

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

WILSON CLARK, III

CIVIL ACTION

VERSUS

NUMBER: 18-7665

MARRERO ESTELLE FIRE  
DEPARTMENT, *et al.*

SECTION: M (5)

**ORDER**

On May 14, 2019, named defendant Marrero Estelle Fire Department filed a motion to dismiss for failure to state a claim and to withdraw entry of default judgment entered against it,<sup>1</sup> which was set for expedited submission on May 22, 2019.<sup>2</sup> No opposition to the motion has been filed.

Marrero Estelle Fire Department is a non-existent legal entity that the plaintiff, Wilson Clark, III, erroneously named in the complaint.<sup>3</sup> After Marrero Estelle Fire Department filed a motion for an extension of time to answer,<sup>4</sup> the proper defendant, Marrero-Estelle Volunteer Fire Company No. 1, answered, noting plaintiff's error in pleading.<sup>5</sup> Dismissal of the non-existent entity is an appropriate remedy when a plaintiff institutes legal proceedings against it. *See, e.g., Carr v. Spherion*, 2009 WL 3380007, at \* 3 (citing *Int'l Fire & Safety, Inc. v. HC Servs., Inc.*, 2006 WL 2403496 (S.D. Miss. Aug. 18, 2006)) (dismissing complaint as to non-existent entity). Because Clark was never employed by Marrero Estelle Fire Department and such legal entity does not exist under Louisiana law, Clark cannot prove any set of facts that would entitle him to relief

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<sup>1</sup> R. Doc. 43.

<sup>2</sup> R. Doc. 46.

<sup>3</sup> *See* R. Doc. 1.

<sup>4</sup> R. Doc. 17.

<sup>5</sup> R. Doc. 23.

against the erroneously-named party. Accordingly, the default judgment entered against Marrero Estelle Fire Department must be withdrawn, and Clark's claims against it must be dismissed with prejudice. Clark's claims against Marrero-Estelle Volunteer Fire Company No. 1 are unaffected by this Order.

Accordingly, because the motion to dismiss and withdraw entry of default is unopposed, and it appearing to the Court that the motion has merit,

IT IS ORDERED that named defendant Marrero Estelle Fire Department's motion to dismiss and withdraw entry of default (R. Doc. 43) is GRANTED as unopposed; and

IT IS FURTHER ORDERED that the entry of default against Marrero Estelle Fire Department (R. 39) is withdrawn, and that Clark's claims against Marrero Estelle Fire Department are dismissed with prejudice.

New Orleans, Louisiana, this 22nd day of May, 2019.

  
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BARRY W. ASHE  
UNITED STATES DISTRICT JUDGE