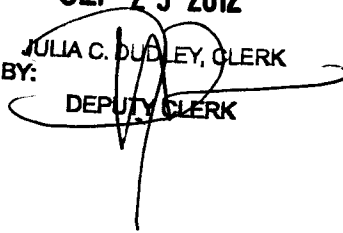


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT HARRISONBURG, VA
FILED

SEP 25 2012

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

JAMES T. LUTHER,

Plaintiff,

v.

WELLS FARGO BANK,

Defendant.

)
)
) Civil Action No. 4:11cv00057
)

) By: Michael F. Urbanski
) United States District Judge
)
)

ORDER

This case was referred to the Honorable Robert S. Ballou, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B), for proposed findings of fact and a recommended disposition. A number of motions are currently pending before the court. Defendant filed a motion to dismiss the complaint on February 27, 2012 and plaintiff responded by filing a motion for summary judgment on March 14, 2012. By opinion and order dated May 10, 2012, the Magistrate Judge granted plaintiff leave to file an amended complaint, finding Luther had failed to allege sufficient facts to support a cause of action against Wells Fargo, and stated the failure to file an amended complaint within the time allotted would result in a recommendation that the complaint be dismissed. Luther filed his first amended complaint on May 24, 2012. Defendant responded by filing a motion to dismiss the amended complaint on June 7, 2012. Luther filed a response, defendant filed a reply brief, and the Magistrate Judge granted Luther leave to file a further response to defendant's reply brief. In that response, Luther moved for leave to file a second amended complaint, which was construed as a separate motion. Thereafter, Luther filed a motion for extension of time to answer defendant's discovery requests. Discovery was stayed by order dated July 25, 2012.

On August 6, 2012, the Magistrate Judge issued a report and recommendation, recommending that defendant's motion to dismiss the first amended complaint be granted and

that Luther's motion for summary judgment, motion for leave to file a second amended complaint, and motion for extension of time to answer defendant's discovery requests all be denied as moot. Plaintiff has filed objections to the report and recommendation, in which he appears to reiterate the allegations raised in his first amended complaint rather than object specifically to any portion of the report pursuant to Federal Rule of Civil Procedure 72(b)(2).

Nevertheless, the court has considered the objections raised by Luther and carefully reviewed the Magistrate Judge's report as well as the relevant portions of the docket and concludes that the Magistrate Judge's report is substantially correct. The court therefore adopts the report and recommendation.

It is accordingly **ORDERED** and **ADJUDGED** that defendant's motion to dismiss Luther's first amended complaint (Dkt. # 32) is **GRANTED**, and that defendant's motion to dismiss the original complaint (Dkt. # 16), Luther's motion for summary judgment (Docket # 23), Luther's motion for leave to file a second amended complaint (Dkt. # 39), and Luther's motion for extension of time to answer defendant's discovery request are all **DENIED as moot**. (Dkt. # 40.) This matter is hereby **DISMISSED with prejudice** and is **STRICKEN** from the active docket of the court.

The Clerk is directed to send a certified copy of this Order to plaintiff and to counsel of record.

Entered: September 25, 2012

/s/ Michael F. Urbanski

Michael F. Urbanski
United States District Judge