

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

**ANZ ADVANCED TECHNOLOGIES, LLC)
d/b/a ANZ USA, LLC, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 **BUSH HOG, LLC, and)
HENRY CROWN AND COMPANY,**)
)
 Defendants.)**

CIVIL ACTION NO. 09-00228-KD-N

ORDER

This action is before the Court on the Report and Recommendation of the Magistrate Judge dated February 7, 2012 (doc. 217)¹ and the Motion to Voluntarily Dismiss Counterclaim without Prejudice filed by defendants Bush Hog, LLC and Henry Crown and Company (doc. 179).

Service of this Order

As an initial consideration, Scott Speagle and M. Ali Zakaria, counsel for plaintiffs, have filed a motion to withdraw as counsel for plaintiffs ANZ Advanced Technologies, LLC d/b/a ANZ USA, (ANZ USA) and ANZ International Manufacturing Private Limited (ANZ International) (doc. 213, 215). The motions have not been granted. Thus, attorneys Speagle and Zakaria are **ORDERED** to provide this Court, on or before **Friday, March 16, 2012**, with **proof of receipt** of this Order by their respective clients ANZ USA and ANZ International. Speagle and Zakaria are reminded that proof of receipt is not the same as notice that documents have been mailed.²

¹ On notice from defense counsel that Paul Carroll was not present at the motion hearing, the Report and Recommendation is modified to remove Carroll from the list of attorneys who attended on behalf of Bush Hog, LLC. (doc. 217, p. 1, ¶ 2).

² Magistrate Judge Nelson ordered Speagle and Zakaria to provide verification “of the (Continued)

Report and Recommendation

After due and proper consideration of all portions of this file deemed relevant to the issue raised, and there having been no objections filed, the Report and Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated February 7, 2012 (doc. 217), is **ADOPTED** as the opinion of this Court.

Accordingly, it is **ORDERED** as follows:

1. Defendants' motion for sanctions (doc. 182) is **GRANTED** in part and **DENIED** in part as follows:

a. The motion for sanctions is **GRANTED** as to plaintiffs ANZ USA and ANZ International and their principals, Irfan Sheriff and Rakesh Vashee, jointly and severally. Sanctions will be imposed against these defendants, jointly and severally, in an amount to be determined by this Court and consistent with the Report and Recommendation.

b. The motion for sanctions is **DENIED** to the extent defendants seek sanctions against Scott Speagle and M. Ali Zakaria.

2. Defendants' request for leave to prove their reasonable expenses incurred as a result of ANZ USA's and ANZ International's repeated failure to comply with the Orders of this Court, is **GRANTED** and defendants shall file such proof on or before **Monday, March 19, 2012**.

3. ANZ USA and ANZ International and their principals, Irfan Sheriff and Rakesh Vashee, shall **SHOW CAUSE**, on or before **Monday, April 2, 2012**, why defendants' claim does not constitute a reasonable amount for the costs and fees incurred as a result of their failure to comply the Court's Orders

efforts they employed to confirm that service of this Order and the Report and Recommendation on their clients has been perfected" (doc. 218). In response, Speagle and Zakaria filed a joint notice stating that they had "notified" the plaintiffs and their principals by sending the Order and Report and Recommendation by FedEx and Certified Mail Return Receipt Requested (doc. 219). However, Speagle and Zakaria did not provide proof of receipt, they only notified the Court that the documents had been mailed.

4. The Court will take the matter under submission on **April 3, 2012** for the Magistrate Judge to prepare a Report and Recommendation as to an appropriate sanction.

Motion to Voluntarily Dismiss Counterclaim without prejudice filed by defendants Bush Hog, LLC and Henry Crown and Company (doc. 179)

This action is before the Court on defendants' motion to voluntarily dismiss their Counterclaim without prejudice with each party to bear their own costs and fees except for the award of sanctions to be imposed against ANZ USA and ANZ International as addressed herein. Defendants also move the Court to delay the entry of judgment until the amount of sanctions has been determined.

Upon consideration of this motion and in light of the Magistrate Judge's Report and Recommendation adopted herein as the Order of this Court, defendants' motion to voluntarily dismiss the counterclaim without prejudice (doc. 179) is **GRANTED**.

Accordingly, defendants' Counterclaim (doc. 70, ¶¶ 10-11) is hereby **DISMISSED without prejudice**, with each side to bear its own costs and fees, with the exception of the sanctions to be determined by this Court.

The Court retains jurisdiction to determine the sanctions to be imposed against the plaintiffs, jointly and severally.

Final Judgment shall be entered by separate document as required by Rule 58 of the Federal Rules of Civil Procedure after determination of the sanctions.

DONE this 5th day of March, 2012.

/s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE