

**FILED
CLERK**

1:07 pm, Jun 04, 2019

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

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

-----X
TRUSTEES OF THE UNITED PLANT AND
PRODUCTION WORKERS LOCAL 175
BENEFITS FUND,

Plaintiffs,

-against-

CAPRI LANDSCAPING INC., SALVATORE
COLUCCIO, and JOHN DOE COMPANY

Defendants.
-----X

**MEMORANDUM OF
DECISION & ORDER**
2:16-cv-5527 (ADS) (ARL)

APPEARANCES:

Palmieri Castiglione & Associates, PC

Attorneys for the Plaintiffs

250 Mineola Boulevard 2nd Floor

Mineola, NY 11501

By: Vito A. Palmieri, Esq.,

SPATT, District Judge:

On October 4, 2016, the Plaintiffs filed a complaint seeking a judgment requiring the Defendants to pay delinquent contributions, interest, liquidated damages, costs and attorneys' fees, pursuant to § 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), based on the Defendants' alleged failure to pay fringe benefit contributions, as required by a collective bargaining agreement and Trust Agreements and statutory obligations imposed on the Defendants by §§ 502 and 515 of ERISA, 29 U.S.C. §§ 1132 and 1145.

On February 14, 2017, due to case inactivity, the Court notified the Plaintiffs that the matter would be dismissed for failure to prosecute in the event the Plaintiffs did not respond within ten days. The Plaintiffs responded that the parties were engaged in settlement negotiations.

On June 9, 2017, the Court again warned the Plaintiffs that the matter would be dismissed for failure to prosecute because there had been no activity on the matter. The Plaintiffs again responded, this time alerting the Court that settlement discussions had reached an impasse and requesting an initial conference. The Court ordered the Defendants to answer or in the alternative for the Plaintiffs to move for default judgment.

On July 27, 2017, the Plaintiffs moved for default judgment.

On March 22, 2018, the Court denied the motion, with leave to renew, because the Defendants had not been served with the motion.

On October 9, 2018, United States Magistrate Judge Arlene R. Lindsay issued a Report and Recommendation (“R&R”) that the Court dismiss the case with prejudice pursuant to Federal Rule of Civil Procedure 41(b), stating:

Here, Plaintiff was cautioned on numerous occasions that failure to respond to the Court’s Order, would run the risk of dismissal of the matter. Nonetheless, Plaintiff has continued to fail to follow the Court’s Orders. Under these circumstances, the matter cannot proceed. Moreover, Defendants would be substantially prejudiced should this case remain open, to say nothing of the need to alleviate court congestion where the Plaintiff has been nonresponsive.

R & R at 2. Judge Lindsay served the R&R on the Plaintiffs electronically.

It has been more than fourteen days since the service of the R&R, the Plaintiffs have not filed objections, and there has been no other activity in the case.

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 the R&R and finds it to be persuasive and without any legal or factual errors. There being no objections, the Court adopts the R&R in its entirety. Pursuant to Rule 41(b), the Court dismisses this case with prejudice due to the Plaintiffs’ failure to prosecute. The Clerk of the Court is respectfully directed to enter judgment and close the case.

SO ORDERED.

Dated: Central Islip, New York

June 4, 2019

/s/ Arthur D. Spatt

ARTHUR D. SPATT

United States District Judge