

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

HELIX INVESTMENT MANAGEMENT, LP,

Plaintiff,

v.

Case No. 8:18-cv-206-T-33AEP

PRIVILEGE DIRECT CORP., ET AL.,

Defendants.

ORDER

This matter comes before the Court upon consideration of United States Magistrate Judge Anthony E. Porcelli's Report and Recommendation (Doc. # 105), entered on January 7, 2019, recommending that Plaintiff Helix Investment Management, LP's Motion for Preliminary Injunction (Doc. # 91) be denied. Defendants Oliphant Financial Group, LLC, Oliphant Financial Corporation, and Robert A. Morris (the Oliphant Defendants) filed a limited Objection to the Report and Recommendation on January 22, 2019. (Doc. # 107). Helix filed a Response in Opposition to the Objection on February 5, 2019. (Doc. # 108). As explained below, the Court adopts the Report and Recommendation.

I. Background

Helix filed this action against the Oliphant Defendants

as well as against Defendant Privilege Direct Corp. on January 23, 2018. (Doc. # 1). With leave of the Court, Helix filed an Amended Complaint on May 17, 2018. (Doc. # 46). Thereafter, Helix once again sought leave to amend the Complaint, which the Court granted. (Doc. ## 49, 50). Thus, the Second Amended Complaint was filed on June 18, 2018. (Doc. # 51). The Oliphant Defendants sought dismissal of the Second Amended Complaint. (Doc. # 54). The Court held oral argument on the Motion to Dismiss and directed that the parties provide further briefing. (Doc. # 71). Helix subsequently requested the opportunity to amend, which the Court granted. (Doc. ## 56, 88). The Third Amended Complaint, which is the operative Complaint, was filed on December 10, 2018. (Doc. # 95).

Helix also filed a Motion for Preliminary Injunction on December 4, 2018. (Doc. # 91). The Court referred the Motion for Preliminary Injunction to the Magistrate Judge for the issuance of a Report and Recommendation. (Doc. # 94). The Oliphant Defendants responded to the merits of the Motion for Preliminary Injunction, but also raised the argument that the Court lacks subject matter jurisdiction over the case based on a lack of complete diversity of citizenship. (Doc. # 97). The Oliphant Defendants provide a comprehensive discussion of

their jurisdictional arguments in a Motion to Dismiss filed on December 21, 2018. (Doc. # 100). The Motion to Dismiss is ripe for the Court's review and currently under advisement. (Doc. # 104).

After holding a hearing, the Magistrate Judge issued a Report and Recommendation on the Motion for Preliminary Injunction. (Doc. # 105). Although the Report and Recommendation contains a discussion of the unique jurisdictional issue raised by the Oliphant Defendants, it does not contain a formal recommendation regarding whether the requirements for complete diversity of jurisdiction are satisfied. Instead, the Magistrate Judge postulates: "Given that jurisdiction based on complete diversity of citizenship *may exist*, the undersigned finds it appropriate to consider Helix's Motion for Preliminary Injunction and the response in opposition." (Doc. # 105 at 3)(emphasis added).

After finding that a possibility exists that the Court has jurisdiction, the Magistrate Judge analyzes the request for a preliminary injunction. The Magistrate Judge recommends denial of the Motion for Preliminary Injunction because Helix failed to demonstrate that it will suffer irreparable harm in the absence of injunctive relief. The Magistrate Judge

correctly states that "this action is, quite simply, all about money." (Id. at 5). The Magistrate Judge points out that "Helix is only seeking monetary damages" and "because the portfolio accounts [in dispute in this case] can be valued and the money within is fungible, the injury to Helix [if any] can be undone through monetary damages." (Id. at 6).

II. Analysis

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). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject, or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. S. Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994).

Upon due consideration of the record, including Judge

Porcelli's Report and Recommendation as well as the Oliphant Defendants' Objection thereto, the Court overrules the Objection, adopts the Report and Recommendation, and denies the Motion for Preliminary Injunction.

The Court notes that the Oliphant Defendants are objecting to a perceived jurisdictional finding in the Report and Recommendation. As the Defendants in this case, the Oliphant Defendants obviously take no issue with the recommendation that Helix's request for injunctive relief be denied. The Court notes that it will decide the jurisdictional issues raised in the Motion to Dismiss separately and does not view the Report and Recommendation as squarely deciding the discrete issue of whether the Court has subject matter jurisdiction over the case. Thus, in adopting the Report and Recommendation, including its jurisdictional discussion, it is not, at this time, deciding the jurisdictional issue presented in the Motion to Dismiss.


Accordingly, it is now

ORDERED, ADJUDGED, and DECREED:

- (1) United States Magistrate Judge Anthony E. Porcelli's Report and Recommendation (Doc. # 105) is **ACCEPTED** and **ADOPTED**.

(2) The Motion for Preliminary Injunction (Doc. # 91) is
DENIED.

DONE and **ORDERED** in Chambers, in Tampa, Florida, this
6th day of February, 2019.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE