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## BLOGS

### Procedure

# Court Sets Aside Default Judgment Against Franchisees, But Upholds Injunction and Orders Payment to Franchisor

In *Super 8 Motels, Inc. v. Deer Lodge Super 8, Inc.*, 2007 WL 4246454 (D.S.D. Nov. 29, 2007), the franchisor's default judgment against its franchisee was set aside conditioned upon the franchisee paying the franchisor \$15,000 in return for the right to participate in a hearing on whether damages should be awarded to the franchisor. The court also left in place the injunctive portion of the default judgment, ruling that the franchisee can no longer use the franchisor's trademarks.

Based on the totality of the circumstances and in balancing the policies of prompt and efficient handling of litigation with the interests of justice that are normally served through a trial on the merits, the court concluded that the franchisor was entitled to the injunctive relief that it had obtained by default. The court reluctantly did set aside the default judgment as to liability due to various practical considerations. Specifically, the court noted that a final judgment had not been entered, and a ruling as to liability is always subject to change before a final judgment is entered. The court also noted that less stringent standards apply where a party seeks relief from a non-final judgment.