

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JENNIFER ECKLUND, Receiver,	§	
Plaintiff	§	
	§	ANCILLARY CIVIL ACTION
v.	§	NO. 4:18-cv-00360
	§	
BEDAZZLED INC., et al.,	§	
Defendants	§	

**DEFENDANT ENMOTION’S RESPONSE TO RECEIVER’S MOTION
TO APPOINT MAGISTRATE JUDGE AS MEDIATOR**

Defendant Enmotion Enterprises Inc. files this response in opposition to Receiver’s Motion to Appoint Magistrate Judge as Mediator (Dkt. 102).

1. Enmotion opposes the appointment of a magistrate judge as mediator because it is more comfortable having frank discussions about the strengths and weaknesses of the parties’ respective positions with a mediator who is not affiliated with the Court. Enmotion believes reaching a settlement at mediation would be more likely with a private mediator.
2. Other than the cost savings, the benefits that the Receiver attributes to mediating with a magistrate judge are equally applicable to a qualified and experienced private mediator. The Receiver’s claim against Enmotion in this case totals \$75,000. (Receiver’s Compl. Against Certain Transferees (Dkt. 1) ¶ 58.) Given this amount in dispute, the cost of a private mediator is justified

since it will make Enmotion more comfortable and amenable to openly discussing settlement possibilities.

3. One reason for Enmotion's reluctance to discuss settlement openly with a magistrate judge is that a magistrate judge may make or influence important rulings in the case. The Receiver responds to this concern by stating that she "could not envision any circumstance in this Case where the magistrate judge would be ruling on motions." (Receiver's Mot. to Appoint Magistrate Judge as Mediator (Dkt. 102) n.1.) However, 28 U.S.C. section 636(b)(1) and Federal Rule of Civil Procedure 72 plainly empower magistrate judges to rule on non-dispositive motions and to conduct hearings and recommend rulings and findings of fact on dispositive motions. It is understandable that Enmotion would not feel comfortable engaging in the sort of discussion necessary to facilitate an effective mediation with a person holding such authority.

4. In her reply in support of a nearly identical motion in a related case also pending in this Court, the Receiver counters that the parties did not consent to proceed before a magistrate judge pursuant to 28 U.S.C. section 636(c). Receiver's Reply in Supp. of Mot. to Appoint Magistrate Judge as Mediator ¶ 4, *Ecklund v. Bailey*, No. 4:18-cv-359 (E.D. Tex. Feb. 20, 2019), Dkt. 58. However, consent of the parties for the magistrate to "conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case" is not required for a magistrate to perform the specific functions

authorized under section 636(b). *Compare* 28 U.S.C. § 636(b) *with* § 636(c). Indeed, Federal Rule of Civil Procedure 72(b)(1) specifically acknowledges that a magistrate judge may be assigned to conduct hearings on a dispositive pretrial matter “without the parties’ consent.” The Receiver and her team of experienced lawyers should know very well that magistrate judges frequently rule on non-dispositive motions and conduct hearings and recommend rulings and findings of fact on dispositive motions without consent of the parties.

5. For the foregoing reasons, Defendant Enmotion Enterprises Inc. requests that the Court deny the Receiver’s Motion to Appoint Magistrate Judge as Mediator (Dkt. 102), appoint a private mediator instead, and grant all other just relief in favor of Enmotion

Respectfully submitted,

THE SINGHAL LAW FIRM

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**ATTORNEY FOR DEFENDANT,
ENMOTION ENTERPRISES INC.**

CERTIFICATE OF SERVICE

I certify that, on February 22, 2019, a copy of the foregoing Defendant Enmotion's Response to Receiver's Motion to Appoint Magistrate Judge as Mediator, along with the attached proposed order, has been served by electronic service through the electronic case filing system (ECF).



Geoffrey E. Riddle

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**ORDER DENYING RECEIVER'S MOTION TO APPOINT
MAGISTRATE JUDGE AS MEDIATOR**

Receiver's Motion to Appoint Magistrate Judge as Mediator (Dkt. 102) is hereby **DENIED**. The Court hereby appoints the following person as mediator.

NAME: _____

TBN: _____

EMAIL: _____

PHONE: _____