

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:16-cv-00390-MR-DLH**

**TOMMY WILLIAM LINEBERGER and)
MARCELLA WILSON LINEBERGER,)**

Plaintiffs,)

vs.)

CBS CORPORATION, et al.,)

Defendants.)

ORDER

THIS MATTER is before the Court on the Defendant RSCC Wire and Cable LLC's Motion to Dismiss [Doc. 91]; the Magistrate Judge's Memorandum and Recommendation [Doc. 127] regarding the disposition of that motion; and the Defendant's Objections to the Memorandum and Recommendation [Doc. 133].

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the Defendant's motion and to submit a recommendation for its disposition.

On August 14, 2017, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a

recommendation regarding the motion to dismiss. [Doc. 127]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The Defendant timely filed Objections on August 28, 2017. [Doc. 133].

In its Objections, the Defendant argues that the Magistrate Judge erred in failing to consider the Affidavit of John Regalbuti, the Vice President of Finance and Controller of RSCC. Even considering the facts presented in Regalbuti's Affidavit, however, the Court still concludes that the Defendant's Motion should be denied. At this stage in the proceedings, the Court must draw all reasonable inferences and resolve any factual disputes in favor of the Plaintiffs. See Mylan Labs., Inc. v. Akzo, N.V., 2 F.3d 56, 60 (4th Cir. 1993). Viewing the Plaintiffs' allegations in this manner, the Court concludes for the reasons stated by the Magistrate Judge that the Plaintiffs have made a prima facie showing sufficient to survive the Defendant's jurisdictional challenge.

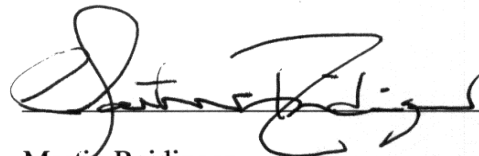
After careful consideration of the Memorandum and Recommendation and the Defendant's Objections thereto, the Court finds that the Magistrate Judge's proposed conclusions of law are correct and consistent with current case law. Accordingly, the Court hereby overrules the Defendant's

Objections and accepts the Magistrate Judge's recommendation that the motion to dismiss be denied.

IT IS, THEREFORE, ORDERED that the Defendant's Objections to the Memorandum and Recommendation [Doc. 133] are **OVERRULED**; the Memorandum and Recommendation [Doc. 127] is **ACCEPTED**; and the Defendant's Motion to Dismiss [Doc. 91] is **DENIED**.

SO ORDERED.

Signed: September 4, 2017


Martin Reidinger
United States District Judge

