

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

UNITED STATES OF AMERICA,
FOR THE USE AND BENEFIT OF
MCKENNEY'S, INC.

Plaintiff,

v.

CIVIL ACTION NO. 4:20cv179

LEEBCOR SERVICES, LLC
and
THE CINCINNATI INS. Co.,

Defendants.

ORDER

This matter comes before the court on Defendant, The Cincinnati Insurance Company's ("Cincinnati"), Motion for Judgment on the Pleadings, filed on April 5, 2021. ECF No. 61. Cincinnati argues that the claim against it under the Miller Act, 40 U.S.C. § 3131, is time-barred under the applicable statute of limitations.

The matter was referred to United States Magistrate Judge Robert J. Krask by Order of April 28, 2021, ECF No. 82, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b), and Local Civil Rule 72, to conduct hearings, including evidentiary hearings, if necessary, and to submit to the undersigned proposed findings of fact, if applicable, and recommendations for the disposition of the Motion. The

Magistrate Judge filed the Report and Recommendation on May 12, 2021, ECF No. 86, and recommended denying the Motion because the Complaint alleges sufficient facts to demonstrate the timeliness of Plaintiff's claim under the Miller Act, and because there is a genuine dispute between the parties regarding a material fact on which Cincinnati's statute of limitations defense is based.

By copy of the Report and Recommendation of the Magistrate Judge, the parties were advised of their right to file written objections thereto. The court has received no objections to the Magistrate Judge's Report and Recommendation, and the time for filing the same has expired.

Accordingly, the court **ADOPTS AND APPROVES IN FULL** the findings and recommendations set forth in the Magistrate Judge's thorough and well-reasoned Report and Recommendation filed on May 12, 2021, ECF No. 86. Therefore, the court **DENIES** Defendant's Motion for Judgment on the Pleadings, ECF No. 61.

The Clerk is **DIRECTED** to send a copy of this Order to counsel for all parties.

IT IS SO ORDERED.

ls/ *-RBS*

Rebecca Beach Smith
Senior United States District Judge

REBECCA BEACH SMITH
SENIOR UNITED STATES DISTRICT JUDGE

June 10, 2021