

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

KENTWOOD PLAZA, LLC,

Plaintiff,

vs.

JALAL KARADSHEH,

Defendant.

Case No. 18-02430-CBB

HON. CHRISTOPHER P. YATES

ORDER DEFINING PROCEDURES FOR DETERMINATION OF DAMAGES

In this largely unremarkable action on a commercial lease and a personal guaranty, Plaintiff Kentwood Plaza, LLC (“Kentwood Plaza”) has hit a speed bump on its way to entry of a judgment. In response to Kentwood Plaza’s complaint, Defendant Jalal Karadsheh not only filed an answer and a counterclaim, but also demanded a trial by jury in conformity with MCR 2.508(B)(1). Thereafter, Karadsheh failed to appear for a scheduled settlement conference, so the Court entered default under MCR 2.401(G) and dismissed Karadsheh’s counterclaim under that same court rule. That left only the issue of damages for resolution, so the Court scheduled an evidentiary hearing to address that last remaining issue.

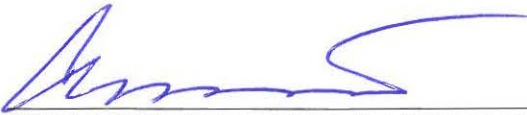
On the date of the hearing on damages, the Court carefully reviewed the file and discovered that Defendant Karadsheh had properly demanded a trial by jury. Under Michigan law, the entry of a default establishes liability, but not damages, Epps v 4 Quarters Restoration LLC, 498 Mich 518, 554-555 (2015), and the right to a trial by jury applies at a hearing on damages even if the defendant has been defaulted. See Zaiter v Riverfront Complex, Ltd, 463 Mich 544, 554-556 (2001). As our Supreme Court has twice explained, ““a defaulting party who has properly invoked his right to jury

trial retains that right *if* a hearing is held to determine the amount of recovery.” Id. at 554, quoting Wood v DAIIE, 413 Mich 573, 583-584 (1982). Accordingly, if the Court must conduct a hearing to establish Plaintiff Kentwood Plaza’s damages, Karadsheh is entitled to have a jury determine the appropriate amount of damages to be awarded. See Zaiter, 463 Mich at 556.

But MCR 2.603(B) prescribes two methods for obtaining a default judgment in the wake of the entry of a default. That is, MCR 2.603(B)(2) authorizes the Clerk of the Court to “enter a default judgment” without a hearing if, but only if, “(a) the plaintiff’s claim against a defendant is for a sum certain or for a sum that can by computation be made certain; (b) the default was entered because the defendant failed to appear; (c) the defaulted defendant is not an infant or incompetent person; and (d) the damages amount requested is not greater than the amount stated in the complaint.” Also, MCR 2.603(B)(3) permits the Court to conduct an evidentiary hearing to establish damages, but the Court “shall accord a right to trial by jury to the parties to the extent required by the constitution.” As a result, Plaintiff Kentwood Plaza can avoid a jury trial on damages if, but only if, it can convince the Clerk of the Court to enter a default judgment under MCR 2.603(B)(2). But if Kentwood Plaza cannot obtain a default judgment from the Clerk of the Court, then the Court must conduct a trial by jury to determine the amount of damages that Defendant Karadsheh must pay. See Zaiter, 463 Mich at 554-556. That process may be cumbersome, but Michigan law mandates that approach.

IT IS SO ORDERED.

Dated: October 2, 2018


HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge