is best left to the bankruptcy court. (Def.'s Resp. 13–14.)

The existence of "another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate." Fed.R.Civ.P. 57. In exercising their discretion under the Declaratory Judgment Act, 28 U.S.C. § 2201, however, courts may "deny declaratory relief if an alternative remedy is better or more effective," *Scottsdale Ins. Co. v. Flowers,* 513 F.3d 546, 562 (6th Cir.2008) (quoting *Grand Trunk Western R. Co. v. Consolidated Rail Corp.,* 746 F.2d 323, 326 (6th Cir.1984)) (internal quotation marks omitted). If Yoser declares bankruptcy, VRF will have the opportunity to argue before the bankruptcy court that one of the discharge exceptions applies to any debt Yoser owes it. *See* 11 U.S.C. § 523. Because the bankruptcy court would be better able to decide whether the exceptions apply, using its sound expertise in the context of Yoser's bankruptcy, a remedy in that court would be more effective. Because VRF cites no authority to support its request for a declaratory judgment and an alternative remedy is better, VRF's request for declaratory relief is DENIED.[10]

V. Conclusion

For the foregoing reasons, the Court DENIES VRF's Motion for Summary Judgment on its RICO claims against Yoser. The Court GRANTS VRF's Motion for Summary Judgment on its breach of duty and conversion claims against Yoser. The Court ORDERS Yoser to indemnify VRF in the amount of $264,675.15. The Motion for Summary Judgment is DENIED in all other respects.

10. Declaratory judgments must also satisfy the case or controversy justiciability requirement. U.S. Const. art. III, § 2; 28 U.S.C. § 2201; *MedImmune, Inc. v. Genentech, Inc.,* 549 U.S. 118, 126–27, 127 S.Ct. 764, 166 L.Ed.2d 604 (2007). Because, according to the record before the Court, Yoser has not yet declared bankruptcy, VRF has not shown that the possible dispute over whether Yoser's debt is dischargeable is "of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *See MedImmune,* 549 U.S. at 127, 127 S.Ct. 764 (quoting *Maryland Cas. Co. v. Pacific Coal & Oil Co.,* 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826 (1941)).

STARNES FAMILY OFFICE, LLC, Plaintiff,

v.

Meredith McCULLAR, Defendant.

and

Meredith McCullar, Third–Party Plaintiff,

v.

Michael S. Starnes, Third–Party Defendant.

No. 10–2186.

United States District Court,
W.D. Tennessee,
Western Division.

Jan. 28, 2011.

Background: Limited liability company (LLC) brought action against former partner in real estate investment partnership to collect on note LLC purchased from bank. Former partner brought counterclaims against LLC and third party complaint against LLC officer. LLC moved to strike affirmative defenses and counterclaims, and LLC and officer jointly moved to strike and to dismiss.

is and the grounds upon which it rests.' " *Id.* (citing *Twombly,* 550 U.S. at 555, 127 S.Ct. 1955). Nonetheless, a complaint must contain sufficient facts "to 'state a claim to relief that is plausible on its face' " to survive a motion to dismiss. *Ashcroft v. Iqbal,* —— U.S. ——, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Twombly,* 550 U.S. at 570, 127 S.Ct. 1955). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly,* 550 U.S. at 556, 127 S.Ct. 1955). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 1949 (citation omitted). A plaintiff with no facts and "armed with nothing more than conclusions" cannot "unlock the doors of discovery." *Id.* at 1950. The standard applicable to a motion to dismiss a plaintiff's claims also applies to a defendant's counterclaims. *See, e.g., Weakley Cnty. Bd. of Educ. v. H. M.,* No. 08–1254, 2009 WL 3064885, at *4 (W.D.Tenn. Sept. 21, 2009).

B. Affirmative Defenses & Counterclaims

McCullar pleads as affirmative defenses: 1) Starnes' incompetence, 2) SFO's lack of capacity, 3) breach of contract, 4) breach of fiduciary duty, 5) fraud, 6) estoppel and waiver, and 7) SFO's lack of "holder in due course" status. (*See* Am. Answer ¶¶ 12–19.) McCullar also asserts counterclaims for fraud, breach of contract, and breach of fiduciary duty. (*See* Am. Counter Compl. ¶¶ 25–29.) McCullar does not distinguish between his arguments that fraud, breach of contract, and breach of fiduciary duty constitute affirmative defenses to his liability to SFO and his arguments that they constitute counterclaims against SFO. (*See* Resp. to Defenses; Def.'s Surreply to Defenses.) Therefore, Court will analyze the arguments together. In doing so, however, the Court applies the motion-to-strike standard to the affirmative defenses and the motion-to-dismiss standard to the counterclaims.

1. Starnes' Competence

McCullar asserts as an affirmative defense that Starnes is incompetent under Tennessee law, that he is incapable of performing his purported role with SFO, and that he "is therefore being used to effect[ ] and commit fraud against McCullar." (Am. Answer ¶ 16.)

An affirmative defense is an "assertion of facts and arguments that, if true, will defeat the plaintiff's ... claim, even if all the allegations in the complaint are true." *Black's Law Dictionary* (9th ed.2009); *see Saks v. Franklin Covey Co.,* 316 F.3d 337, 350 (2d Cir.2003) ("An affirmative defense is defined as [a] defendant's assertion raising new facts and arguments that, if true, will defeat the plaintiff's ... claim, even if all allegations in the complaint are true.") (quoting *Black's Law Dictionary* 430 (7th ed.1999) (internal quotation marks omitted); *cf. Ford Motor Co. v. Transport Indem. Co.,* 795 F.2d 538, 546 (6th Cir.1986) (explaining that, rather than "negate an element of the plaintiff's prima facie case," an "affirmative defense raises matters extraneous to the plaintiff's prima facie case") (citations omitted)); *see also Hannan v. Alltel Publishing Co.,* 270 S.W.3d 1, 6 (Tenn.2008) (explaining that the "most commonly understood definition" of affirmative defense is a "matter asserted by defendant which, assuming the complaint to be true, constitutes a defense to it") (citations omitted).

[14] McCullar does not direct the Court to any authority for the proposition that Starnes' competence is, in and of itself, an affirmative defense that would relieve McCullar of his obligations under the Notes. Instead, he directs the Court to the Tennessee standard for determining