

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Zita Leeson Weinshienk

Civil Action No. 10-cv-00073-ZLW-KLM

JAMES E. PRESTON,

Plaintiff,

v.

CAPITAL ONE AUTO FINANCE, INC., a Texas corporation,
a/k/a/ SUMMIT ACCEPTANCE CORPORATION,

Defendant.

ORDER

The matters before the Court are Plaintiff's Motion For Remand (Doc. No. 5) and Defendant Capital One Auto Finance Inc.'s Motion To Dismiss Plaintiff's Amended Complaint And Motion For Attorneys' Fees (Doc. No. 10) (Motion To Dismiss). These motions were referred to Magistrate Judge Kristen L. Mix pursuant to D.C.COLO.LCivR 72.1C. On May 19, 2010, the Magistrate Judge issued her Recommendation that Plaintiff's Motion For Remand be granted and that Defendant's Motion To Dismiss be denied as moot (Doc. No. 37). Defendant filed a motion for reconsideration of the Recommendation (Doc. No. 39), asking that the Court allow the Motion To Dismiss to remain pending in this Court so that it can be considered by the state court upon remand. In the Minute Order denying the motion for reconsideration, Magistrate Judge Mix noted that Defendant had failed to explain "why it cannot simply refile its Motion to

Dismiss in the state court proceedings.” (Doc. No. 41). No party filed objections to either the Recommendation or to the Minute Order denying the motion for reconsideration.

Having reviewed the record and the Recommendation, the Court is satisfied “that there is no clear error on the face of the record.”¹ Thus, the Court accepts and adopts the Recommendation in its entirety, clarifying that Defendant’s Motion To Dismiss is denied without prejudice to Defendant re-filing the Motion To Dismiss in state court. Accordingly, it is

ORDERED that Plaintiff’s Motion For Remand (Doc. No. 5) is granted. It is

FURTHER ORDERED that this action is remanded to state court. It is

FURTHER ORDERED that Defendant Capital One Auto Finance Inc.’s Motion To Dismiss Plaintiff’s Amended Complaint And Motion For Attorneys’ Fees (Doc. No. 10) is denied as moot, without prejudice to Defendant re-filing said motion in state court.

DATED at Denver, Colorado, this 23rd day of June, 2010.

BY THE COURT:



ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

¹See Fed. R. Civ. P. 72(b) advisory committee’s note; Summer v. Utah, 927 F.2d 1165, 1167 (10th Cir. 1991); Thomas v. Arn, 474 U.S. 140, 150 (1985).