

**Margaret O. Steinbeck**  
*Circuit Judge, 20th Judicial Circuit*  
Lee County Justice Center, 1700 Monroe Street  
Fort Myers, FL 33901  
(239) 335-2412

**MEMO**

**To: Counsel and Pro Se Litigants**

**Re: Default Judgment**

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**IF A DEFAULT IS ENTERED AGAINST THE DEFENDANT**, the default operates to admit only the “liquidated” allegations of the petition or complaint. If the claims are “unliquidated,” unless the plaintiff has properly moved for and been granted summary judgment pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, a trial is required with notice to the defaulted Defendant, at which time the Plaintiff must prove his/her specific claims. In that event, a Notice for Trial should be filed by a party requesting trial to be set. Trial shall be scheduled by a Trial Order signed by the judge setting a trial date with at least thirty (30) days notice to the defaulted party. *See* Rules 1.500(e) and 1.440 of the Fla. Rules of Civil Procedure.

Damages are liquidated when the proper amount to be awarded can be determined with exactness from the cause of action as pleaded, i.e., from a pleaded agreement between the parties, by arithmetical calculation, or by application of definite rules of law. If testimony must be taken to determine the exact amount of damages, the claim is unliquidated. It is well settled that a defaulting party has a due process entitlement to notice and an opportunity to be heard as to the presentation and evaluation of evidence necessary to a judicial determination of the amount of unliquidated damages. *See Pierce v. Anglin*, 721 So.2d 781 (Fla. 1<sup>st</sup> DCA 1998), and cases cited therein.

Where an action involves unliquidated damages, a party against whom a default has been entered is entitled to notice of an order setting the matter for trial, and must be afforded the opportunity to defend. A notice of hearing sent by the opposing party/attorney rather than a trial order sent by the court is defective. *See Pierce*, 721 So.2d at 783; *Lauxmont Farms, Inc. v. Flavin*, 514 So.2d 1133, 1134 (Fla. 5<sup>th</sup> DCA 1987).

Except in a mortgage foreclosure proceeding where plaintiff meets the requirements of Florida Statute 702.065(2), or unless another express statutory exception to the common law rule applies, attorney’s fees and most costs are unliquidated damages because testimony must be taken to ascertain facts upon which a judge or jury can base a value judgment. They may not be determined on affidavit unless awarded on summary judgment pursuant to Rule 1.510. *See Roggemann v. Boston Safe Deposit and Trust Company*, 670 So.2d 1073 (Fla. 4<sup>th</sup> DCA 1996)(error to award attorney’s fees after default at hearing noticed by opposing counsel and based solely on affidavits); *Sloan v. Freedom Savings & Loan Assoc.*, 525 So.2d 1000 (Fla. 5<sup>th</sup> DCA 1988)(attorneys fees and costs may be determined and awarded by summary judgment).

*Margaret O. Steinbeck* (electronically signed)

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MARGARET O. STEINBECK, Circuit Judge