

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 WESTERN DIVISION

NO. 5:12-CV-135-FL

PROVIDENT FINANCIAL SERVICES,)
 INC. D/B/A THE PROVIDENT BANK,)
)
 Plaintiff,)
)
 v.)
)
 BB&H ENTERPRISES, LLC, and)
 WILLIAM C. BUTLER,)
)
 Defendants.)

ORDER

This matter comes before the court on plaintiff’s motion for default judgment (DE # 13), filed together with request for entry of default July 16, 2012, where verified complaint filed against defendants BB&H Enterprises, LLC (“BB&H”), and William C. Butler (“Butler”) on March 15, 2012, asserting a claim for breach of contract regarding an interest-free installment loan note defendants executed in the principal sum of \$110,428.38 (“the note”) (DE # 1), was served with summons, and defendants failed to file responsive pleading or otherwise defend and failed to make an appearance by affidavit or otherwise. Entry of default was entered against defendants and the court now proceeds to the matter of default judgment, after its inadvertent delay.

Plaintiff seeks a sum certain of \$154,599.73 in its motion. This consists of the \$110,428.38 unpaid principal balance owed on the note, where no payment ever was made. It appears defendants entered into the note in avoidance of a deficiency judgment. No interest was assessed on the obligation. Plaintiff’s motion makes reference also to unspecified fees totaling \$44,171.35, not

related to attorneys' fees, for which plaintiff also seeks to recover in the amount of \$2,159.50. Based upon the allegations in the complaint which defendants have admitted by their default, plaintiff is entitled to damages in the amount of \$110,428.38 plus \$2,159.50 in attorneys' fees and costs, but not to \$44,171.35 in fees, which fees were not pleaded as owing.

Plaintiff states in its complaint that the note was executed for the principal sum of \$110,428.38, that defendants failed to make any payments on the note making the total amount owed on the note is \$110,428.38, and that plaintiff has been damaged in the amount of \$110,428.38. Compl. ¶¶ 8-11, 16. Plaintiff further avers it is entitled to recover "reasonable costs of collection, to include attorney's fees and court costs." *Id.* at ¶ 12. Nowhere, however, does the complaint make mention of the \$44,171.35 in other fees. These ancillary fees summarily presented as "late fees" in plaintiff's attorneys' affidavit of default are outside the scope of defendants' default. Thus, the court awards damages in the amount of \$110,428.38, plus \$2,159.50 in attorneys' fees and costs. The clerk is directed to enter judgment in accordance with this order and close the file.

SO ORDERED, this the 13th day of March, 2013.


LOUISE W. FLANAGAN
United States District Judge