

FILED: February 21, 2002
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

SUPERIOR COURT

THOMAS S. MICHALOPOULOS

:

:

v.

:

C.A. No. 95-6509

:

C & D RESTAURANT, INC., d/b/a/

:

“EDDIE AND CONRAD’S FINE

:

FOODS”

:

DECISION ON MOTION FOR RETURN AND RESTORATION OF CASE
EXHIBITS

GIBNEY, J. The defendant, C & D Restaurant Inc., d/b/a/ “Eddie and Conrad’s Fine Foods” (defendant), moves this Court for the return and restoration of case exhibits in the above-entitled case presently pending decision on the motion for new trial. Specifically, the defendant requests that a lighting stand and an adjustable speaker stand, both admitted into evidence (Def.’s Exhibit A) be returned to the Court for retention, pending both a ruling on the motion before it and the likelihood of any appeal therefrom.

This Court has not yet ruled on the motion for new trial before it. With respect to a motion for new trial, the trial justice is required “to review the evidence passing upon the weight of the evidence and the credibility of the witnesses.” Dilone v. Anchor Glass Container Corp., 755 A. 2d 818, 821 (R.I. 2000) (Citations omitted.) The subject exhibits would be material to such a review.

Furthermore, Article I, Rule 10(a) of the Rules of Appellate Procedure in pertinent part provides that “[t]he original papers and exhibits filed in the trial court . . . shall constitute the record on appeal in all cases. With respect to exhibits, Rule 10(b)(2)(f) requires that “[w]henver an exhibit is part of the record on appeal, the original thereof shall be certified and transmitted by the clerk, except that by stipulation or by order of the trial court upon motion and for good cause shown a copy thereof may be substituted.”¹ It follows that “[n]ormally an exhibit that has been introduced into evidence must be certified and transmitted by the clerk in its original form.” (Emphasis added.) Joseph R. Weisberger, Rhode Island Appellate Practice 48 (1993).

This Court is satisfied that there is good and sufficient cause for the requested exhibits to be returned to the Court for safekeeping, and the plaintiff, Thomas Michalopoulos (plaintiff), has not demonstrated good cause otherwise. Accordingly, this Court orders the plaintiff to restore said exhibits to this Court forthwith.

Counsel shall submit the appropriate order for entry after notice.

¹ The parties may agree to substitute photograph(s) of the exhibits subject to approval by the Court.

