

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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502013AP000062
L.T. No.: 502010CC015961

ADAM D. COOPER AND
BRANDI COOPER,
Appellant(s),

v.

BOCA LANDINGS HOMEOWNERS
ASSOCIATION, INC.,
Appellee(s).

Opinion filed: **MAY 30 2014**

Appeal from the County Court in and for Palm Beach County,
Judge Edward Garrison.

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PER CURIAM.

Appellants, Adam and Brandi Cooper ("the Coopers") appeal a final summary judgment entered in favor of Appellee, Boca Landings Homeowners Association, Inc. ("Boca Landings"). Boca Landings filed a two-count Complaint against the Coopers, Count I: Foreclosure of a Lien in the amount of \$552.77 for past due assessments, and Count II: Breach of Declaration in the alternative of Count I and to the extent that foreclosure did not satisfy the lien amount. Boca Landings moved for summary judgment, arguing that the Coopers were indebted to them for past due assessments in the amount of \$7,249.96, which breached the Declaration of Covenants. The motion

also requested reasonable attorney's fees. The trial court granted the motion for summary judgment and awarded attorney's fees.

The standard of review of summary judgment is de novo. *Dennis v. Kline*, 120 So. 3d 11, 20 (Fla. 4th DCA 2013). Upon review of a motion for summary judgment, the appellate court must examine the record in the light most favorable to the nonmoving party. *Id.* "If the record reflects the existence of any genuine issue of material fact, or the possibility of any issue, or if the record raises even the slightest doubt that an issue might exist, summary judgment is improper." *Shaw v. Tampa Elec. Co.*, 949 So. 2d 1066, 1069 (Fla. 2d DCA 2007) (quoting *Snyder v. Cheezem Dev. Corp.*, 373 So. 2d 719, 720 (Fla. 2d DCA 1979)).

We find that summary judgment was proper as to the default because there are no material issues of fact as to whether the Coopers failed to pay their assessments. However, the documents Boca Landings filed as to the amount the Coopers owed were inconsistent, therefore the entry of final summary judgment was error. An affidavit attached to the motion for summary judgment stated that the Coopers owed \$7,249.96, while the Resident Transaction Report, also attached to the motion, stated that \$7,249.63 was owed. The difference between the two figures is \$0.33. On the Claim for Lien Assessments dated March 26, 2010 and attached to the Complaint indicates that the amount due from September 1, 2009–March 31, 2010 is \$552.77, while the Demand for Payment/Notice of Intent to Foreclose Lien attached to the Complaint indicates that the amount due from September 1, 2009 – March 31, 2010 is \$525.19. The difference between the two figures is \$27.58. Although the differences are small, they nevertheless create a genuine issue of material fact that precludes summary judgment. *See State Rd. 7 Inv. Corp. v. Natcar Ltd. P'ship*, 82 So. 3d 1013, 1018 (Fla. 4th DCA. 2011) (holding that summary judgment was inappropriate when the record reflected that the principal indebtedness was a genuine issue of material fact). Because the record establishes that the documents submitted to establish the amount the Coopers owed were in conflict, the case is remanded for the trial court to determine the amount the Coopers owe Boca Landings. *See Douglas*

v. Deutsche Bank Trust Co., 995 So. 2d 1144 (Fla. 5th DCA 2008) (reversing summary judgment because although foreclosure was proper, the actual amount owed was in dispute).

We also find that the trial court erred by awarding Boca Landings attorney's fees without holding an evidentiary hearing to determine a reasonable amount to award. Boca Landing's request for fees and supporting affidavits were filed and considered as part of its motion for summary judgment. Claims for reasonable attorney's fees are considered unliquidated damages and thus, the court must consider evidence and testimony to determine the reasonable amount to award. *Minkoff v. Caterpillar Fin. Servs. Corp.*, 103 So. 3d 1049, 1051 (Fla. 4th DCA 2013). There is a due process right for parties to have notice and an opportunity to be heard when evidence is being presented as to the interpretation of unliquidated damages. *Id.*

Because the trial court relied upon evidence to determine the amount of fees, the Coopers were entitled to notice and opportunity to be heard. *See Arango v. Alvarez*, 585 So. 2d 1131, 1133 (Fla. 3d DCA 1991) (vacating the award of attorney's fees and remanding for an evidentiary hearing for the court to determine the amount of the award when the defendants have an opportunity to contest the amount awarded); *Parker v. Dekle*, 46 Fla. 452, 35 So. 4 (1903) (finding fundamental error because to determine reasonable attorney's fees, testimony is required and cannot be ascertained solely by an ex parte affidavit from an attorney indicating what constituted a reasonable fee). Therefore, the trial court's award of attorney's fees is remanded for an evidentiary hearing to determine the amount that should be awarded.

Therefore, the Court **AFFIRMS** the trial court's grant of summary judgment as to the default and **REVERSES** and **REMANDS** as to the issue of the amount the Coopers owe and the amount of attorney's fees to award Boca Landings.

BRUNSON, BARKDULL, and SMALL, JJ., concur.