

United States District Court,  
S.D. Florida.

**ARMOR SCREEN CORPORATION, a Florida corporation,**  
Plaintiff.

v.

**STORM CATCHER, INC., a Florida Corporation, Storm Smart Building Systems, Inc., a Florida corporation, Smart Tracks, Inc., a Florida corporation, Brian Rist, an individual, Stephen Johnson, an individual, and Does 1-5, inclusive,**  
Defendants.

No. 07-81091-CIV

**Dec. 18, 2008.**

Jeremy Dutra, John A. Burlingame, Squire Sanders & Dempsey, Washington, DC, Robert C.L. Vaughan, Javier Asis Lopez, Squire Sanders & Dempsey LLP, Miami, FL, for Plaintiff.

Andrew William Ransom, Benjamin Michael Hanrahan, John Fulton, Jr., David Andrew Gast, Oliver Alan Ruiz, Malloy & Malloy, P.A., Clifford Lawrence Rostin, Kaplan Zeena, Raquel Aurora Regalado-Herrera, Herrera & Regalado-Herrera PA, Lawrence D. Smith, Walton Lantaff, Miami, FL, for Defendants.

***ORDER ADOPTING THE REPORT AND RECOMMENDATION***

**KENNETH L. RYSKAMP, District Judge.**

THIS CAUSE comes before the Court upon the Report and Recommendation of Magistrate Judge Ann E. Vitunac [DE 156] entered on November 10, 2008. Pending before Judge Vitunac was defendants' motion to correct inventorship [DE 62], defendants' request for oral argument [DE 65], and Dodd's motion to intervene as third party claimant against plaintiff [DE 71]. Defendants' objected to the report [DE 167] on November 28, 2008.

Defendants made two general objections to the report and recommendation. First, defendants argue that Judge Vitunac erred by not conducting an evidentiary hearing. They seem to argue that they are entitled to an evidentiary hearing, which is incorrect. This Court was not able to find, nor did defendants cite any authority stating that a court is required to conduct an evidentiary hearing in this instance. Defendants were free to submit any admissible evidence that they wanted to attach to the motions. Moreover, defendants fail to specifically indicate what other evidence they planned to introduce at an evidentiary hearing that was not already provided in the exhibits to the motions. To the extent that defendants planned to introduce further testimony from Dodd, Dodd's uncorroborated testimony is insufficient for the reasons explained in Judge Vitunac's report and recommendation.

Second, defendants argue that Judge Vitunac exceeded the scope of her authority. Defendants argue that

Judge Vitunac should not have determined the issues of co-inventorship and invalidity because they are beyond the scope of the motion to intervene. Defendants fail to recognize, however, that they raised these very issues in the motions they chose to file, a motion to intervene and a motion to correct inventorship, both of which relied on identical evidence. Since the parties placed these issues before Judge Vitunac, her order was not outside the scope of the motions.

Next, defendants argue that the report and recommendation not only denies the motions at issue, but also dismisses defendants' affirmative defense of patent invalidity due to failure to name a co-inventor and the counterclaim for correction of inventorship. As worded, the report and recommendation does not dispose of the affirmative defense or the counterclaim. It merely denies the motions for correction of inventorship and motion to intervene.

Finally, defendants argue that Judge Vitunac converted these motions into dispositive motions and then issued judgment on those motions. While it is true that Magistrate Judges cannot "determine" dispositive motions, Judge Vitunac issued a report and recommendation and therefore by definition did not determine a dispositive issue. This Court does so by adopting her report and recommendation. Second, the motions were never converted into dispositive motions.

This Court has read and considered all of the above submissions in light of the record. Accordingly, it is hereby,

ORDERED AND ADJUDGED that:

- (1) The Report of Magistrate Judge Vitunac [DE 156] be, and the same hereby is, RATIFIED, AFFIRMED and APPROVED in its entirety;
- (2) Defendants' motion to correct inventorship [DE 62] is DENIED;
- (3) Defendants' request for oral argument [DE 65] is DENIED;
- (4) Dodd's motion to intervene as third party claimant against plaintiff [DE 71] is DENIED.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 16 day of December, 2008.

S.D.Fla., 2008.

Armor Screen Corp. v. Storm Catcher, Inc.

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