

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ALANA SOUZA, a/k/a ALANA	:	
CAMPOS; LAURIE YOUNG, a/k/a	:	
LAURIE ROMEO; VIDA GUERRA;	:	
EVA PEPAJ; JAMIE EDMONDSON-	:	
LONGORIA; LUCY PINDER; PAOLA	:	
CANAS; URSULA SANCHEZ, a/k/a	:	
URSULA MAYES; AMBER	:	
LANCASTER,	:	
Plaintiffs,	:	
	:	
v.	:	C.A. No. 19-492JJM
	:	
GULLIVER’S TAVERN INC. and	:	
PATRICIA TSOUMAS,	:	
Defendants.	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

On May 13, 2021, all Defendants filed a motion for leave to file an amended answer (ECF No. 21) and Defendant Patricia Tsoumas filed a motion for judgment on the pleadings (ECF No. 22). Both motions were referred to me, the first for determination pursuant to 28 U.S.C. § 636(b)(1)(A) and the second for report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). Plaintiffs’ oppositions to both motions were due on May 27, 2021; they objected to the motion to amend the answer but filed nothing in response to the motion for judgment on the pleadings. On June 2, 2021, the motion for leave to file an amended answer was granted (ECF No. 24) and the amended answer was filed the same day. ECF No. 25.

The filing of the amended answer raised a conundrum for the Court regarding the status of the unobjected-to motion for judgment on the pleadings; such motions are typically denied as moot when a court has permitted a defendant to amend his answer. Drapkin v. Mjalli, 441 F. Supp. 3d 145, 159 (M.D.N.C. 2020); Patai v. Paton Eng’rs & Constructors (CA) LLC, Civil

Action No. 4:17-CV-3104, 2018 WL 3208199, at *1 n.2 (S.D. Tex. June 29, 2018) (denying plaintiffs’ motion for judgment on the pleadings as moot after defendants filed amended answers); Xtria, LLC v. Int’l Ins. All. Inc., Civil Action No. 3:09-CV-2228-D, 2010 WL 1644895, at *2 (N.D. Tex. Apr. 22, 2010) (“Because Xtria has been granted leave to amend, International’s motions to dismiss and for judgment on the pleadings are denied without prejudice as moot.”). To clarify the matter, I issued the following text order:

Plaintiff is now out of time to object to the motion of Defendant Tsoumas for judgment on the pleadings (ECF No. 22); however, with leave of Court, the amended answer was filed on June 2, 2021, which potentially moots the original motion for judgment on the pleadings. Drapkin v. Mjalli, 441 F. Supp. 3d 145, 159 (M.D.N.C. 2020). Accordingly, Defendant Tsoumas is directed promptly to file a written notice advising the Court whether the motion for judgment on the pleadings may be deemed to be reasserted despite the amendment. If it is, the Court will examine the pleadings and determine the merits of the motion as required by Principe v. M2M Glob. Corp., Civil No. 17-2262(ADC), 2018 WL 4735720, at*4 (D.P.R. Sept. 28, 2018). If it is not, the motion will be denied as moot.

Text Order of June 3, 2021. As of this writing, the Court has not received any response to this Text Order; Defendant Tsoumas has not filed a written notice advising the Court that her motion for judgment on the pleadings may be deemed to be reasserted despite the amendment.

Based on the foregoing, I recommend that Defendant Patricia Tsoumas’ motion for judgment on the pleadings (ECF No. 22) be denied as moot. Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court’s decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
June 11, 2021