

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

EDWARD ANTHONY TOTH &
KAREN MICHEL TOTH,

CASE NO.: 20-30345-KKS
CHAPTER 7

Debtors.

MARY W. COLON
CHAPTER 7 TRUSTEE,

ADV. NO.: 22-03005-KKS

Plaintiff,

v.

DIVINE MERCY FARMS, LLC, &
GENE CHURCH,

Defendants.

**ORDER DENYING DEFENDANTS', DIVINE MERCY FARMS, LLC
AND GENE CHURCH [sic] MOTION TO DISMISS ADVERSARY
PROCEEDING OR, IN THE ALTERNATIVE, FOR SUMMARY
JUDGMENT (ECF NO. 23)**

THIS PROCEEDING is before the Court on *Defendants', Divine Mercy Farms, LLC and Gene Church [sic] Motion to Dismiss Adversary Proceeding or, in the Alternative, for Summary Judgment* ("Motion," ECF No. 23), and Plaintiff's response in opposition.¹ For the reasons set

¹ *Plaintiff's Response in Opposition to Defendants' Motion to Dismiss Adversary Proceeding*

forth below, the Motion is due to be denied.

When considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the Court is generally not permitted to consider matters outside the pleadings.² It is within the Court's discretion to accept material beyond the pleadings that is offered in conjunction with a 12(b)(6) motion.³ The Court declines to consider the exhibits attached to the Motion and reviews the Motion strictly under Rule 12(b)(6). In support of their summary judgment motion, Defendants attach several exhibits to the Motion as evidence.

To survive a motion to dismiss, a complaint must contain a short and plain statement showing that the plaintiff is entitled to relief.⁴ In addressing a motion to dismiss, the Court must accept all factual allegations in a complaint as true and take them in the light most favorable to the plaintiff.⁵ While a complaint is not required to include detailed factual allegations, it must include "sufficient factual matter,

or, in the Alternative, for Summary Judgment (ECF No. 23) and Incorporated Request to Exclude Extrinsic Evidence, ECF No. 37.

² *Crawford's Auto Center, Inc. v. State Farm Mut. Auto. Ins. Co.*, 945 F.3d 1150, 1162 (11th Cir. 2019). Fed. R. Civ. P. 12(b), made applicable by Fed. R. Bankr. P. 7012(b).

³ *Prop. Mgmt. & Invs., Inc. v. Lewis*, 752 F.2d 599, 604 (11th Cir. 1985).

⁴ Fed. R. Civ. P. 8(a)(2), made applicable by Fed. R. Bankr. P. 7008.

⁵ *Erickson v. Pardus*, 551 U.S. 89, 93–94 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406 (2002).

accepted as true, to state a claim to relief that is plausible on its face.”⁶ At the motion to dismiss stage, the question is not what Plaintiff could ultimately prove, but whether Plaintiff has adequately alleged each element of a plausible claim.⁷

Under the applicable standard, the Complaint states a cause of action under Fla. Stat. § 605.0702(1)(b)(5) sufficient to survive a motion to dismiss. Read in the light most favorable to Plaintiff, the factual allegations contained in the Complaint allow the Court to draw the reasonable inference that irreparable injury to Divine Mercy Farms, LLC is threatened or being suffered. At this stage in litigation, Plaintiff is under no obligation to prove those facts. The Complaint contains sufficient factual matter that states a plausible claim under Fla. Stat. § 605.0702(1)(b)(5). For that reason, Defendants’ motion to dismiss this adversary proceeding is denied.

For the reasons stated, it is:

ORDERED:

1. *Defendants’, Divine Mercy Farms, LLC and Gene Church [sic]*

⁶ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

⁷ *Melon Acres, Inc. v. Villa (In re Villa)*, 265 B.R. 111, 116 (Bankr. N.D. Fla. 2021).

Motion to Dismiss Adversary Proceeding or, in the Alternative, for Summary Judgment (ECF No. 23) is DENIED.

2. Defendants have twenty-one (21) days from entry of this Order to file an answer or responsive pleading.
3. The hearing currently scheduled for June 28, 2022, is CANCELED.

DONE and ORDERED June 23, 2022.


KAREN K. SPECIE
CHIEF U.S. BANKRUPTCY JUDGE

Defendants' Counsel is directed to serve a copy of this Order on interested parties and file a proof of service within three (3) days of entry of this Order.