

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ROBERT L. ROACH, an individual,

Plaintiff,

v.

Case No: 3:14-cv-703-J-39JBT

BANK OF AMERICA CORPORATION,
et al.,

Defendants.

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ORDER

THIS CAUSE is before the Court on the Magistrate Judge's Report and Recommendation (Doc. 48), recommending Defendant, Argent Mortgage Company, LLC's Motion to Dismiss (Doc. 15) be granted and Count II of Plaintiff's Complaint (Doc. 1) be dismissed with prejudice. Plaintiff was furnished with a copy of the Report and Recommendation and has been afforded an opportunity to file objections. However, to date, no objections have been filed. Indeed, Plaintiff filed his Notice of Non-Opposition to Defendant's Motion to Dismiss (Doc. 43), in which Plaintiff agrees his claim against Argent should be dismissed.

The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b). If no specific objections to findings of facts are filed, the district judge is not required to conduct a *de novo* review of those findings. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993); see also 28 U.S.C. § 636(b)(1). However, the district judge must review legal

conclusions *de novo*, even in the absence of an objection. See Cooper–Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994).

Upon independent review of the file and for the reasons stated in the Report and Recommendation, the Court will accept and adopt the factual and legal conclusions recommended by the Magistrate Judge as modified herein. Accordingly, it is

ORDERED:

1. The Magistrate Judge’s Report and Recommendation (Doc. 48) is **ADOPTED** as modified as the Opinion of this Court.
2. Defendant’s Motion to Dismiss (Doc. 15) is **GRANTED in part**.
3. Count II of Plaintiff’s Complaint (Doc. 1) is **DISMISSED without prejudice**.¹

DONE and **ORDERED** in Jacksonville, Florida this 2nd day of February, 2015.



BRIAN J. DAVIS
United States District Judge

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Copies furnished to:

The Honorable Joel B. Toomey
United States Magistrate Judge

Counsel of Record
Unrepresented Parties

¹ The Magistrate Judge recommends dismissal of this action with prejudice based on lack of subject matter jurisdiction. However, since the Court lacks subject matter jurisdiction, the Court “lack[s] the power to dismiss . . . with *prejudice*.” Campbell v. Air Jamaica Ltd., 760 F.3d 1165, 1169 (11th Cir. 2014) (quotation and citation omitted). Indeed, a court without subject matter jurisdiction cannot grant a dismissal with prejudice even when voluntary and originating from the plaintiff. Heaton v. Monogram Credit Card, 231 F.3d 994, 1000 (5th Cir. 2000).