

MASSACHUSETTS DISTRICT COURT, APPELLATE DIVISION

Marquis v. Galasti

1982 Mass. App. Div. 218 (1982) · Decided September 8, 1982

SUMMARY

The court held that a trial justice must provide written facts and reasons when disallowing a draft report under Dist./Mun. Cts. R. Civ. P. 64(c)(5). Nevertheless, the defendants’ petition to establish the draft report was denied because the report was filed twenty days after judgment, beyond the ten-day deadline, and the defendants had no remaining right to appellate review.

CASE DETAILS

COURT	Massachusetts District Court, Appellate Division
WRITING FOR THE COURT	Cowdrey, P.J.; Banks; Cowdrey; Tiffany
JURISDICTION	Massachusetts
DECIDED	September 8, 1982
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The defendants petitioned the Appellate Division to establish a draft report after the trial justice disallowed it without stating reasons. The petition was denied because the draft report was filed outside the ten-day period prescribed by Rule 64(c)(1)(ii).
STANDARD OF REVIEW	A trial justice's decision on a motion for additional time to submit a draft report is reviewed for abuse of discretion; the opinion states that such a motion rests within the sound discretion of the trial justice.
PRECEDENTIAL VALUE	Published Massachusetts Appellate Division opinion
PARTIES	Galasti, Defendants v. Marquis, Plaintiff

TOPICS

- appellate procedure
- civil procedure
- real estate

PRACTICE AREAS

- civil procedure
- appellate procedure
- real estate litigation

QUESTIONS PRESENTED

1. Whether the trial justice was required by Rule 64(c)(5) to state in writing the facts and reasons for disallowing the defendants' draft report.
2. Whether the defendants were entitled to have the draft report established despite filing it twenty days after judgment and outside Rule 64(c)(1)(ii)'s ten-day deadline.
3. Whether the denial of the defendants' motion for additional time to file the draft report was reviewable in the petition proceeding.

HOLDINGS

1. Rule 64(c)(5) requires a trial justice who disallows a draft report to set forth succinctly in writing the facts and reasons for the disallowance.
2. A party forfeits the right to appellate review by failing to file a draft report within the ten-day period prescribed by Rule 64(c)(1)(ii), absent a valid basis for extension.
3. The disposition of a motion for additional time to submit a draft report rests within the sound discretion of the trial justice.

KEY QUOTATIONS

“Rule 64(c)(5) of the Dist./Mun. Cts. R. Civ. P. clearly and unequivocally mandates that a trial justice “shall set forth in writing succinctly the facts and reasons” for his disallowance of a draft report.” (218)

“As the defendants’ draft report was not seasonably filed in accordance with Rule 64(c)(1)(ii), the present petition to establish said draft report must be denied.” (219)

FACTUAL BACKGROUND

The plaintiff obtained a \$6,390 judgment against the defendants on a claim for a real estate broker's commission. Judgment entered on May 7, 1981, but the defendants did not submit their draft report until May 27, twenty days later. Their motion for an extension had been denied, and the trial justice disallowed the draft report without providing written reasons.

PROCEDURAL HISTORY

Judgment for \$6,390 was entered for the plaintiff on his claim for a real estate broker's commission on May 7, 1981. The defendants sought an extension of time to file a draft report, but the motion was denied on May 20, 1981; they filed the draft report on May 27, 1981, and the trial justice disallowed it on July 22, 1981 without explanation. The Appellate Division held that the defendants had forfeited appellate review by failing to file the draft report within ten days and denied the petition.

DISPOSITION

writ_denied

CASES CITED

- *Patterson v. Ciborowski*, 277 Mass. 260, 264-266 (1931)
- *Sechrest v. Safiol*, 80 1980 Mass. App. Div. 133, 135
- *Langone v. Hayden*, Mass. App. Div. Adv. Sh. (1978) 70, 73
- *Microsonics, Inc. v. Comrex Corp.*, 39 Mass. App. Dec. 229, 233-234 (1968)
- *Ahern v. Towle*, 310 Mass. 695, 699 (1942)
- *Whitney v. Medeiros*, 56 Mass. App. Dec. 112, 116 (1975)
- *Meola Construction Co. v. Ace Bldg. Supply Co.*, Mass. App. Div. Adv. Sh. (1978) 466, 467

OPINION

COWDREY, J.

Cowdrey, P.J. This is a petition to establish the defendants' draft report which was disallowed, without explanation, by the trial justice. Judgment in the sum of \$6,390.00 was entered for the plaintiff, on his complaint for a real estate broker's commission, on May 7, 1981.

The defendants thereafter sought an extension of time to file a draft report. The defendants' motion for such extension was denied on May 20, 1981. The defendants did not in fact submit the instant draft report until May 27, 1981.

The trial justice disallowed the defendants' draft report on July 22, 1981. No statement of reasons for such disallowance accompanied this order. 1. Rule 64(c)(5) of the Dist./Mun. Cts. R. Civ. P. clearly and unequivocally mandates that a trial justice "shall set forth in writing succinctly the facts and reasons" for his disallowance of a draft report. *Patterson v. Ciborowski*, 277 Mass. 260, 264-266 (1931).

We can hypothesize no set of circumstances which would justify or explain a failure to comply with this simple procedural requirement. Having heard all the evidence and rendered a judgment thereon, the trial justice is in the best position to determine if a draft report constitutes an accurate and complete recital of all evidence material to appellate issues.

Indeed, it is the trial justice's duty to so review a proposed report. *219*Sechrest v. Safiol*, 80 1980 Mass. App. Div. 133, 135. It must be inferred from an order of disallowance that the trial justice has found the contents of a draft report to be in some manner incomplete or untrue. This Division should not be asked to, and cannot properly engage in, guesswork and speculation as to what the trial justice had in mind when issuing an order of disallowance.

The unnecessary time, energy and expense often expended upon a petition to establish in rehearing testimony or attempting to otherwise reconstruct a trial court record, see *Langone v. Hayden*, Mass. App. Div. Adv. Sh.

(1978) 70, 73, could be wholly eliminated if the grounds for a disallowance of a draft report were clearly set forth in writing as required by Rule 64. 2. It is, however, unnecessary either to return

this case to the trial justice for a statement of his reasons for disallowing the defendants' draft report or to undertake any other measures to settle a report in this matter.

The docket reveals that the defendants forfeited any right to appellate review by failing to comply with the ten day time. requirement prescribed by Dist./Mun. Cts. R. Civ. P. Rule 64(c) (1) (ii) for filing a draft report. *Microsonics, Inc. v. Comrex Corp.*, 39 Mass. App. Dec. 229, 233-234 (1968). Judgment was entered herein on May 7, 1981, and the defendants did not submit their draft report until May 27,1981, a full twenty days later.

The defendants have raised no issue before this Division concerning the denial of their motion for additional time to submit a draft report. The disposition of such a motion rested, in any event, within the sound discretion of the trial justice. *Ahern v. Towle*, 310 Mass. 695 699 (1942); *Whitney v. Medeiros*, 56 Mass. App. Dec. 112, 116 (1975).

As the defendants' draft report was not seasonably filed in accordance with Rule 64(c)(1)(ii), the present petition to establish said draft report must be denied. *Meola Construction Co. v. Ace Bldg. Supply Co.*, Mass. App. Div. Adv. Sh.

(1978) 466, 467. Petition Denied.