

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THOMAS W. SPAUDE, et al.,)	CASE NO. 1:16 CV 1836
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
)	Magistrate Judge David A. Ruiz
)	
PAUL MYSYK, et al.,)	<u>MEMORANDUM OPINION</u>
)	
Defendants.)	

This matter is before the Court on the Motion to Dismiss Plaintiffs' Class Action Complaint filed by Defendants Robert O'Bannon and Beverly Vilardefsky on September 16, 2016. (Docket #9.)¹ Defendants O'Bannon and Vilardefsky ask the Court to dismiss all claims asserted against them in Plaintiffs' Complaint. On October 18, 2016, Plaintiffs filed a Memorandum in Opposition to Defendants' Motion to Dismiss. (Docket #17.) On November 1, 2016, Defendants filed a Reply Brief. (Docket #20.) On May 10, 2017, this case was referred to

1

Plaintiffs voluntarily dismissed their claims against Defendants Phillips Murrah P.C. and Thomas Wolf on September 16, 2016 and Defendant Paul Mysyk on June 19, 2017, all without prejudice. On June 19, 2017, Plaintiffs filed Applications for Default Judgment with the Clerk of Court against Defendants Quantum Energy, LLC, Quaneco, LLC and Harrison Schumacher (Docket #s 37, 38 and 39) and, on July 7, 2017, the Clerk entered default against all three (Docket #s 43, 44 and 45).

Magistrate Judge David A. Ruiz for a Report and Recommendation on the pending Motion to Dismiss. (Docket #32.)²

As summarized by the Magistrate Judge, the procedural history of this case is as follows:

On July 20, 2016. Plaintiffs Thomas W. Spaude, Angela M. Spaude, and Dennis C. Macieski (hereinafter "Plaintiffs"), individually and behalf of all others similarly situated, filed a Complaint naming the following parties as Defendants: Paul Mysyk; Harrison Schumacher; Quantum Energy, LLC; Quaneco, LLC; Phillips Murrach, P.C.; Robert O'Bannon; Beverly Vilardefsky; and, Thomas Wolfe (hereinafter "Defendants"). (R. 1). Plaintiffs allege the following causes of action: (1) violation of California Corporations Code § 25504.1 against Defendants O'Bannon and Vilardefsky; (2) violations of Ohio Blue Sky Law, O.R.C. § 1707.43 against Defendants O'Bannon and Vilardefsky; (3) legal malpractice/negligence against Defendants O'Bannon and Vilardefsky; (4) negligent misrepresentations and/or omissions against Defendants O'Bannon and Vilardefsky; (5) aiding and abetting fraud under Oklahoma common law against Defendants O'Bannon and Vilardefsky; (6) breach of fiduciary duty under the common law against Defendants Quantum Energy, LLC, Quaneco, LLC, and Schumacher; and, (7) aiding and abetting breach of fiduciary duty under the common law against Defendants O'Bannon and Vilardefsky. Id. Generally, Plaintiffs allege that they are investors in a fraudulentscheme maintained by Defendants Quantum Energy, LLC, Quaneco, LLC, and Schumacher (the "Quantum Defendants") in conjunction with the Quantum Defendants' attorneys—Defendants O'Bannon and Vilardefsky from the law firm of Phillips Murrach in Oklahoma City. Id. Plaintiffs further allege that Defendants Vilardefsky and O'Bannon drafted the offering documents for Quantum Defendants containing fraudulent and material misrepresentations, without which their securities would not have been marketable. (R. 1, PageID# 7-8).

Magistrate Judge Ruiz issued his Report and Recommendation on July 14, 2017. (Docket #46.) Based on a thorough review of the Complaint this case; Defendants' Motion to Dismiss and responsive briefing;, and, applicable statutory and case law, the Magistrate Judge recommends that the Motion to Dismiss filed by Defendants O'Bannon and Vilardefsky be

2

On October 18, 2016, this case was stayed pending mediation. The stay was extended by request of the Parties through April 14, 2017, at which time the Parties indicated that mediation was ultimately unsuccessful.

granted with respect to Counts One, Two, Three, Four, Five and Seven of the Complaint, but denied with respect to their alternative theories for dismissing Count One. The Magistrate Judge notes that Count Six of the Complaint – alleging a breach of fiduciary duty under common law against Defendants Quantum Energy, LLC, Quaneco, LLC and Harrison Schumacher – remains pending, as these Defendants have not filed a motion for dismissal.

On July 28, 2017, Plaintiffs filed Objections to the Magistrate Judge's Report and Recommendation (Docket #47.) On August 11, 2017, Defendants O'Bannon and Vilarodofsky filed their Response to Plaintiffs' Objections. (Docket #49.)

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Conclusion

The Court has reviewed the Magistrate Judge's Report and Recommendation *de novo*, analyzing Plaintiffs' objections to the Report and Recommendation and the response filed by Defendants O'Bannon and Vilarodofsky. The objections raised offered by Plaintiffs do not affect the disposition of any of the claims raised in the Complaint. Magistrate Judge Ruiz thoroughly and exhaustively reviewed the allegations in the Complaint in conjunction with the applicable

statutory and case law and, for the reasons stated in his Report and Recommendation, properly concluded that the Motion to Dismiss should be granted with respect to Counts One, Two, Three, Four, Five and Seven, but denied with respect to the Movants' alternative theories for dismissing Count One.

Accordingly, the Report and Recommendation issued by Magistrate Judge Ruiz (Docket #46) is ADOPTED in its entirety. The Motion to Dismiss filed by Defendants O'Bannon and Vilardofsky (Docket #9) is GRANTED IN PART as stated above.

All of Plaintiffs' claims against Defendants O'Bannon and Vilardofsky are hereby DISMISSED WITH PREJUDICE.

As stated above, on June 19, 2017, Plaintiffs filed Applications for Default Judgment with the Clerk of Court against Defendants Quantum Energy, LLC, Quaneco, LLC and Harrison Schumacher (Docket #s 37, 38 and 39) and, on July 7, 2017, the Clerk entered default against all three (Docket #s 43, 44 and 45). If Plaintiffs wish to pursue Default, they must file a Motion for Default Judgment; an Affidavit that reflects service; an Affidavit that reflects damages; and, a proposed Final Default Judgment Order as to each Defendant in default no later than Friday, October 6, 2017.

A Default Judgment Hearing is hereby set for Wednesday, October 25, 2017 at 10:30 a.m.

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: September 21, 2017