

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

BidZirk, LLC, Daniel G. Schmidt,)
III, and Jill Patterson,)
)
Plaintiffs,)
)
vs.)
)
Philip Smith,)
)
Defendant.)

C.A. No. 6:06-109-HMH-WMC

OPINION AND ORDER

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge William M. Catoe, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1) (West Supp. 2006).

The Defendant filed no objections to the Report and Recommendation. In the absence of objections to the Report and Recommendation of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts Magistrate Judge Catoe's Report and Recommendation and incorporates it herein. It is therefore

ORDERED that the Plaintiffs' motions to dismiss Defendant's counterclaims for lack of jurisdiction (document number 41) and for judgment on the pleadings (document number 46) are granted. The parties' remaining motions related to the appeal will be held in abeyance pending the United States Court of Appeals for the Fourth Circuit's ruling on the Plaintiffs' appeal.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
November 7, 2006

NOTICE OF RIGHT TO APPEAL

The Defendant is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.