

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ROBERT EDWARD FIEDLER,

Plaintiff,

v.

Case No: 6:18-cv-962-Orl-41KRS

WELLS FARGO N.A.,

Defendant.

ORDER

THIS CAUSE is before the Court on Plaintiff's Motion for Leave to Proceed *in Forma Pauperis* (Doc. 7). United States Magistrate Judge Karla R. Spaulding issued a Report and Recommendation (Doc. 19), recommending that Plaintiff's motion be granted in part and denied in part, that his breach of contract claim be dismissed, and that his claims relating to the violation of an automatic bankruptcy stay be referred to the bankruptcy court.

Plaintiff filed his first motion to proceed *in forma pauperis* (Doc. 2) in conjunction with the filing of his original Complaint (Doc. 1). That motion was referred to Judge Spaulding, who issued her first Report and Recommendation (Doc. 3), recommending that the original complaint be dismissed but that Plaintiff be given leave to file an amended complaint and a renewed motion to proceed *in forma pauperis*. Prior to this Court addressing the issue, Plaintiff filed his First Amended Complaint (Doc. 6), a renewed Motion to Proceed *in Forma Pauperis* (Doc. 7), and an Objection (Doc. 8) to the first Report and Recommendation. The renewed Motion to Proceed *in Forma Pauperis* was referred to Judge Spaulding. Two days later, Plaintiff filed a Second Amended Complaint (Doc. 9). As a result, Judge Spaulding withdrew her first Report and Recommendation, (July 16, 2018 Order, Doc. 11), and issued her second Report and

Recommendation (Doc. 14), recommending that Plaintiff's Second Amended Complaint be dismissed without leave to amend. Plaintiff filed an Objection (Doc. 15), which provided the Court with additional information and prompted Judge Spaulding to withdraw her second Report and Recommendation. (July 26, 2018 Order, Doc. 16). Judge Spaulding then issued her third Report and Recommendation—which is currently at issue.

In the meantime, Plaintiff filed a document objecting to the Court's referral of matters to Judge Spaulding, ("Objection to Referral," Doc. 17), which Judge Spaulding struck, (August 7, 2018 Order, Doc. 18). Plaintiff filed an Objection ("Objection to Magistrate Order," Doc. 20) to Judge Spaulding's Order striking his Objection to Referral. Prior to this Court addressing his Objection to Magistrate Order, Plaintiff appealed Judge Spaulding's Order to the Eleventh Circuit. (Notice of Appeal, Doc. 21). Subsequently, the Eleventh Circuit dismissed Plaintiff's appeal for lack of jurisdiction. (Mandate, Doc. 27).¹ Thus, his Objection to Magistrate Order is also ripe for review.

I. ANALYSIS

A. Objection to Magistrate Order

Objections to a magistrate judge's order on a non-dispositive issue are reviewed under the "clearly erroneous" or "contrary to law" standard. Fed. R. Civ. P. 72(a); *Hallford v. Allen*, No. 07-0401-WS-C, 2007 WL 2570748, at *1 (S.D. Ala. Aug. 30, 2007) (citing additional authority).

Plaintiff is under the mistaken impression that he must give consent for a magistrate judge to handle matters in this case. Pursuant to 28 U.S.C. § 636 and Local Rule 6.01, upon referral from the district court judge, the magistrate judge has the authority to issue an order on non-dispositive

¹ The Eleventh Circuit's dismissal of Plaintiff's appeal renders his motion to appeal *in forma pauperis* (Doc. 22) and the Report and Recommendation thereon (Doc. 24) moot.

matters and a report and recommendation on dispositive matters. Plaintiff's Objection to Magistrate Order is without merit.

B. Report and Recommendation

Pursuant to 28 U.S.C. § 636(b)(1), when a party makes a timely objection, the Court shall review *de novo* any portions of a magistrate judge's report and recommendation concerning specific proposed findings or recommendations to which an objection is made. *See also* Fed. R. Civ. P. 72(b)(3). *De novo* review "require[s] independent consideration of factual issues based on the record." *Jeffrey S. v. State Bd. of Educ. of Ga.*, 896 F.2d 507, 513 (11th Cir. 1990) (per curiam). The district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

Plaintiff did not file any objections to the current Report and Recommendation, and his previous objections fail to raise any meritorious arguments with regard to Judge Spaulding's analysis. Moreover, after a *de novo* review of the record, the Court agrees entirely with that analysis.

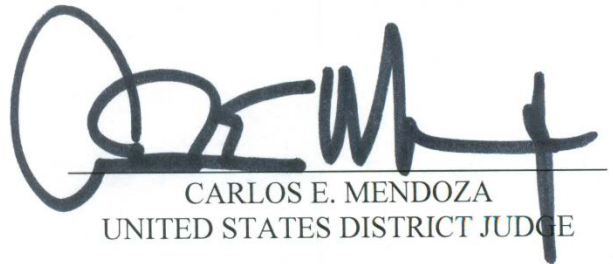
II. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. The August 7, 2018 Report and Recommendation (Doc. 19) is **ADOPTED** and **CONFIRMED** and made a part of this Order.
2. Plaintiff's renewed Motion to Proceed *in Forma Pauperis* (Doc. 7) is **GRANTED in part** and **DENIED in part**.
3. Count I of the Second Amended Complaint (Doc. 9) is **DISMISSED** without leave to amend.

4. Counts II and III of the Second Amended Complaint are **REFERRED** to the United States Bankruptcy Court for the Middle District of Florida pursuant to 28 U.S.C. § 157(a).
5. Plaintiff shall be permitted to proceed *in forma pauperis* in the bankruptcy court on Counts II and III of his Second Amended Complaint.
6. Plaintiff's Motion to Appeal *in Forma Pauperis* (Doc. 22) is **DENIED as moot**.
7. The August 16, 2018 Report and Recommendation (Doc. 24) is **moot**.
8. The Clerk is directed to close this case.

DONE and **ORDERED** in Orlando, Florida on January 25, 2019.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Unrepresented Party
Clerk of Court, United States Bankruptcy Court in and for the Middle District of Florida