

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

TIMMY J. RILEY and BARBARA J. RILEY,

Plaintiffs,

vs.

Case No. 3:10-cv-644-J-34MCR

JOHN H. RUTHERFORD, as Sheriff of Duval  
County, in his individual and official capacity, et  
al.,

Defendants.

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**ORDER**

**THIS CAUSE** is before the Court on Plaintiffs' Motion for Entry of a Clerk's Default (Doc. 23) filed September 1, 2010. On September 2, 2010, Defendant filed its response in opposition to Plaintiffs' Motion (Doc. 24). Accordingly, this matter is now ripe for judicial determination.

Plaintiffs seek the entry of a clerk's default against Defendant, John Rutherford, pursuant to Federal Rule of Civil Procedure 55(a). (Doc. 23). However, on August 23, 2010, Defendant timely filed a Motion to Dismiss. (Doc. 14). Accordingly, Defendant has not "failed to plead or otherwise defend this lawsuit." Fed.R.Civ.P. 55(a). The Court acknowledges that the service copies of Defendant's Motion to Dismiss were mailed to *pro se* Plaintiff one day after they were due to be served. However, the Motion to Dismiss was timely filed and Defense counsel asserts that the short delay in service was due to an inadvertent clerical error. The Court can see no reason that

Plaintiffs were prejudiced by this short delay. Therefore, Plaintiffs' Motion is due to be denied and Defendant's Motion to Dismiss is considered timely served. See Lee v. Huttig Bldg. Prods., 2005 U.S. Dist. LEXIS 22364, 2005 WL 2266591 (M.D. Ga. Sept. 16, 2005) (holding defaults are disfavored and instead federal courts prefer that cases be decided on the merits).

Accordingly, after due consideration, it is

**ORDERED:**

Plaintiffs' Motion for Entry of a Clerk's Default (Doc. 23) is **DENIED**. Defendant's Motion to Dismiss (Doc. 14) is considered timely served.

**DONE AND ORDERED** in Chambers in Jacksonville, Florida this 3<sup>rd</sup> day of September, 2010.

*Monte C. Richardson*

MONTE C. RICHARDSON  
UNITED STATES MAGISTRATE JUDGE

Copies to:

Counsel of Record  
Any Unrepresented Party