

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FLATHEAD-MICHIGAN I, LLC,

Plaintiff,

v.

Case Number 09-14043
Honorable David M. Lawson

THE PENNINSULA DEVELOPMENT L.L.C.,
MARCUS W. YONO, FRANCIS F. YONO,
THE PENINSULA HOMEOWNERS
ASSOCIATION, JOHN SCHAEFER'S
BOBCAT & CEMENT SERVICES, INC.,
M.C. GUTHERIE LUMBER CO. GFCOLD,
LLC, JOHN A. LATESSA, JR.,

Defendants,

and

M.C. GUTHERIE LUMBER CO.

Cross-Plaintiff,

v.

THE PENINSULA HOMEOWNERS
ASSOCIATION, BIG SHOOTER, INC.,
JOHN SCHAEFER'S BOBCAT & CEMENT
SERVICES, INC., M.C. GUTHERIE
LUMBER CO., PLUMBING CONCEPTS,
LLC, GFCOLD, LLC, THE PENNINSULA
DEVELOPMENT L.L.C., MARCUS W.
YONO, FRANCIS F. YONO, FLATHEAD-
MICHIGAN I, LLC,

Cross-Defendants

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**ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING MOTION FOR
DEFAULT JUDGMENT, AND SETTING ASIDE CLERK'S ENTRY OF DEFAULT**

Presently before the Court is the report issued on February 18, 2011 by Magistrate Judge R. Steven Whalen pursuant to 28 U.S.C. § 636(b). Judge Whalen recommended denying the plaintiff's motion for default judgment as to defendant John Schaefer's Bobcat & Cement Services, Inc., and setting aside the Clerk's entry of default as to this defendant. Judge Whalen concluded that the defendant had demonstrated good cause to defeat the plaintiff's motion under Fed. R. Civ. P. 55(b)(2) and to set aside the default under Fed. R. Civ. P. 55(c). In addition, Judge Whalen found no evidence that the plaintiff would be prejudiced by a denial of its motion or by setting aside the Clerk's entry of default, that the defendant had presented some possibility of success on the merits, and that defense counsel was guilty of excusable neglect at worst.

The magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report. As of the date of this order, no objections have been filed. A party's failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the Magistrate Judge.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation [dkt. # 175] is **ADOPTED**.

It is further **ORDERED** that the plaintiff's motion for default judgment as to defendant John Schaefer's Bobcat & Cement Services, Inc. [dkt. #132] is **DENIED**.

It is further **ORDERED** that the Clerk's entry of default against defendant John Schaefer's Bobcat & Cement Services, Inc. [dkt. #130] is **SET ASIDE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: March 10, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 10, 2011.

s/Deborah R. Tofil
DEBORAH R. TOFIL