

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CHARLES LAMIRAND and TRACY
LAMIRAND,

Plaintiffs,

v.

Case No: 2:18-cv-333-FtM-38MRM

FAY SERVICING, LLC,

Defendant.

_____ /

OPINION AND ORDER¹

Before the Court is United States Magistrate Judge Mac R. McCoy's Report and Recommendation ("R&R") ([Doc. 25](#)), recommending that Plaintiffs Charles and Tracy Lamirand's Motion to Strike Defendant's Amended Affirmative Defenses ([Doc. 23](#)) be granted in part and denied in part. No party has objected to the R&R, and the period to do so has elapsed. This matter is ripe for review.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify the magistrate judge's report and recommendation. [28 U.S.C. § 636\(b\)\(1\)](#); *Williams v. Wainwright*, [681 F.2d 732 \(11th Cir. 1982\)](#). Absent specific objections, there is no requirement that a district judge

¹ Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

review factual findings *de novo*, and the court may accept, reject, or modify the findings in whole or in part. 28 U.S.C. § 636(b)(1); *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir. 1993). The district judge reviews legal conclusions *de novo*, even with no objection. *Cooper-Houston v. Southern Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994).

Here, after thoughtfully analyzing each affirmative defense, Judge McCoy recommends that the Court strike Fay Servicing's second, seventh, and eight defenses without prejudice and its fourth defense with prejudice, and that the Court deny the Motion as to the remaining defenses. After conducting an independent examination of the file and on consideration of Judge McCoy's findings and recommendations, the Court accepts the R&R.


Accordingly, it is now

ORDERED:

United States Magistrate Judge Mac R. McCoy's Report and Recommendation (Doc. 25) is **ACCEPTED and ADOPTED** and Plaintiffs' Charles and Tracy Lamirand's Motion to Strike Amended Affirmative Defenses is **GRANTED in part and DENIED in part**.

1. Defendant Fay Servicing, LLC's second, seventh, and eighth affirmative defenses are **stricken without prejudice**.
2. Fay Servicing's fourth affirmative defense is **stricken with prejudice**.
3. Fay Servicing may file a second amended answer on or before **December 3, 2018**.

DONE and **ORDERED** in Fort Myers, Florida this 19th day of November, 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record