

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 12-23354-CIV-MARTINEZ/GOODMAN

GIANFRANCO DIOGUARDI,

Plaintiff,

v.

GRISOKI, LLC, et al.,

Defendants.

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**ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT AGAINST  
GARNISHEE KVR EQUITY PARTNERS, LLC WITHOUT PREJUDICE**

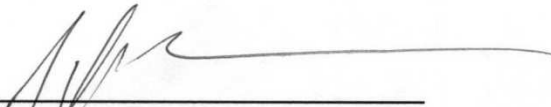
This Cause is before the Court on Plaintiff's Motion For Default Against Garnishee KVR Equity Partners, LLC (the "Motion"). [ECF No. 154]. Upon consideration of the Motion and the pertinent portions of the record, the Motion is **DENIED without prejudice** for the following reasons.

It is unclear to the Court whether the Motion is a motion for default or a motion for default judgment. Pursuant to Federal Rule of Civil Procedure 55, default judgment is a two-step process: first, entry of default by the clerk (Fed. R. Civ. P. 55(a)), and second, entry of judgment by default (Fed. R. Civ. P. 55(b)). *Patino v. El Rey Del Chivito Corp.*, No. 23726-CIV, 2013 WL 5652056, at \*1 (S.D. Fla. Oct. 15, 2013) (citing *Brantley v. DEA*, No. 2:12-cv-361-FtM-99SPC., 2012 WL 6015591, at \*1 (M.D. Fla. Dec. 3, 2012)). The Motion indicates in its prayer for relief that Plaintiff is pursuing the first step of the default judgment process: entry of default. [ECF No. 154, p. 2 ("requests this Court to

enter a Default against Garnishee”]. However, the Motion also indicates that relief is being sought *from the Court*, not the clerk.<sup>1</sup> [*Id.*]. Matters are further complicated by Plaintiff selecting “Motion for Default Judgment” as the relief sought in the Court’s electronic filing system.<sup>2</sup>

Given that the Motion seeks relief from the Court and that it has been labeled a Motion for Default Judgment by Plaintiff in the CM/ECF system, the Undersigned will address the Motion as a motion for default judgment. Because Plaintiff did not obtain an entry of default from the clerk, the Court cannot grant an entry of default judgment pursuant to Rule 55(b). Therefore, the Motion is **DENIED without prejudice**.

**DONE AND ORDERED** in Chambers, in Miami, Florida, November 7, 2014.



Jonathan Goodman  
UNITED STATES MAGISTRATE JUDGE

**Copies furnished to:**

Honorable Jose E. Martinez  
All Counsel of Record

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<sup>1</sup> It is the clerk who “enter[s] a Default” pursuant to Rule 55. The Court is charged by subsection (b) of Rule 55 with entering default *judgment*.

<sup>2</sup> See the Clerk of Court’s entry for ECF No. 154 on electronic docket sheet.