

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

Heritage Bank of the South, }
as successor to Frontier Bank; }

Plaintiff, }

Case No.: 2:13-cv-1084-TMP

v. }

Jones & Jones Construction LLC, }
and Vernon C. Jones; }

Defendants.


**ORDER ADOPTING IN PART REPORT AND RECOMMENDATION AND
RECOMMITTING CASE TO MAGISTRATE JUDGE**

On May 22, 2014, the Magistrate Judge filed a Report and Recommendation recommending that (1) the Court grant Heritage Bank’s motion for summary judgment, or in the alternative for default judgment (Doc. 19), to the extent that default be entered in favor of plaintiff Heritage Bank and against defendant Jones & Jones, on the claim for breach of the note; (2) summary judgment be entered in favor of Heritage Bank and against Mr. Jones on the breach of guaranty claim; and (3) summary judgment be entered in favor of the FDIC on any counterclaim asserted by Mr. Jones. (Doc. 19, p. 12). No party filed an objection to the Report and Recommendation.

Having carefully reviewed and considered *de novo* all the materials in the Court file, including the Report and Recommendation, the Court **ACCEPTS** and **ADOPTS** the Magistrate Judge’s finding that the FDIC appears as a party “only to the extent that it is a defendant to a counterclaim of breach of some unwritten agreement to which [the defendant] alludes in his letter.” (Doc. 19, p. 10). Thus, “the only claims before the court are the plaintiff’s claims of breach of the note, and breach of the guaranty.” (Doc. 19, p. 10 n. 5). In light of this finding and under 28 U.S.C. § 636(b)(1), the Court **RECOMMITS** this action to the Magistrate Judge to examine subject matter jurisdiction. Specifically, the Court asks the Magistrate Judge to please address whether the Court may properly exercise subject matter jurisdiction under the well-pleaded complaint rule¹ or under 28 U.S.C §1441(c).

The Court asks the Clerk to please TERM Doc. 19.

DONE and **ORDERED** this August 11, 2014.



MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE

¹ See *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 828 (2002) (holding that district court did not properly exercise jurisdiction on the basis of a compulsory counterclaim which arose under federal law when the plaintiff’s claims did not provide a basis for federal jurisdiction).