

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

GERALD R. MOLLOHAN, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:13-cv-32251

DONALD PRICE, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court are three motions filed by Defendants: two motions to dismiss [ECF 36 and 77], and one motion to dismiss, or, in the alternative, to consolidate this case with Case No. 2:11-cv-104 [ECF 50]. Also pending before the Court are several motions filed by Plaintiff Gerald R. Mollohan (“Plaintiff”): eight motions for various forms of injunctive relief [ECF 32, 46, 47, 48, 52, 54, 55, and 87], two motions construed as motions for declaratory relief [ECF 57 and 58], a Motion to Moot Defendant’s Answer, Motion to Dismiss and Counterclaim [ECF 41], and a Motion to Strike Defendants’ Motion to Dismiss [ECF 79].¹ Finally, a Motion to Dismiss Defendants’ Answer and Objections to Defendants’ Answer and Counterclaim was filed by Plaintiff and Counterclaim Defendant Frank J. Visconi [ECF 81]. By Standing Order entered

¹ Plaintiff Mollohan appears to have brought these motions on behalf of both himself and Plaintiff Brothers of the Wheel Motorcycle Club Nomads Incorporated. As Magistrate Judge Tinsley explained to Plaintiff Mollohan, however, corporations must be represented by licensed counsel and Mr. Mollohan is not an attorney. Magistrate Judge Tinsley permitted the plaintiffs until September 22, 2014, to locate counsel to represent the corporation. (ECF 65 at 2.) To date, Plaintiff Brothers of the Wheel Motorcycle Club Nomads Incorporated does not appear to be represented by counsel. Accordingly, the Court construes these motions as made by Plaintiff Mollohan individually. Similarly, the Motion to Dismiss Defendants’ Answer and Objections to Defendants’ Answer and Counterclaim (ECF 81) is construed as being made only by Plaintiff Mollohan and Counterclaim Defendant Frank J. Visconi.

April 8, 2013, and entered in this case on December 16, 2013, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings and a recommendation (“PF&R”). Magistrate Judge Tinsley filed his PF&R [ECF 102] on February 20, 2015, recommending that this Court deny the pending motions and leave this matter referred to Magistrate Judge Tinsley for additional proceedings.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner’s right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R were due on March 9, 2015. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R [ECF 102], **DENIES WITHOUT PREJUDICE** Defendants’ motions to dismiss [ECF 36, 50, and 77], **DENIES** Defendants’ motion in the alternative to consolidate this case with Case No. 2:11-cv-104 [ECF 50], **DENIES AS MOOT** Plaintiff’s Motion to Moot Defendant’s Answer, Motion to Dismiss and Counterclaim [ECF 41], **DENIES AS MOOT** Plaintiff’s Motion to Strike Defendants’ Motion to Dismiss [ECF 79], **DENIES AS MOOT** the Motion to Dismiss Defendants’ Answer and Objections to Defendants’ Answer and Counterclaim filed by Plaintiff and Counterclaim Defendant Frank J.

Visconi [ECF 81], **DENIES WITHOUT PREJUDICE** Plaintiff's motions for injunctive relief [ECF 32, 46, 47, 48, 52, 54, 55, and 87], **DENIES WITHOUT PREJUDICE** Plaintiff's motions for declaratory relief [ECF 57 and 58], and **ORDERS** that this civil action remain referred to Magistrate Judge Tinsley for additional proceedings.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 10, 2015



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE