

No. A05-2014
State of Minnesota
In Supreme Court

APR - 4 2005

FILED

Commandeur, LLC and
ACRO Business Finance Corporation,

Appellants,

v.

Howard Hartry, Inc.,

Respondent.

Court of Appeals Opinion Filed
November 22, 2005

APPELLANTS' INFORMAL REPLY BRIEF

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I. SUMMARY OF ARGUMENT

Respondent's argument is noteworthy for two things: what it doesn't say and the strained reading of statutes and rules it urges to throw Appellants out of court without considering the merits. Both merit brief attention in this reply brief.

II. ARGUMENT

Respondent essentially ignores Appellants' argument that it is nonsensical to allow a jurisdictional deadline to pass on a day that is holiday for the United States given the uniform premise of our appellate rules that service by mail is the preferred method of service. Simply put, when the appellate courts encourage service by mail and under federal law Columbus Day is legally a holiday on which mail is neither delivered nor picked up, this court should construe Minn. R. Civ. P. 6.01, when it refers to "legal holiday," as including the federal legal holiday and mail holiday. In this context, the fact that the court elects to stay open makes no difference. If it is a federal mail holiday, it is a legal holiday for all practical purposes relating to service and filing by U.S. Mail.

The conclusion that Columbus Day is a legal holiday for purposes of Rule 6.01 is underscored by the prohibition found in Minn. Stat. § 645.44 on service of any type occurring on the identified holidays. The fact that Appellants could have hand-delivered their notice of appeal for filing with the Clerk of Appellate Courts on Columbus Day does not affect their inability to serve the notice of appeal on that same date.

For all of the reasons argued in detail in Appellant's opening brief, Columbus Day is a "legal holiday" based simply on the language of Minn. Stat. § 645.44, subd. 5. Whether by the language of the statute, or analysis of the necessary interplay among a

poorly crafted state statute, a different federal holiday schedule, and the simple reference to “legal holiday” in the rules, this court should reach the conclusion that Appellant’s service and filing of their Notice of Appeal by U.S. Mail on the first day after the Columbus Day mail holiday is sufficient and timely.

This court consistently has construed and administered its rules to secure the just, speedy, and inexpensive determination of every action, as required by Minn. R. Civ. P. 1. The rules should be given liberal construction so as to effectuate that purpose. *See, e.g., Huntsman v. Huntsman*, 633 N.W.2d 852, 854 (Minn. 2001), *citing Kornberg v. Kornberg*, 542 N.W.2d 379, 384 (Minn. 1996). Construing the rules to permit something that is impossible to accomplish would mark a significant retreat from that policy.

The court of appeals and now Appellant have both put too much weight on the advisory committee comments to Rule 6.01. This court has repeatedly discouraged this sort of blind reliance on the advisory committee’s comments. It is especially inappropriate where, as here, there is nothing to suggest anyone on the advisory committee ever considered the question actually presented on this appeal.

III. CONCLUSION

Based upon the foregoing authorities and those set forth in Appellants’ opening brief, this court should reverse the court of appeals’ decision and remand this case for a resolution of Appellants’ appeal on its merits.

Dated: April 3, 2006.

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