

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KEYBANK NATIONAL ASSOCIATION

CIVIL ACTION

VERSUS

NO. 09-497-JJB-SCR

PERKINS ROWE ASSOCIATES, INC.,
ET AL**RULING ON DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S
AFFIRMATIVE DEFENSE OF FRAUD**

This matter is before the Court on Defendant's Motion (doc. 272) to Dismiss KeyBank National Association's Affirmative Defense of Fraud Pursuant to Fed. R. Civ. P. 9(b) and Fed. R. Civ. P. 12(f). Plaintiff has filed an opposition (doc. 286), to which Defendants have filed a reply (doc. 294). Oral argument is not necessary. This Court's jurisdiction exists pursuant to 28 U.S.C. § 1332.

Under Federal Rule of Civil Procedure 12(d),

If, on a motion under Rule 12(b)(6) or 12(c), 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. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Once a motion to dismiss has been converted into a motion for summary judgment, the nonmovant must have ten days after being notified of the conversion to respond and present evidence opposing the motion. *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 283 (5th Cir. 1993).

Defendants supported their motion (doc. 272) to dismiss with countless exhibits, affidavits and other materials not contained within the pleadings. Therefore, the Court will convert Defendants' motion into one for summary judgment.

CONCLUSION

Accordingly, the Court hereby converts Defendant's Motion (doc. 272) to Dismiss KeyBank National Association's Affirmative Defense of Fraud Pursuant to Fed. R. Civ. P. 9(b) and Fed. R. Civ. P. 12(f) into a motion for summary judgment. Plaintiff Keybank National Association shall have ten (10) days from the date of this ruling to file a response and present evidence opposing the motion. Defendants shall have fourteen (14) days from the date Plaintiff's opposition is filed to file a reply.

Signed in Baton Rouge, Louisiana this 9th day of February, 2011.



**JUDGE JAMES J. BRADY
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**