

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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STARK TRUSS COMPANY, INC.,

Plaintiff,

v.

22-CV-979 (JLS) (JJM)

AFFINITY ELMWOOD GATEWAY  
PROPERTIES, LLC, RP OAK HILL  
BUILDING COMPANY, INC.,  
MERCHANTS BONDING COMPANY  
(MUTUAL),

Defendants.

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### DECISION AND ORDER

Plaintiff Stark Truss Company commenced this action on December 16, 2022, alleging claims against Defendants Affinity Elmwood Gateway Properties, LLC, RP Oak Hill Building Company, Inc., and Merchants Bonding Company (Mutual) related to a construction project in the City of Buffalo. *See* Dkt. 1. As relevant here, Stark Truss alleges claims against Defendant RP Oak Hill—an entity Stark Truss describes as the construction manager of the project—for fraud (Count IV), negligent misrepresentation (Count V), promissory estoppel (Count VI), and negligence (Count VII). *See id.* at 13–17.

Defendant RP Oak Hill moved to dismiss the complaint as against it. Dkt. 31. Stark Truss opposed the motion (Dkt. 47), and RP Oak Hill replied in further support (Dkt. 50).



After hearing oral argument, on May 9, 2023, Judge McCarthy issued a Report and Recommendation (R&R),<sup>1</sup> recommending that this Court grant RP Oak Hill's motion to dismiss the complaint as against it. Dkt. 53.

Neither party objected to the R&R, and the time to do so has expired. *See* 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). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); 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).

Though not required to do so here, this Court nevertheless reviewed Judge McCarthy's R&R. Based on that review, and absent any objections, the Court accepts and adopts the R&R.

For the reasons stated above and in the R&R, the Court **grants Defendant RP Oak Hill's motion to dismiss (Dkt. 31)**. The complaint as against RP Oak Hill is dismissed. The Clerk of Court shall terminate RP Oak Hill as a Defendant to this action. The Court refers the case back to Judge McCarthy, consistent with the

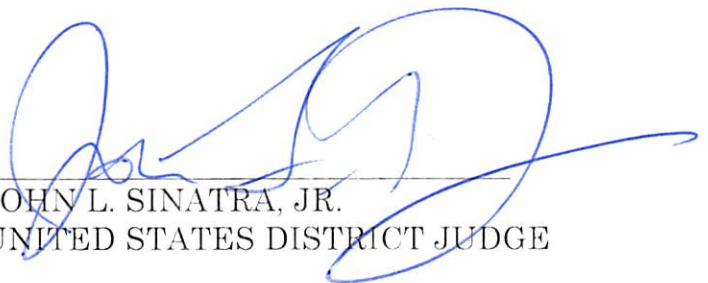
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<sup>1</sup> On February 21, 2023, this Court referred the case to Judge McCarthy for all pretrial matters, pursuant to 28 U.S.C. §§ 636(b)(1)(A)–(C). *See* Dkt. 33.

referral order at Dkt. 33, for further proceedings as to the remaining parties in this action.

SO ORDERED.

Dated: July 5, 2023  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE