

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:10cv175

THOMAS RAY,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
HSBC BANK, N.A.,)	
)	
Defendant.)	
)	

THIS MATTER is before the Court on the Plaintiff's document titled "Tort--Petition for No Answer Default [Doc. 6]. The Court construes this as a motion for entry of default pursuant to Federal Rule of Civil Procedure 55.

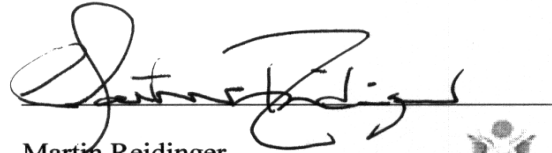
On August 20, 2010, the Plaintiff filed a twenty-six page complaint which contains rambling, inarticulate accusations against the banking industry in general. [Doc. 1]. On the same date that the complaint was filed, the Plaintiff filed a document identical to the complaint except that, through this pleading, the Plaintiff sought a temporary restraining order to prevent the foreclosure of his home. [Doc. 2]. In the motion, the Plaintiff revealed that by the time this action was filed on August 20, 2010, the foreclosure sale had occurred. The

motion was denied. [Doc. 4].

On September 16, 2010, the Plaintiff filed an amended complaint. [Doc. 5]. On September 23, 2010, he filed a motion for entry of default in which he claims that he served the Defendant HSBC Bank, N.A. on August 23, 2010. He claims that the affidavit of the process server, whom he identifies as Ross A. Olmos, shows that the Defendant was served on August 23, 2010 and is therefore in default. [Doc. 6, at 2]. Attached to the motion is an unidentified document which does not contain the caption of the case. [Id., at 5]. The document is signed by “Roger D. Burton” who states that he served HSBC Bank, N.A. with a summons. [Id.]. He does not state that he served a copy of the complaint and amended complaint on HSBC Bank, N.A. The amended complaint was, in fact, filed after the purported date of service. Moreover, because there is no case caption or case number on the affidavit of service, the Court is unable to ascertain whether the affidavit of service relates to this action. Finally, the person signing this document is not “Ross A. Olmos,” identified by the Plaintiff as his process server.

IT IS, THEREFORE, ORDERED that the Plaintiff's document titled "Tort-Petition for No Answer Default [Doc. 6], construed as a motion for entry of default pursuant to Federal Rule of Civil Procedure 55, is hereby **DENIED**.

Signed: September 28, 2010

A handwritten signature in black ink, appearing to read "Martin Reidinger", written over a horizontal line.

Martin Reidinger
United States District Judge

