

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-80804-CIV-COHN/SELTZER

PRUCO LIFE INSURANCE COMPANY,

Plaintiff,

v.

STEVEN M. BRASNER, individually and as
Principal of Infinity Financial Group, LLC;
MARK A. TARSHIS; INFINITY FINANCIAL
GROUP LLC; WELLS FARGO BANK, N.A.,
as Securities Intermediary; and John Does 1-10,Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION RE: SIU REPORT

THIS CAUSE is before the Court upon the Report and Recommendation [DE 274] (“Report and Recommendation”) filed by Chief United States Magistrate Judge Barry S. Seltzer regarding whether Plaintiff Pruco Life Insurance Company’s (“Pruco’s”) Special Investigative Unit Report [DE 253-1 at 4-9] (“SIU Report”) constitutes a privileged document, which is improperly before the Court in considering Defendant Wells Fargo Bank, N.A.’s (“Wells Fargo’s”) Motion for Relief from Summary Final Judgment Pursuant to Federal Rule of Civil Procedure 60(b) [DE 253] (“Rule 60(b) Motion”). See Order of Reference [DE 273]. Pursuant to 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review of the record herein, including the Report and Recommendation, the applicable filings relating to the privilege issue, and is otherwise fully advised in the premises. Neither party has filed any objections to the Report and Recommendation, and the time for doing so has passed.

On July 9, 2010, Pruco filed a five-count Complaint [DE 1] alleging, among other

things, fraud in the procurement of a \$10 million insurance policy on the life of Arlene Berger. On November 14, 2011, the Court entered an Order Granting Pruco's Motion for Summary Judgment and Denying Wells Fargo's Motion for Summary Judgment [DE 246] ("Summary Judgment Order").

On January 9, 2012, Wells Fargo filed its Rule 60(b) Motion. The Rule 60(b) Motion seeks relief based on Pruco's SIU Report, which Wells Fargo discovered after the Court entered its Summary Judgment Order. Among other arguments opposing the Rule 60(b) Motion, Pruco contends that the SIU Report is privileged and confidential and is therefore not properly before this Court. See Pruco's Response [DE 259] at 17-18 § III(D)-(E). Because, at the time the Court entered the Summary Judgment Order, there was a Motion to Compel [DE 242] pending before Judge Seltzer addressing this topic, the undersigned referred this matter to Judge Seltzer.

In his detailed Report and Recommendation, Judge Seltzer conducts a thorough analysis of the facts and the law relating to the privilege issue. The Report and Recommendation concludes "that Pruco voluntarily disclosed the SIU Report to the [Florida Department of Financial Services, Division of Insurance Fraud] and that such disclosure substantially increased the likelihood of an adversary obtaining the document." Report & Recommendation at 11. The Report and Recommendation also notes that "Wells Fargo – one of Pruco's adversaries – did, in fact, obtain the SIU Report (through a Public Records request)." Id. Therefore, Judge Seltzer recommends that the Court find that Pruco waived any work product protection that may have attached to the SIU Report, the SIU Report is not confidential, and the SIU Report is properly before the Court for consideration in ruling on Wells Fargo's Rule 60(b) Motion.

Id. Upon careful consideration of the Report and Recommendation and the applicable filings, the undersigned agrees with Judge Seltzer. Therefore, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation [DE 274] filed by Chief United States Magistrate Judge Barry S. Seltzer is **ADOPTED**;
2. The Court holds that Plaintiff Pruco Life Insurance Company waived any work product protection that may have attached to the Special Investigative Unit Report ("SIU Report"), the SIU Report is not confidential, and the SIU Report is properly before the Court for consideration in ruling on Wells Fargo's Motion for Relief from Summary Final Judgment Pursuant to Federal Rule of Civil Procedure 60(b) [DE 253];
3. Pruco's request to strike the SIU Report from the docket, see Response to Rule 60(b) Motion [DE 259] at 19, is **DENIED**;
4. The Court will enter a separate Order on the Motion for Relief from Summary Final Judgment Pursuant to Federal Rule of Civil Procedure 60(b) [DE 253].

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 23rd day of July, 2012.


JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of record via CM/ECF