

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-21830-CIV-UNGARO/SIMONTON

THE PROVIDENT BANK,

Plaintiff,

v.

OSMEL L. RODRIGUEZ,

Defendant.

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ORDER REQUIRING RESPONSE

Presently pending before the Court is Plaintiff's Motion for Attorneys' Fees and Costs (DE # 29). This motion is referred to the undersigned Magistrate Judge (DE # 30). The deadline for timely filing a response expired on January 12, 2009 and no response has been filed to date. Based upon a careful review of the record and for the reasons stated herein, it is ORDERED that, on or before February 5, 2009, Defendant shall file a response in opposition to Plaintiff's Motion for Attorneys' Fees and Costs.

On December 12, 2008, the Honorable Ursula Ungaro, the United States District Judge assigned to this case, entered a Final Judgment in this case in favor of Plaintiff, the Provident Bank, and against Defendant, Osmel L. Rodriguez. The Court reserved jurisdiction for the purpose of assessing attorneys' fees and costs against Defendant (DE # 24); and, on December 23, 2008, Plaintiff filed the instant motion (DE # 29).

The Settlement Agreement states that Defendant "agrees to the entry of a judgment against him individually in the amount of \$82,024.80, plus interest . . . , plus reasonable attorneys fees and costs . . . , subject to the understanding that the Defendant can contest/does not waive any right to contest the amount of reasonable attorneys fees and costs sought by Plaintiff" (DE # 23, Ex. A). According to Plaintiff's counsel,

however, Defendant objected to the imposition of fees and costs when they discussed the topic at mediation (DE # 29 at 4). It is therefore unclear whether Defendant intended to contest liability for fees and costs or the amount of fees and costs requested in the instant motion.

Although the deadline for Defendant to file a timely response to the motion for attorneys' fees and costs expired on January 12, 2009, the undersigned notes that Defendant is proceeding in this action *pro se*, and it appears that he was not served with a copy of the motion.

First, the Certificate of Service states that Defendant will be served "either via transmission of Notices of Filing Generated by CM/ECF or in some other authorized manner" (DE # 29 at 5). However, the docket reflects that Defendant did not receive a Notice of Electronic Filing electronically or by any other authorized means through the Court's Electronic Filing System, CM/ECF (DE # 29, Receipt).

Second, the Service List suggests that Plaintiff's counsel attempted to send a copy of the motion to Defendant by United States Mail (DE # 29 at 6). However, the address used in the Service List is "4697 E. 8th Court," whereas the record – including the summons (DE # 6) and Defendant's own filings – reflects that Defendant's address is, in fact, "4967 E. 8th Court" (see, e.g., DE # 10, Ex. A) (Defendant's signature block reflecting an address of "4967 E 8 Court"). Thus, not only did Defendant fail to receive a copy of the motion from CM/ECF, but it also appears, based on the transposition of the numbers in Defendant's address on the Service List, that Defendant did not receive a copy of the motion by mail from Plaintiff's counsel either. It is, accordingly,

**ORDERED AND ADJUDGED** that, on or before February 5, 2009, Defendant

shall file a response in opposition to Plaintiff's Motion for Attorneys' Fees and Costs (DE # 29) by mailing the response to the Clerk of the Court at 400 North Miami Avenue, 8th Floor North, Miami, Florida 33128 and serving a copy on Plaintiff's Counsel. In light of the fact that he has previously filed documents in Florida state court, which is the wrong Court, Defendant is advised to submit any future filings in this action to the correct Court: the United States District Court for the Southern District of Florida. Defendant is further advised that a failure to comply with this Order by filing a response within the time provided may result in the entry of an Order granting Plaintiff's Motion for Attorneys' Fees and Costs by default, without the need for further proceedings.

**DONE AND ORDERED** in chambers in Miami, Florida on January 16, 2009.

  
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ANDREA M. SIMONTON  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
All counsel of record, via CM/ECF

Osmel L. Rodriguez  
4967 E. 8th Court  
Hialeah, Florida 33013