

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

---

JOHN ELDER, et al.,

Plaintiffs,

v.

ORDER  
08-CV-733

DAVID J. GOLD, P.C.,

Defendant.

---

---

This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1). On November 11, 2008, plaintiff filed a motion to dismiss the counterclaim. On December 5, 2008, defendant filed a motion to dismiss the complaint. On August 18, 2009, Magistrate Judge Scott filed a Report and Recommendation, recommending that the motion to dismiss the counterclaims be granted and the motion to dismiss the complaint be granted to the extent the plaintiffs asserted claims under § 1692e(2)(A) and 1692e(5); and that the motion be otherwise denied.

Defendant filed objections to the Report and Recommendation on August 28, 2009 and plaintiff filed a response thereto. Oral argument on the objections was held on September 29, 2009. The Court notes that defendant objected only to Magistrate Judge Scott's nondispositive finding concerning attorney fees. (See Dkt. No. 21 at 11.)

Pursuant to 28 U.S.C. § 636(b)(1)(A), the district court "may reconsider any pretrial matter under this [section] where it has been shown that the magistrate's order is clearly erroneous or contrary to law." The Court has reviewed defendant's objections and Magistrate Judge Scott's Report and Recommendation. Upon such review and after hearing argument from counsel, the Court finds that the portion of Magistrate Judge Scott's Report and Recommendation to which defendant has objected, is neither clearly erroneous nor contrary to law.

The Court has carefully reviewed the remainder of the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, the motion to dismiss the counterclaims is granted and the motion to dismiss the complaint is granted to the extent the plaintiffs asserted claims under § 1692e(2)(A) and 1692e(5); and that the motion is otherwise denied.

The case is referred back to Magistrate Judge Scott for further proceedings.

SO ORDERED.

*s/ Richard J. Arcara*

\_\_\_\_\_  
HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: October 19, 2009