

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

NATIONAL REVENUE
SERVICE, INC.,

Appellant,

APPELLATE DIVISION (CIVIL)
Case No.: 502006AP000094XXXXMB
L.T.: 502005CC013895XXXXMB
Division: 'AY'

USA JOHNSON AKA
B. LISA JOHNSON AKA
BROWN ADRIENNE JOHNSON

Appellee.

Opinion filed:

OCT 02 2007

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

✓ For Appellant: Louie R. Pejic, Esq., 1533 Sunset Dr., Ste 225, Coral Gables, FL, 33143

✓ For Appellee: USA Johnson, 7864 Granada Pl., Apt 502, Boca Raton, FL, 33433

PER CURIAM.

Appellant, National Revenue Service, Inc., seeks review of the trial court's Final Judgment entered in favor of Appellee, USA Johnson. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.110(a)(1).

On October 20, 2005, the Appellant filed a Complaint against the Appellee for collection of a delinquent debt that had been assigned to the Appellant. The Appellee failed to appear at a pre-trial conference, and a default was entered on April 21, 2006. A Default Final Judgment hearing was set for August 25, 2006. The only evidence submitted into the record was an Affidavit of Indebtedness by the Appellant's own records custodian, alleging that the Appellee owed the amount alleged in the Complaint. At the close of the hearing, the trial court reserved ruling on the Motion for Default Final Judgment.

On September 11, 2006, the trial court entered a Final Judgment in favor of the Appellee. The Final Judgment asserted that the case was set for final hearing, and that after considering the evidence, the trial court found for the Appellee. A Motion for Reconsideration was filed by the Appellant, arguing that if the trial court did not feel that the Appellant presented sufficient evidence of damages to warrant the entry of a Default Final Judgment, the proper course of action would have been to set the matter for trial on the issue of damages. The Motion for Reconsideration was denied, and this appeal followed.

On appeal, the Appellant argues that damages are liquidated, that the Affidavit of Indebtedness is sufficient evidence for an entry of Default Final Judgment, and that the trial court erred in finding for the Appellee because of insufficient evidence of damages, rather than setting a hearing on the issue of damages. As this Court agrees with the Appellant on the final issue, we must reverse and remand for the trial court to set a hearing on the issue of damages.

This Court agrees with the trial court that damages are unliquidated. "Liquidated damages are specific and precise sums of money immediately apparent from the express terms of the contract itself, or determinable therefrom by mathematical calculation, or fixed by a specific rule of law." Watson v. Internet Billing Co., 882 So.2d 533, 534 (Fla. 4th DCA 2004). Generally, damages are not liquidated if "testimony must be taken to determine the exact amount of damages." Bodygear Activewear, Inc. v. Counter Intelligence Services, 946 So.2d 1148, 1150 (Fla. 4th DCA 2006) (citing Pierce v. Anglin, 721 So.2d 781, 783 (Fla. 1st DCA 1998)).

"In a contractual setting, liquidated damages exist when a specific sum of money has been expressly stipulated or agreed to by the parties for recovery by either party following a breach of the contract by the other." Hartford Fire Ins. Co. v. Controltec, Inc., 561 So.2d 1334 (Fla.5th DCA 1990). Moreover, the Fourth District in Bodygear cited with approval case law

from other Districts explicitly rejecting the Appellant's argument that damages are liquidated after default simply because they are alleged with specificity within the Complaint. See Bodygear Activewear, Inc., 946 So.2d at 1150-1; See also Tand v. C.F.S. Bakeries, Inc., 559 So.2d 670 (Fla. 3d DCA 1990) (finding that damages were unliquidated where the amended complaint made reference to an exhibit that merely stated that the defendant owed the plaintiff the sum of \$7,219.06); Hartford Fire Ins. Co. v. Controltec, Inc., 561 So.2d 1334 (Fla. 5th DCA 1990) (rejecting plaintiffs assertion that its damages were liquidated simply because a fixed sum was demanded by the complaint). Accordingly, this is a claim for unliquidated damages.

The Appellant's argument that the trial court erred in finding that an Affidavit is **insufficient** evidence to warrant the entry of a Default Final Judgment is without merit. The only record evidence submitted to the trial court was an Affidavit by the Appellant's own records custodian alleging that they were assigned a debt of the Appellee in this amount. The trial court did not abuse its discretion in requiring actual evidence of a debt before granting a Default Final Judgment in favor of the Appellant.

However, we believe that the trial court's entry of Final Judgment against the Appellant at this stage of the litigation was premature. The Appellant was before the trial court on a Motion for Default Final Judgment. At this stage of the litigation, the trial court should have denied the Motion for Default Final Judgment and held a final hearing or trial to determine the issue and amount of unliquidated damages.

This case is REVERSED AND REMANDED to the trial court with directions to hold a hearing on the issue of damages.

STERN, CROW, and HOY, JJ., concur.