

was granted by the Bankruptcy Judge as to all issues, except the issue of insolvency of the Debtor at the time of transfer in March 2016, this Court withdrew reference of the case to the Bankruptcy Judge. (Doc. Nos. 1, 2). The Court scheduled a final pretrial conference for April 30, 2018, notified that parties that this case will be tried with a jury to be held at the first available mixed term of court commencing in May, and notified the parties that docket call would occur on May 1, 2018. (Doc. Nos. 1, 4).

Defendant for the first time filed a motion to dismiss pursuant to Rule 12(b)(6) on April 24, 2018. Defendant argues that the Complaint fails to show or allege that the debtor, Marolyn Teresa Collins, was insolvent or made insolvent at the time of the transfer. (Doc. Nos. 5, 6).

As Defendant answered the Complaint, and the pleadings are closed, the Court cannot consider Defendant's motion under Rule 12(b)(6). Motions under Rule 12 of the Federal Rules of Civil Procedure "must be made before pleading" where a responsive pleading is allowed.

THEREFORE, the Court hereby DENIES Defendant's "Motion to Dismiss" pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (Doc. No. 5) without prejudice to Defendant's assertion of his defense, see Fed. R. Civ. P. 12(h)(2).

IT FURTHER APPEARS that the parties have not filed their pretrial submissions as required by the Court's March 21, 2018 Order or moved for an extension of time. The Court hereby *sua sponte* EXTENDS the time for the parties to file their pretrial submissions to 5:00 pm on April 26, 2018. The Court, however, notifies the parties that the failure to timely submit the pretrial submissions may result in this Court ordering the parties to show cause.

The Clerk is respectfully directed to mail this Order to Defendant.

IT IS SO ORDERED.

Signed: April 24, 2018

A handwritten signature in black ink, appearing to read "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

