

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Edgar J. Dietrich,

Plaintiff,

v.

Case No. 16-11071

Basil T. Simon,

Sean F. Cox

United States District Court Judge

Defendant.

ORDER

Acting *pro se*, Plaintiff Edgar J. Dietrich filed this action against Defendant Basil T. Simon (“Simon”). This Court declined to exercise supplemental jurisdiction over any state-law claims in Plaintiff’s complaint and dismissed those claims without prejudice. (Docket Entry No. 6). That left one federal claim remaining in this action, Count V of Plaintiff’s Complaint.

Thereafter, Defendant filed a Motion to Dismiss (Docket Entry No. 10), which this Court referred to Magistrate Judge David Grand for issuance of a report and recommendation.

On September 14, 2016, Magistrate Judge Grand issued a Report and Recommendation (“the R&R”) (Docket Entry No. 19) wherein he recommends that the Court grant Defendant’s Motion and dismiss Dietrich’s remaining claim in this action. Specifically, Magistrate Judge Grand agreed with Simon that Dietrich’s remaining claim must be dismissed for lack of subject matter jurisdiction, pursuant to the *Barton* Doctrine, because Dietrich did not seek leave from either the Wayne County Circuit Court or the United States Bankruptcy Court to sue Simon in his capacity as receiver or trustee.

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a

matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R. “The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection has been made.” *Id.*

Dietrich filed Objections to the R&R, along with a certificate of service indicating that the Objections were filed and served on October 4, 2016. Accordingly, Dietrich’s Objections are untimely.

Moreover, even if the Objections had been timely filed, the Court finds that they lack merit. In objecting to the R&R, Dietrich continues to argue that the *Barton* doctrine does not bar his claims because 11 U.S.C. § 959(a) controls. In the R&R, the magistrate judge considered and rejected that argument and this Court concurs with the magistrate judge’s analysis.

Accordingly, the Court OVERRULES Dietrich’s Objections and hereby ADOPTS the September 14, 2016 R&R.

IT IS FURTHER ORDERED that Defendant’s Motion to Dismiss is GRANTED and Plaintiff’s federal claim (Count V) is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: October 18, 2016

S/ Sean F. Cox
Sean F. Cox
U. S. District Judge

I hereby certify that on October 18, 2016, the foregoing document was served on counsel of

record via electronic means and upon Edgar J. Dietrich via First Class mail at the address below:

Edgar J. Dietrich
15832 Windmill Pointe
Grosse Pointe Park, MI 48230

S/ J. McCoy
Case Manager