

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

BidZirk, LLC, Daniel Schmidt,  
III, and Jill Patterson,  
  
Plaintiffs,  
  
v.  
  
Philip J. Smith,  
  
Defendant.

C.A. No. 6:06-00109-HMH-WMC

**OPINION & ORDER**

This matter is before the court with 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 of the District of South Carolina.<sup>1</sup> BidZirk, LLC (“BidZirk”), Daniel Schmidt, III (“Schmidt”), and Jill Patterson (“Patterson”) (collectively “Plaintiffs”) filed a complaint seeking damages, injunctive relief, and attorneys’ fees for alleged violations of the Lanham Act, 15 U.S.C. § 1125, and damages for alleged defamation and invasion of privacy. The Plaintiffs filed a motion for a preliminary injunction on February 3, 2006. In his Report entered January 29, 2007, Magistrate Judge Catoe recommended dismissing the Plaintiffs’ motion for judgment on the pleadings and granting the Plaintiffs’ amended motion to amend

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<sup>1</sup>The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District 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. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

the complaint and motion to amend the scheduling order. Further, Magistrate Judge Catoe recommended denying the Defendant's motion to dismiss and motion for a hearing.

The Plaintiffs filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific 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).

The Plaintiffs object to the Magistrate Judge's recommendation to deny their motion for judgment on the pleadings. The Plaintiffs allege that the "Defendant accepted Plaintiffs' allegations" that the "Defendant defamed them and invaded their privacy." (Objections 3.) Because the Defendant is a pro se litigant, his pleadings are accorded liberal construction. Hughes v. Rowe, 449 U.S. 5, 9 (1980); United States v. Anderson, 364 F. Supp. 2d 569, 570 (D.S.C. 2004) ("The Defendants are pro se litigants, and thus their pleadings are accorded liberal construction."). In his answer, the Defendant stated that he "accepts statement made in Paragraph 30 of this Complaint." (Ans. ¶ 30.) Paragraph 30 of the Plaintiffs' complaint states: "Smith's purpose in linking his blog to the aforementioned photograph, was to imply that Schmidt and Patterson, by virtue of their then-pending marriage, were unable to dedicate themselves sufficiently to the operations and administration of BidZirk." (Compl. ¶ 30.)

“The test applicable for judgment on the pleadings is whether or not, when viewed in the light most favorable to the party against whom the motion is made, genuine issues of material fact remain or whether the case can be decided as a matter of law.” Tollison v. B & J Mach. Co., 812 F. Supp. 618, 619 (D.S.C. 1993) (internal quotation marks omitted). After review of the pleadings and being mindful of the liberal construction of pro se pleadings, the court finds that the Defendant has not admitted the Plaintiffs’ defamation and invasion of privacy claims. Therefore, after a thorough review of the Magistrate Judge’s Report and the record in this case, the court adopts Magistrate Judge Catoe’s Report and Recommendation.

It is therefore

**ORDERED** that the Plaintiffs’ motion for judgment on the pleadings, docket number 33, is denied. It is further

**ORDERED** that the Defendant’s motion to dismiss, docket number 44, is denied.

**IT IS SO ORDERED.**

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

Greenville, South Carolina  
February 23, 2007