

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Anthony T. Cocciardi, Debtor.	Case No. 91-57664
Malcolm G. Waitt, Plaintiff, vs. Anthony T. Cocciardi, Defendant.	Adversary No. 93-05627 MEMORANDUM DECISION RE MOTIONS IN LIMINE

A. Plaintiffs' Motions in Limine

1. Adoption of Janice Waitt

The motion to exclude evidence regarding the adoption of Janice Waitt is granted. Pursuant to the Settlement Agreement in the state court, Janice Waitt is the sole remainderman under the Murl Eaton testamentary trust. The five-year statute of limitations for challenging the validity of the 1983 adoption has long elapsed. Cal. Civ. Code 228.15 (West 1982 & Supp. 1993); Walter v. August, 8 Cal. Rptr. 778 (Cal. App. 1960). Moreover, only the putative heirs have standing to challenge the validity of an adoption. Estate of Smith, 86 Cal App. 2d 456, 468 (Cal. App. 1948). As an heir, Ms. Waitt can challenge the validity of Mr. Cocciardi's accounting. Mr. Cocciardi, as the former trustee of the testamentary trust, cannot now collaterally attack the adoption of Janice Waitt. The issue of

1 the validity of the adoption is not relevant to this case.

2
3 **2. Statements by William Eaton**

4 The motion to exclude testimony of communications between William Eaton and Cocciardi
5 and any of Cocciardi's friends or relatives is denied.

6 Although it is anticipated that the testimony will be offered to prove the truth of the matter
7 asserted, statements by Eaton fall within exceptions to the hearsay rule. The statements may be
8 characterized as either relating to the decedent's state of mind at the time of the statements or against
9 the decedent's pecuniary interest. F.R.E. 803(3), 804(b)(3).

10 Although the statements are admissible as hearsay exceptions, the Court must nonetheless
11 consider whether such relevant evidence should be excluded for other reasons. Federal Rule of
12 Evidence 403 permits the trial court, at its discretion, to exclude evidence that is relevant if its
13 probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues,
14 or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of
15 cumulative evidence. F.R.E. 403. That the probative value is outweighed by one or more of the
16 countervailing factors does not compel exclusion of the evidence; it only gives rise to the Court's
17 discretion to exclude the evidence. 22 Wright & Graham, Federal Practice and Procedure
18 § 5222 (West 1978). The purpose of requiring probative value to be "substantially outweighed" is to
19 further the policy of favoring the admissibility of evidence. Wright & Graham, *supra* at § 5221.

20 Excluding relevant evidence on the basis of unfair prejudice under F.R.E. 403 has no logical
21 application to bench trials. Gulf States Utilities Co. v. Ecodyne Corp., 635 F.2d 517, 519 (5th Cir.
22 1981). In Gulf States Utilities v. Ecodyne, the Fifth Circuit stated:

23 Rule 403 assumes a trial judge is able to discern and weigh the
24 improper inferences that a jury might draw from certain evidence,
25 and then balance those improprieties against probative value and
necessity. Certainly, in a bench trial, the same judge can also
exclude those inferences from his mind in reaching a decision.

26 Id. There is no danger of unfair prejudice here.

27 Other factors to be considered in the Court's exercise of discretion are relevance of the
28 disputed issue, availability of other proof on that issue to the party offering the evidence, and the need

1 for the evidence when the offering party bears the burden of proof on the issue. Thor v. Boska, 113
2 Cal. Rptr. 296, 303 n. 8 (Cal. App. 1974)(applying Cal. Evid. Code § 352). The Court must balance
3 the factors compelling exclusion under R. 403 against the importance of the fact for which the
4 evidence is being offered in the context of the litigation and the strength and length of the chain of
5 inferences necessary to establish the disputed fact. Russell, Bankr. Evid. Manual § 403.1, 1990, p.
6 137. Where evidence relates to a critical issue, directly supports an inference relevant to that issue,
7 and other evidence does not as directly support the same inference, the evidence cannot be excluded
8 except in highly unusual circumstances. Kessler v. Gray, 143 Cal. Rptr. 496, 500 (Cal. App.
9 1978)(applying Cal. Evid. Code § 352). Cocciardi has asserted ratification by Eaton as an affirmative
10 defense, so the issue is critical to his case. The evidence to be offered is necessary to Cocciardi's
11 case, cannot be acquired from another source, and is not substantially outweighed by any of the
12 countervailing factors in R. 403.

13 Further, the credibility of the testifying witness is not a factor in the Court's balancing process
14 to determine whether relevant evidence should be excluded for compelling reasons. The plaintiff
15 argued that Eaton's statements should be excluded because Cocciardi's testimony lacks credibility.
16 However, it is the trustworthiness of Eaton's statements, and not Cocciardi's credibility, that is
17 relevant to the determination of admissibility. The court may assess the credibility of testifying
18 witnesses by hearing his testimony to assess his demeanor, hearing the evidence available to
19 corroborate his testimony, and reviewing the impeaching evidence that the opponent introduces.
20 Wright & Graham, supra § 5214. Cocciardi's credibility is not a factor that is relevant to the
21 admissibility of Eaton's statements, and Rule 403 presupposes that the trier of fact can judge
22 credibility.

23 The plaintiffs have also argued that ratification or affirmation of a transaction by the trust
24 beneficiary requires that the transaction be fair and reasonable. That is the appropriate standard. Cal.
25 Prob. Code § 16465(b)(4). The plaintiff and the defendant will each have the opportunity to conduct
26 the examination with respect to this issue at the discretion of the respective party. Any objections
27 may be raised at the time of trial.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Defendant's Motions in Limine

1. Exhibits Identified in Pre-Trial Statement

This motion has been resolved because the plaintiff has provided copies of its exhibits to the defendant.

2. Testimony of Malcolm Waitt

There's no dispute that a witness' testimony is limited to matters within that person's personal knowledge. F.R.E. 602. To the extent that such testimony may be necessary, Mr. Waitt will be permitted to testify to the lengths to which he has had to go to acquire complete and accurate information regarding the transactions involving the trust. He will also be permitted to testify to his interpretations of the documents offered. If the defendant has any specific objections to the testimony or exhibits being offered based on hearsay, he may raise those objections at the time the evidence is offered.

3. Testimony of Expert Witness, Judith Wisecarver

This motion has been resolved because the plaintiff has withdrawn Ms. Wisecarver as an expert.