

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-175

JANUARY TERM, 2005

Bay Oil, Inc.	}	APPEALED FROM:
	}	
	}	Franklin Superior Court
	}	
v.	}	
	}	
Roy McAllister, Sally McAllister, individually, d/b/a McAllister's Market	}	DOCKET NO. S51-01 Fc
	}	
	}	Trial Judge: David A. Jenkins
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Defendants in this breach of contract action appeal from a superior court judgment in favor of plaintiff Bay Oil, Inc. Defendants contend: (1) the judgment order failed to reflect certain amended findings of the court made in response to defendants' motion for new trial; and (2) the seven-month delay between the hearing and the issuance of the court's decision was unreasonable and requires reversal of the judgment. We agree with the first contention, and therefore reverse and remand for issuance of an amended judgment order.

The material facts may be briefly summarized. Defendant Sally McAllister entered into a sales and lease agreement with plaintiff for the operation of a retail market and gasoline sales business in the Town of Richford. Defendant also purchased previously existing inventory and equipment from plaintiff. Within a year of the lease, defendants gave plaintiff several checks that failed to clear, and plaintiff terminated the lease and took possession of the premises. Plaintiff thereafter commenced this action for back rent and money owed. A one-day hearing was held in January 2002. The court issued a written decision in August, finding that defendants jointly owed plaintiff \$27,936.098, less a set-off for the value of certain attached inventory and abandoned equipment, for a total judgment of \$10,905.40, plus attorneys fees and costs.

Defendants filed a motion for new trial, which led to a hearing in January 2003. At the hearing, the court revised its earlier decision, finding that defendant Roy McCallister was jointly liable with defendant Sally McCallister for only \$1200 of the amount owed, and that defendant Sally McCallister was not- as previously found- liable for a loss of beer totaling \$3,607.82. The amended findings resulted in a total judgment against Sally McCallister of \$7,297.58, of which \$1200 was jointly owed by defendant Roy McCallister. The court directed plaintiff's counsel to submit a judgment order reflecting the amended findings. The judgment order submitted by plaintiff and signed by the court on February 13, 2004, however, reflected the court's original finding that both defendants owed a total of \$10,905.40, plus attorney's fees and costs. This appeal followed.

Defendants contend the court erred in issuing a judgment order that failed to reflect its amended findings. Plaintiff is in agreement with defendants on this point, and our independent review of the record confirms that the order does not reflect the court's amended findings. Accordingly, we will reverse the judgment and remand to the trial court for the issuance of an amended judgment order incorporating the court's amended findings as summarized above.

Defendants also contend that the seven-month delay between the hearing in January 2002 and the court's written decision in August 2002, was " excessive as a matter of law and deprived [defendants] of a fair decision based on the evidence presented at trial." Defendants have adduced no authority in support of their claim that the seven-month interval was " excessive as a matter of law," nor any evidence or law to show that the delay resulted in a misstatement of

the facts or an unfair decision. Accordingly, we discern no grounds to reverse the judgment on this basis.

Reversed and remanded for the entry of an amended judgment order reflecting the court's amended findings as set forth herein.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned