

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**SOUTHERN ILLINOIS STORM
SHELTERS, INC.,**

Plaintiff/Counterclaim Defendant,

v.

No. 13-0297-DRH

4SEMO.COM, INC.,

Defendant/Counterclaimant,

v.

INGOLDSBY EXCAVATING, INC.,

Additional Counterclaim Defendant.

MEMORANDUM and ORDER

HERNDON, District Judge:

Pending before the Court is a Report and Recommendation (“the Report”) submitted by Magistrate Judge Williams (Doc. 147). The Report recommends that the Court take judicial notice of the parties’ positions as to the motion for summary judgment; recommends that the Court dismiss with prejudice and without conditions Counts 3 through 7 pursuant to Southern Illinois Storm Shelters, Inc.’s

motion to dismiss pursuant to Federal Rule 41(a)(2); and that the Court defer ruling on the motion to dismiss as to Counts 1 and 2 until the Court addresses 4SEMO's motion for summary judgment. 4SEMO filed a partial objection to the Report (Doc. 148). 4SEMO objects to the portion of the Report regarding the narrowing of the issues for the summary judgment motion due to the failure of the Magistrate to actually provide a recommendation with respect to the question of whether or not the District Court should grant summary judgment against plaintiff on Counts I and II of its complaint solely on the grounds conceded by plaintiff, or whether the Court should undertake the analysis and review all grounds asserted by 4SEMO and grant summary judgment on all grounds as 4SEMO requests.

Since timely objections have been filed, this Court must undertake *de novo* review of the Report. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b); Southern District of Illinois Local Rule 73.1(b); *Govas v. Chalmers*, 965 F.2d 298, 301 (7th Cir. 1992). The Court may “accept, reject or modify the recommended decision.” *Willis v. Caterpillar Inc.*, 199 F.3d 902, 904 (7th Cir. 1999). In making this determination, the Court must look at all the evidence contained in the record and give fresh consideration to those issues to which specific objection has been made. *Id.* After reviewing this matter, the Court agrees with Magistrate Judge Williams.

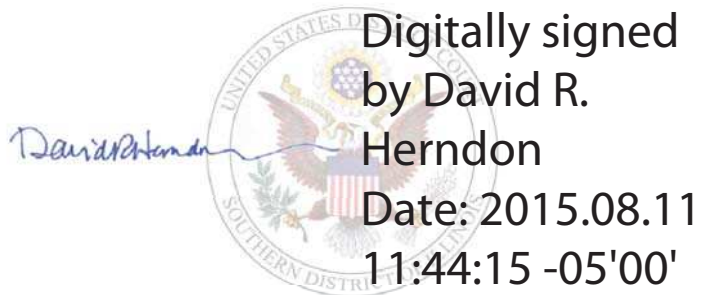
Accordingly, the Court **ADOPTS** in its entirety the Report (Doc. 147). The Court **GRANTS in part** and **DEFERS in part** Southern Illinois Storm Shelters, Inc.'s motion to dismiss pursuant to Federal Rule 41(a)(2) (Doc. 128). The Court

DISMISSES with prejudice and without conditions Counts 3 through 7 of the Southern Illinois Storm Shelters, Inc.'s amended complaint. The Court **DIRECTS** the Clerk of the Court to enter judgment reflecting the same at the close of the case. Further, the Court agrees with the Report that the Court should defer ruling on the motion to dismiss as to Counts 1 and 2 until after the Court issues its ruling on the pending motion for summary judgment. Therefore, the Court **DEFERS** ruling on the motion to dismiss as to Counts 1 and 2. The Court will dispose of the summary judgment motion in a separate Order.

IT IS SO ORDERED.

Signed this 11th day of August, 2015.

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by David R.
Herndon
Date: 2015.08.11
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United States District Court