

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RETREAT LLC, d/ b/ a REGAL VISTA, :
:
:
Plaintiff, :
:
:
v. :
:
:
OLIVIA MOORER, *and All Others*, :
:
:
Defendants. :

CIVIL ACTION NO.
1:18-CV-1028-AT

ORDER

This matter is before the Court on the Magistrate Judge’s Report and Recommendation (“R&R”) [Doc. 3] recommending that this dispossessory action be remanded to the Magistrate Court of DeKalb County.

Under 28 U.S.C. § 636(b)(1), the Court reviews the Magistrate Judge’s R&R for clear error if no objections are filed to the report. 28 U.S.C. § 636(b)(1). If a party files objections, however, the district court must determine de novo any part of the Magistrate Judge’s disposition that is the subject of a proper objection. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b).

Plaintiff filed this dispossessory action against Defendant Moorner in the State Court of DeKalb County. Defendant Moorner asserted in her removal papers that this Court has federal question jurisdiction over this matter because Plaintiff’s dispossessory action violates the Fair Debt Collection Practices Act.


The Magistrate Judge concluded that federal subject matter jurisdiction was lacking because (1) jurisdiction cannot be based on the assertion of a federal defense or counterclaim, and (2) there were no facts alleged in Plaintiff's complaint that would support the existence of diversity jurisdiction. Defendant filed timely objections to the R&R, asserting that the R&R is unconstitutional under the due process clauses of the Fifth and Fourteenth Amendments¹, the Seventh Amendment's right to trial by jury, and the Bill of Rights with respect to a trial before "Tribunal Court."

The Court has reviewed and considered Defendant Moorer's Objections to the R&R on a de novo basis and finds they lack merit. Accordingly, the Court hereby **OVERRULES** Defendant Moorer's Objections and **ADOPTS** the Magistrate Judge's Report and Recommendation as the opinion of this Court. For the reasons stated in the Magistrate Judge's Report and Recommendation, the Court lacks federal subject matter jurisdiction over this matter and the Court **REMANDS** this case to the Magistrate Court of DeKalb County.² There being no further issues before the Court, the Clerk is **DIRECTED** to close the case.

¹ Although Plaintiff actually asserts a violation of the Fifteenth Amendment, it is apparent that Plaintiff intended to object pursuant to the Due Process Clause of the Fourteenth Amendment.

² As this case involves a *pro se* Defendant, the Court provides further guidance. An order remanding the case means that the case will continue to be heard, but in the court where it was originally filed – here, the Magistrate Court of DeKalb County. The case is simply being returned to the Magistrate Court for further proceedings. Any future motions should be filed with that court.

IT IS SO ORDERED this 26th day of April, 2018.



AMY TOTENBERG
UNITED STATES DISTRICT JUDGE