

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 08-21042-CIV-KING

OSVALDO VISCOVICH,

Plaintiff,

v.

SALMAN MAINTENANCE SERVICE, INC.,  
A Florida corporation d/b/a SALMAN  
LANDSCAPE SERVICES; ARBOR TECH  
OF MIAMI, INC., a Florida corporation;  
SALMAN LS, INC., a Florida corporation,  
MARIO SALMAN, CHAD BETHEL,  
EDWARD MESIS a/k/a "EDDIE MESIS",

Defendants.

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**ORDER DENYING DEFENDANTS' MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION**

THIS CAUSE is before the Court upon the Defendants' Motion to Dismiss Including for Lack of Subject Matter Jurisdiction (D.E. #65), filed August 4, 2009.

In the instant Motion, the Defendants ask this Court to dismiss the above-styled case due to the Plaintiff's alleged failure to file his Amended Complaint after the Court granted him leave to file. As factual background, Plaintiff filed his Motion to Amend the Complaint on August 29, 2008 (D.E. #20). The Court granted this Motion on October 7, 2008 (D.E. #23). In that Order, the Court stated, "Pursuant to the Administrative Procedures of the Southern District of

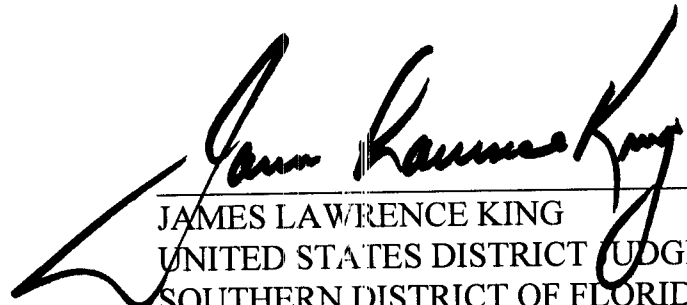
Florida, the Plaintiffs are directed to electronically file the document.” (D.E. #23). The Plaintiff did not file an Amended Complaint subsequent to the Court’s Order; however, the Plaintiff did attach his proposed Amended Complaint to his August 29, 2008 Motion to Amend (D.E. #20, Ex. 1).

The Defendants allege that “to date Plaintiff has failed to file an Amended Complaint, forthwith, or otherwise.” (D.E. #65). The Court, however, finds that, due to the confusion of the electronic filing system, the Plaintiff’s Amended Complaint attached to his August 29, 2008 Motion to Amend is sufficient to comply with the Court’s October 7, 2008 Order. More importantly, the Court finds that since the Court’s Order of October 7, 2008, both Parties have been continuously litigating the case. The Defendants should have brought this issue to the Court’s attention ten (10) months ago. Instead, by litigating the case and waiting until just two months before the trial date of October 19, 2009 to notify the Court, the Defendants’ argument is no longer appropriate.

Accordingly, after a careful review of the record and the Court being otherwise fully advised, it is **ORDERED, ADJUDGED, AND DECREED** that Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction (**D.E. #65**) be, and the same is hereby, **DENIED**.

**DONE AND ORDERED** in the Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida this 5th day of August,

2009.



JAMES LAWRENCE KING  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF FLORIDA

cc:

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