

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



KHALID M. KHAN,

Plaintiff,

v.

18-CV-561-JLS-HBS

LANINVER USA, INC.,

Defendant.

DECISION AND ORDER

Plaintiff Khalid M. Khan commenced this action on May 17, 2018. Dkt. 1. On July 17, 2018, this Court¹ referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 11. Plaintiff filed an amended complaint on July 26, 2019, alleging breach of contract, breach of fiduciary duty, and contractual indemnification. Dkt. 29.

On September 16, 2019, Defendant moved to dismiss (Dkt. 33); on October 18, 2019, Plaintiff responded (Dkt. 39); and on November 4, 2019, Defendant replied (Dkt. 41). On January 9, 2020, Judge Scott issued a Report and Recommendation (“R&R”) recommending that Defendant’s motion be granted in part. Dkt. 51.

On March 6, 2020, Plaintiff objected to the R&R. Dkt. 59. Plaintiff argued that Judge Scott erred by overlooking Plaintiff’s implied covenant of good faith and

¹ Judge Vilardo was originally assigned to this case and made the referral to Magistrate Judge Scott. On February 18, 2020, this case was reassigned to the undersigned. Dkt. 56.

fair dealing claim, suggesting that Plaintiff's implied covenant claim needed to be stated as a stand-alone breach of contract claim, dismissing the portion of Plaintiff's first cause of action that stated a claim for breach of Section 7.2(b) of the parties' Purchase Agreement, and dismissing Plaintiff's third cause of action for contractual indemnification. *See, e.g., id.* at 2. Defendant replied on March 13, 2020. *See* Dkt. 60; *see also* Dkt. 61 (refiling on March 17, 2020, at the request of the Clerk's Office).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

This Court has carefully reviewed the thorough R&R, the record in this case, the objection and response, and the materials submitted by the parties. Based on that *de novo* review, the Court accepts and adopts Judge Scott's recommendation to grant Defendant's motion to dismiss, in part, to dismiss Counts One and Three of the amended complaint and to deny Defendant's motion with respect to Count Two of the amended complaint. The Court's dismissal, however, is without prejudice. Plaintiff is granted leave to amend to address the deficiencies noted by Judge Scott. *See* Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires.").


CONCLUSION

For the reasons stated above and in the Report and Recommendation, the Defendant's motion to dismiss (Dkt. 33) is GRANTED in part. Counts One and Three of the amended complaint (Dkt. 29) are dismissed without prejudice. Plaintiff's second amended complaint is due July 28, 2020. Defendant is directed to answer or otherwise respond to the second amended complaint by August 11, 2020. If no second amended complaint is timely filed, then Counts One and Three of the amended complaint will be dismissed with prejudice.

The case is referred back to Judge Scott for further proceedings consistent with the referral order of July 17, 2018. Dkt. 11.

SO ORDERED.

Dated: July 14, 2020
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE