

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Lazaro Montero Collado,)	
)	C/A No. 9:10-1870-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
Juanita Cancel,)	
)	
Defendant.)	
_____)	

Plaintiff Lazaro Montero Collado is a federal inmate in custody of the Federal Bureau of Prisons who currently is housed at FCI-Estill in Estill, South Carolina. Plaintiff brings this civil action for breach of contract against Defendant Juanita Cancel, alleging, among other things, that Defendant failed to pay Plaintiff a monthly fee of \$1,000 for the privilege of running Plaintiff's restaurant, "Hispanic Take Out," located in Rochester, New York.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. On September 3, 2010, the Magistrate Judge filed a Report and Recommendation in which he noted that there is diversity between the parties, Plaintiff being a citizen of the Dominican Republic illegally in the United States, and Defendant being a resident of the State of New York, so that it would appear the court has subject matter jurisdiction. However, the Magistrate Judge determined that the court lacks personal jurisdiction over Defendant. Accordingly, the Magistrate Judge recommended that the action be transferred to the United States District Court for the Western District of New York for forum conveniens purposes.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo

determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. Plaintiff’s complaint is transferred to the United States District Court for the Western District of New York.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

October 13, 2010.