

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

August 24, 2017, at 2:00 p.m.

1. [17-90347-E-7](#) **MARJORIE SHAMGOCHIAN** **CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
4-27-17 [1]**

Agent of Debtor's Atty: Pro Se

Notes:

Continued from 6/29/17 by order of the court filed 7/28/17 [Dckt 20]. Marjorie Shamgochian, the Debtor, and Steve Shamgchian are to appear in person, no telephonic appearances permitted.

Trustee Report at 341 Meeting docketed 8/17/17; Debtor did not attend; Continued to 9/14/17 at 9:30 a.m.

AUGUST 24, 2017 STATUS CONFERENCE

Marjorie Eleanor Shamgochian ("Debtor") filed the instant Chapter 7 bankruptcy case on April 27, 2017. The Petition and subsequent documents filed in this case are signed by Steve Shamgochian, Power of Attorney for Marjorie Shamgochian. A prior Chapter 7 bankruptcy for Debtor was filed on March 14, 2017, and dismissed on April 3, 2017, for failure to timely file documents. Case number 17-90198. The filing documents in this bankruptcy were also signed by "Steve Shamgochian, Power of Attorney for Marjorie Shamgochian."

This is Debtor's second Chapter 7 bankruptcy case filed in 2017. The first case, 17-90198, was filed on March 14, 2017, and dismissed on April 3, 2017. The first case was dismissed due to the failure of Debtor to file the minimum required documents (including schedules and statement of financial affairs). The petition in the first bankruptcy case is signed "Steve Shamgochian - Power of Attorney for Marjorie Shamgochian." 17-90198, Dckt. 1. The Verification of Master Address List states there being only one party in interest to receive notice:

Nationstar Mortgage, LLC
c/o NBS Default Services, LLC
301 E. Ocean Blvd. Suite 17200
Long Beach, CA 90802

Id., Dckt. 4.

August 24, 2017, at 2:00 p.m.

In this current, second Chapter 7 bankruptcy case, the Verification of Master Address List states only two parties in interest to receive notice:

Nationstar Mortgage LLC
8950 Cypress Waters Blvd.
Coppell, TX 75019

Nationstar Mortgage, LLC
c/o NBS Default Services, LLC
301 E. Ocean Blvd. Suite 17200
Long Beach, CA 90802

Dckt. 4.

On May 11, 2017, a Motion for Extension of Time to File Missing Documents was filed in this second Chapter 7 case. Dckt. 12. The motion is “made by” Marjorie Shamgochian, in *pro se*, with the motion executed by “Steve Shamgochian, Power of Attorney for Marjorie Eleanor Shamgochian.” It states that “the Debtor” is elderly and currently having a difficult time locating and compiling the information for the missing documents. *Id.*, p. 2:5.5–6.5. Further, it states that Debtor has not been able to retain counsel to “assist” with the preparation of documents. *Id.*, p.2:3.5–4.5.

It is not clear to the court why Debtor, herself, has not filed these bankruptcy cases and why Debtor, herself, is not signing the pleadings.

It also appears that Steve Shamgochian is not merely acting as the agent of Debtor as authorized by a power of attorney, but is using the power of attorney to “practice law” and represent Debtor in this case. A power of attorney does not allow a person to appear in court as the legal representative of another.

As stated in Federal Rule of Bankruptcy Procedure 9010(a), a nonlawyer may act on a debtor’s behalf as his or her attorney-in-fact, but only to the extent that his or her actions do not constitute the practice of law. To this end, an attorney-in-fact may commence a bankruptcy case pursuant to a clearly stated power of attorney. *In re Curtis*, 262 B.R. 619, 622 (Bankr. D. Vt. 2001). Power of attorney cannot be used to authorize a nonlawyer to litigate a matter on behalf of a *pro se* debtor, however. *In re O’Connor*, No. 08-16434, 2009 Bankr. LEXIS 1376 at *8 (Bankr. N.D. Ohio Feb. 27, 2009) (citing *Cavanaugh v. Cardinal Local Sch. Dist.*, 409 F.3d 753, 756 (6th Cir. 2005) (abrogated on other grounds by *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007))).

States may prohibit unauthorized law practice, pursuant to their police power, to ensure that those performing legal services do so competently. *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal. 4th 119, 126 (Cal. 1998). Pursuant to this power, California prohibits all persons from practicing law who are not active members of the State Bar. Cal. Bus. & Prof. Code § 6125. The practice of law is defined in California as “doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure.” *Birbrower*, 17 Cal. 4th at 128 (citing *People v. Merchants Protective Corp.*, 189 Cal. 531, 535 (Cal. 1922)). This includes preparing legal instruments. *Id.*

A power of attorney does not permit an agent to act as an attorney at law. If the rule were otherwise, the State Bar Act could be relegated to contempt by any layman who secured from his principal an ordinary power of attorney, for the purpose of representing him in pending litigation.

An attorney at law is different from an attorney in fact [agent under power of attorney] by definition and by general customary treatment; [attorney in fact] had no right whatsoever to act as attorney for his [principal]. This fact alone requires us to say that we cannot uphold the judgment as to [principal]. The short sentence appearing in *Campbell v. Jewish Committee for Personal Service*, 125 Cal.App.2d 771, at page 772 is appropriate: “Not being a lawyer, Campbell cannot appear as attorney for his brother.”

People ex rel. Department of Public Works v. Malone, 232 Cal. App. 2d 531, 536–37 (1995).

To the extent that the Power of Attorney includes executing a bankruptcy petition or being the basis of appointment as a personal representative pursuant to Federal Rule of Civil Procedure 25 for Marjorie Shamgochian, it does not empower Steve Shamgochian to appear as Marjorie Shamgochian, file motions in the name of Marjorie Shamgochian, or litigate for Marjorie Shamgochian. If he may exercise rights pursuant to a power of attorney, then Mark Shamgochian must be represented by an attorney at law when Mr. Shamgochian is acting in his fiduciary capacity for another under the power of attorney.

June 29, 2017 Status Conference

The court ordered that Marjorie Shamgochian, Debtor, and Steve Shamgochian, and each of them appear at the June 29, 2017 Status Conference. Order, Dckt. 17. Neither appeared as ordered. Civil Minutes, Dckt. 19.

Order to Appear for Continued August 24, 2017 Status Conference

Given the court’s concerns about the apparent unlicensed practice of law, the apparent wasting of Debtor’s rights, and the potential for Debtor (due to her age of approximately ninety-six years and possible physical condition) to being the subject of improper judicial proceedings, the court issued a second order to appear. Further, to make it clear that attendance by Steve Shamgochian was not “optional,” the court expressly notified Mr. Shamgochian that if he failed to appear: (1) the court may issue a writ for the U.S. Marshal to take Mr. Shamgochian into custody and present him in court and (2) impose a monetary sanction.

The court notes that the Chapter 7 Trustee’s report of the continued First Meeting of Creditors conducted on August 17, 2017, notwithstanding the court having demonstrated a concern over Ms. Shamgochian and the wasting of her rights, states that neither Ms. Shamgochian nor Steve Shamgochian appeared at the August 17, 2017 continued meeting of Creditors. August 18, 2017, Trustee’s Docket Entry Report.

At the August 24, 2017 Status Conference, **XXXXXXXXXXXXXXXXXX**.

2. [12-93049](#)-E-11 **MARK/ANGELA GARCIA**

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-30-12 [\[1\]](#)**

Debtor's Atty: Mark J. Hannon
Trustee's Atty: Estela O. Pino

Notes:

Continued from 7/13/17 to allow the parties in interest to assess their respective positions, see if the sale of the residence is completed, and allow for the filing of any motions that parties deem appropriate. The court requested that the U.S. Trustee have a representative in attendance at the 7/13/17 continued status conference. Mark Garcia, Angela Garcia, and Mark Hannon are to appear in person, no telephonic appearances permitted.

Operating Report filed: 8/16/17

AUGUST 24, 2017 CONTINUED STATUS CONFERENCE

The court continued the Post-Confirmation Status Conference from the prior June 13, 2017 date to August 24, 2017, because of continuing concerns of the conduct of the two debtors and their counsel.

On August 18, 2017, Counsel for Debtor filed a Report of Sale, informed the court and parties in interest that the sale of Debtor's residence has closed, with the senior lien holder paid, \$25,000.00 deposited with the court, and the balance of the sales proceeds paid to the junior secured claim of United States Fire Insurance Company. Report, Dckt. 963. The court notes that the \$25,000.00 received by the court is reflected in an August 22, 2017 Docket Entry by the Clerk (which Report inaccurately identifies it as an "Overpayment").

At the Status Conference, the Replacement Plan Administrator reported **XXXXXXXXXXXXX**.

3. [15-90358](#)-E-7 LAWRENCE/JUDITH SOUZA CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
4-10-15 [\[1\]](#)

CASE CONVERTED TO CHAPTER 7
ON 6/26/17

AUGUST 24, 2017 STATUS CONFERENCE

Though this case has been converted to one under Chapter 7 and has been the subject of effective and cooperative lawyering and participation by the parties during the Chapter 11 phase of the case, the court conducts this Status Conference to provide a forum for the new Chapter 7 Trustee to address any initial issues, concerns, or points due to the complexity of these proceedings.

The Chapter 7 Trustee filed a Status Conference Statement on August 17, 2017. Dckt. 645. The Trustee states that based on his investigation, some properties of the Estate should be abandoned. The court has entered orders authorizing the Chapter 7 Trustee to operate the business (several rental properties) of the bankruptcy estate, use cash collateral, and to abandon other property.

The Trustee reports that he is negotiating with lien creditors and is in the process of amending prior tax returns. The Trustee notes he is holding \$327,000.00 in settlement proceeds relating to the Turlock Air Park. Due to the amount of the settlement monies and the “in-flux” status of the Chapter 11 case at that time, the court ordered that Debtor in Possession hold the settlement monies in a blocked account pending further order of the court. The Chapter 7 Trustee now having replaced the former Debtor in Possession, it is for the Trustee to seek the release of such monies so they can properly be disbursed in this case.

At the Status Conference **XXXXXXXXXXXXXXXXXX**.