

**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 Sui Juris.
Bakha Yawuti El, 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).

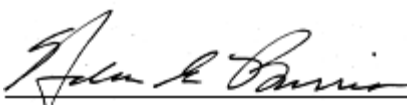
There is nothing in the record to evidence that El or the other individuals who appeared on Richardson's behalf are licensed attorneys admitted to represent parties in this Court. Even assuming these individuals have authority to act as Richardson's power of attorney or made an adequate record to be 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