

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case Number 2020-000021

RECEIVED

Nov 02 2020

SC Court of Appeals

In the Matter of the Estate of Chris Combis

Desa Ballard, as Personal Representative of the Estate of Chris Combis.....Respondent,

v.

George Combis, Diane Combis, and Chris Combis, Defendants,

Of Whom, George Combis and Chris Combis are.....Appellants,

**RETURN TO MOTION FOR RETRIEVAL OF
PHYSICAL EVIDENCE FOR APPEAL**

Pursuant to SCACR 240(e), Appellant Chris Combis submits his Return to the Motion for Retrieval of Physical Evidence for Appeal, as follows.

A. Respondent's Motion for Retrieval of Physical Evidence for Appeals fails to set forth any purpose for the Motion. If this Court receives the physical watch requested by the Motion, what is the point?

B. Respondent issued a subpoena to Appellants in March 2017, including one to Appellant Chris Combis ("Appellant"), who was a party to the case. It is not clear why a subpoena was issued instead of a request pursuant to Rule 34, SCRPC. In any event, the request

is required to describe with reasonable particularity the items or documents requested. *See*, Rule 34(b), SCRCPC (requiring the requesting party to describe with “reasonable particularity” the items being sought).

C. Respondent’s request in the subpoena, however, failed to identify the item that she now contends that the subpoena sought. It requested the “Original Rolex watch allegedly gifted to you by the deceased. . .” The lower court’s Motion to Compel simply ordered the production of the items sought in the subpoena.

D. The undisputed evidence is (1) that the decedent had gifted two Rolex watches to Appellant Chris Combis, (2) and that Chris Combis timely produced the “original Rolex watch.” The “Original Rolex watch” is silver in color or stainless steel (hereinafter “the Original Silver Rolex”).

E. At the hearing, a jeweler testified that the Original Silver Rolex watch is a fake, or is not a genuine Rolex watch. But he also testified that he would not be surprised if a layperson would not know whether or not the Original Silver Rolex is a genuine Rolex. [11/17/17 Transcript at pp. 20-21]

F. Based on the undisputed facts, there is no purpose for the request to produce the actual Original Silver Rolex for the panel to review.

G. One can presume that the Respondent believes that the panel will examine the watch and determine that it is not a genuine Rolex watch, and perhaps further conclude that Chris Combis should have reached the same conclusion. There are several flaws in such a contention.

H. First, Respondent wants to pretend that she used some different description of the watch sought by the subpoena than the description actually used. Respondent wants to pretend

that she used the phrase “the genuine Rolex watch” or “the authentic Rolex watch.” But the description used was “the original Rolex watch” -- and the undisputed testimony is that is exactly what was produced.

I. Second, even if the panel has some experience with Rolex watches and would conclude that the Original Silver Rolex is not a genuine Rolex watch, and would conclude that genuineness was somehow relevant, these conclusions still would be irrelevant because Chris Combis testified that he did not know whether or not the Original Silver Rolex was a genuine Rolex watch or not. [11/14/17 Transcript at pp. 35,37,67].

J. The fact is that based on the language used in the subpoena, genuineness was not a issue. The Respondent could have used the term “the Genuine Rolex watch” or something similar. In fact, after Appellant produced the Original Silver Rolex, Respondent provided a description with “reasonable particularity” of what she was seeking: “An 18k watch, with a Presidential, solid gold bracelet-band. . . [and] a brown walnut face.” [Rule to Show Cause Petition at p.9]. After seeing this description, Appellant realized that in the subpoena the Respondent really was not seeking the “Original Rolex watch,” but instead was seeking a gold Rolex that was given to Appellant after the Original Silver Rolex was given to him.

K. If Respondent had given an adequate description of the watch in the subpoena, the entire issue would have been avoided.

L. The use of the term “Original Rolex watch” in the subpoena excluded genuineness as a factor, and also precluded further inquiry by Appellant. If the subpoena had asked for “the Genuine Rolex watch” or even “the Rolex watch,” such language would have required Chris Combis to further inquire as to which watch was sought. But the language

Respondent used left no doubt in his mind which watch was being sought, and that is what he timely produced.

M. That said, if the panel determines that the physical watch is somehow relevant, Appellant believes that the panel will reach the same conclusion that he reached regarding the Original Silver Rolex watch. That is, a layperson with no expertise in Rolex watches cannot determine whether or not it is a genuine Rolex watch. Again, however, such a determination is not relevant to the appeal.

This the 2ND day of November, 2020.

s/ Brian S. McCoy
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Return to Motion for Retrieval of Physical Evidence for Appeal was served on all parties via email to Douglas Truslow, Esq., counsel for Respondent at douglastruslow@truslowlaw.com, and via email to Ty McTier, Esq., counsel for co-Appellant George Combis, at tmctier@reddingjones.com.

This the 2ND day of November, 2020.

s. Brian S. McCoy
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