

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MONTGOMERY BANK, N.A.,

Plaintiff,

v.

Case No: 2:16-cv-173-FtM-38CM

PIKE CREEK TURF FARMS,
INC., LEE COUNTY, SOUTHERN
GULF EQUIPMENT RENTAL &
SALES, INC., RIVERBEND
HOMEOWNERS ASSOCIATION
OF LEE COUNTY, INC. and
FLORIDA DEPARTMENT OF
REVENUE,

Defendants.

ORDER

This matter comes before the Court upon review of Plaintiff's Motion for Default by the Clerk (Doc. 101) filed on March 28, 2017. Plaintiff moves for entry of Clerk's default against Defendant Florida Department of Revenue ("DOR") for failure to plead or otherwise defend as provided by Rule 55(a) of the Federal Rules of Civil Procedure. Doc. 101. On March 28, 2017, Plaintiff filed an Amended Return of Service. Doc. 100. For the reasons that follow, the motion is due to be denied without prejudice.

Pursuant to Rule 55(a), Federal Rules of Civil Procedure, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must

enter the party's default." Similarly, Middle District of Florida Local Rule 1.07(b) provides:

When service of process has been effected but no appearance or response is made within the time and manner provided by Rule 12, Fed. R. Civ. P., the party effecting service shall promptly apply to the Clerk for entry of default pursuant to Rule 55(a), Fed. R. Civ. P.

M.D. Fla. R. 1.07(b). Prior to directing the Clerk to enter a default, the Court must first determine whether Plaintiff properly effected service of process. *United States v. Donald*, No. 3:09-cv-147-J-32HTS, 2009 WL 1810357, at *1 (M.D. Fla. June 24, 2009). Rule 4(c)(1) requires that a summons be served with a copy of the complaint, and it is the plaintiff's responsibility to ensure proper service of the summons and complaint. Fed. R. Civ. P. 4(c)(1); see also *Kelly v. Florida*, 233 F. App'x 883, 885 (11th Cir. 2007).

Here, it is not clear whether service was properly effected. The Amended Return of Service states that on March 8, 2017, a process server for ATA Process, LLC delivered a true copy of the Summons in a Civil Action to Tanya Williams, an administrative assistant for the DOR c/o General Counsel's Office, at 2450 Shumard Oaks Blvd., Bldg 1, Tallahassee, FL 32399. Doc. 100. The Return of Service does not state whether Plaintiff served a copy of the Amended Complaint for Commercial Foreclosure and Other Relief (Doc. 77) upon the DOR. *Id.*

ACCORDINGLY, it is hereby

ORDERED:

Plaintiff's Motion for Default by the Clerk (Doc. 101) is **DENIED without prejudice.**

DONE and **ORDERED** in Fort Myers, Florida on this 30th day of March, 2017.



CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record