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Docket: 1684CV03929-BLS2

Date: May 16, 2017

Parties: NEW ENGLAND PATRIOTS FANS v. NATIONAL FOOTBALL LEAGUE, ROGER GOODELL, and ROBERT KRAFT

Judge: /s/Kenneth W. Salinger, Justice of the Superior Court

MEMORANDUM AND ORDER DENYING MOTION SEEKING RECONSIDERATION OF THE ORDER DISMISSING PLAINTIFF'S APPEAL

Final judgment dismissing this action was entered on February 27, 2017. Plaintiffs filed a notice of appeal on April 12, 2017. The Court allowed Defendants' motions to dismiss the appeal as untimely because it was filed more than thirty days after the entry of judgment. See Mass. R. App. P. 4(a). In its prior ruling, the Court explained that Plaintiffs' post-judgment motion for findings did not toll the deadline for filing a notice of appeal because that motion was not served within ten days of the entry of judgment. See Mass. R. Civ. P. 52(b). The Court has no power to extend this time limit. See Mass. R. Civ. P. 6(b).

Plaintiffs seek reconsideration of the order dismissing their appeal. They argue that they are entitled to the benefit of the "mailbox rule" because the final judgment was mailed to their counsel. Plaintiffs contend that their Rule 52(b) post-judgment motion for findings was timely because the deadline for serving that motion was automatically extended by three days under Mass. R. Civ. P. 6(d).

This argument is incorrect. Rule 6(d) only adds more time to deadlines that allow or require a party to do something "within a prescribed period after the service of a notice or other papers upon him." But the ten-day deadline for serving post-judgment motions for findings does not start to run upon "service" of anything. Instead, such a motion must be served "not later than 10 days after entry of judgment." Rule 52(b).

The three-day grace period after mailing provided in Rule 6(b) therefore does not apply to Plaintiffs deadline for filing post-judgment motions under Rule 52(b). See Commonwealth v. White, [429 Mass. 258](#), 261-262 (1999) (since period for filing notice of appeal starts to run upon entry of judgment, not upon service, mailbox rule in Mass. R. App. P. 14© does not apply); Goldstein v. Barron, [382 Mass. 181](#), 182-

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185 (1980) (since period for posting medical practice bond starts to run upon entry of tribunal's finding, not upon service, mailbox rule in Mass. R. Civ. P. 6(d) does not apply); Flint v. Howard, 464 F.2d 1084, 1087 (1st Cir. 1972) (per curiam) (since deadline for filing post-judgment motion for findings under Fed. R. Civ. P. 52(b) "begins to run from 'entry of judgment' rather than from receipt of notice," mailbox rule in Fed. R. Civ. P. 6 does not apply); see also Smaland Beach Ass'n, Inc. v. Genova, [461 Mass. 214](#), 228 (2012) (judicial construction of federal rules of civil procedure applies to parallel state rules).

The Court concludes that Plaintiffs' other argument in support of the motion for reconsideration are also without merit.

ORDER

Plaintiffs' motion for reconsideration of the dismissal of their notice of appeal is DENIED

/s/Kenneth W. Salinger, Justice of the Superior Court

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