

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BUFFALO LABORERS WELFARE FUND,
BUFFALO LABORERS PENSION FUND,
BUFFALO LABORERS TRAINING FUND, and
BUFFALO LABORERS SECURITY FUND,
by THOMAS L. PANEK, in his fiduciary capacity
as ADMINISTRATOR, and LABORERS' LOCAL
210, LABORERS INTERNATIONAL UNION
OF NORTH AMERICA,

Plaintiffs,

v.

ARIA CONTRACTING CORP., and
MCS REMEDIAL SERVICES, INC.,

Defendants.

DECISION AND ORDER
13-CV-1113-A

This action was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings. On August 28, 2015, Magistrate Judge McCarthy filed a Report and Recommendation (Dkt. No. 43), recommending that the motions for summary judgment filed by defendants MCS Remedial Services, Inc., and Aria Contracting Corp. (Dkt. Nos. 32 and 33) be denied.

On October 14, 2015, the defendants filed objections (Dkt. Nos. 46 and 47) to the Report and Recommendation. Plaintiffs filed responses to the objections on November 16, 2015 (Dkt. Nos. 48 and 49), and the defendants filed a reply on November 30, 2015 (Dkt. Nos. 50 and 51).

Pursuant to 28 U.S.C. §636(b)(1), the Court must make a *de novo*

determination of the portions of the Report and Recommendation to which objections have been raised. Upon *de novo* review, and after consideration of the submissions from the parties and hearing oral argument, the Court hereby adopts Magistrate Judge McCarthy's findings and conclusions in their entirety.

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendants' motions for summary judgment are denied. On or before December 19, 2016, the parties shall confer and submit to the Court, either jointly or individually, a brief status report regarding whether the case is ready for trial, what discovery may be necessary, if the case is not ready for trial, an estimate of the number of witnesses each party will call to testify during the trial, and an estimate of the number of trial days that will be required.

IT IS SO ORDERED.

Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: December 1, 2016