

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed October 7, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-21

Lower Tribunal No. 08-22437

1445 Washington Limited Partnership, etc.,
Appellant,

vs.

Ryan Lemontang, etc.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Scott J. Silverman, Judge.

Gray Robinson, Terrance W. Anderson, Jr., and Juan C. Martinez, for appellant.

Marin, Eljaiek & Lopez, Anthony M. Lopez, and Roniel Rodriguez, IV, for appellee.

Before GERSTEN and CORTIÑAS, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

1445 Washington Limited Partnership (“the partnership”) appeals an attorney’s fee judgment in favor of Ryan Lemontang (“Lemontang”). We reverse.

Lemontang filed a class action against the partnership. The partnership failed to respond, and the clerk entered a default. The trial court entered a final default judgment entitling Lemontang to attorney's fees. Lemontang subsequently filed a motion to determine the attorney's fees, noticing the motion for hearing eight days thereafter. The partnership failed to appear at the hearing, and the trial court awarded Lemontang's counsel \$31,500 in attorney's fees.

The partnership appeals from the trial court's denial of a motion to vacate the attorney's fee judgment. Among other grounds, the partnership asserts that the trial court erred in entering judgment for unliquidated damages without proper notice. Lemontang contends the trial court properly awarded attorney's fees. We agree with the partnership.

A defaulting party is entitled to notice and an opportunity to be heard on unliquidated damages. Cellular Warehouse, Inc. v. GH Cellular, LLC, 957 So. 2d 662, 665 (Fla. 3d DCA 2007); Fla. R. Civ. P. 1.440(c). Rule 1.440(c) specifically states that "actions in which the damages are not liquidated, the order setting an action for trial shall be served on parties who are in default." At a minimum, due process requires that a party be given sufficient notice to prepare for a hearing. See e.g., Herranz v. Siam, 2 So. 3d 1105 (Fla. 3d DCA 2009); Crepage v. City of Lauderhill, 774 So. 2d 61 (Fla. 4th DCA 2000).

Where a default is entered, the defaulting party admits entitlement to liquidated damages, but not unliquidated damages. Cellular Warehouse, 957 So. 2d at 666. Damages are liquidated when the exact amount due may be determined from the pleadings. See e.g., Bowman v. Kingsland Dev., Inc., 432 So. 2d 660, 662 (Fla. 5th DCA 1983). Where evidence must be presented to determine the amount, however, damages are unliquidated. 432 So. 2d at 663. An attorney's fees award requires competent and substantial evidence to determine reasonableness. Brewer v. Solovsky, 945 So. 2d 610, 611 (Fla. 4th DCA 2006). Therefore, attorney's fees are considered unliquidated damages. See e.g., Cellular Warehouse, 957 So. 2d at 665.

Here, the partnership was not afforded reasonable notice or an opportunity to be heard before the trial court awarded attorney's fees. Lemontang served the motion for attorney's fees and the notice of hearing at the partnership's place of business only a few days before the scheduled hearing. This left the partnership with insufficient time to prepare for an evidentiary hearing. Additionally, the trial court's order awards Lemontang's counsel \$31,500 in fees without stating what, if any, evidence Lemontang presented to prove that the amount was reasonable for a simple default action.

Accordingly, we reverse the final default judgment awarding attorney's fees, and remand for an evidentiary hearing upon proper notice.

Reversed and remanded with instructions.