

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERT SOLOMON, JANE B. SOLOMON, :
and FIRST KEYSTONE CONSULTANTS, :
INC., :

Plaintiffs, :

-against- :

SIEMENS INDUSTRY, INC., :
SCHLESINGER-SIEMENS LLC, SIEMENS :
AG, FRANK KRUTEMEIER, and MANATT, :
PHELPS & PHILLIPS, LLP, :

Defendants. :
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SUMMARY ORDER ADOPTING
REPORT AND RECOMMENDATION
11-CV-1321 (DLI)(SMG)

DORA L. IRIZARRY, U.S. District Judge:

Plaintiffs filed this action against defendants asserting various claims arising from a failed business venture involving plaintiffs, defendants, and other non-parties. Defendants Manatt, Phelps & Phillips, LLP (“Manatt”) and Siemens Industry, Inc. (“SII”) moved for summary judgment (*see* Manatt Motion for Summary Judgment, Dkt. Entry No. 119; SII Motion for Summary Judgment, Dkt. Entry No. 118), which plaintiffs opposed (*see* Plaintiffs’ Opposition, Dkt. Entry Nos. 143, 144). On July 11, 2012, the Court referred these motions to the Honorable Steven M. Gold, Chief United States Magistrate Judge for the Eastern District of New York, to prepare a Report and Recommendation. On June 21, 2013, Chief Magistrate Judge Gold issued his Report and Recommendation (“R&R”), recommending that the Court grant the motions for summary judgment in favor of defendants Manatt and SII and recommending dismissal of the action. (*See* R&R, Dkt. Entry No. 193.) Additionally, the magistrate judge denied Plaintiffs’ motion to unseal certain documents filed in connection with these motions. (*See* R&R at 33-36.) Plaintiffs filed objections to the R&R (*see* Plaintiff’s Objections (“Pls.’

Obj.”), Dkt. Entry No. 197), which defendants Manatt and SII jointly opposed (*see* Manatt & SII Opposition to Pls.’ Obj. (“Defs.’ Opp’n to Obj.”), Dkt. Entry No. 216).

STANDARD OF REVIEW

When a party objects to a R & R, a district judge must make a *de novo* determination with respect to those portions of the R & R to which the party objects. *See* FED. R. CIV. P. 72(b); *United States v. Male Juvenile*, 121 F. 3d 34, 38 (2d Cir. 1997). If, however, a party makes conclusory or general objections, or attempts to relitigate the party’s original arguments, the court will review the R & R for clear error. *Robinson v. Superintendent, Green Haven Correctional Facility*, 2012 WL 123263, at *1 (E.D.N.Y. Jan. 17, 2012) (quoting *Walker v. Vaughan*, 216 F. Supp. 2d 290, 292 (S.D.N.Y. 2002)). The district court may then “accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b); *see also* 28 U.S.C. § 636(b)(1).

DISCUSSION

As a preliminary matter, plaintiffs do not object to the portions of the R&R that recommend dismissal of the: (1) second, third, and fifth causes of action as time-barred (*see* R&R at 13-15); (2) eighth through eleventh causes of action, premised on Manatt’s aiding and abetting SII (*see* R&R at 29-30); (3) twelfth and fourteenth causes of action seeking punitive damages and alleging a conspiracy among the defendants (*see* R&R at 30-31); and (4) thirteenth cause of action for intentional infliction of emotional distress (*see* R&R at 31-33). The Court has reviewed the submissions in connection with this motion and hereby adopts the unopposed recommendations of the R&R as to these claims. Accordingly, the second, third, fifth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth causes of action are dismissed.

Plaintiffs object to the magistrate judge's recommendation that the first, fourth, sixth, and seventh causes of action which assert tax loss claims, be dismissed. (*See* R&R at 15-29; Pls.' Obj. at 3-28.) It is apparent that plaintiffs seek to relitigate many of the issues already briefed in their opposition to summary judgment. Nonetheless, the Court has carefully considered each of plaintiffs' objections. Upon review of the characteristically thorough, thoughtful, and well-reasoned R&R of Chief Magistrate Judge Gold, the Court hereby adopts the R&R in its entirety. Accordingly, the Court dismisses the first, fourth, sixth, and seventh causes of action.

Plaintiffs also challenge the magistrate judge's denial of their motion to unseal the documents exchanged during discovery and relied upon by the parties in connection with the briefing for the motion for summary judgment. (*See* Pls.' Obj. at 29-33.) As a preliminary matter, the objections to Magistrate Judge Gold's final order were untimely as they were not properly filed or served on defendants within the deadlines for such objections. *See* Fed. R. Civ. P. 72(a) ("A party may not assign as error a defect in the order not timely objected to."). Moreover, the objections lack merit. Again, the Court incorporates by reference Chief Magistrate Judge Gold's thoughtful discussion of the issues underlying the final order denying plaintiffs' motion, which this Court incorporates in full. Accordingly, plaintiffs' request to unseal the documents is denied.

CONCLUSION

Upon due consideration, the R&R is adopted in its entirety. The complaint is dismissed as to all defendants. Furthermore, Magistrate Judge Gold's order denying plaintiffs' motion to unseal will remain in force notwithstanding the dismissal of this action.

SO ORDERED.

Dated: Brooklyn, New York
March 26, 2014

/s/

DORA L. IRIZARRY
United States District Judge