

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF THE LOCAL 138 PENSION  
FUND,

Plaintiffs,

**ORDER**  
09-CV-3041 (RRM)(RML)

- against -

TAX TRUCKING CO., *et al.*,

Defendants.

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ROSLYNN R. MAUSKOPF, United States District Judge.

Plaintiffs, the Trustees of the Local 138 Pension Fund, commenced this action in July of 2009 against three defendants: Maria Torres, 1341 Garrison Realty Corp., and Tax Trucking Co. Plaintiffs seek to recover unpaid withdrawal liability owed by defendant Tax Trucking under Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.* On November 17, 2011, plaintiffs and Torres each moved under Federal Rule of Civil Procedure 56 for summary judgment as against the other. By order entered November 18, 2011, this Court referred the motions to the assigned Magistrate Judge, the Honorable Robert M. Levy, for a Report and Recommendation. On January 26, 2012, Judge Levy heard oral argument on the motions. On April 17, 2012, he issued a Report and Recommendation (the “R&R”) (Doc. No. 36) recommending that both motions be denied. (R&R at 11.) Judge Levy reminded the parties that any objection to the R&R was due within 14 days of its service, under Rule 72 of the Federal Rules of Civil Procedure. (*Id.*) No party has filed any objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, the Court has reviewed Magistrate Judge Levy’s thorough and well-reasoned R&R for clear error and, finding

none, concurs with the R&R in its entirety. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007). Accordingly, the R&R is adopted in its entirety.

**CONCLUSION**

Plaintiffs' motion for summary judgment (Doc. No. 31) is DENIED, and Torres motion for summary judgment (Doc. Nos. 32, 34) is DENIED.

By June 8, 2012, the parties shall submit a Joint Status Report advising the Court as to how the parties intend to proceed at this juncture, with a proposed schedule for all remaining pretrial matters, including the filing of a Joint Pre-Trial Order. This matter is recommitted to Magistrate Judge Levy for all pre-trial matters.

SO ORDERED.

Dated: Brooklyn, New York  
May 23, 2012

*Roslynn R. Mauskopf*

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ROSLYNN R. MAUSKOPF  
United States District Judge