

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TOMMY CHANCI CASTLE, SR.,

Plaintiff,

v.

Case No: 6:18-cv-243-Orl-41GJK

**THE STATE OF FLORIDA,
GOVERNOR RICK SCOTT and
INTERNAL REVENUE SERVICE,**

Defendants.

ORDER

THIS CAUSE is before the Court on Plaintiff's Motion for Default Judgment (Doc. 2) and Motion for Summary Judgment (Doc. 3). United States Magistrate Judge Gregory J. Kelly issued a Report and Recommendation (Doc. 5), in which he recommends denying both motions. First, Judge Kelly recommends denying Plaintiff's Motion for Default Judgment because Plaintiff has not provided any evidence that Defendants were ever served in this case. Second, Judge Kelly recommends denying Plaintiff's Motion for Summary Judgment because Defendants have not made an appearance in this case, and no discovery has been conducted. Plaintiff filed an Objection (Doc. 6), in which he argues that Defendants were served via certified mail and that he has provided the Court with sufficient evidence for entry of summary judgment.

With regard to the Motion for Default Judgment, as Judge Kelly pointed out, Plaintiff has not obtained a default in accordance with Federal Rule of Civil Procedure 55. Additionally, the information contained in Plaintiff's Objection is insufficient to establish that Defendants were served in accordance with Federal Rule of Civil Procedure 4.

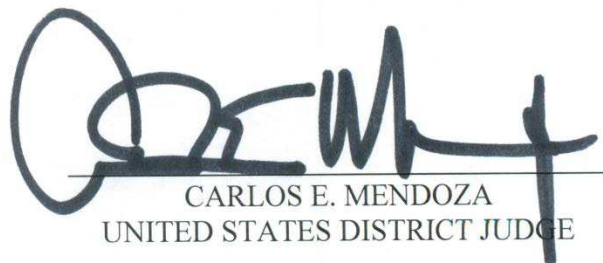
As to Plaintiff's Motion for Summary Judgment, Defendants have not appeared. If they were properly served, then the appropriate avenue for Plaintiff to take is to obtain a Clerk's default and move for default judgment, not summary judgment. *Phillips Factors Corp. v. Harbor Lane of Pensacola, Inc.*, 648 F. Supp. 1580, 1582–83 (M.D.N.C. 1986); *see also United States v. Estate of Segel*, No. 8:08-cv-2196-T-23EAJ, 2010 WL 1730749, at *1 (M.D. Fla. Apr. 27, 2010) (construing motion for summary judgment as a motion for default judgment). If, on the other hand, Defendants were not properly served, then that must be done, and they must be given the opportunity to appear and respond to Plaintiff's allegations.

Finally, Plaintiff asserts that he has appropriately paid the filing fee. The Court acknowledges that Plaintiff's filing fee payment was received on February 20, 2018.

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. The Report and Recommendation (Doc. 5) is **ADOPTED** and **CONFIRMED** as set forth in this Order.
2. Plaintiff's Motion for Default Judgment (Doc. 2) and Motion for Summary Judgment (Doc. 3) are **DENIED**.

DONE and **ORDERED** in Orlando, Florida on June 27, 2018.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Unrepresented Party