

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

BAYCHAR, INC., ET AL.,)	
)	
PLAINTIFFS)	
)	
v.)	CIVIL No. 04-136-B-H
)	
SALOMON/NORTH AMERICA,)	
INC.,)	
)	
DEFENDANT)	

ORDER ON PLAINTIFFS' MOTION FOR RELIEF FROM JUDGMENT

In this case, the Magistrate Judge and the District Judge ruled favorably on the defendant's motion for summary judgment on the plaintiffs' claims. The defendant's motion for summary judgment, however, did not address the counterclaims it had raised. Def.'s Answer & Countercls. at 5-7 (Docket Item 11).

As a result, the Orders of both the Magistrate Judge and the District Judge did not rule on the counterclaims.¹ Nevertheless, the Clerk's Office incorrectly

¹ The defendant argues that by saying "no further proceeding [was] necessary," Def.'s Opp'n to Mot. to Set Aside J. at 2 (Docket Item 140), the district judge ruled on the counterclaims. The quotation clearly refers to further proceeding on the motion for summary judgment, not the entire case. I take judicial notice that Judge Carter customarily uses that language in affirming a Magistrate Judge's decision. Moreover, under Federal Rule 56(c), summary judgment should not be entered in favor of the nonmoving party without prior notice. Fed. R. Civ. P. 56(c); see National Expositions, Inc. v. Crowley Maritime Corp., 824 F.2d 131, 133-34 (1st Cir. 1987) (*sua sponte* grant of summary judgment upheld because procedural circumstances of case indicate nonmoving party had notice and opportunity to respond); see also Preterm, Inc. v. Dukakis, 591 F.2d 121, 134 (1st Cir. 1979) (court must first afford parties opportunity to oppose dismissal prior to dismissing action
(continued on next page))

entered judgment in the defendant's favor on the entire case, *i.e.*, including the defendant's counterclaims. Plainly, the judgment on the counterclaims must be **VACATED** under Fed. R. Civ. P. 60(a). I express no view concerning the effect of this Order on the plaintiffs' appeal to the Federal Circuit, previously dismissed as untimely.

The plaintiffs' motion for relief from judgment from the counterclaims is **GRANTED**.

The defendant's motion for attorney fees is **DISMISSED WITHOUT PREJUDICE** as premature.

The plaintiffs' motion to extend briefing on the attorney fees motion is **DISMISSED** as moot.

So ORDERED.

DATED THIS 22ND DAY OF MAY, 2007

/s/D. BROCK HORNBY

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

sua sponte).

**U.S. DISTRICT COURT
DISTRICT OF MAINE (BANGOR)
CIVIL DOCKET FOR CASE #: 1:04cv136 (DBH)**

Baychar, Inc.

and

Baychar Holdings, LLC

Plaintiffs

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v.

Salomon / North America, Inc.

Defendant

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