

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

|   |   |                                |
|---|---|--------------------------------|
| UNITED STATES OF AMERICA <i>ex rel.</i> | ) |                                |
| DIANA SALVATORE, and DIANA M.           | ) | Civil Action No. 11-1157       |
| SALVATORE,                              | ) |                                |
|   | ) |                                |
| Plaintiffs,                             | ) |                                |
|   | ) | United States District Judge   |
| v.                                      | ) | Mark R. Hornak                 |
|   | ) |                                |
| MICHAEL FLEMING, TAYLOR                 | ) | United States Magistrate Judge |
| MANAGEMENT, INC., and DIXIE             | ) | Cynthia Reed Eddy              |
| REALTY, INC., d/b/a BUY-N-SELL          | ) |                                |
| Real Estate,                            | ) |                                |
|   | ) |                                |
| Defendants.                             | ) |                                |

**MEMORANDUM ORDER**

**Mark R. Hornak, United States District Judge**

On September 15, 2011, the above captioned case was filed under seal in this Court, and on October 27, 2011, it was referred to a Magistrate Judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules of Court for Magistrate Judges.

On February 23, 2015, United States Magistrate Judge Cynthia Reed Eddy issued her Report and Recommendation (ECF No. 69) in which she recommended denial of Defendant Michael Fleming's Motion to Dismiss and Strike the Amended Complaint under Rules 10(b) and 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative, Motion for Summary Judgment under Rule 56. (ECF No. 37). Defendant Fleming filed timely Objections to the

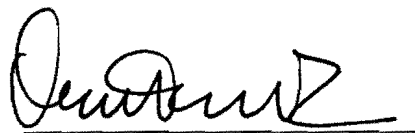
Report and Recommendation (ECF No. 75 )<sup>1</sup>, and both the Plaintiff and Defendant Dixie Realty, Inc. filed timely Responses to such Objections, (ECF Nos. 78, 81)<sup>2</sup>.

After a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and Objections/ Responses thereto, the following Order is entered:

**AND NOW**, this 25th day of March, 2015, **IT IS HEREBY ORDERED** that Defendant Fleming's Motion to Dismiss and Strike the Amended Complaint, or in the alternative, Motion for Summary Judgment (ECF No. 37) is **DENIED**.

**IT IS FURTHER ORDERED THAT** Defendant Fleming shall file a responsive pleading to the Amended Complaint on or before **April 16, 2015**.

**IT IS FURTHER ORDERED THAT** the Report and Recommendation is adopted as the Opinion of the Court, as modified by this Order<sup>3</sup>.

  
Mark R. Hornak  
United States District Judge

cc: all ECF registered counsel

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<sup>1</sup> The Court concludes that because they were not presented to the Magistrate Judge in the first instance in its Motion to Dismiss, the matters set forth by Fleming in its Objections as Sections 2A and 3A are not properly considered at this juncture. Whether they may be later addressed in a Motion for Summary Judgment is a matter that must be presented to the Magistrate Judge in the first instance.

<sup>2</sup> The Court adopts the Report and Recommendation as to the matters raised by both Fleming and Dixie as to the Plaintiff's compliance with Fed. R. Civ. P. 10(b) for the reasons set forth by the Magistrate Judge, and because the discovery process will provide each Defendant with an appropriate opportunity to glean any further or necessary parsing and precision as to the Plaintiff's claims as to each of them, jointly or severally.

<sup>3</sup> The Court deletes the reference to "*Tucci*, 2012 WL 2190145 at \*2" at page 13 of the Report and Recommendation and replaces it with "*Ruddy v. United States*, 2012 WL 511487 at \*2 (M.D. Pa. Feb. 15, 2012)" and modifies the citation to *United States ex rel Laird v. Lockheed Martin Engineering & Science Services Co.* at page 11 of the Report and Recommendation to read "336 F. 3d 346, 357-360 (5<sup>th</sup> Cir. 2003), *abrogated on other grounds by Rockwell Int'l Corp. v. United States*, 549 U.S. 457 (2007).