UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DIANA BELLASALMA, and
JAMES BELLASALMA,

Plaintiffs,

v.

COLTON RV, LLC,
FIFTH THIRD BANK, N.A.,

Defendants.

22-CV-765 (JLS) (JGF)

DECISION AND ORDER

Plaintiffs Diana and James Bellasalma commenced this action on October 10, 2022. Dkt. 1. Plaintiffs filed an amended complaint on November 2, 2022, asserting claims arising from an alleged breach of contract. Dkt. 4. On January 17, 2023, Defendants Colton RV, LLC and Fifth Third Bank, N.A. moved to dismiss the amended complaint based on a purported settlement agreement. Dkt. 12-1, at 6. Defendants attached several e-mail exhibits in support of the motion to dismiss. Dkt. 12-2, 94–105. On January 18, 2023, this Court referred the case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 15.

Presently before the Court is Judge Foschio's Report & Recommendation ("R&R"). Dkt. 19. The R&R recommends that—pursuant to Rule 12(d)—this Court convert Defendants' motion to dismiss to a motion for summary judgment and grant the summary judgment motion. *Id.* Alternatively, the R&R recommends

Defendants' motion to dismiss should be granted in part and denied in part, and dismissal of the Second, Fifth, Sixth, Seventh, and Eighth claim should be with prejudice. *Id.* Plaintiffs objected to converting the motion to dismiss into a motion for summary judgment. Dkt. 20. Plaintiffs also objected to the dismissal of the claims asserted in count two of the amended complaint. *Id.* Defendants opposed, Dkt. 22, and Plaintiffs replied. Dkt. 23.

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 objection is made. 28 U.S.C. § 636(b)(1): Fed. R. Civ. P. 72(b)(3).

The Court conducted a *de novo* review of the R&R, the briefing on objections, and the relevant record. Based on that review, the Court accepts and adopts Judge Foschio's recommendation to convert Defendants' motion to dismiss to a motion for summary judgment, and grant that motion for summary judgment.

For the reasons stated above and, in the R&R, this court GRANTS Defendants' motion for summary judgment, Dkt. 12. The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: September 28, 2023
Buffalo, New York

JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE