

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

JENNIFER ECKLUND, RECEIVER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Ancillary Civil Action No. 4:18-cv-360
	§	
BEDAZZLED et al.,	§	
	§	
Defendants.	§	

**RECEIVER’S REPLY IN SUPPORT OF THE RECEIVER’S MOTION TO APPOINT
MAGISTRATE JUDGE AS MEDIATOR**

Plaintiff Jennifer Ecklund, in her capacity as the Court-appointed Receiver (the “**Receiver**”) for Defendants Thurman P. Bryant, III (“**Bryant**”) and Bryant United Capital Funding, Inc. (“**BUCF**”) (Bryant and BUCF, collectively, the “**Bryant Defendants**”) and Defendant Arthur F. Wammel (“**Wammel**”), Defendant Wammel Group, LLC (the “**Wammel Group**”), and Wammel Group Holdings Partnership (“**WGHP**”) (together Wammel, Wammel Group, and WGHP, the “**Wammel Defendants**”) receivership estates (together, the “**Receivership Estate**” or the “**Receivership**”), in the above-captioned case (the “**Case**”), by and through undersigned counsel, hereby files this Reply (the “**Reply**”) to *Defendant Enmotion’s Response to Receiver’s Motion to Appoint Magistrate Judge as Mediator* [Dkt. 104] (the “**Response**”) and in support of the *Receiver’s Motion to Appoint Magistrate Judge as Mediator* [Dkt. 102] (the “**Motion**”).

1. The Receiver filed her Motion on February 19, 2019. Defendant Enmotion Enterprises, Inc. filed its Response on February 22, 2019.

2. In the Motion, the Receiver requested a magistrate judge serve as mediator in this Case because the Receiver believes there are multiple benefits to appointing a magistrate judge as

mediator given the circumstances and posture of this case, including but not limited to, (a) the benefit of independent and impartial review of the parties' positions; (b) the benefit of cost-saving aspects; (c) the benefit of having a judge to consult with the parties regarding evidentiary issues; and (d) the benefit of having a judge comment on the parties' issues regarding dispositive motions.¹

3. Defendant Enmotion Enterprises, Inc. opposed the Receiver's Motion arguing that it would be 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 and that the magistrate judge may make or influence important rulings in the case. (Dkt. 104 at ¶¶ 1 and 3). Defendant Enmotion Enterprises, Inc. further cites a federal statute and rule (28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72) in support of its arguments that the magistrate judge may conduct hearings in this case and could rule on the Receiver's dispositive motion. Defendant Enmotion Enterprises, Inc.'s arguments are unpersuasive.

4. As an initial matter, the parties in this Case conducted the conference required by Rule 26(f) of the Federal Rules of Civil Procedure and did not agree or consent to proceed before a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). As indicated in the Receiver's Motion, the Receiver could not envision any circumstance in this Case where the magistrate judge would be ruling on motions or presiding over hearings. In its Response, Defendant Enmotion Enterprises, Inc. contends that consent of the parties under § 636(c) is not required in order for a magistrate judge to perform specific functions authorized under § 636(b). *See* Dkt. 104 at ¶ 4. Significantly, however, Defendant Enmotion Enterprises, Inc. ignores that appointing a magistrate judge to preside over certain matters is entirely at the discretion of the district judge. Indeed, 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72 both unequivocally state that a judge *may*

¹ Counsel to Defendants Fresh Start Legal Advocates, Inc. and Christel Such are unopposed to the Motion. *See* Motion, Dkt. No. 102 at ¶ 4.

designate a magistrate judge to hear and determine certain matters and that matters are *referred* to magistrate judges. Therefore, Defendant Enmotion Enterprises, Inc.'s reluctance to discuss settlement with a magistrate judge (who is not involved in the underlying case) is unfounded.

5. Similarly, Defendant Enmotion Enterprises, Inc.'s attempts to use and reference 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72 as support for its request to not have a magistrate judge appointed as mediator in this case is without merit. Section 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure merely enumerate the jurisdiction in civil and criminal matters that a magistrate judge *may* preside over if the matter is first referred to a magistrate judge by the judge of the court. Section 636(b)(1) and Federal Rule of Civil Procedure 72 state that a judge *may* designate a magistrate judge to hear certain civil matters in a case. The statute and rule do not mean that the judge in this Case will designate a magistrate judge to hear certain civil matters or that the judge will designate the same magistrate judge to hear certain civil matters and mediate this Case.

6. Finally, Defendant Enmotion Enterprises, Inc. also argues that given the amount in controversy a private mediator is appropriate. Enmotion Enterprises, Inc., however, is not the only defendant in this Case. Indeed, this case involves multiple defendants. Because there are multiple defendants in this Case, it would be economically advantageous to have mediation at the same time with the same mediator with all of the defendants. Separate mediations would only serve to drive up costs and should not be conducted with each defendant.

7. The Receiver is committed to the mediation process and is hopeful she can reach a mutually acceptable resolution with the named defendants in this Case. There is great benefit to having a magistrate judge serve as a mediator, and the Receiver believes all parties involved in this Case could reach amicable settlements from having a magistrate judge serve as the mediator.

WHEREFORE, the Receiver respectfully requests that the Court deny the relief requested in the Response, enter an order appointing a magistrate judge to mediate this Case, and grant such other and further relief to which she may show herself justly entitled.

DATED: February 28, 2019.

Respectfully submitted,

By: /s/ Timothy E. Hudson

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COUNSEL TO RECEIVER

CERTIFICATE OF SERVICE

On February 28, 2019, I electronically submitted the foregoing document to the Clerk of the Court for the United States District Court for the Eastern District of Texas using the electronic case filing system of the Court.

/s/ Timothy E. Hudson
Timothy E. Hudson