

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

**WELLS FARGO FINANCIAL
LEASING, INC.**

PLAINTIFF

v.

CASE NO. 3:09cv00055 BSM

**DIXON FARMS, INC.
and RAY DIXON**

DEFENDANTS

ORDER

Plaintiff, Wells Fargo Financial Leasing, Inc. (“Wells Fargo”), moves for default judgment and summary judgment. [Doc. No. 23]. Defendants, Dixon Farms, Inc. (“Dixon Farms”) and Ray Dixon, (“Dixon”) (collectively “defendants”) have not responded. The motion for default judgment is granted and the motion for summary judgment is denied.

Wells Fargo filed a complaint against defendants on April 24, 2009, claiming breach of contract on two equipment leases and defendants answered on May 28, 2009. Summary judgment was granted to Wells Fargo on the issue of liability on July 23, 2009, with damages to be determined at a damages hearing.

Service by Wells Fargo throughout the litigation has been sufficient. On May 13, 2009, summonses for both Dixon Farms and Dixon were returned executed. Wells Fargo amended its complaint on September 15, 2009 to add another breach of contract claim against defendants regarding a third equipment lease. Defendants were served electronically the same day but failed to respond. Upon Wells Fargo’s motion, the clerk entered a default against defendants on December 14, 2009. Wells Fargo then moved for default judgment

and summary judgment on February 26, 2010, requesting default judgment on the issue of liability under the amended complaint, and summary judgment on the issue of damages under the original and amended complaints. Defendants were served electronically the same day but failed to respond.

Wells Fargo's motion for summary judgment on the issue of damages is quite offensive. This is the case because Wells Fargo was informed that the issue of damages must be taken up at a separate damages hearing; however, it is now attempting to circumvent the previous order by moving for summary judgment on the issue of damages. The motion for summary judgment is denied.

The motion for default judgment on the issue of liability as to the third equipment lease is granted and the issue of damages will be determined at a separate hearing to be scheduled by Wells Fargo.

IT IS SO ORDERED this 12th day of April, 2010.



UNITED STATES DISTRICT JUDGE