

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

COUNSEL FINANCIAL HOLDINGS LLC,

Plaintiff,

v.

20-CV-1698-LJV-JJM
DECISION & ORDER

SULLIVAN LAW, L.L.C., *et al.*,

Defendants.

On October 21, 2020, the plaintiff, Counsel Financial Holdings LLC (“Counsel Financial”), commenced this action against the defendants in New York State Supreme Court, Erie County. Docket Item 1 at 2, 7-8. On November 20, 2020, *pro se* defendant Richard Sullivan removed the matter to this Court. Docket Item 1. On December 8, 2020, Counsel Financial moved to remand and for attorney’s fees and costs, Docket Item 2; on December 29, 2020, Sullivan responded; and on January 6, 2021, Counsel Financial replied, Docket Item 7.

On January 12, 2021, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 8. On January 27, 2021, Judge McCarthy issued a Report and Recommendation (“R&R”) finding that Counsel Financial’s motion for remand and for attorney’s fees and costs should be granted. Docket Item 9. The parties did not object to the R&R, and the time to do so now has expired. *Id.* (ordering objections to the R&R due by 2/16/2021); *see also* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

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). The court must review *de novo* 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). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the parties' submissions. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant the motion for remand and for attorney's fees and costs.

For the reasons stated in the R&R, the forum selection clauses in the promissory note and in the guaranty plainly foreclose removal. *See* Docket Item 9 at 2-3. Counsel Financial's motion for remand, Docket Item 2, therefore is GRANTED. And because removal "was contrary to overwhelming authority," an award of attorney's costs and fees also is appropriate. *See id.* at 4 (citing *Wallace v. Wiedenbeck*, 985 F. Supp. 288, 291 (N.D.N.Y. 1998)). The request for attorney's fees and costs, Docket Item 2, therefore is GRANTED as well. The case is referred back to Judge McCarthy, consistent with the referral order of January 12, 2021, Docket Item 8, to determine an appropriate award.

SO ORDERED.

Dated: March 2, 2021
Buffalo, New York

/s/ Lawrence J. Vilaro
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE