durable Power of Attorney	For Vanessa Richardson	PO Box
	22591	Charleston, SC 29413		
ust	John Timothy Stack	Office of the United States Trustee	1835 Assembly Street Suite 953	Columbia,
	SC 29201			
ust	US Trustee	Strom Thurmond Federal Bldg	1835 Assembly Street	Suite 953 Columbia, SC
	29201			

TOTAL: 5

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Vanessa Shevell Richardson,

Debtor(s).

C/A No. 22-00542-DD

Chapter 13

ORDER GRANTING *IN REM* RELIEF

THIS MATTER is before the Court on the Motion for Relief from stay filed by LoanCare, LLC (“Movant”) pursuant to 11 U.S.C. § 362 (d)(1), (2) and (4),¹ and the Objection filed on behalf of Vanessa Shevell Richardson.² After careful consideration, the Court finds as follows:

FACTS

1. The case docket includes copies of documents indicating that in 2003 Richardson executed a promissory note and mortgage involving property located at 1143 Hamlin Road, Mount Pleasant, SC 29466 (the “Property”). Movant filed documents indicating subsequent transfers and assignments of the loan, including to Green Tree Servicing LLC in 2013, who issued a Home Affordable Modification Agreement to Richardson in 2014.

2. A foreclosure action was filed in August 2017, bearing Case No. 2017-CP-10-04109. The state court determined that entry of a Foreclosure Order of Judgment and Sale was appropriate and entered that ruling on December 29, 2017. A foreclosure sale was scheduled for September 4, 2018.

3. The Court’s case records indicate that on the day of the scheduled foreclosure sale, Richardson filed a petition for Chapter 13 relief, *pro se*, bearing Case No. 18-04531-jw (“First Case”). The petition appears to be signed and filed by Richardson acting on her own behalf. The First

¹ ECF No. 63, filed May 19, 2022.

² ECF No. 69, filed Jun. 6, 2022.

Case was dismissed on October 10, 2018, after Richardson failed to submit required court forms and attend a status hearing scheduled to address those deficiencies.

4. The foreclosure action resumed and a sale was scheduled for January 7, 2019.

5. The Court's case records indicate that on the day of the scheduled foreclosure sale, Richardson filed another Chapter 13 case, *pro se*, bearing Case No. 19-00149-jw ("Second Case"). The petition appears to be signed and filed by Richardson acting on her own behalf. A document filed thereafter bears the state court foreclosure case number, states Richardson appointed Bakha Yawuti El ("El"), Travis Deion Bey ("Bey"), and Reginald Toomer Bey "to handle all legal and lawful affairs in regard to myself and my Estate, Vanessa Richardson, in this matter," and appears to have been previously filed with the state court on March 5, 2018.³ During the Second Case, Richardson appeared at hearings along with El on her behalf. The Second Case was dismissed on April 3, 2019, due to Richardson's failure to make the plan payments. On April 19, 2019, an Order was entered in the Second Case prohibiting Richardson from filing a Chapter 11, 12, or 13 bankruptcy for a period of one year.

6. The Court's records include documents evidencing an assignment of the note and mortgage to Movant in 2020. Thereafter, the foreclosure sale was rescheduled for December 7, 2021.

7. The Court's case records indicate that the day before the scheduled foreclosure sale, Richardson filed a third bankruptcy, *pro se*, Case No. 21-03143-jw ("Third Case"). The petition appears to be signed and filed by Richardson on her own behalf. No power of attorney was indicated throughout the proceedings. The Third Case was voluntarily dismissed by Motion of Richardson one week later on December 13, 2021.

³ ECF No. 20, C/A No. 19-00149-jw, filed Jan. 8, 2019. This document is signed, but not dated.

8. The foreclosure sale was rescheduled for March 1, 2022.

9. On the day of the scheduled foreclosure sale, another petition for Chapter 13 relief was filed, initiating the above-captioned case (“Fourth Case”). The petition was submitted electronically and includes Richardson’s electronic signature and handwritten signature. The Property is listed as Richardson’s home address.

10. After the Court issued an Order for Richardson to Show Cause why her case should not be dismissed due to her failure to file a certificate of credit counseling, El filed responsive pleadings including a “Durable Financial Power of Attorney” dated February 12, 2019.⁴

11. No motion to extend the automatic stay pursuant to 11 U.S.C. § 362(c) was filed in the Fourth Case. Therefore, the automatic stay of 11 U.S.C. § 362 expired thirty days after filing.

12. Movant filed a proof of claim in the amount of \$150,006.04 secured by the Property, with pre-petition arrears in the amount of \$54,582.38.⁵ Attached to the proof of claim are a payment schedule and escrow statement itemizing amounts owed, as well as copies of the note, mortgage, assignments, and loan modification agreement.

13. Movant asserts Richardson is past-due on regular mortgage payments as of July 1, 2016, and there is no equity in the Property. Further, the current plan filed on behalf of Richardson does not propose to pay Movant, and Richardson’s scheduled income is insufficient to do so. Movant asserts that due to the actions by or on behalf of Richardson, it has been unable to enforce its remedies to foreclose and obtain possession of the Property within a reasonable time, its efforts have been interrupted by repeated, unproductive bankruptcy filings, and Richardson has presented

⁴ ECF No. 26, filed Mar. 30, 2022. It is unclear from this record whether this document was properly recorded in the appropriate county’s deed records. *See* S.C. Code Ann. § 62-8-109(c) (“After the principal’s incapacity, an agent may exercise the authority granted unto the agent under the power of attorney only if the power of attorney has been recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded.”).

⁵ POC No. 4-1, filed May 10, 2022.

no evidence of changed circumstances between filings nor any ability to fund a Chapter 13 plan.

14. Movant requests the Court enter an order granting relief from the automatic stay pursuant to § 362(d)(1) and (2) to allow it to proceed in state court to enforce its remedies to foreclose upon and obtain possession of the Property. Movant also requests *in rem* relief pursuant to § 362(d)(4), rendering the automatic stay inapplicable to the Property for two (2) years regardless of who owns the Property or files a bankruptcy petition, and that such relief survive the dismissal or closing of this case.

15. An Objection to the Motion was signed and filed by El as Richardson's durable power of attorney on June 6, 2022. It raises questions about the enforceability of the note and mortgage and references Richardson's mental and physical disabilities currently and during the state court proceeding as cause to deny the requested relief. The Court's records include a sealed document providing some information about Richardson's medical condition,⁶ and El asserts Richardson is incapable of handling her affairs, which he and others are doing on her behalf. The details are not repeated here for privacy reasons, but the record before the Court does not provide a complete picture of Richardson's capabilities. Further, El represented to the Court that she has been incapacitated for several years, but the petition initiating her Third Case appears to be signed by Richardson and dated December 3, 2021, and the record includes a power of attorney signed by Richardson dated July 5, 2022.⁷

16. In response to a Rule to Show Cause issued by the Court, El filed a pleading on behalf of Richardson that recognizes a default judgment was entered in the foreclosure action in December 2017, and states Richardson's mental health condition contributed to that default.⁸ The

⁶ ECF No. 29, filed Mar. 30, 2022.

⁷ ECF No. 84, filed Jul. 7, 2022.

⁸ ECF No. 28, filed Mar. 30, 2022.

pleading asserts the state court judge reviewed Richardson's medical records thereafter "and he made a determination to disregard those medical records and uphold the Default Judgment . . ." It goes on to state that Richardson, through her power of attorney, seeks bankruptcy relief "so that a proper trial can take place . . . and to show and prove the unfair practices that led to the void default judgment order made in the state court on December 29, 2017."

17. Richardson's Statement of Financial Affairs discloses the foreclosure action with the status as "concluded" and lists a lawsuit initiated by Richardson against the foreclosing party in 2021 in the Charleston County Court of Common Pleas pending at the time of the bankruptcy filing.

18. A hearing on the Motion was held on June 21, 2022.⁹ Counsel for the Movant, Ashley Stanley, appeared and El and Bey appeared on behalf of Richardson. At that hearing, the Court determined and ordered that because a prior case was pending and dismissed within the past year, the automatic stay under § 362(a) expired on March 31, 2022. 11 U.S.C. § 362(c)(3)(A). The Court continued to July 6, 2022, the issue on whether to grant *in rem* relief under § 362(d)(4).

19. Stanley was present at the continued hearing on July 6, 2022, as well as El, Bey, and Vincent Mack, who all appeared on behalf of Richardson.¹⁰ Richardson was not present at either hearing.

20. El filed a pleading titled *Objection and Motion to Extend Stay Rule 362 Disabled Debtor*, which was received at 9:00 a.m. on the morning of the continued hearing and amended thereafter.¹¹ The pleading again questions the validity of Movant's claim and mentions Richardson's medical condition. It also requests appointment of a representative on Richardson's

⁹ This hearing was held before the Hon. David R. Duncan.

¹⁰ The hearing judge was the Hon. Helen E. Burris. During the hearing, El, Bey, and Mack represented they are attorneys in fact on behalf of Richardson. The Court makes no ruling at this time regarding the validity such assertions.

¹¹ ECF Nos. 82 & 84.

behalf pursuant to Fed. R. Civ. P. 17.

21. Movant is the only scheduled creditor and Richardson's scheduled expenses exceed her monthly income. Although the bankruptcy case was filed more than four months before the continued hearing, no plan payments have been made, and the plan does not propose to pay Movant's claim.

22. EI also filed an adversary proceeding, naming Richardson as plaintiff and others including Movant as defendants, challenging the enforceability of any interest asserted as a result of the note and mortgage, which includes challenges to decisions issued by the state court and lists Rule 60(b)(4), (5), and (6) "for relief of liability of alleged debt OF THE ORDER OF December 29th, 2017 . . ." ¹² That adversary proceeding was dismissed by separate order. ¹³

DISCUSSION & CONCLUSIONS

This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(G), and this Court may enter a final order.

Section 362(c)(3)(A) of the Bankruptcy Code provides if a debtor had a bankruptcy case pending within the previous year that was dismissed, the automatic stay shall terminate with respect to the debtor on the 30th day after the filing of the later case. The stay may be extended only upon the filing of a motion and hearing before expiration of the 30-day period, and demonstration by the debtor that the later case was filed in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(3)(B). No timely request to extend the automatic stay pursuant to § 362(c)(3)(B) was filed here. Therefore, Movant's request to lift the automatic stay pursuant to § 362(d)(1) and (2) is not necessary because the protections of § 362(a) do not apply in this case.

¹² ECF No. 1, Adv. Pro. No. 20-80017-dd, filed Apr. 8, 2022.

¹³ ECF No. 20, Adv. Pro. No. 20-80017-dd, entered Jul. 8, 2022.

There is no bankruptcy stay in place and the Court confirms Movant already possesses this portion of its requested relief.

Addressing Movant's additional grounds for relief, § 362(d)(4) allows *in rem* relief in appropriate circumstances. If granted, relief under § 362(d)(4) applies to the subject property in subsequent cases. It provides, in relevant part:

with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved . . . multiple bankruptcy filings affecting such real property

an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court . . .

11 U.S.C. § 362(d)(4)(B). “A ‘scheme,’ for purposes of § 362(d)(4), ‘is an intentional artful plot or plan to delay, hinder [or] defraud creditors.’” *In re Ford*, 522 B.R. 829, 840 (Bankr. D.S.C. 2014) (quoting *In re Wilke*, 429 B.R. 916, 922 (Bankr. N.D. Ill. 2010)). In determining whether a debtor acted in bad faith to warrant *in rem* relief, the Court also considers: “1) strategic filing of bankruptcy petitions to prevent collection; 2) multiple petitions by multiple parties to protect common property; 3) lack of evidence of changed circumstances between filings; and 4) inability to fund a plan.” *In re Henderson*, 395 B.R. 893, 901 (Bankr. D.S.C. 2008). The creditor bears the initial burden of showing cause for relief from the stay exists under § 362(d)(4). Upon such a showing, the burden shifts to the debtor to demonstrate the filing of the petition was not part of a scheme to delay, hinder, or defraud the creditor. 11 U.S.C. § 362(g); *Henderson*, 395 B.R. at 898.

Four bankruptcy cases have been filed by or on behalf of Richardson in less than four years, when the foreclosure sale of the Property was first scheduled. Each case was filed the day of or the day before the scheduled foreclosure sale. All prior cases have been unproductive and dismissed shortly after filing. The First and Second Case were dismissed due to Richardson's

failure to file documents or make plan payments. The Third Case was voluntarily dismissed just one week after filing. Further, this case has been pending for four months yet no plan payments have been made to the Chapter 13 trustee. Because Movant is the only scheduled creditor, it is evident that the repetitive filings were strategically used as an attempt to delay foreclosure and to prevent collection on the note and mortgage. There is also no evidence of any changed circumstances between the filings nor any intent or ability to fund a Chapter 13 plan to pay any creditor. These factors allow the Court to conclude that Movant has met its initial burden of demonstrating relief exists under § 362(d)(4); the burden, therefore, shifts to the Richardson to demonstrate the filing of the petition was not part of a scheme to delay, hinder, or defraud Movant. *See* 11 U.S.C. § 362(g).

Richardson's representatives did not provide information or arguments of any change of circumstances since the prior unproductive filings or of Richardson's ability to succeed in this Chapter 13 bankruptcy case. Any challenges to the validity of the loan documents and the state court foreclosure order should be addressed in the appropriate forum – the state court where the foreclosure proceedings are held. This Court is not the court of review for actions taken in the state court. *See Anderson v. Cordell (In re Infinity Bus. Grp., Inc.)*, 497 B.R. 495, 500 (Bankr. D.S.C. 2013) (stating the *Rooker-Feldman* doctrine applies when “(1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state-court judgments.”).

Based on the foregoing, the Court finds that Richardson and/or others on her behalf engaged in a scheme to delay and hinder Movant through the use of multiple unproductive bankruptcy petitions. Therefore, Movant's motion for an order granting *in rem* relief and rendering

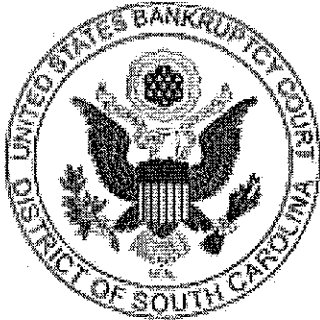
the automatic stay inapplicable to the Property for two years from entry of the requested order, regardless of who owns the Property or files the petition for bankruptcy relief, should be granted.

IT IS, THEREFORE, ORDERED THAT:

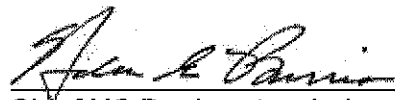
1. pursuant to 11 U.S.C. § 362(c)(3), no automatic stay is in effect and the protections afforded by § 362(a) do not apply;
2. the relief requested pursuant to § 362(d)(4) is granted; and
3. the Court grants *in rem* relief as to the Property known as 1143 Hamlin Road, Mount Pleasant, SC 29466. The filing of a bankruptcy case by any individual or entity involving this Property shall not invoke the protection of the automatic stay for a period of two years from entry of this Order, absent further order of this Court. Movant is also authorized, to the extent it so chooses, to file a copy of this order in the public records relating to real property in the county where the Property is located.

AND IT IS SO ORDERED.

**FILED BY THE COURT
07/12/2022**



Entered: 07/12/2022


Chief US Bankruptcy Judge
District of South Carolina

Notice Recipients

District/Off: 0420-2
Case: 22-00542-dd

User: admin
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Date Created: 7/12/2022
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Recipients of Notice of Electronic Filing:

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TOTAL: 3

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TOTAL: 2