



SO ORDERED,

Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: October 2, 2024

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-JAW

DEBTOR.

CHAPTER 11

**ORDER GRANTING IN PART AND DENYING IN PART JOINT AMENDED
MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9024
TO CORRECT SCRIVENER MISTAKES IN TRIAL TRANSCRIPT**

This matter came before the Court on the Amended Joint Motion Pursuant to Federal Rule of Bankruptcy Procedure 9024 to Correct Scrivener Mistakes in Trial Transcript (the “Second Joint Motion”) (Dkt. #3519) filed by Edwards Family Partnership, LP and Charles and Gretchen Edwards Family Trust, successor by assignment to Behr Holdings Trust (the “Edwards Entities”); Kristina M. Johnson, the chapter 11 trustee (the “Trustee”) of the estate of the debtor, Community Home Financial Services, Inc.; and Jones Walker LLP (“JW”) in the above-referenced bankruptcy case (the “Bankruptcy Case”). At issue here is the accuracy of about 2,000 pages of transcripts of contested proceedings on the Trustee’s Final Application for Compensation as the Chapter 11 Trustee of Community Home Financial Services, Inc. (Dkt. #3315) and the Final Application for Compensation and Reimbursement of Expenses by the Law Firm of Jones Walker LLP as Counsel

to Kristina M. Johnson, Trustee of the Estate of Community Home Financial Services, Inc. (Dkt. #3316) (together, the “Final Fee Applications”).

Procedural History

The Court held a trial on April 15-19, 22, 2024, and June 10-12, 2024, and closing arguments on August 28, 2024, on the Final Fee Applications. (Dkt. #3501). The trial and closing arguments were electronically recorded by the Court.¹ JW ordered stenographic transcripts of the audio recordings to prepare for closing arguments and presumably in anticipation of an appeal.² (Dkt. ##3468, 3495).³ The court transcriber⁴ filed transcripts of the first six days of trial on May 10, 2024 (Dkt. ##3480-3485) and the remaining days of trial on July 1, 2024 (Dkt. ##3504-3506).⁵

On Thursday, August 15, 2024, (45 days after the last transcript was filed) the Courtroom Deputy received a telephone call from JW asking how the Court Transcriber would docket “amended” transcripts in the Bankruptcy Case. This telephone call was the first notice to the Court of any proposed amendments to the stenographic trial transcripts. The Court held a telephonic

¹ In this Court, all courtroom proceedings are electronically recorded, and a typed transcript is available upon request and payment of a fee to the Court Transcriber. During the nine-day trial, the Court instructed witnesses and counsel for the parties (“Counsel”) to speak directly into the courtroom’s microphones and placed eight “SPEAK INTO THE MICROPHONE” neon-yellow signs throughout the courtroom as reminders.

² Counsel have repeatedly stated their intentions to appeal this Court’s rulings on the Final Fee Applications regardless of the outcome. “We all know this is going up on appeal.” (Status Conf. at 1:56:00–1:56:03 (Aug. 19, 2024)). Citations to conferences and hearings that have not been transcribed are to the timestamp of the audio recording.

³ Dkt. #3480 is the transcript from April 15, 2024; Dkt. #3481 is the transcript from April 16, 2024; Dkt. #3482 is the transcript from April 17, 2024; Dkt. #3483 is the transcript from April 18, 2024; Dkt. #3484 is the transcript from April 19, 2024; Dkt. #3485 is the transcript from April 22, 2024. The deadline to request redactions for these transcripts expired May 31, 2024. (Dkt. ## 3486, 3487, 3488, 3489, 3490, 3491). Dkt. #3504 is the transcript from June 10, 2024; Dkt. #3505 is the transcript from June 11, 2024; Dkt. #3506 is the transcript from June 12, 2024. The deadline to request redactions for these transcripts expired July 22, 2024. (Dkt. ## 3507, 3508, 3509).

⁴ At the status conference, hearing, and in the two motions, the parties have used the terms “court reporter” and “court transcriber” interchangeably. However, the parties were referring to the court reporter/transcriber, J&J Court Transcribers, Inc. (“Court Transcriber”).

⁵ When a transcript is filed, parties to the recorded proceedings are notified that they may file a Notice of Intent to Redact personal identifiers, such as social security numbers under Federal Rule of Bankruptcy Procedure 9037(a). *See Administrative Procedures for Electronic Case Filing* (Rev. Nov. 17, 2020), mssb.uscourts.gov/transcripts. After filing a Notice of Intent to Redact, the party submits to the transcriber an itemized list of personal data identifiers to be redacted including the location in the transcript. That list is not filed with the Court. The transcriber then files a redacted version of the transcript with the Bankruptcy Court within the deadlines set forth in the Notice. The Notice clearly applies to redactions only, not amendments.

status conference on Monday, August 19, 2024, to discuss the “amended” transcripts with Counsel. During this status conference, Counsel represented to the Court that they each had noticed typographical errors and other mistakes, such as misidentified speakers, and had directly contacted the Court Transcriber⁶ to request corrections to the transcripts without first seeking permission from the Court to do so.⁷ Counsel represented to the Court that no substantive changes to the record had been requested⁸ and offered to send the Court the “errata sheets”⁹ they had given the Court Transcriber.¹⁰

The Court instructed Counsel to file a joint motion setting forth all their proposed changes with their errata sheets attached. The Court advised Counsel that no changes would be made to the transcripts without a motion and Court approval, which would be contingent on whether the changes were substantive and otherwise consistent with the audio recording. A two-page Joint Motion Pursuant to Federal Rule of Bankruptcy Procedure 9024 to Correct Scrivener Mistakes in Trial Transcript (the “First Joint Motion”) (Dkt. #3512) was filed by the Edwards Entities, the Trustee, and JW on August 22, 2024.

⁶ The Trustee: “It’s my understanding that the court reporter has been communicating with each side on whatever changes were made.” (Status Conf. at 1:41:55–1:42:10 (Aug. 19, 2024)).

⁷ Both parties made these representations to the Court. (Status Conf. at 1:32:50–1:35:40 (Aug. 19, 2024) (counsel for the Trustee and JW)); (Status Conf. at 1:38:3–1:40:50 (Aug. 19, 2024) (counsel for the Edwards Entities)).

⁸ Any party may request a copy of any audio recording by filing a form order with the Bankruptcy Clerk and paying a fee. *See Administrative Procedures for Electronic Case Filing* (Rev. Nov. 17, 2020), mssb.uscourts.gov/transcripts. A review of the docket reveals that no audio recordings were requested. Apparently, Counsel requested changes to the transcripts based on their own and witnesses’ recollections of a nine-day trial that began 101 days and ended 45 days before their telephone call to the Court. (Hr’g at 12:32:51 (Aug. 28, 2024)).

⁹ Counsel used the term “errata sheets” to refer to their lists of proposed changes to the trial transcripts, so the Court does too. The term “errata sheet,” however, is more often used to refer to the list of changes to a deposition transcript. FED. R. BANKR. P. 7030(e)(1). The procedural requirements for changing deposition testimony do not apply to changes to transcripts of courtroom proceedings.

¹⁰ The Trustee: “I’m certainly happy to share what we sent to the court reporter, or what the court reporter – what we asked – I think we have a copy of the errata sheet that Erin sent around...” (Status Conf. at 1:50:03–1:50:20 (Aug. 19, 2024)). Counsel for the Edwards Entities: “We can certainly send you our stuff today that we sent to the court reporter...” (Status Conf. at 1:52:45–1:52 (Aug. 19, 2024)).

The First Joint Motion sets forth that Counsel both noticed certain mistakes that were either not substantive, clerical in nature, or attributed words to the incorrect speaker and sent their proposed changes to the Court Transcriber. (Dkt. #3512). According to counsel for the Trustee, the Court Transcriber then listened to the audio recordings to verify whether the transcription reflected what was actually said and made the correction¹¹ if appropriate. Apparently, the changes were reflected in a redlined version of the transcripts.

The First Joint Motion did not include the proposed changes as the Court had instructed. Instead, Counsel emailed to the Courtroom Deputy about 2,000 pages of the redlined transcripts that had been forwarded to them by the Court Transcriber. To be clear, Counsel did not attach either the errata sheets or the redlines to their First Joint Motion. At that time, the only way the Court could review all the proposed changes was to scour approximately 2,000 pages of transcripts which the Court ultimately declined to do. However, the Court did begin to review the redlines and immediately noticed some proposed changes were, in fact, substantive.

As a result, the Court reset the Joint Motion for hearing on August 28, 2024, the same day the Court had scheduled closing arguments on the Final Fee Applications. The Court directed Counsel to amend the First Joint Motion to include their errata sheets as originally instructed.

Counsel filed the Second Joint Motion and included as exhibits the lists of proposed changes they gave to the Court Transcriber. (Dkt. #3519). In all, Counsel proposed 108 changes, of which the Court approves 82 for the reasons stated below.

¹¹ The Trustee: “The court reporter actually verified with any changes requested that it matched the audio before making any changes.” (Status Conf. at 1:38:23-1:38:31 (Aug. 19, 2024)).

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Notice of the Second Joint Motion was proper under the circumstances.

Discussion

The Second Joint Motion is not a request for redaction but seeks 108 amendments to the trial transcripts. Clearly, a transcript of sworn live testimony provided during a trial is not analogous to a deposition transcript.¹² Neither Counsel nor witnesses may edit what they said at trial after the fact. The informal back-and-forth between Counsel and the Court Transcriber to alter the trial transcripts without first seeking the Court's approval is troubling, especially since 24% of the proposed changes are impermissible substantive alterations.

Given that the parties have indicated their intent to appeal this Court's rulings on the fee disputes even before any decision is reached, "[a] complete and accurate record of the trial court proceedings is essential to the appellate process." *United States v. Margetis*, 975 F.2d 1175, 1176 (5th Cir. 1992). 28 U.S.C. § 753 requires that court proceedings be recorded by a reliable method including by stenographic means or audiotape and also requires that the court reporter file the "original records" with the Court. 28 U.S.C. § 753(b); *Cadle Co. v. Dennis (In re Pratt)*, 511 F.3d 483, 485 (5th Cir. 2007). A "transcript" is presumed to be a correct representation of the proceedings and is deemed "*prima facie* a correct statement of the testimony taken, and proceedings had" when certified by the court reporter. 28 U.S.C. § 753(b); *United States v. Austin*, 954 F.3d 877, 879 (6th Cir. 2020).

¹² This matter does not concern a deposition that can be changed under FED. R. BANKR. P. 7030(e)(1).

Federal Rule of Civil Procedure 60(a), incorporated by Federal Rule of Bankruptcy Procedure 9024, provides the authority for challenging the accuracy of the record and resolving disputes about the official transcript. *United States v. Evans*, No. 15–16, 2016 WL 4926423 (D. Minn. Sept. 15, 2016). The Fifth Circuit Court of Appeals has cautioned, however, that “[a] Rule 60(a) motion can only be used to make the judgment or record speak the truth and cannot be used to make it say something other than what originally was pronounced.” *Rivera v. PNS Stores, Inc.*, 647 F.3d 188, 194 (5th Cir. 2011) (quotation & citation omitted). In general, “courts may correct clerical mistakes that ‘cause the record ... to fail to reflect what was intended’ at trial.” *Apple Inc. v. Wi-LAN, Inc.*, Case No. 14cv2235, 2020 WL 10458096, at *2 (S.D. Cal. June 15, 2020) (allowing two proposed corrections but disallowing one because the mistake was “far from apparent” and other case law only allowed obvious upon the record corrections to be made) (citation omitted). To overcome the presumption of correctness afforded official transcripts by 28 U.S.C. § 753(b), any mistakes to be corrected should be clear and apparent after reviewing the record. *Id.* (citing *Transamerican Energy v. Transtexas Gas Corp. (In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002)).

After comparing the proposed changes against the audio recordings of the trial, the Court finds that several of these changes are substantive in nature and do not match the audio recordings. The audio recordings are the purest form of the record, and the transcripts cannot be “amended” in a manner that does not reflect what was actually spoken in the courtroom. Twenty-six of these proposed changes are not “scrivener’s mistakes”; they do not arise from errors of the Court Transcriber but are the parties’ attempt to correct misstatements or omissions of witness testimony or their own statements. Clearly, changing words such as “admissible” to “inadmissible” (change #2), “liquidation” to “litigation” (change #4), and “unsecured” to “secured” (change #12), and

adding “don’t” to a sentence (change #19) are substantive in nature and alter the meaning of what was actually said.

The Court finds that the following proposed changes listed below do not reflect errors by the Court Transcriber and are not “scrivener’s mistakes.” They are substantive in nature; not in conformity with the actual audio recording; and will not be reflected in the official corrected trial transcripts.

CHANGES THAT ARE DENIED AS SUBSTANTIVE					
	Dkt. #	Page #: Line #	Original Transcript Text	Counsels’ Proposed Change	Recording
1.	3480	133:24	former Fifth Circuit judge	former 5th circuit clerk	former Fifth Circuit judge
2.	3480	179:20	the same admissible information is in	the same inadmissible information is in	the same admissible information is in
3.	3480	206:21	falls along	follows along	falls along
4.	3480	218:24	liquidation	litigation	liquidation
5.	3483	22:25	settlement of the bank	settlement of the case	settlement of the bank
6.	3484	15:1	another servicer	another server	another servicer
7.	3484	45:20	some of the cases were too	some of the rates were too	some of the cases were too
8.	3484	61:15	there was	there were	there was
9.	3484	207:3	work the court	walk the court	work the court
10.	3485	52:14-15	That was not one of them. That was the only one of them.	That was one of them. That was not the only one of them.	That was not one of them. That was the only one of them.

11.	3485	107:14	that used to be late	that you said	that you stipulated
12.	3485	181:6	unsecured	secured	unsecured
13.	3485	227:6	inequitable claim	inequitable conduct claim	inequitable claim
14.	3485	227:8	of Judge O’Leary	by Judge Olack	of Judge Olack
15.	3485	254:19	STP 3112	STP 312	STP 3112
16.	3504	165:8	they worked like	they were like	they worked like
17.	3504	191:4	we did appeal first	we did not appeal first	you did appeal first
18.	3504	226:22	1281	12-91	1281
19.	3504	233:16	because you don’t know	because you know	because you don’t know
20.	3504	249:11	Oh, do you remain	Oh, do you mean	Oh, do you remain
21.	3504	257:20	Rule 907	Rule 9017	Rule 907
22.	3504	298:12	I object to the testifying	I object to counsel testifying	I object to the testifying
23.	3505	60:24	Rule 813(a)(3)	Rule 8013	Rule 813(a)(3)
24.	3505	140:19	claimant in the NSA	claimant in the case	claimant in the estate
25.	3505	198:17	end the bankruptcy save	end the bankruptcy for	to benefit the bankruptcy estate for the

26.	3505	208:11	basically the court	basically the district court	basically the court
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Four of the proposed revisions (changes #11; #17; #24; #25) do not match either the original text of the transcript or the audio recording. Although the Court denies these changes as proposed by the parties, the Court authorizes the Court Transcriber to revise the transcripts to match the audio recordings as reflected in last column of the above chart.

The remaining requested revisions (##27-108) are identified in a chart at the end of this Order. While many are cosmetic in nature, the Court finds that these changes accurately reflect the audio recordings and should be made by the Court Transcriber.

IT IS, THEREFORE, ORDERED that the Second Joint Motion is hereby granted in part and denied in part as set forth herein.

IT IS FURTHER ORDERED that the Court Transcriber is hereby authorized to make only the changes approved herein and is hereby instructed to file new, clearly-designated, amended trial transcripts using the CM/ECF event “Corrected Transcript” and relating each one to the original transcript docket entry.

IT IS FURTHER ORDERED that the corrected trial transcripts shall be the official Court record.¹³

CHANGES THAT ARE APPROVED AS NOT SUBSTANTIVE				
	Dkt. #	Page #: Line #	Original Transcript Text	Court-Approved Change Proposed by Counsel
27.	3480	196:22-25	BY MR. SPENCER: Q Well, we litigated . . . I would agree that they asserted an interest.	BY MR. BARBER: A Well, we litigated . . . I would agree that they asserted an interest. Q And they asserted . . .
28.	3480	199:7	somebody	some money

¹³ FED. R. APP. P. 10(e)(1)

29.	3480	220:22	that there was entities	the Edwards entities
30.	3480	222:9	own the home improvement loan	on the home improvement loan
31.	3480	237:2	I don't call	I don't recall
32.	3481	12:9	BARBER	SPENCER
33.	3481	23:8	Q I believe it says it's filed on January 15, 2016. Correct? A Correct.	Q I believe it says it's filed on January 15, 2016. Correct? A Correct.
34.	3481	39:1-2	one of the ways to transfer a motion out of context	if ones reads the transfer motion out of context
35.	3481	42:19	Oh, I was happy	Oh, I wasn't happy
36.	3481	59:25	day or to	day or two
37.	3481	115:22	Bacio and Kennis	Facio and Canas
38.	3481	115:23	Kenys	Canas
39.	3481	157:16	resolved, and the Fifth Circuit	resolved at the Fifth Circuit
40.	3482	35:9	try and access	try and assist
41.	3483	118:14-15	A I understand the Edwards party . . . objected to it, and it was never confirmed. In your experience . . .	A I understand the Edwards party . . . objected to it, and it was never confirmed. Q In your experience . . .
42.	3483	219:4-6, 8-10, 12 220:2-9, 25 221:1, 3 227:18 - 19, 22-23	RIPPEE	JOHNSON

		228:1		
43.	3483	242:19	to the extent leading priority of their claim	to the extent validity and priority of their claim
44.	3483	244:2	she went through the plan	she withdrew that plan
45.	3483	259:12	the elections on those loans	the collections on those loans
46.	3483	272:10	JOHNSON	RIPPEE
47.	3483	275:4	Gilby Bradford	Kilby Brabston
48.	3483	291:9, 11-12	RIPPEE	JOHNSON
49.	3484	5:23-25 6: 2, 4-6, 16	RIPPEE	JOHNSON
50.	3484	16:1	handling a well	handling it well
51.	3484	28:10	average parties	Edwards parties
52.	3484	37:16	did you involve Mr. Montagnet	did you involve Ms. Montagna
53.	3484	38:25	under 1000	under 1006
54.	3484	65:22	Mr. Barbara	Mr. Barber
55.	3484	101:5	RIPPEE	JOHNSON
56.	3484	205:17, 22	THE COURT: Okay. That's the Costa Rica condo	THE COURT: Okay. THE WITNESS: That's the Costa Rica condo

57.	3484	209:13	©	(c), paragraph (c)
58.	3484	220:22	lines of the NOR	lines of the MOR
59.	3485	40:11	Judge O'Leary	Judge Olack
60.	3485	45:22	road operation	rogue operation
61.	3485	141:2	absolutely, we objected	absolutely, you objected
62.	3485	164:14	a2	MR. NOBLE
63.	3485	190:9	finer	funds
64.	3485	194:23-24	THE COURT	MS. RIPPEE
65.	3485	204:14-19	A	Q
66.	3485	227:3	violated the state	violated the stay
67.	3485	227:6	state violation	stay violation
68.	3485	227:8	in his final	and is final
69.	3485	247:23	incumbents of the estate	encumbrance of the estate
70.	3485	249:23	state	stay
71.	3485	264:9	attach	approach

72.	3485	267:21	'91	91
73.	3485	280:23	Bare limited	Beher Limited
74.	3485	281:10	Bare	Beher
75.	3504	80:15	THE COURT	MR. MONTAGNET
76.	3504	84:3	Simply Wills	<i>Simply Wheelz</i>
77.	3504	85:19	THE COURT	MR. MONTAGNET
78.	3504	90:5	MCMANUS	RIPPEE
79.	3504	96:17	A	Q
80.	3504	120:25	Judge Walker	Jones Walker
81.	3504	125:21	Bacco	Facio
82.	3504	165:6	BankcorpSouth	BancorpSouth
83.	3504	165:9	BankcorpSouth	BancorpSouth
84.	3504	231: 3	Jevic, which has	<i>Jevic</i> , which had
85.	3504	246:11	Do you agree that Jones Walker	Do you agree that if Jones Walker
86.	3504	258:9	The Fifth Circuit ruled	The Fifth Circuit rule

87.	3505	7:14	SPENCER	MONTAGNET
88.	3505	37:12	unencumbered bonds	unencumbered funds
89.	3505	49:22	I though	I thought
90.	3505	54:21	suppliers	buyers
91.	3505	67:8	schedule times	schedule claims
92.	3505	83:4	before I'm	before him
93.	3505	88:3	And you vacated Judge Olack's ruling to remanded	And he vacated Judge Olack's ruling and remanded
94.	3505	94:6	I had not choice	I had no choice
95.	3505	95:4	remained	remanded
96.	3505	119:4	Aucoin was no	Aucoin was so
97.	3505	156:18	first admitted	first amended
98.	3505	165: 17	statute of fraud	statute of frauds
99.	3505	167:13	what do I do with when	what do I do with it when
100.	3505	175:3	agree with out	agree with our
101.	3505	179:13	BBI company	BVI company

102.	3505	190:18	motion to sale	motion to sell
103.	3505	192:1	filed	file
104.	3505	196:4	were not reasonable	were not reasonably
105.	3506	Cover page	APPEARANCES: For the Trustee and Jones Walker: Jones Walker LLP By: MARK A. MINTZ, ESQ. *** McRaney Montagnet Quin Noble PLLC By: O. STEPHEN MONTAGNET III, ESQ. DOUG NOBLE, ESQ.	APPEARANCES: For the Trustee and Jones Walker: McRaney Montagnet Quin Noble PLLC By: O. STEPHEN MONTAGNET III, ESQ. DOUG NOBLE, ESQ.
106.	3506	Index 3: pg. 182	FOR THE TRUSTEE AND JONES WALKER FIRM: T-50 Edwards Brief to the Fifth Circuit 108 110	FOR THE TRUSTEE AND JONES WALKER FIRM: T-50 Edwards Brief to the Fifth Circuit 108 110 T-51 <i>Raspberry Junction Properties, LLC v. Edwards Family Partnership, LP & Charles C. Edwards, M.D.</i> , Case No. 18-cv-01243-AWT (D. Conn. Sept. 29, 2021 182
107.	3506	88:18	won't impact	will impact
108.	3506	88:19	won't impact	will impact

END OF ORDER