UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

COLLEEN HOPKINS,
KATHRYN DISALVO, and
DOUGLAS MORRIS, Executor of the
Estate of Margaret Morris,

Plaintiffs,

v.

JOHN S. BOOTH, III,

Defendant.

16-CV-1020
DECISION AND ORDER

On December 21, 2016, the plaintiffs commenced this action. Docket Item 1. On August 21, 2017, this Court referred this case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 13. On January 26, 2018, the plaintiffs moved to dismiss the defendant's first amended counterclaim, Docket Item 26; on February 23, 2018, the defendant responded, Docket Item 29; and on March 2, 2018, the plaintiffs replied, Docket Item 30. On February 20, 2019, Judge Foschio issued a Report and Recommendation ("R&R") finding that the plaintiffs' motion should be granted. Docket Item 37. The parties did not object to the R&R, and the time to do so now has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ.

P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Foschio's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Foschio's recommendation to grant the plaintiffs' motion.

For the reasons stated above and in the R&R, the plaintiffs' motion to dismiss the defendant's first amended counterclaim, Docket Item 26, is GRANTED. The case is referred back to Judge Foschio for further proceedings consistent with the referral order of August 21, 2017, Docket Item 13.

SO ORDERED.

Dated: September 6, 2019
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE