

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELIZABETH OCASIO and DANNY OCASIO,

Plaintiffs,

Case #17-CV-620-FPG

v.

DECISION AND ORDER

AVAZZHON N. AZAMZHANOVICH, VELOCITY
TRANS. INC. and GENERAL LEASE, LLC,

Defendants.

On July 6, 2017, Defendants Avazzhon N. Azamzhanovich, Velocity Trans. Inc., and General Lease, LLC, removed this case from the Supreme Court of the State of New York, County of Erie, pursuant to 28 U.S.C. § 1332(a). *See* ECF No. 1. Defendants answered the Complaint on October 17, 2017. ECF No. 2. The Court then ordered Defendants to show cause why the case should not be remanded to state court for lack of subject matter jurisdiction regarding the amount in controversy. ECF No. 4. Defendants responded to the Order and the Court found they had established the amount in controversy. ECF Nos. 5-6. The Court then referred the case to United States Magistrate Judge Jeremiah J. McCarthy for “all pretrial matters excluding dispositive motions.” ECF No. 7.

On January 10, 2018, Judge McCarthy ordered Defendants to show cause why the case should not be remanded to state court for lack of subject matter jurisdiction regarding diversity of citizenship. ECF No. 13. Defendants responded to the Order. ECF Nos. 15-16. After reviewing Defendants’ materials, Judge McCarthy issued a Report and Recommendation (“R&R”) on February 15, 2018, finding that Defendants had not established diversity of citizenship between the parties and recommending that this Court remand the action to the Supreme Court for the State

of New York, Erie County, for further proceedings. ECF No. 18 at 5. To date, Defendants have not filed objections or responded to Judge McCarthy's R&R.

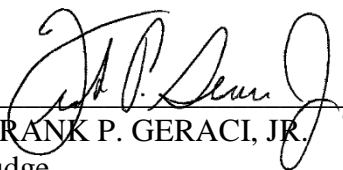
Generally, the Court reviews portions of the R&R to which a party makes specific objections *de novo*. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C). When a party does not object to the R&R, however, the Court will review the R&R for clear error. *EEOC v. AZ Metro Distributors, LLC*, 272 F. Supp. 3d 336, 339 (E.D.N.Y. 2017) (quoting *Dafeng Hengwei Textile Co. v. Aceco Indus. & Commercial Corp.*, 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014)). "When performing such a 'clear error' review, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Boice v. M+W U.S., Inc.*, 130 F. Supp. 3d 677, 686 (N.D.N.Y. 2015) (internal quotation marks omitted).

After conducting the appropriate review, the 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).

The Court has reviewed Judge McCarthy's R&R and finds no clear error. Accordingly, the Court adopts Judge McCarthy's R&R in full and this action is hereby REMANDED to the Supreme Court of the State of New York, County of Erie. The Clerk of Court is directed to transmit this Decision and Order to the Clerk of the Supreme Court of the State of New York, County of Erie, and close this case.

IT IS SO ORDERED.

Dated: April 2, 2018
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court