

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
HOIKAM GARMENT CO., LTD,

Plaintiff,

-against-

RAND INTERNATIONAL ACQUISITION
LLC,

Defendant.
-----X

**MEMORANDUM OF
DECISION AND ORDER**
09-CV-47 (ADS)(WDW)

APPEARANCES:

Wellman & Warren LLP

Attorneys for the plaintiff

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Laguna Hills, CA 92653

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Cathy Zotti, Esq.

Scott Wellman, Esq., Of Counsel

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By: Howard Rosenberg, Esq.

SPATT, District Judge.

Presently before the Court is a Report and Recommendation by United States Magistrate Judge William D. Wall dated July 26, 2011 ("the Report"), recommending that the Court dismiss this case pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 41(b) based on the plaintiff's failure to comply with the court's orders of March 25, 2010 and May 18, 2011. For the reasons set forth below, the Court adopts the Report in its entirety.

On October 7, 2008 the Hoikam Garment Co., Ltd (“Hoikam”) commenced this action against Rand International Acquisition LLC (“Rand”) in the Southern District of New York. Subsequently, on January 5, 2009, the case was transferred to the Eastern District of New York. On February 11, 2009, Rand answered the complaint and asserted three counterclaims against Hoikam.

On March 25, 2010, counsel for Rand wrote to Judge Wall in advance of a pretrial conference in order to advise the court that an involuntary bankruptcy petition had been filed against Rand and therefore the above-captioned case was subject to an automatic stay. As a result, Judge Wall adjourned the conference and issued an order dated March 25, 2010 directing the parties to file a status letter by October 1, 2010.

Neither party submitted a status a letter on or after October 1, 2010. Thus, on May 18, 2011, Judge Wall entered an order for a written status report stating:

Counsel for plaintiff shall inform the court in writing, within ten days of the date of this order, of the present status of this case. . . . Failure to respond could result in a report and recommendation that the case be dismissed.

(Docket Entry 26.) Despite being informed of the potential consequences, the plaintiff did not respond to the May 18, 2011 order. Accordingly, based on the plaintiff’s failure to comply with the March 25, 2010 order and the May 18, 2011 order, Judge Wall issued the Report on July 26, 2011 recommending that this Court dismiss the case pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. §636(b)(1)(C). “To accept the report and recommendation of a magistrate, to

which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Wall’s Report and finds it to be persuasive and without any legal or factual errors. There being no objection to Judge Wall’s Report, it is hereby

ORDERED, that Judge Wall’s Report and Recommendation is adopted in its entirety and Hoikam’s complaint is dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, and it is further

ORDERED, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
September 9, 2011

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge