

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

JENS AUGUST PEDERSEN, III,)	
)	
Plaintiff,)	
vs.)	
)	
BEAZER HOMES LIMITED LIABILITY)	
PARTNERSHIP,)	
)	
Defendant.)	1:07-cv-1583-WTL-TAB
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BEAZER HOMES LIMITED LIABILITY)	
PARTNERSHIP,)	
)	
Third Party Plaintiff,)	
vs.)	
)	
FOUNDATIONS BY THOMPSON, INC.,)	
HENRY Y. DEIN, and)	
U. S. DEPARTMENT OF HOUSING &)	
URBAN DEVELOPMENT,)	
)	
Third Party Defendants.)	
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REPORT AND RECOMMENDATION

This matter came before the court for a conference on October 29, 2008. The defendant and third-party defendants participated by counsel by telephone. The plaintiff's former counsel Thomas E. Atz and Nicholas C. Huang appeared in person. The plaintiff was given notice of the conference and arrangements had been made for him to appear by telephone, but his custodian at the Shelby County Jail notified the court that due to internal issues at the Jail the plaintiff would not be available to participate in the conference. The purpose of the conference was to discuss the *motion to pay settlement proceeds into the court and for order of dismissal* filed by third-party defendant Foundation by Thompson (dkt 47).

On August 27, 2008, the parties appeared for a settlement conference. The court had granted the motion to withdraw filed by former counsel prior to the conference and therefore former counsel did not attend the conference. The conference concluded with a signed handwritten settlement agreement by which the defendant and third-party defendants would pay a total of \$18,000 to the plaintiff. During the conference, the plaintiff failed to account for the attorney lien asserted by his former counsel in the amount of \$6,994.40. See Notice of Attorney's Lien (dkt 29). The plaintiff contends in his letter dated October 27, 2008, that he was not aware of the attorney fee lien. The clerk **shall file and docket** this letter.

The plaintiff now asserts two issues. He first disputes the amount sought by former counsel. Former counsel presented documentation at the October 29, 2008, conference showing that the fees sought by former counsel were properly incurred and that the plaintiff was on notice of such fees. Such documentation is attached to this Report and Recommendation as Exhibits A and B. The court finds that former counsel are entitled to payment of \$6,994.40 consistent with the lien asserted in this action.

Second, the plaintiff disputes certain provisions in the draft settlement agreement. The court agrees that the handwritten agreement and the typed draft settlement agreement differ in some respects. Under these circumstances, the terms contained in the handwritten agreement will govern. A copy of the handwritten agreement and a typed (simply for the sake of legibility) version of that agreement are attached to this Report and Recommendation as Exhibits C and D, respectively.


Consistent with the foregoing, the *motion to pay settlement proceeds into the court and for order of dismissal* (dkt 47) is **granted**. Accordingly, the defendant/third-party defendants shall pay the \$18,000 by certified check made payable to Clerk, U.S. District Court. After the time for objections has expired and if the District Judge has adopted this Report and Recommendation, the Clerk shall disburse the funds in the manner ordered by the District Judge. The Magistrate Judge recommends that the funds be distributed by paying \$6,994.40 to Nicholas C. Huang and Thomas E. Atz and the balance made payable to the plaintiff Jens August Pedersen, III. The undersigned also recommends that the action be dismissed.

Any objections to the Magistrate Judge's Report and Recommendation shall be filed with the Clerk in accordance with 28 U.S.C. § 636(b)(1), and failure to file timely objections within the ten days after service shall constitute a waiver of subsequent review absent a showing of good cause for such failure.

This notice shall be sent to the plaintiff at his "primary" address at 8415 Sunset Lane, Indianapolis, IN 46260.

IT IS SO ORDERED.

Date: 11/06/2008



Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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