

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CACV OF COLORADO, LLC

Appellant,

v.

LISA M. DE WOLF

Appellee.

APPELLATE DIVISION (CIVIL)

CASE NO.: 502006AP0000XXXXMB

L.T.: 502003CC28559XXXXMB

Division: 'AY'

Opinion filed:

NOV 13 2007

✓ Appeal from the County Court in and for Palm Beach County, Florida
Judge Peter Evans.

✓ For Appellant: Juan G. Andreu, Esq., Law Offices of Andreu & Palma, LLP, 701 S.W.
27th Avenue, Suite 1201, Miami, Florida 33135.

✓ For Appellee: Lisa M. De Wolfe, pro se, 150 Wayne Road, West Palm Beach, Florida
33415; P.O. Box 7216, West Palm Beach, FL 33405.

Reversed.

CACV of Colorado, LLC, appeals the trial court's August 25, 2006 order denying a motion for entry of a default final judgment against Lisa M. DeWolf¹ and dismissing the case.

We find that the trial court erred in dismissing the case, and reverse.

CACV sued DeWolf for \$4,529.50, alleging that DeWolf owed Providian Bank on a credit card debt which Providian had assigned to CACV. The action was governed by the Small Claims Rules. See Fla. Sm. Cl. R. 7.010(b).

The trial court entered a default against DeWolf when she failed to appear at a pre-trial conference. Fla. Sm. Cl. R. 7.170(a). CACV submitted affidavits of proof, non-military service, interest, costs, and attorney's fees. On August 25, 2006, the trial court entered its Order Denying Entry of Default Final Judgment and Dismissing Case, finding that CACV's

¹ We note that Ms. DeWolf spells her name "DeWolfe".

statement of claim failed to state a cause of action because it did not identify the predecessor creditor or establish compliance with §559.715, Fla. Stat.'s notice requirement, and dismissing the case.

Contrary to the trial court's order, CACV's statement of claim specifically identified the assignor as Provident Bank. While pleading rules required CACV to attach a copy of a written document on which its claim is based, we do not believe CACV's claim is "based" on the assignment. See Fla. Sm. Cl. R. 7.050(a); Henry P. Trawick, Florida Practice and Procedure, §6-15 (ed. 2006)("[d]ocuments relating to the right to bring the action . . . are not required [to be attached]. In this category are . . . assignments of contracts . . . unless a party to the assignment is suing for a breach of the assignment. . ."). Further, in its count to collect the credit card debt, CACV alleged it had complied with all conditions precedent. Because DeWolf did not assert CACV's failure to comply with §559.715, Fla. Stat., as a defense, the reasoning of UMLIC-VP, LLC v. Levine, 10 Fla. L. Weekly Supp. 336a (Fla. 15th Cir. Ct. March 20, 2003), cited by the trial court, does not apply. We conclude, then, that the statement of claim stated a cause of action.

CACV contends that once a default was entered its claim was admitted and the trial court was required to enter a default final judgment for the amount claimed. This is incorrect. There is a fundamental distinction between the effect of a default on a claim for liquidated damages under the Florida Rules of Civil Procedure and under the Florida Small Claims Rules. Under the former, evidence of damages is not automatically required. See Fla. R. Civ. P. 1.500(e), 1.440(c); Cellular Warehouse, Inc. v. GH Cellular, LLC, 957 So. 2d 662, 665 (Fla. 3d DCA 2007) (" . . . a default admits all well-pleaded allegations of a complaint including a plaintiff's entitlement to liquidated damages . . ."); *Bodygear* Activewear, Inc. v. Counter Intelligence Services, 946 So. 2d 1148 (Fla. 4th DCA 2006). Under the latter, it is Florida Small Claims Rule 7.170(b) requires that "(a)fter default is entered, the judge shall

receive evidence establishing the damages and enter judgment in accordance with the evidence and the law." (emphasis supplied).

In the small claims context, this rule makes sense. Many small claims cases are brought by people without the benefit of counsel. Though a statement may state a claim, either specific items of **damage** or the manner in which damages are calculated may be in error. To minimize the possibility of abuse, then, whether intentional or inadvertent, the Florida Supreme Court requires evidence of damages to support a final judgment in small claims cases, not just where unliquidated damages are claimed, not just where a plaintiff is unrepresented, and even if a default has been entered. See *In re: Amendment to The Florida Small Claims Rules*, 785 So. 2d 401, 402 (Fla. 2000) (purpose of Florida Small Claims Rules is to create "a system that is open and **helpful** to those that appear in small claims court, many of whom appear pro se and are unfamiliar with legal proceedings . . .").

Here, because the trial judge dismissed the action he did not consider whether CACV's evidentiary showing was **sufficient** under Rule 7.170(b). See, also, *In re: Rules of Summary Procedure*, 270 So. 2d 729, 734 (Fla. 1972) ("**(e)vidence [after default]** may be by testimony, affidavit, or other competent means."). We note, too, that Rule 7.170(b) does not and cannot abrogate DeWolf's due process right to notice and an opportunity to be heard on any portion of the claim which is unliquidated. See *First Union National Bank of Florida v. Phillips*, 4 Fla. L Weekly Supp. 615b (Palm Beach Cty. 1997).

Based on the foregoing, the order of dismissal for failure to state a cause of action is reversed and the action remanded to the trial court to vacate the order of dismissal and to consider whether an award is appropriate under Fla. Sm. Cl. R. 7.170(b).

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FRENCH. MAASS and FINE, JJ., concur.