

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DANILO VILLA,

Plaintiff,

v.

TIANO'S CONSTRUCTION CORP.,
ET AL.,

Defendants.

11 Civ. 3026 (DAB) (HBP)
ADOPTION OF REPORT
AND RECOMMENDATION

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DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the May 21, 2012 Report and Recommendation (Docket Number 49) of United States Magistrate Judge Henry B. Pitman (the "Report"). Judge Pitman's Report recommends that this action be dismissed against Defendants Mitrani Plasterers Co., Inc., Tiano's Construction Mitrani Cesare General Partnership and GBE Alasia Contracting Corp. on the ground that Plaintiff has not completed service of the summons and complaint within the time permitted by Fed. R. Civ. P. 4(m). (Report at 3.)

"Within fourteen days after being served with a copy [of a Magistrate Judge's Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of the report to which no timely objection has been made, so long as

there is no clear error on the face of the record. Wilds v. United Parcel Serv., Inc., 262 F.Supp.2d 163, 169 (S.D.N.Y. 2003). “[F]ailure to object timely to a magistrate’s report operates as a waiver of any further judicial review of the magistrate’s decision.” Caidor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008) (quoting Small v. Sec. of HHS, 892 F.2d 15, 16 (2d Cir. 1989)). This rule applies to pro se parties so long as the magistrate’s report “explicitly states that failure to object to the report within [fourteen (14)] days will preclude appellate review...” Small, 892 F.2d at 16.

Despite being advised of the procedure for filing objections in Judge Pitman’s Report, and warned that failure to file objections would waive objections and preclude appellate review, (Report at 3-4), Plaintiff has filed no timely objections to the Report.¹ Nor has any other Party filed objections to the Report.

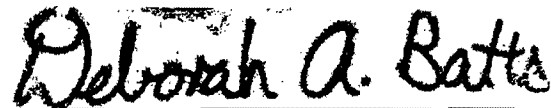
¹ On July 18, 2012, Plaintiff filed a document entitled “Notice in Opposition to Defendants’ Motion for Summary Judgment” (Docket Number 55.) Having reviewed this Document, the Court construes it as an Objection to Magistrate Judge Pitman’s Report and Recommendation dated July 6, 2012 (Docket Number 54). In the July 6, 2012 Report, Judge Pitman recommends that summary judgment be granted and the action be dismissed as to Defendants Lumbermens, St. Paul, Pythagoras and Safeco. Plaintiff’s July 18, 2012 filing does not mention Defendants Mitrani Plasterers Co., Inc., Tiano’s Construction Mitrani Cesare General Partnership and GBE Alasia Contracting Corp. or the issue of service of the summons and complaint—the subject of the instant Report and Recommendation—and thus cannot fairly be said to constitute an Objection to that Report.

Having reviewed the Report, and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby ORDERED AND ADJUDGED that the Report and Recommendation of United States Magistrate Judge Henry B. Pitman, dated June 22, 2012, be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety. This action is hereby DISMISSED as to Defendants Mitrani Plasterers Co., Inc., Tiano's Construction Mitrani Cesare General Partnership and GBE Alasia Contracting Corp.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: New York, New York
September 6, 2012

A handwritten signature in black ink that reads "Deborah A. Batts". The signature is written in a cursive style and is underlined.

Deborah A. Batts
United States District Judge