

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

Marshall D. McGaha, Jr.,)	
)	
Plaintiff,)	C.A. No. 6:10-cv-2575-JMC
)	
v.)	ORDER
)	
Waco F. Childers, Jr.,)	
)	
Defendant.)	
_____)	

This matter is before the court upon the Magistrate Judge’s Report and Recommendation [Doc. # 10], filed on October 12, 2010, recommending that Marshall D. McGaha’s (“Plaintiff”) case be dismissed without prejudice and without the issuance of service of process.¹ Plaintiff is a pre-trial detainee at the Greenville County Detention Center in Greenville, South Carolina. Waco F. Childers, Jr. (“Defendant”), a South Carolina corporation, buys and sells real estate.

STANDARD OF REVIEW

The Magistrate Judge’s Report and Recommendation is 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 objections are made, and the court

¹Plaintiff submitted his complaint without the first two pages. [Doc. # 1]. However, Plaintiff submitted a summons and a Form USM-285 which provided the identity and location of Defendant. [Doc. # 3]. Plaintiff later submitted the first two pages of the complaint with the objection that he filed on October 21, 2010. [Doc. # 13].

may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

DISCUSSION

Plaintiff, a pre-trial detainee proceeding *pro se*, seeks relief for alleged work-related injuries he sustained on January 15, 2010, when he was attempting to remove a sink from a house owned or listed by Defendant. The sink, which weighed approximately one hundred fifty (150) pounds, fell on Plaintiff when he unhooked the drain pipe. Plaintiff sustained injuries to his right wrist, his lumbar spine and his right shoulder.

Plaintiff timely filed objections to the Magistrate Judge's Report and Recommendation on the pending motions. [Doc. #'s 12 and 13]. 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 Magistrate Judge's Report and Recommendation, 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).

Upon review, the court finds that the majority of Plaintiff's objections are non-specific, unrelated to the dispositive portions of the Magistrate Judge's Report and Recommendation, or merely restate his claims. The court notes that Plaintiff attempts to correct the defect in his claim that diversity jurisdiction exists between him and Defendant. [Doc. # 12, at 1]. Plaintiff requests damages in the amount of \$500,000.00; however, diversity jurisdiction requires that the amount in controversy exceed \$75,000.00 **and** that the parties must be "citizens of different States." 28 U.S.C. 1332(a) (emphasis added). Plaintiff fails to object to or provide evidence to contradict the

Magistrate Judge's finding that Defendant, like Plaintiff, is a citizen of South Carolina. Plaintiff also does not object to the Magistrate Judge's finding that the matter should be dismissed because Defendant has not acted under color of state law. [Doc. # 12, at 3]. Finally, the court reiterates the Magistrate Judge's finding that Plaintiff cannot obtain workers compensation benefits in a civil action filed in federal court. [Doc. # 12, at 3].

For the foregoing reasons, the court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein.

It is therefore **ORDERED** that the case be dismissed without prejudice and without issuance of service of process.

IT IS SO ORDERED.

s/ J. Michelle Childs
United States District Judge

December 8, 2010
Greenville, South Carolina