



SO ORDERED.

SIGNED this 18th day of July, 2024

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**



Suzanne H. Bauknight
CHIEF UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

AARON W. LEHNERT

Debtor

JOHN P. NEWTON, TRUSTEE

Plaintiff

v.

SHANNON RENEE (LEHNERT) ROESNER

Defendant

Case No. 3:23-bk-30080-SHB
Chapter 7

Adv. Proc. No. 3:23-ap-3021-SHB

**MEMORANDUM AND ORDER ON MOTION TO EXTEND
TIME TO FILE A RESPONSE TO DEFENDANT’S MOTION FOR DISMISSAL
AND SUMMARY JUDGMENT TO ALLOW DISCOVERY**

On May 21, 2024, Plaintiff filed a Motion to Extend Time to File a Response to Defendant’s Motions for Dismissal and Summary Judgment to Allow Discovery (“Rule 56(d) Motion”) [Doc. 39]. Plaintiff asks the Court to authorize discovery through June 30, 2024,

pursuant to Federal Rule of Civil Procedure 56(d),¹ and to extend the time for him to file a response to Defendant's summary judgment motion, which was filed on April 30, 2024 [Doc. 36], to 21 days after the June 30 discovery deadline.² Defendant objected to the ex parte filing of the Rule 56(d) Motion on May 22, 2024 [Doc. 40], and the Court entered an Order on May 22, 2024 [Doc. 41], allowing Defendant 21 days to file a response to the Rule 56(d) Motion.

Defendant filed her Response and Objection to the Rule 56(d) Motion together with a brief in support thereof on June 11, 2024 [Docs. 43, 44]. She argues that "Plaintiff does not articulate the scope or specify the discovery needed by identifying the potential source of those facts, if any, or explain how those specific facts will create a genuine triable factual dispute." [Doc. 44 at 4.] Defendant also argues that any discovery as to insolvency is unnecessary because the Summary Judgment Motion "turns solely on whether the debtor received reasonably equivalent value." [*Id.* at 3.] Finally, Defendant asserts that Plaintiff's refusal to agree to informal and formal discovery before Defendant responded to the complaint [*see* Docs. 14, 17, 21, 22] makes inequitable his request now to engage in discovery before responding to the Summary Judgment Motion.³

On June 18, 2024, Defendant filed a supplemental response and objection [Doc. 45], to clarify that she did not object to an extension of time through and including June 30, 2024, for Plaintiff to respond to the Summary Judgment Motion; however, she does continue to object to allowing Plaintiff to conduct discovery.

¹ Rule 56 is applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7056.

² The Rule 56(d) Motion was filed as an ex parte motion on May 21, 2024, which would have provided approximately six weeks before the June 30 deadline.

³ Discovery has not commenced in this proceeding because the Court has not yet ordered a Rule 26(f) report in connection with scheduling a Rule 16 scheduling conference. *See* Fed. R. Civ. P. 16(b)(1); 26(d), (f). The Court has not scheduled a Rule 16 conference because Defendant has sought dismissal of the Complaint and Amended Complaint under Rule 12 and Rule 56, respectively [*see* Docs. 24, 36.]

I. Analysis

Although Rule 56(b) allows a party to move for summary judgment “at any time until 30 days after the close of discovery,” and thus “contemplates that a defending party may move for summary judgment even before any discovery has been taken,’ . . . [t]he general rule is that summary judgment is improper if the non-movant is not afforded a sufficient opportunity for discovery.” *Zakora v. Chrisman*, 44 F.4th 452, 479 (6th Cir. 2022) (quoting *Short v. Oaks Corr. Facility*, 129 F. App’x 278, 280 (6th Cir. 2005); *Vance v. United States*, 90 F.3d 1145, 1148 (6th Cir. 1996)). Accordingly, a court is authorized to allow the parties to take discovery “[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition.” Fed. R. Civ. P. 56(d).

The purpose behind Rule 56(d) is to ensure that [non-movants] receive “‘a full opportunity to conduct discovery’ to be able to successfully defeat a motion for summary judgment.” *Ball v. Union Carbide Corp.*, 385 F.3d 713, 719 (6th Cir. 2004) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986)). “A party invoking the protections of Rule 56(d) must do so in good faith by affirmatively demonstrating how postponement of a ruling on the motion will enable him to rebut the movant’s showing of the absence of a genuine issue of fact.” *Fed. Trade Comm’n v. E.M.A Nationwide, Inc.*, 767 F.3d 611, 623 (6th Cir. 2014) (quoting *Willmar Poultry Co. v. Morton-Norwich Prods., Inc.*, 520 F.2d 289, 297 (8th Cir. 1975)). The affidavit must “indicate to the [trial] court the party’s need for discovery, what material facts it hopes to uncover, and why it has not previously discovered the information.” *Ball*, 385 F.3d at 720 (quoting *Cacevic v. City of Hazel Park*, 226 F.3d 483, 488 (6th Cir. 2000)).

Doe v. City of Memphis, 928 F.3d 481, 490–91 (6th Cir. 2019) (internal brackets and ellipses omitted). Procedurally, “when a nonmovant believes that it needs more time for discovery before it can respond to a motion for summary judgment, ‘the non-movant must file an affidavit pursuant to [Rule] 56[(d)] that details the discovery needed, or file a motion for additional discovery.’” *Zakora*, 44 F.4th at 479 (quoting *Abercrombie & Fitch Stores, Inc. v. Am. Eagle Outfitters, Inc.*, 280 F.3d 619, 627 (6th Cir. 2002)).

In the Sixth Circuit, Rule 56(d) motions are construed generously in consideration of the following five factors:

- (1) when the appellant learned of the issue that is the subject of the desired discovery;
- (2) whether the desired discovery would have changed the ruling below;
- (3) how long the discovery period had lasted;
- (4) whether the appellant was dilatory in its discovery efforts; and
- (5) whether the appellee was responsive to discovery requests.

First Floor Living LLC v. City of Cleveland, 83 F.4th 445, 453 (6th Cir. 2023) (quoting *CenTra, Inc. v. Estrin*, 538 F.3d 402, 420 (6th Cir. 2008)). Nevertheless, “this is an ill-fitting test ‘when the parties have no opportunity for discovery,’ and [the Sixth Circuit has] generally held that, in the absence of any discovery, ‘denying the Rule 56(d) motion and ruling on a summary judgment motion is . . . an abuse of discretion.” *Id.* (quoting *Siggers v. Campbell*, 652 F.3d 681, 696 (6th Cir. 2011) (internal brackets omitted)); *see also E.M.A. Nationwide, Inc.*, 767 F.3d at 623 (stating that a decision to grant or deny a motion under Rule 56(d) is within the court’s sound discretion and will not be disturbed unless found to be “arbitrary, unjustifiable, or clearly erroneous”); *CenTra, Inc.*, 538 F.3d at 420 (“Because [the non-movant] was given no opportunity to conduct the discovery that would be necessary for [it] to oppose [the movant’s] summary judgment motion, we conclude that the district court abused its discretion in denying [the] Rule [56(d)] motion.”).

Although, “filing an affidavit that complies with Rule 56(d) is essential, and . . . in the absence of such a motion or affidavit, ‘this court will not normally address whether there was adequate time for discovery[,]’ . . . a formal affidavit may not be required ‘when a party has clearly explained its need for more discovery on a particular topic to the [trial] court prior to or contemporaneously with the motion for summary judgment.’” *Unan v. Lyon*, 853 F.3d 279, 292-93 (6th Cir. 2017) (quoting *Plott v. Gen. Motors Corp.*, 71 F.3d 1190, 1196 (6th Cir. 1995); *United States v. Rohner*, 634 F. App’x 495, 504 (6th Cir. 2015)); *see also Zakora*, 44 F.4th at 480 (“It is not enough to state that discovery is needed without explaining *why* it is needed.” (quoting *Short*,

129 F. App'x at 283)).

Plaintiff states the following in his Rule 56(d) Motion:

3. The Plaintiff needs to obtain discovery from the Defendant on factual issues related to the Affidavit in support of the Summary Judgment Motion at a minimum. In particular, the Defendant asserts that she has given fair consideration or value with respect to property transfers from the Debtor pre-petition but only asserts the sole reason was in ¶ 19. "Aaron received \$85,926.15 to satisfy his personal guaranty" but such allegation is unsupported since the loan was paid to a creditor from the sale of the property she jointly pledged for such loan.

4. The allegations that she "disputes" insolvency in ¶ 26 is unsupported and requires discovery. As alleged in the Amended Complaint there was a substantial amount of debt assumed by the Debtor in his divorce proceeding, in particular as stated in ¶¶ 9 to 14 of the Amended Complaint.

5. The Debtor and the Defendant had several other pieces of real property which were sold prior to the transfer of the property located at 2811 Lamar Alexander, which may be the subject of the Defendant's defense to the fraudulent conveyance complaint. See ¶¶ 24 and 25. In the absence of discovery the Plaintiff cannot determine whether there were other concessions and agreements with the parties related to those previous sales of real properties netting funds jointly and the disposition.

6. Finally, related to the Motion to Dismiss the Plaintiff would be entitled to some discovery related to the allegations contained that oppose the statutory elements that are under the [*sic*] Rule 12(b)(6) assumed to be true for purposes of such Motion. The Defendant has made specific arguments that such allegations in the Amended Complaint of intent may not be true or should not be considered to be true when filing this Motion to Dismiss that count under 11 U.S.C. § 548(a)(1)(A). The Amended Complaint addresses intent specifically in ¶¶ 14 and 18.

[Doc. 39 at ¶¶ 3-6.] Additionally, in his Affidavit attached to the Rule 56(d) Motion, Plaintiff states that he needs discovery to determine the accuracy of facts stated by Defendant in paragraphs 4, 7-8, 13-15, 18-20, and 23-26 of her Statement of Undisputed Facts [Doc. 37], which "were not included in the Debtor's Bankruptcy or were unknown to the Plaintiff." [Doc. 39-1 at ¶¶ 2-3.]

On review of the paragraphs referenced by Plaintiff in both the Rule 56(d) Motion and his Affidavit, the Court agrees that Defendant's affidavit [Doc. 36-4] contains alleged facts that are relevant to the reasonably-equivalent-value inquiry but are not readily available to Plaintiff

through his role as Chapter 7 Trustee in Debtor's bankruptcy case. Without conducting discovery as to the factual statements in paragraphs 4, 7-8, 13-15, 18-20, and 23-25 of the Statement of Undisputed Facts, Plaintiff has no source for obtaining information concerning those facts and cannot fully or adequately respond to the Summary Judgment Motion. Indeed, this situation is precisely the purpose behind Rule 56(d) and Sixth Circuit authority interpreting it.⁴

The Court also disagrees with Defendant's argument that Plaintiff should not be allowed to conduct discovery about insolvency (i.e., the information in paragraph 26) because it is irrelevant to the Summary Judgment Motion. Because Defendant seeks summary judgment

⁴ Defendant filed a Motion to Commence Discovery on October 11, 2023, and amended on October 17, 2023, asking the Court, pursuant to Federal Rule of Civil Procedure 26(d), to commence discovery before the parties' conference pursuant to Federal Rule of Civil Procedure 26(f) "to enable Defendant to appropriately respond to the complaint as well as to potentially save the parties time and money." [Doc. 14 at ¶ 3.] The Court denied this request in its Memorandum and Order entered on November 27, 2023, finding that the motion "does not mention 'good cause'" and "[t]o the extent that the Complaint fails to allege sufficient facts to comply with Federal Rule of Civil Procedure 9(b) . . . , Defendant's remedy is to file a motion to dismiss under Rule 12(b)(6)." [Doc. 22 at 3, 4 (footnote omitted).] In her brief, Defendant argues that "given Plaintiff's refusal to agree to Defendant's request to engage in discovery early on in this litigation, Plaintiff's decision to now seek discovery is both inequitable and improper and the Court should bar discovery under Rule 26(b)(2)(C) considering the equities and particularly the burden/benefit calculation." [Doc. 44 at 4.] Defendant's statements and request concerning her prior request for discovery, however, are misplaced and without merit given the procedural posture.

First, Defendant fails to acknowledge that both the purpose and authority behind a Rule 56(d) motion differ from a request for early discovery under Rule 26(d). Defendant sought discovery a mere six weeks after the Complaint initiating this adversary proceeding was filed on September 1, 2023 [Doc. 1], rather than filing a responsive pleading or motion under Rule 12 to challenge what she believed was a deficient complaint. Defendant did not file an answer to the Complaint [Doc. 1] and has not filed an answer to the Amended Complaint filed on March 29, 2024 [Doc. 32], instead, choosing (as is her right) to file the Summary Judgment Motion. Thus, discovery has not commenced. *See supra* n.3.

The Court finds that Plaintiff has satisfied the requirements under Rule 56(d) to show his "need for discovery, what material facts it hopes to uncover, and why it has not previously discovered the information," *Ball*, 385 F.3d at 720, but Defendant simply did not satisfy the standard for granting early discovery under Rule 26(d), which requires a showing of "good cause." *See, e.g., Lozano v. Does I-X*, No. 2:22-cv-3089, 2022 WL 4111208, at *1 (S.D. Ohio Aug. 12, 2022) ("Courts within the Sixth Circuit require a showing of good cause in order to authorize expedited discovery. . . . Good cause exists where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party." (citations omitted)). It is not "inequitable and improper" for Plaintiff to request or the Court to grant discovery under Rule 56(d) when the standard has been satisfied regardless of the Court's denial of Defendant's request for early discovery because she failed to satisfy the required standard of showing "good cause."

Finally, the Court notes that, as concerns equity, Defendant has not argued that she would be prejudiced by a delay in adjudication of the Summary Judgment Motion to allow for discovery by Plaintiff.

concerning the constructive fraud allegations in the Amended Complaint and constructive fraud under 11 U.S.C. § 548(a)(1)(B) requires proof of both elements, the Court likewise must address both elements in deciding the Summary Judgment Motion. As such, discovery concerning paragraph 26 of the Statement of Undisputed Facts, as requested by Plaintiff in the Rule 56(d) Motion, also is appropriate.

II. Order

Finding the requested relief to be appropriate under the circumstances of this adversary proceeding, the Court directs the following:

1. To the extent it seeks authority to conduct discovery under Rule 56(d) and an extension of time to respond to the Summary Judgment Motion, the Rule 56(d) Motion filed by Plaintiff on May 21, 2024 [Doc. 39], is GRANTED.

2. Pursuant to Federal Rule of Civil Procedure 26(d)(1),⁵ the parties are authorized to commence discovery, with initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) to be made by July 31, 2024.

3. Discovery solely for the purposes of resolving the Summary Judgment Motion [Doc. 36], as limited to the paragraphs in the Statement of Undisputed Facts referenced in the Rule 56(d) Motion and this Memorandum and Order, shall be completed on or before August 30, 2024.

4. Plaintiff shall file a response to the Summary Judgment Motion no later than September 20, 2024.

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⁵ Rule 26 is applicable to this adversary proceeding by virtue of Federal Rule of Bankruptcy Procedure 7026.