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Article 20

CPLR 4213(b): Decision of Trial Court Must State the Essential Facts

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standards of "substantial justice."[129] But the conduct of the arbitration hearing would be the same in a small claims action as it was for the *Rochester* case. The only difference is that, whereas the arbitration panel normally consists of three attorneys, claims for $500 or less are before a single arbitrator.[130] The *Rochester* rationale would not give conclusive effect to such a proceeding. Even though the protection of a party's rights might be as great in a small claims arbitration, the effect of the award is equated to the judgment it replaces. As UCCA section 1808 limits the res judicata effect of small claims judgments, it should similarly limit the effect of substitute small claims arbitration.

ARTICLE 42 — TRIAL BY THE COURT

CPLR 4213(b): Decision of trial court must state the essential facts.

CPLR 4213(b) provides that the decision of the court in a non-jury trial "may be oral or in writing and shall state the facts it deems essential."[131] Trial court decisions inadequately supported by findings of fact are accorded one of three alternatives on appellate review: reversal and remand for trial de novo; remand for further or amended findings; and retention by the appellate court for its own findings of fact.[132] The disposition by the appellate court depends upon the degree of inadequacy of the findings of fact and the insufficiency of the record.[133]

In *Nutone Inc. v. Bouley Co.*,[134] the trial court, in sustaining a mechanic's lien for the plaintiff, neither made findings of fact nor established any record whatsoever. The appellate court reversed the decision and noted that issues were created which required factual determination as to whether the plaintiff had performed his contractual obligations with the defendant entitling the former to recover. The

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129 Supreme Burglar Alarm Corp. v. Mason, 204 Misc. 185, 186, 122 N.Y.S.2d 398, 399 (App. T. 1st Dep't 1953).

130 22 N.Y.C.R.R. § 28.2(a) (1970).

131 CPLR 4213(b); *see* 4 WK&M ¶ 4213.07.

132 4 WK&M ¶ 4213.09.

133 A new trial generally follows when the findings are unsupported by the facts and the record gives insufficient basis of essential facts found by the court. *E.g.*, Harris v. Doley, 22 App. Div. 2d 769, 253 N.Y.S.2d 645 (1st Dep't 1964); Driskell v. Alfano, 12 App. Div. 2d 973, 211 N.Y.S.2d 668 (2d Dep't 1961); Kundla v. Symans, 9 App. Div. 2d 1021, 194 N.Y.S.2d 251 (4th Dep't 1959). A remand to enable the trial court to formulate adequate findings follows where the proper decision was reached but the findings are inadequate. *E.g.*, Conklin v. State, 22 App. Div. 2d 481, 256 N.Y.S.2d 477 (3d Dep't 1965); Ahleim v. State, 21 App. Div. 2d 747, 250 N.Y.S.2d 242 (4th Dep't 1964). Occasionally, an appellate court will prepare findings of fact when the trial court record is sufficiently complete although the findings of fact are inadequate. *E.g.*, Mellon v. Street, 23 App. Div. 2d 210, 259 N.Y.S.2d 900 (3d Dep't 1965).

134 — App. Div. 2d —, 327 N.Y.S.2d 256 (4th Dep't 1971).

court implied that it would exercise its fact-finding authority in a proper case.[135]

The requirement of CPLR 4213(b) is sound and well settled. To insure intelligent appellate review there must be a sufficient factual basis upon which to pass. Exceptions have been made by appellate courts where there is a sufficient record although inadequate findings of fact, and the decision is compelling.[136] However, the present case comes well within the proscription of CPLR 4213(b), since the total absence of an oral or written decision and findings of fact left the appellate court with a *tabula rasa* to review.

ARTICLE 50 — JUDGMENTS GENERALLY

CPLR 5003: Interest on a judgment is not a basis for a separate action.

In *Ferguson v. City of New York*,[137] the Supreme Court, Orange County, was called upon to determine "whether a separate action can be maintained to fix the amount of interest due on a judgment while an appeal is pending, such appeal having been instituted by the plaintiffs in the collateral action."[138] The court reasoned that

> [i]nterest on a judgment has no independent existence from the judgment upon which it is predicated and cannot be the basis for a new and separate action which seeks to modify either the amount, or the rate of interest previously awarded.[139]

Plaintiffs, dissatisfied with the interest awarded to them, were advised to appeal or to apply for modification of their judgments.[140]

ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS

CPLR 5231(d): Service upon judgment debtor as agent of corporation held ineffective.

Income execution against money which a judgment debtor is receiving or will receive is available under CPLR 5231(d). The procedural safeguards for this remedy include service upon the judgment debtor if possible and service upon the third party against whose debt

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135 *See* Power v. Falk, 15 App. Div. 2d 216, 222 N.Y.S.2d 261 (1st Dep't 1961), where reasons were assigned for not exercising the court's fact-finding authority. The present case approved the *Falk* rationale.

136 *E.g.*, Mellon v. Street, 23 App. Div. 2d 210, 259 N.Y.S.2d 900 (3d Dep't 1965); Weidman v. Klot, 11 App. Div. 2d 641, 201 N.Y.S.2d 476 (1st Dep't 1960) (holding that the trial testimony and documents received in evidence were a sufficient basis upon which to make findings of fact).

137 67 Misc. 2d 812, 324 N.Y.S.2d 894 (Sup. Ct. Orange County 1971).

138 *Id.* at 814, 324 N.Y.S.2d at 896.

139 *Id.* at 815, 324 N.Y.S.2d at 897.

140 *Id.*