

GULF STATES UTILITIES CO. v. ECODYNE CORP.
United States Court of Appeals, Fifth Circuit 577 F.2d 103111978)

Charles Clark, Circuit Judge.

Gulf States brought suit against Ecodyne claiming that Ecodyne had negligently designed the [cooling] towers and had negligently selected the materials used in constructing the towers, which acts of negligence were claimed to have been the cause of the failure of Tower A. The district judge held that Gulf States had failed to carry its burden of proof regarding the cause of the structural failure. Judgment was accordingly rendered for Ecodyne.

During the course of [this] bench trial, Gulf States attempted to prove that similar towers built by Ecodyne had experienced similar structural failures. Gulf States also offered a copy of a complaint filed by Ecodyne in the Superior Court of California, against the California Redwood Association, et al., Ecodyne's supplier of redwood. That complaint alleged that the redwood supplied to Ecodyne was inferior in quality and that misrepresentations were made to Ecodyne regarding the quality of the redwood. The allegations strongly implied that the cause of failures of several towers built by Ecodyne, including Tower A built for Gulf States, was the failure of the wood to meet specifications. Gulf States makes the same allegations against Ecodyne in the instant case.

As the district judge recognized, this evidence was relevant under Fed REvid 401. The district judge refused to admit the proof of the other failures and the California complaint into evidence on the ground that, although relevant, the evidence was inadmissible under Fed R Evid 403. The district judge reasoned that the evidence would be prejudicial to a jury and that since he would not let a jury hear the evidence, he should not hear it in a bench trial.

The exclusion of this evidence under Rule 403's weighing of probative value against prejudice was improper. This portion of Rule 403 has no logical application to bench trials. Excluding relevant evidence in a bench trial because it is cumulative or a waste of time is clearly a proper exercise of the judge's power, but excluding relevant evidence on the basis of "unfair prejudice" is a useless procedure. Rule 403 assumes a trial judge is able to discern and weigh the improper inferences that a jury might draw from certain evidence, and then balance those improprieties against probative value and necessity. Certainly, in a bench trial, the same judge can also exclude those improper inferences from his mind in reaching a decision. The significant question is whether the trial judge's action here produces an error or defect that affected substantial rights of Gulf States. The judge heard the offer of proof but said he would not consider this evidence in making his factual determinations. We have no choice but to believe him. He is trained to recognize and to exclude those matters which the rules of evidence require be discarded. Indeed, in this very case the trial judge acknowledged the possibility that this court might disagree with his ruling and direct him to consider this evidence. That possibility has now materialized. The major policy underlying the harmless error rule is to preserve judgments and avoid waste of time. Discarding a jury verdict is extremely wasteful.

Requiring a district judge to examine more evidence and reevaluate his decision is not nearly so prodigal.

We vacate the judgment of the district court and remand the case for further proceedings, leaving to the district court's discretion determination of what further hearings or proceedings are necessary upon remand.