

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

SAFECO INSURANCE COMPANY  
OF ILLINOIS and SAFECO  
INSURANCE COMPANY OF  
AMERICA,

Plaintiffs,

v.

Case No: 2:16-cv-837-FtM-38CM

JOSEPH A. TREMBLAY, CODY  
JAMES MORRISON, ROMARRIO  
ANTHONY SCOTT, RAQUEL  
MARIA NUNEZ, JULIE LIPPSON  
and STEVEN LIPPSON,

Defendants.

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**ORDER**

This matter comes before the Court upon review of Plaintiffs' Motion for Entry of Clerk's Default against Defendant Joseph A. Tremblay ("Tremblay") (Doc. 74) filed on September 28, 2017. Plaintiffs seek a Clerk's entry of default as to Tremblay. Doc. 74. On November 16, 2016, Plaintiffs filed a Petition for Declaratory Judgment ("Petition") against various Defendants including Tremblay. Doc. 1. On December 7, 2016, Tremblay filed his Answer to the Petition. Doc. 14. Plaintiffs subsequently amended their pleading two more times, filing a Second Amended Petition for Declaratory Judgment ("Second Petition") on March 22, 2017. Doc. 59. Plaintiffs served the Second Petition upon Tremblay by mailing it to him on March 22, 2017. *Id.* at 21. On September 6, 2017, United States District Judge Sheri Polster Chappell ordered Tremblay to show cause on or before September 13, 2017 why he

had not filed an amended answer to the Second Petition, or, alternatively, to file an amended answer by that date. Doc. 71. As of this date, Tremblay has not responded to the Order to Show Cause (Doc. 71) or filed his amended answer to the Second Petition.

Pursuant to Rule 55(a) of the 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). Pursuant to Rule 15(a)(3) of the Federal Rules of Civil Procedure, “any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.” Fed. R. Civ. P. 15(a)(3).

Rule 5(a)(1) of the Federal Rules of Civil Procedure states that a pleading filed after the original complaint must be served on every party. Fed. R. Civ. P. 5(a)(1)(B). A party may properly serve an amended pleading under Rule 5 by mailing the amended pleading to the person’s last known address, “in which event service is complete upon mailing.” Fed. R. Civ. P. 5(b)(2)(C). Here, Plaintiffs served the Second Petition upon Tremblay by mailing it to his last known address. Doc. 59 at 21; *see id.* Tremblay has failed to file his amended answer within the time period

permitted under Rule 15(a)(3) of the Federal Rules of Civil Procedure or Judge Chappell's Order to Show Cause (Doc. 71); therefore, the entry of Clerk's default pursuant to Federal Rule of Civil Procedure 55(a) and Middle District of Florida Local Rule 1.07(b) is appropriate.

ACCORDINGLY, it is hereby

**ORDERED:**

1. Plaintiffs' Motion for Entry of Clerk's Default against Defendant Joseph A. Tremblay (Doc. 74) is **GRANTED**.

2. The Clerk is directed to enter a Clerk's default against Defendant Joseph A. Tremblay.

**DONE** and **ORDERED** in Fort Myers, Florida on this 4th day of October, 2017.

  
CAROL MIRANDO  
United States Magistrate Judge

Copies:  
Counsel of record  
Unrepresented parties