

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

ALBERT THOMAS,

Plaintiff

VS.

SONNY PERDUE, *et al.*,

Defendants

NO. 5: 05-CV-217 (DF)

**PROCEEDINGS UNDER 42 U.S.C. §1983
BEFORE THE U. S. MAGISTRATE JUDGE**

ORDER

Plaintiff ALBERT THOMAS has filed a motion seeking a default *judgment* against the defendants for failure to timely file responsive pleadings. Tab #19. The court notes that the Waivers of Service filed herein were signed in mid November by counsel representing the defendants. Tabs # 15, #16, #17, and #18. Those waivers clearly state that the defendants had sixty days **from September 22, 2005**, within which to file responsive pleadings. Defendants' Answer was not filed until December 6, 2005, after the time required by law. Apparently, as plaintiff surmised, it took his motion to prod counsel for the defendants to file an Answer because subsequent to the filing of plaintiff's motion, an Answer was filed on behalf of the defendants. Tab #20. However, the delay occasioned by the defendants' tardy filing is not egregious.

Under Rule 55(c) of the Federal Rules of Civil Procedure:

For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60 (b).

In this case, no request for an entry of default has been submitted to the Clerk of Court. This is a prerequisite to judgment being entered. In the meantime, the defendants have filed their Answer. As noted above, counsel for the defendants acted very quickly to file an Answer after plaintiff filed his motion. Under these circumstances, it is not appropriate to grant plaintiff's request for default judgment. The court finds that defendants' default does not appear to be willful and that plaintiff Thomas will not be prejudiced by permitting the defendants to defend this action.

Accordingly, plaintiff's motion (Tab #19) is DENIED.

SO ORDERED, this 7th day of DECEMBER, 2005.



A handwritten signature in blue ink that reads "Claude W. Hicks, Jr." The signature is stylized and cursive.

CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE