Curto v. Erie County Water Authority, et al Doc. 81

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PATRICIA J. CURTO,

Plaintiff,

v. 18-CV-695 (JLS)

ERIE COUNTY WATER AUTHORITY,

Defendant.

DECISION AND ORDER

On May 24, 2018, *pro se* Plaintiff Patricia J. Curto commenced this action in New York State Supreme Court, Erie County, under the United States Constitution and various federal and state statutes, including 42 U.S.C. § 1983. Dkt. 1-2. Defendants removed the case to this Court on June 19, 2018. *See generally* Dkt. 1. On October 3, 2019, this Court referred the case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B).[1]

This Court previously has reviewed and accepted two Reports and Recommendations ("R&Rs") in this case.[2] *See* Dkts. 23, 47. The most recent of these R&Rs, by Judge Feldman, recommended dismissal of all the claims against

[1] Judge Vilardo, to whom this case was originally assigned, made the initial referral to Magistrate Judge Scott. *See* Dkt. 19. The case was subsequently reassigned to Judge Sinatra (Dkt. 26); the pending motion to dismiss was referred to Magistrate Judge Feldman (Dkt. 45); and the case referral was reassigned to Magistrate Judge McCarthy (Dkt. 46).

[2] This Court assumes the parties' familiarity with the details of this case, outlined in the R&Rs and decisions.

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Defendant Jann, and dismissal of all but three claims against Defendant ECWA. *See* Dkt. 47, at 37.

Following this Court's Decision and Order (Dkt. 58) accepting Judge Feldman's R&R, Defendant ECWA filed an answer on July 22, 2021. Dkt. 60. On August 13, 2021, Plaintiff Curto filed a motion to strike ECWA's answer pursuant to Fed. R. Civ. P. 12(f). Dkt. 62. ECWA responded on August 30, 2021. Dkt. 66. Plaintiff replied on September 9, 2021. Dkt. 67.

On September 29, 2021, Judge McCarthy filed an R&R recommending denial of the motion to strike—but requiring Defendant ECWA to amend a portion of the answer to state more clearly whether ECWA admits, denies, or lacks sufficient information to form a belief as to the truth of the allegation. Dkt. 70, at 6, 11.

Plaintiff Curto filed timely objections to the R&R on October 14, 2021. Dkt. 72. Defendant ECWA responded on October 29, 2021. Dkt. 75. Plaintiff Curto replied on November 5, 2021. Dkt. 78.

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 a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

This Court has carefully reviewed Judge McCarthy's R&R, the objections and responses, and the relevant record in this case. Based on a *de novo* review,[3] the Court accepts Judge McCarthy's recommendation to deny the motion to strike. Defendant ECWA is required to amend the answer consistent with the R&R no later than December 22, 2021.

CONCLUSION

For the reasons stated above and in Judge McCarthy's R&R, Plaintiff's motion to strike (Dkt. 62) is DENIED. Defendant ECWA is ordered to amend its answer in accordance with the R&R by **December 22, 2021.**

The case is referred back to Judge McCarthy for further proceedings consistent with the referral orders in this case. Dkts. 19, 45, 46.

SO ORDERED.

Dated: December 8, 2021
Buffalo, New York

JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

[3] Judge McCarthy's R&R and the parties' submissions treat the motion to strike as dispositive. This Court reviews the objections *de novo*.