

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR [REDACTED]**

---

[REDACTED]  
a Michigan Limited Liability Company,

Plaintiff,

vs.

Case No:

Hon. Judge:

[REDACTED], an individual  
and [REDACTED]  
[REDACTED] a Michigan  
Corporation,

Defendants.

---

[REDACTED]

Attorney for Plaintiff

---

[REDACTED]

Attorney for Defendants

---

**DEFENDANTS' MOTION FOR RELIEF FROM JUDGMENT**

NOW COME Defendants [REDACTED] and [REDACTED] Inc.  
("defendants"), by and through their attorney, [REDACTED], hereby submits this brief on  
support of their Motion For Relief from the Entry of Default Judgment. For the reasons set  
forth below, defendants requests that their motion be granted in its entirety.

Attorney for the Defendants

---

[REDACTED]



Thereafter, the court granted plaintiff's application for a default judgment on [REDACTED] against both defendants on the grounds that defendants failed to plead or otherwise defend within the time prescribed by the summons served on them. The error was then discovered by defense counsel on [REDACTED], 200[REDACTED]. As soon as the error was discovered, defense counsel inquired with the court and was informed that that the default had been filed, but had not yet been entered. As a result, defense counsel made numerous attempts to contact plaintiff's counsel to settle the matter or vacate the default. Plaintiff's counsel, however, was unresponsive and on [REDACTED], 200[REDACTED] plaintiff's counsel entered the default judgment with the court.

Pursuant to the judgment, plaintiff has been awarded \$100,095.00 including costs. As part of the judgment, plaintiff has also been awarded \$30,000 in "legal fees." However, plaintiff did not submit one scintilla of proof to the court in support of its default application evidencing that it is entitled to such an exorbitant amount of legal fees. In this regard, the only objective proof of any legal work performed for plaintiff was the preparation of a complaint and the entering of a default.

In addition, the judgment calls for the payment of an exorbitant rate of 18% as interest for the outstanding amount payable to the plaintiff. Ever since defendants executed the Commission Agreement with plaintiff in [REDACTED] 200[REDACTED] whereby defendants agreed to pay a commission to plaintiff for securing any tenants for the shopping center, plaintiff never demanded any interest. In fact, when defendants failed to pay the commission amount on time, plaintiff agreed to wait for the remainder of the commissions without any accruing interest. Further, in [REDACTED] 200[REDACTED], plaintiff executed another listing agreement with defendants to market the shopping center for more tenants. In its complaint against defendants alleging breach of contract, quantum meruit and unjust enrichment, plaintiff went back on the earlier agreement and demanded an exorbitant rate of interest for the first time.

Accordingly, defendants seek to vacate the judgment and strike from same the award of “legal fees” awarded to the plaintiff as well as the interest rate as that award is both unsupported and unfounded.

### **LEGAL STANDARD**

Michigan public policy favors the meritorious determination of issues and, therefore, encourages the setting aside of defaults under the sound discretion of the trial court. *Huggins v. Bohman*, 228 Mich. App. 84, 86 (Mich. Ct. App. 1998).

### **ARGUMENT**

**THE DEFAULT JUDGMENT MAY BE VACATED BECAUSE THE TRIAL COURT FAILED TO ARTICULATE ANY REASONABLE BASIS FOR THE AWARD OF ATTORNEY FEES AND THEREFORE THE JUDGMENT AGAINST DEFENDANTS RESULTS IN MANIFEST INJUSTICE.**

Grounds for relief from a judgment include “any reason justifying relief.” MCR 2.612(C)(1)(f). Where a default judgment has been entered, a motion to set aside is to be decided according to the guidelines set forth in MCR 2.612. *Komejan v. Suburban Softball, Inc.*, 179 Mich. App. 41, 50 (Mich. Ct. App. 1989). Relief generally has been granted under the “any other reason” provision where the judgment was obtained by the improper conduct of the party in whose favor it was rendered, or where it resulted from the excusable default of the party against whom it was directed, under circumstances not covered by the other specific grounds listed in the court rule and where the substantial rights of other parties in the matter in controversy were not affected. *Stallworth v. Hazel*, 167 Mich. App. 345 (Mich. Ct. App. 1988). “This catchall provision for relief from judgment grants a trial court wide discretion to set aside a default if it determines that manifest injustice might flow from the entry of a default judgment.” *Jones v. Reynolds*, 2005 Mich. App. LEXIS 884 (Mich. Ct. App. Apr. 7, 2005) (Unpublished).

In the instant case, the reason justifying relief is the fact that prior to awarding plaintiff “legal fees” in the amount of \$30,000, the court did not consider any proof or evidence to justify this amount. Nothing in plaintiff’s default application evidences the hourly rate charged by plaintiff’s counsel, the actual amount of hours spent on the case or what tasks were performed on the case so as to justify such an unreasonable amount of legal fees. It is respectfully submitted that the preparation of complaint and the entry of a default do not justify such exorbitant fees. On the default application it was plaintiff’s burden to establish its damages including legal fees with competent evidence. Plaintiff has submitted nothing. In addition, the judgment contemplates an award of 18% interest to plaintiff. This is equally unreasonable and exorbitant since the plaintiff has never demanded any interest and has agreed to wait for the remainder of the commissions without any accruing interest. The court has failed to provide any rationale for awarding a heavy interest rate.

More significantly, the trial court failed to review or consider any evidence or articulate any reasons for the award of “legal fees” in the amount of \$30,000. Although a default settles liability issues, a trial court has discretion to hold further hearings to determine damages. MCR 2.603(B)(3).

Michigan courts follow a multi-factor approach for the determination of attorney fees. Actual costs “include a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial court for services necessitated by the rejection of case evaluation.” MCR 2.403(O)(6)(b). See also *Timothy Egeler v. Bradford*, 2009 Mich. App. LEXIS 630 (Mich. Ct. App. Mar. 19, 2009). The Michigan Supreme Court has held that a trial court must first determine the reasonable hourly or daily rate customarily charged in the locality for similar legal services, using reliable surveys or other credible evidence, and then, multiply the rate by the reasonable number of hours expended, before making any necessary upward or downward adjustments. *Smith v. Khouri*, 481 Mich. 519, 529 (Mich. 2008).

While making any attorney fee adjustments, the court should also consider (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of professional relationship with the client. *Wood v Detroit Auto Inter-Insurance Exchange*, 413 Mich 573, 588 (1982). See also Rule 1.5(a) of the Michigan Rules of Professional Conduct. (The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent).

The court should at the least provide a brief articulation of its view of each factor outlined under Rule 1.5(a) of the Michigan Rules of Professional Conduct. *Timothy Egeler*, 2009 Mich. App. LEXIS 630. The *Smith* Court further held that in considering the time and labor involved, the trial court must determine the reasonable number of hours expended by each attorney. *Smith*, 481 Mich. 519 at 532. An evidentiary hearing is required whenever a factual dispute exists over the reasonableness of the hours billed or the hourly rate claimed by the fee applicant. *Smith*, 481 Mich. 519 (Mich. 2008).

In the instant case, nothing was submitted to the court to establish the reasonableness of the attorney fees or the interest rate awarded. As such, relief from the judgment is

warranted and the default judgment should be vacated and the award of legal fees and interest stricken from the judgment.

**RELIEF REQUESTED**

WHEREFORE, for the reasons stated above, defendants [REDACTED] and [REDACTED]

[REDACTED] Inc. request this Court grant its Motion for Relief from Judgment.

Dated: [REDACTED] \_\_, 200[REDACTED]

Respectfully submitted,

---

[REDACTED]  
Attorney for Defendants  
[REDACTED]

LEGALEASE SOLUTIONS