SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: April 12, 2017

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:	
COMMUNITY HOME FINANCIAL SERVICES, INC.,	**CASE NO. 12-01703-NPO**
DEBTOR.	**CHAPTER 11**
KRISTINA M. JOHNSON, AS TRUSTEE FOR THE ESTATE OF COMMUNITY HOME FINANCIAL SERVICES, INC.	**PLAINTIFF**
V.	**ADV. PROC. 12-00091-NPO**
EDWARDS FAMILY PARTNERSHIP, L.P., AND BEHER HOLDINGS TRUST	**DEFENDANTS**

ORDER DENYING THE EDWARDS FAMILY PARTNERSHIP, LP AND BEHER HOLDINGS TRUST'S MOTION TO DISMISS THIRD AMENDED COMPLAINT (DKT. NO. 237)

This matter came before the Court for hearing on February 28, 2017 (the "Hearing"), on the Edwards Family Partnership, LP and Beher Holdings Trust's Motion to Dismiss Third Amended Complaint (Dkt. No. 237) (the "Motion to Dismiss") (Adv. Dkt. 239)[1] filed by the Edwards Family Partnership, LP (the "Edwards Family Partnership") and Beher Holdings Trust ("Beher," or, together with the Edwards Family Partnership, the "Edwards Entities"); the

[1] The docket in the above-styled adversary proceeding (the "Adversary") will be cited as "(Adv. Dkt. ___)." The docket in the related chapter 11 bankruptcy case, Case No. 12-01703-NPO (the "Bankruptcy Case"), will be cited as "(Bankr. Dkt. ___)."

Edwards Family Partnership, LP and Beher Holdings Trust's Brief in Support of Motion to Dismiss Third Amended Complaint (Dkt. No. 237) (Adv. Dkt. 240) filed by the Edwards Entities; the Trustee's Response to Defendants' Motion to Dismiss Third Amended Complaint [Dkt. #239] and Supporting Memorandum of Authorities (Adv. Dkt. 243) filed by Kristina M. Johnson (the "Trustee"), the chapter 11 trustee of the bankruptcy estate of the debtor in the Bankruptcy Case, Community Home Financial Services, Inc. (the "Debtor"); the Edwards Family Partnership, L.P., and Beher Holdings Trust's Reply to Trustee's Response to Defendants' Motion to Dismiss Third Amended Complaint (Dkt. #243) (Adv. Dkt. 247) filed by the Edwards Entities; the Edwards Family Partnership, LP and Beher Holdings Trust's Post-Trial Brief in Support of Motion to Dismiss Third Amended Complaint (Ct Dkt. #239) (Adv. Dkt. 264) filed by the Edwards Entities; the Trustee's Post-Hearing Brief in Opposition to Motion to Dismiss Third Amended Complaint [AP Dkt. #239] and in Opposition to Defendants' Post-Hearing Brief [AP Dkt. #264] (Adv. Dkt. 266) filed by the Trustee; and the Edwards Family Partnership, LP and Beher Holdings Trust's Post-Trial Reply to Trustee's Post-Hearing Brief in Opposition to Motion to Dismiss Third Amended Complaint (Ct Dkt. #266) (Adv. Dkt. 267) filed by the Edwards Entities in the Adversary.

At the Hearing, Jeffrey R. Barber ("Barber"), Stephanie B. McLarty, and Mark A. Mintz represented the Trustee and Jim F. Spencer, Jr. ("Spencer") and Stephanie M. Rippee represented the Edwards Entities. After fully considering the matter and being fully advised in the premises, the Court denied the Motion to Dismiss as procedurally improper from the bench. This Order memorializes and supplements the Court's bench ruling.

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Adversary pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(K). Notice of the Motion to Dismiss was proper under the circumstances.

Facts

The Bankruptcy Case is not directly relevant to the matter currently before the Court, but the Court will briefly discuss it to provide context for the Motion to Dismiss filed in the Adversary. For a detailed explanation of the facts leading up to the filing of the Bankruptcy Case and the appointment of the Trustee, see *In re Community Home Financial Services, Inc.*, Case No. 12-01703-EE, 2015 WL 6511183 (Bankr. S.D. Miss. Oct. 27, 2015). The Court will briefly discuss the facts of the Adversary, remaining cognizant of the fact that the Adversary has been pending since August 24, 2012, but has only been assigned to this Bankruptcy Judge since February 1, 2017. (Adv. Dkt. 268).

I. Bankruptcy Case

William D. Dickson ("Dickson") was the founder and president of the Debtor, which is "in the business of purchasing and servicing mortgage loan portfolios." (Bankr. Dkt. 1206 at 4). The Debtor "entered into various business transactions with several companies controlled by Dr. Charles C. Edwards ("Edwards")," including the Edwards Entities. (*Id.*). The Debtor and the Edwards Entities "entered into a series of agreements whereby [the Edwards Entities] invested money for the purchase of home improvement loans," usually second and third mortgages. (*Id.*). Additionally, the Debtor and the Edwards Entities purportedly "entered into seven (7) joint ventures for the purchase of mortgage portfolios," which "consisted of a large number of individual promissory notes which were backed by first and second residential mortgages on

homes located across the country. [The Edwards Entities] alleged [that] the balance owed on the home improvement loans was $27,785,548.00, and the balance owed on the seven joint ventures was $12,018,591.89." (*Id.* at 4-5).

The Debtor and Dickson filed suit against the Edwards Entities, among others, in the Chancery Court of the First Judicial District of Hinds County, Mississippi on February 15, 2012 (the "Chancery Court Action"). (*Id.* at 5). The Debtor and Dickson sought a variety of relief in the Chancery Court Action, including: specific performance, an accounting, damages for breach of contract, and rescission or modification of the alleged joint ventures. (*Id.*). The Edwards Entities removed the Chancery Court Action to the United States District Court for the Southern District of Mississippi (the "District Court") on April 11, 2012 (the "District Court Litigation") (Case No. 3:12-cv-252-CWR-LRA, S.D. Miss.). (*Id.*).

In the District Court Litigation, the Edwards Entities denied that the Debtor and Dickson were entitled to any relief and filed counterclaims requesting various forms of relief, including: a judgment against the Debtor on the promissory notes, a judgment against Dickson on his personal guaranties of the loans, and the appointment of a receiver for the Debtor. (*Id.*). The Edwards Entities filed a separate motion for the appointment of a receiver, and the District Court set the receiver motion for trial. (*Id.*). The District Court heard the Edwards Entities' motion for the appointment of a receiver over the course of several days, and the day before the final hearing day, the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code on May 23, 2012. (Bankr. Dkt. 1).[2] With the exception of the Internal

[2] After the commencement of the Bankruptcy Case, District Judge Carlton W. Reeves severed and transferred the Edwards Entities' counterclaims against Dickson (District Court Litigation Dkt., 100) into Case No. 13-cv-587-CWR-LRA, S.D. Miss. (the "Guaranty Suit"). On September 10, 2014, Judge Reeves entered an Order in which he found that Dickson was liable to the Edwards Entities on the guarantees. (Guaranty Suit, Dkt. 52). The Fifth Circuit Court of Appeals affirmed Judge Reeves' ruling in *Edwards Family Partnership, L.P. v. Dickson*, 821

Revenue Service, the Edwards Entities are, predominantly, the only creditor to actively participate in the Bankruptcy Case. (Bankr. Dkt. 1206 at 5).

On September 20, 2012, the Edwards Entities filed a proof of claim ("POC 4") (Bankr. Cl. No. 4-1) in the Bankruptcy Case. In POC 4, the Edwards Entities indicated that it had a secured claim in the amount of $18,390,660.82 for "Money Loaned." (POC 4 at 1). Attached to POC 4 was: (1) the CHFS Loan and Security Agreement (the "Rainbow Loan Agreement") (POC 4 Ex. 1) executed on September 25, 2006, which indicated that "The Rainbow Group, LTD., (the "Rainbow Group")" a British Virgin Islands corporation, and the Debtor entered into an agreement in which the Rainbow Group would loan the Debtor monetary funds (Rainbow Loan Agreement at 1, 7); (2) the Custodial Agreement by and among the Rainbow Group, Ltd. Community Home Financial Services, Inc. and Harold B. McCarley, Jr., PLLC Custodian Dated as of September 25, 2006 (the "Custodial Agreement") (POC 4 Ex. 2) executed on September 25, 2006, between the Rainbow Group, the Debtor, and Harold B. McCarley, Jr., PLLC, providing "for the custody of documents relating to the Collateral" for the Rainbow Loan Agreement; (3) the Note (the "2006 Note") (POC 4 Ex. 3), dated September 25, 2006, evidencing a loan in the amount of $10,000,000.00 from the Rainbow Group to the Debtor; (4) the Supplemental Promissory Note and Credit Facility (POC 4 Ex. 4) dated August 1, 2007, indicating that Beher loaned the Debtor $3,000,000.00; (5) the Commercial Loan Note and Line of Credit (POC 4 Ex. 5) dated August 10, 2010, evidencing a $12,000,000.00 loan from Beher to the Debtor; (6) the Commercial Loan Note and Line of Credit (POC 4 Ex. 6) dated August 10, 2010, evidencing a $4,000,000.00 loan from the Edwards Family Partnership to the Debtor; (7)

F.3d 614 (5th Cir. 2016). Subsequently, on July 25, 2016, Judge Reeves entered a final judgment in which he held that Dickson was liable to the Edwards Family Partnership in the amount of $6,810,958.00 and to Beher in the amount of $20,502.031.00. (Guaranty Suit, Dkt. 83). Judge Reeves also awarded the Edwards Entities $956,093.39 in reasonable attorneys' fees and expenses. (*Id.*).

the August 10, 2010 Amendment CHFS Loan and Security Agreement (POC 4 Ex. 7) amending the Rainbow Loan Agreement; and (8) the August 10, 2010 Amendment CHFS Loan and Security Agreement (POC 4 Ex. 8). [3]

II. Adversary

The Debtor and Dickson initiated the Adversary against the Edwards Entities by filing the Complaint to Determine the Validity and Extent of Claims (Jury Trial Demanded) (Adv. Dkt. 1) on August 24, 2012. The Debtor and Dickson filed the Amended Complaint to Determine the Validity and Extent of Claims (the "Amended Complaint") (Adv. Dkt. 6) on September 13, 2012. On March 8, 2013, the Edwards Entities filed the Edwards Family Partnership, L.P. and Beher Holdings Trust's Motion to Dismiss (Adv. Dkt. 25), asking the Court to dismiss the Amended Complaint. On May 15, 2013, the Debtor and Dickson filed the Motion for Leave to File Second Amended Complaint (Adv. Dkt. 36), which the Court granted on June 6, 2013 (Adv. Dkt. 47). The Debtor and Dickson filed the Second Amended Complaint (the "Second Amended Complaint") (Adv. Dkt. 48) on June 6, 2013. The Edwards Entities subsequently filed the Edwards Family Partnership, L.P. and Beher Holdings Trust's Renewed Motion to Dismiss Claims of Community Home Financial Services, Inc. and William D. Dickson or Discretionary Abstention of Certain Claims (the "Renewed Motion") (Adv. Dkt. 53) on June 27, 2013.

While the Adversary was pending, one of the Debtor's attorneys, Derek A. Henderson ("Henderson"), filed the Disclosure of Transfer of Funds and Other Matters (the "Disclosure")

[3] The Edwards Entities also filed the following proofs of claim in the Bankruptcy Case on September 20, 2012: Proof of Claim ("POC 5") (Bankr. Cl. 5); Proof of Claim ("POC 6") (Bankr. Cl. 6); Proof of Claim ("POC 7") (Bankr. Cl. 7); Proof of Claim ("POC 8") (Bankr. Cl. 8); and Proof of Claim ("POC 9") (Bankr. Cl. 9). The Debtor objected to every proof of claim filed by the Edwards Entities. POC 4 and POC 5 were consolidated pursuant to the Order to Consolidate for Administration and Discovery (Bankr. Dkt. 202; Adv. Dkt. 24). POC 6, POC 7, POC 8, and POC 9 were consolidated pursuant to the Order to Consolidate for Administration and Discovery (Bankr. Dkt. 203; Adv. Dkt. 13).

(Bankr. Dkt. 426) in the Bankruptcy Case. The Disclosure indicated that the Debtor allegedly moved its principal place of business from Jackson, Mississippi, to Panama and had transferred funds from its debtor in possession accounts at Wells Fargo Bank to other Debtor accounts in Panama. (Disclosure at 1).[4] The same day Henderson filed the Disclosure, the United States Trustee (the "UST") filed the United States Trustee's Emergency Motion for Order for the Appointment of a Chapter 11 Trustee (Bankr. Dkt. 427). The Court entered the Order Granting United States Trustee's Emergency Motion for Order for the Appointment of a Chapter 11 Trustee (Bankr. Dkt. 429), directing the UST to appoint a chapter 11 trustee for the Debtor. On January 21, 2014, the Court entered the Order (Bankr. Dkt. 473), appointing Kristina M. Johnson as the Trustee.

Judge Reeves entered the Order on June 29, 2015, denying the Motion to Withdraw Reference (Adv. Dkt. 176). Subsequently, the Court held a hearing on the Renewed Motion, after which it entered the Order Granting Renewed Motion to Dismiss (AP Dkt. #53) Without Prejudice and Granting Leave to Amend (Adv. Dkt. 227), allowing the Trustee until January 15, 2016, to amend the Second Amended Complaint and the Edwards Entities until February 15, 2016, to file a response. The Trustee filed the Third Amended Complaint (the "Third Amended Complaint") (Adv. Dkt. 237) on January 15, 2016. Because the Court held at the Hearing that the Motion to Dismiss is procedurally improper, the Court will only discuss the pleadings to the extent necessary.

[4] Dickson relocated to Central America and was subsequently arrested and returned to the United States by federal law enforcement officers. *United States v. Dickson*, No. 3:14-CR-78-TSL-FSB (S.D. Miss.). Dickson was indicted and charged with various crimes related to his transfer of funds from the debtor in possession operating account to offshore accounts. *Id.* Dickson entered into a plea agreement on September 10, 2015, and pled guilty to two counts of bankruptcy fraud. *Id.* Dickson was sentenced to 57 months in prison on December 10, 2016, and is currently serving his sentence in a federal penitentiary. *Id.*

A. Third Amended Complaint

In the Third Amended Complaint, the Trustee alleged that in 2006, the Debtor entered into a business transaction with an "alleged" entity named "The Rainbow Group, Ltd.," which "purportedly executed a loan agreement and other instruments by which moneys were advanced to the Debtor to purchase mortgage loans . . . ." (Third Amended Complaint at 3). The Trustee contended that in 2007, "The Rainbow Group purportedly assigned whatever rights it had, if any, under the 2006 Note 'without recourse' to Beher Holdings, LTD." (*Id.* at 8). Similarly, the Trustee contended that in 2010, "Beher Holdings, Ltd. purportedly assigned the rights it acquired, if any, from The rainbow Group to BHT 'without recourse.'" (*Id.*). The Trustee mentioned that "The Rainbow Group, Ltd." has never been a registered corporation in the British Virgin Islands, which is where Edwards allegedly told the Debtor it was incorporated. (*Id.* at 23). The Trustee asserted that Edwards has owned several entities with names similar to the "Rainbow Group," as listed by the Trustee in the Third Amended Complaint. (*Id.* at 23-24).

According to the Trustee, Dickson illegally transferred over $9,000,000.00, and diverted at least $1,300,000.00, which he "laundered, commingled, and otherwise dissipated with the purchase of Costa Rican loans and other properties." (*Id.* at 17). The Trustee alleged that she had not been granted access to the Debtor's books and records, and, therefore, "it is impossible to trace, dollar-for-dollar, funds the Trustee has obtained from Latin America to particular Home Improvement Loans or loans involved in other pending adversary proceedings." (*Id.*). Even after the Trustee was appointed, "Dickson, Dickson family members, Dickson affiliates . . . and/or other related parties had apparently conspired to divert money from the Estate . . . ." (*Id.* at 18). The Trustee contended that Dickson and the other parties accomplished the diversion *via* written and oral communication with borrowers, electronic deposits into non-Debtor accounts,

the transmission of checks between the United States and Costa Rica, the redirection of mail, the deposit of checks into non-Debtor accounts, the re-direction of electronic funds into non-Debtor accounts, the diversion of payoffs through a foreign account, deposits into foreign accounts of the Debtor and Dickson, and the purchase of foreign assets. (*Id.* at 18-22).

Based on the foregoing, the Trustee sought declaratory relief on six (6) grounds: (1) that the Rainbow Loan Agreement, the 2006 Note, and the Custodial Agreement "are void *ab initio*" ("Count 1") (Third Amended Compl. at 30-31); (2) that an alleged assignment in 2010 was invalid ("Count 2") (*Id.* at 31-32); (3) "that the [Edwards Family Partnership] Note and the [Beher] Note are fraudulent and therefore, invalid. As a result, any Claims by [the Edwards Entities] are similarly invalid" ("Count 3") (*Id.*at 32); (4) the Edwards Entities do not have a perfected security interest because the Custodial Agreement was never properly assigned ("Count 4") (*Id.* at 32-35); (5) alternatively, that the Edwards Entities do not have a security interest in the nearly $6,000,000.00 funds voluntarily turned over to the Trustee ("Count 5") (*Id.* at 35-36); and (6) alternatively, that POC 4 and POC 5 are duplicative ("Count 6") (*Id.* at 36-37).

B. Motion to Dismiss

In the Motion to Dismiss, the Edwards Entities argued that the Third Amended Complaint should be dismissed. According to the Edwards Entities, Count 1 is "void [and] fail[s] to state a plausible claim" because "a party to a contract may not accept the benefits of the contract and then clam it is void," and it is "also barred by the doctrines of estoppel and waiver through the debtor's acceptance of contract benefits." (Mot. to Dismiss at 2-3). Count 2, Count 3, and Count 4 are "time barred" under the applicable statute of limitations, and, even if they were not time-barred, the Edwards Entities contended that the Debtor waived these claims by "execution of renewal promissory notes and amendments to the loan agreements . . . ." (*Id.* at 3-

4). Despite the allegation in the Third Amended Complaint that the Edwards Entities do not have a perfected claim, the Edwards Entities alleged in the Motion to Dismiss that they do in fact have a perfected claim and, therefore, Count 4 and Count 5 fail to state a plausible claim for relief. (*Id.* at 4). Finally, the Edwards Entities contended that Count 6 is "frivolous." (*Id.* 5).

Attached to the Motion to Dismiss was transcript excerpts from a hearing before Judge Reeves on May 21, 2012 (the "Transcript") (Mot. to Dismiss Ex. A), on the Motion for the Appointment of a Receiver filed by the Edwards Entities in the District Court Litigation. The Edwards Entities cited the Transcript for the proposition that, *inter alia*, "[t]here is no confusion about the identity of the Lender," which was authorized "to assign any loan documents, including the Custodial Agreement and the assignee shall be the Lender under any such documents." (Mot. to Dismiss at 4).

C. Hearing

At the Hearing, the Court inquired about whether the Motion to Dismiss is procedurally proper given that the Edwards Entities attached the Transcript to the Motion to Dismiss. Spencer explained that the Edwards Entities intended the Motion to Dismiss to be a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)") and that they did not intend to convert it to a motion for summary judgment under Federal Rule of Civil Procedure 56 ("Rule 56") by attaching the Transcript. Instead, the Edwards Entities requested that the Court take judicial notice of the Transcript as a public record. Spencer cited *Carter v. Epps*, 2008 WL 623403, at *5 (N.D. Miss. Mar. 3, 2008), to support his argument that the Transcript is a public record that may be considered without converting the Motion to Dismiss into a motion for summary judgment.

Barber argued at the Hearing that the Transcript was never filed on the public docket in the District Court Litigation and, therefore, is not a public record. He contended that to the extent that public records are permitted to be considered by the Court in deciding the Motion to Dismiss, the Transcript is not such a public record. Thus, according to Barber, the Motion to Dismiss is not procedurally proper and should be denied.

Discussion

Rule 12(b)(6), which is made applicable to the Adversary by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, allows for dismissal of a complaint for failure to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). When a court considers a motion to dismiss under Rule 12(b)(6), it generally may not "go outside the complaint." *Rodriguez v. Rutter,* 310 F. App'x 623, 626 (5th Cir. 2009) (citing *Scanlan v. Tex. A&M Univ.*, 343 F.3d 533, 536 (5th Cir. 2003)). A court generally only considers the complaint in deciding a motion to dismiss, accepting "all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit,* 369 F.3d 464, 467 (5th Cir. 2004) (citation omitted). An exception to this general rule allows a court to consider documents attached to a motion to dismiss if they are: (1.) referred to in the complaint and (2.) central to the claim. *In re Katrina Canal Breaches Litig.,* 495 F.3d 191, 205 (5th Cir. 2007) (citing *Causel v. Sewell Cadillac-Chevrolet, Inc.,* 394 F.3d 285, 288 (5th Cir. 2004)). When this two-part test is met, the movant may attach documents because "in so attaching, the defendant merely assists the plaintiff in establishing the basis of the suit, and the court in making the elementary determination of whether a claim has been stated." *Carter v. Target Corp.,* 541 F. App'x 413, 416-17 (5th Cir. 2013) (quoting *Collins v. Morgan Stanley Dean Witter,* 224 F.3d 496, 499 (5th Cir. 2000)). If the test is not met and a court considers documents outside the complaint that are

not subject to judicial notice, it must treat the motion as a motion for summary judgment. *See* FED. R. CIV. P. 12(d) (as adopted by FED. R. BANKR. P. 7012(b)). Rule 12(d) of the Federal Rules of Civil Procedure provides that, if "matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." FED. R. CIV. P. 12(d).

The Court may also take judicial notice of documents outside the complaint under certain circumstances. *Carter,* 2008 WL 623403, at *2. At the Hearing, Spencer cited *Carter* to support his argument that the Transcript is a public record that the Court may consider without converting the Motion to Dismiss into a motion for summary judgment. In *Carter,* the defendants filed a motion to dismiss under Rule 12(b)(6), arguing that the plaintiff's claims against them should be dismissed under the doctrine of *res judicata. Id.*, at *1. In order to consider whether the claims were *res judicata* and should be dismissed under Rule 12(b)(6), it was necessary for the district court to rely on public records of the proceedings from of the Hinds County Circuit Court and the Mississippi Supreme Court, which provided the basis for the defendant's *res judicata* argument. *Id.*, at *2. The district court held that when it is necessary "[f]or a proper understanding of protracted litigation we may draw upon the records in all the preceding cases." *Id.* (citing *Moore v. Estelle,* 526 F.2d 690, 694 (5th Cir. 1976)). The district court also noted that courts may consider "public records from other proceeding without the necessity of converting a 12(b)(6) motion to a summary judgment motion." *Id.* (citing *Davis v. Bayless,* 70 F.3d 367, 372, n. 3 (5th Cir. 1995)).

In the Adversary, neither the two-part test nor the public records exception is applicable. In order to determine that the Motion to Dismiss should not be converted to a motion for summary judgment under the two-part test, the Transcript must be mentioned in the Third

Amended Complaint and must be essential to the claims. *See In re Katrina Canal Breaches Litig.*, 495 F.3d at 205. Here, neither element is satisfied. Additionally, it was undisputed that the Transcript does not appear on the docket in the District Court Litigation, indicating that it is not a publically available record. Although the testimony given in open court at the hearing from which the Transcript was created may be a matter of public record, the Transcript itself is not. Further, unlike the attached documents in *Carter*, the Transcript is not "necessary for a proper understanding of protracted litigation." *Carter*, 20008 WL 623403, at *2. In other words, fundamental differences exist between the documents permitted in *Carter* and the Transcript. In *Carter*, the documents from the prior proceedings were central to the matter before the district court because the defendants claimed the claims were barred by *res judicata.* Thus, considering the documents was essential to deciding the motion to dismiss. Accordingly, the Court does not find *Carter* applicable under the facts of the Adversary.

Even if the Court were to convert the Motion to Dismiss into a motion for summary judgment under Rule 56, the Court would not grant summary judgment. "Summary judgment is proper when the evidence reflects no genuine issues of material fact and the non-movant is entitled to judgment as a matter of law." *See In re Katrina Canal Breaches Litig.*, 495 F.3d at 206 (citing *Crawford v. Formosa Plastics Corp.*, 234 F.3d 899, 902 (5th Cir. 2000)). An issue is genuine if "there is sufficient evidence favoring the nonmoving party for a fact finder to find for that part," and is material if it would "affect the outcome of the lawsuit under the governing substantive law." *Phillips Oil Co. v. OKC Corp.*, 812 F.2d 265, 272-73 (5th Cir. 1987).

After reviewing the pleadings, it is apparent than many genuine issues of material fact exist and a more complete record is necessary in order to decide these issues. Even if the Court were to find that the standards of Rule 56 are met so that summary judgment should be granted,

"a court has the discretion to deny a motion for summary judgment if it believes that the better course would be to proceed to a full trial," so that the record might be more fully developed for the trier of fact. *Firman v. Life Ins. Co. of N. Am.*, 684 F.3d 533, 538 (5th Cir. 2012) (quoting *Anderson v. Liberty Lobby*, 477 U.S. 242, 255 (1986)); *River Region Med. Corp. v. Wright*, No. 13-00793-DPJ-FKB, slip op. at 4 (S.D. Miss. Aug. 5, 2014) (affirming interlocutory order denying summary judgment); *see also Kunin v. Feofanov*, 69 F.3d 59, 62 (5th Cir. 1995); *Black v. J.J. Case Co.*, 22 F.3d 568, 572 (5th Cir. 1994); *Veillon v. Expl. Servs., Inc.*, 876 F.2d 1197, 1200 (5th Cir. 1989)). When a bankruptcy court exercises its discretion to deny summary judgment in order to allow further development of the record, it is a matter of discretion "not generally viewed as [a] controlling question[] of law." *Wright*, No. 13-00793-DPJ-FKB, slip op. at 4 (citing *Garner v. Wolfinbarger*, 430 F.2d 1093, 1096-97 (5th Cir. 1970)).

Given the complexity of the Adversary and the underlying Bankruptcy Case, and the fact that the Adversary has only recently been transferred to this Bankruptcy Judge, the Court finds that the best course of action is to proceed to a trial of the Adversary. It is necessary for the record to be more fully developed so that the Court, as the trier of fact, may make a more complete and thorough decision on the merits. The Court, therefore, exercises its discretion to proceed to trial.[5] Accordingly, the Motion to Dismiss should be denied.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss is hereby denied.

##END OF ORDER##

[5] The Court set the trial in the Adversary for August 21-25, 2017, at 9:00 a.m. in the U.S. Courthouse, Bankruptcy Courtroom 4C, 507 East Court Street, Jackson, Mississippi, in the Order Consolidating Edwards Claims, Coordinating Discovery, and Setting Dates for Joint Pretrial Orders and Trial (Adv. Dkt. 285 at 5).