

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

ROSE MEYER

CIVIL ACTION NO. 12-0043

VERSUS

JUDGE ROBERT G. JAMES

FRED M. BAYLES, ET AL.

MAG. JUDGE KAREN L. HAYES

MEMORANDUM ORDER

This action derives from an earlier action filed by Plaintiff Rose Meyer (“Meyer”) against The Arbor and Terrace Senior Center of Ruston, LLC, (“The Arbor”), Civil Action No. 08-0268. In that action, Meyer obtained a default judgment against The Arbor on September 2, 2010, [Doc. No. 36, p. 1]; however, The Arbor was insolvent, and Meyer was unable to collect on her judgment. Meyer then filed this action with a notice of *lis pendens* [Doc. No. 1].

On February 8, 2013, Defendant Joanne Caldwell (“Caldwell”) filed a Motion to Dismiss [Doc. No. 45]. She argues that the judgment obtained by Meyer in the previous action was discharged by the Bankruptcy Court on April 5, 2012. Caldwell also argues that transfer of property to a separate entity was not made in an effort to evade her creditors, but in the hopes of refinancing their assisted living facility as housing for disabled veterans. Caldwell has submitted exhibits in support of this argument [Docs. No. 45-2, 45-3].

Federal Rule of Civil Procedure 12(d) provides that, “If, on a motion under Rule 12(b)(6) . . . 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.” FED. R. CIV. P. 12(d); *see also Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004).

Because Caldwell has presented matters outside the pleadings filed by Meyer,

IT IS ORDERED that Caldwell’s Motion to Dismiss [Doc. No. 45] shall be converted to a motion for summary judgment.

IT IS FURTHER ORDERED that Caldwell and Meyer shall have until April 2, 2013, to file any additional materials to supplement their previously submitted documents.

MONROE, LOUISIANA, this 12th day of March, 2013.



ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE