

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

**Patty Precision Products Company v. Brown & Sharpe
Manufacturing Co., General Electric Company, and Tools Capital
Corporation**

846 F.2d 1247 (10th Cir. 1988) · No. Nos. 86-1064, 87-1170 · Decided May 17, 1988

SUMMARY

The Tenth Circuit reviewed consolidated appeals arising from a dispute over allegedly defective machining centers and numerical controls. Applying Oklahoma law, the court held that General Electric's warranty disclaimer to Brown & Sharpe, which was not disclosed to Patty Precision, was not binding on Patty Precision and was improperly admitted into evidence and submitted to the jury. The court also addressed the denial of a new trial and an award of attorney fees to General Electric.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Barrett, Senior Circuit Judge; Logan, Circuit Judge; Seth, Circuit Judge
JURISDICTION	Federal
DECIDED	May 17, 1988
DOCKET	Nos. 86-1064, 87-1170
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Patty Precision appealed from the district court's denial of its motion for a new trial and from an attorney-fee award in favor of General Electric. The appeals were consolidated.
STANDARD OF REVIEW	A denial of a motion for a new trial is reviewed for clear or manifest abuse of discretion. When the motion challenges jury instructions, the instructions are considered as a whole, viewed from the standpoint of whether the jury was misled or understood the issues and its duties.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Patty Precision Products Company v. Brown & Sharpe Manufacturing Co., General Electric Company, Tools Capital Corporation

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QUESTIONS PRESENTED

1. Whether General Electric's disclaimer of implied warranties and limitation of remedies in its agreement with Brown & Sharpe was binding on Patty Precision, a subsequent purchaser that was not informed of the disclaimer.
2. Whether the district court abused its discretion by admitting evidence of General Electric's disclaimer and instructing the jury concerning it.
3. Whether Patty Precision waived its challenge to the disclaimer by introducing notebooks that apparently contained copies of the warranty statement.
4. Whether the court needed to address Patty Precision's proposed increase of its ad damnum for interest paid on borrowed funds.

HOLDINGS

1. Under the applicable Oklahoma law, General Electric's disclaimer of implied warranties to Brown & Sharpe was not binding on Patty Precision because it was not disclosed or expressed in writing to Patty Precision and therefore did not satisfy the requirements for excluding or modifying implied warranties as against the ultimate purchaser.
2. The district court erred by admitting evidence of General Electric's disclaimer to Brown & Sharpe and instructing the jury on that disclaimer because it was irrelevant and could mislead or prejudice the jury in deciding Patty Precision's claims.
3. Patty Precision did not waive its challenge to the validity or admissibility of General Electric's disclaimer by introducing the machine-record notebooks.

KEY QUOTATIONS

“Based on our review of applicable Oklahoma law, we hold that General Electric's disclaimer to Brown & Sharpe was not binding on Patty Precision, that the disclaimer was irrelevant, and that the district court erred in admitting it in evidence and instructing on it.” (¶ 46)

“Thus, an ultimate consumer in the distribution chain in Oklahoma can bring a direct breach of warranty action against a manufacturer, notwithstanding his lack of privity.” (¶ 60)

“Under such circumstances, we hold that Patty Precision did not waive its challenge to the validity of General Electric's disclaimer and the court's instructions relative thereto.” (¶ 64)

“REVERSED AND REMANDED for a new trial.” (¶ 67)

FACTUAL BACKGROUND

Patty Precision purchased and leased three Brown & Sharpe machining centers equipped with General Electric numerical controls for manufacturing bomb-rack side plates under a government contract. The machines required extensive repairs, and the defendants extended the warranty period through June 1977. General Electric's written warranty and disclaimer ran to Brown & Sharpe, was not disclosed in writing to Patty Precision, and limited liability to repair or replacement while excluding implied warranties and consequential damages. General Electric employees nevertheless participated in installation, start-up, and servicing at Patty Precision's facility.

PROCEDURAL HISTORY

Patty Precision brought a diversity action alleging fraudulent inducement and breach of express and implied warranties arising from the purchase and lease of machining centers and General Electric numerical controls. After a jury verdict, the district court entered judgment for Patty Precision against Brown & Sharpe, awarded attorney fees against Brown & Sharpe, and awarded General Electric attorney fees against Patty Precision. The district court denied Patty Precision's motion for a new trial. The Tenth Circuit held that the admission of General Electric's undisclosed disclaimer and related jury instructions were erroneous and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgments in favor of Patty Precision against Brown & Sharpe and awarding attorney fees to Patty Precision and General Electric were set aside, and the case was remanded for a new trial.

CASES CITED

- Patty Precision Products Co. v. Brown & Sharpe Manufacturing Co., 742 F.2d 1260, 1262 (10th Cir. 1984)
- Whiteley v. OKC Corp., 719 F.2d 1051, 1058 (10th Cir. 1983)
- Karns v. Emerson Electric Co., 817 F.2d 1452, 1456 (10th Cir. 1987)
- Suggs v. State Farm Fire & Casualty Co., 833 F.2d 883, 887 (10th Cir. 1987)
- Trujillo v. Goodman, 825 F.2d 1453, 1461 (10th Cir. 1987)
- Furr v. AT & T Technologies, Inc., 824 F.2d 1537, 1549 (10th Cir. 1987)
- Robinson v. Audi NSU Auto Union, 739 F.2d 1481, 1486 (10th Cir. 1984)
- Duflinger v. Artiles, 727 F.2d 888, 895 (10th Cir. 1984)
- Alloy International Co. v. Hoover-NSK Bearing Co., 635 F.2d 1222, 1226–27 (7th Cir. 1981)
- Perry v. Lawson Ford Tractor Co., 613 P.2d 458, 463 (Okla. 1980)
- American Fertilizer Specialists, Inc. v. Wood, 635 P.2d 592, 595 (Okla. 1981)
- Collins Radio Co. of Dallas v. Bell, 623 P.2d 1039, 1049 (Okla. App. 1980)
- P.E.A.C.E. Corp. v. Oklahoma Natural Gas Co., 568 P.2d 1273, 1276 (Okla. 1977)
- Elden v. Simmons, 631 P.2d 739, 742 (Okla. 1981)

- Old Albany Estates, Ltd. v. Highland Carpet Mills, Inc., 604 P.2d 849 (Okla. 1979)
- Whiteley v. OKC Corp., 719 F.2d 1051 (10th Cir. 1983)
- Wylie v. Ford Motor Co., 502 F.2d 1292 (10th Cir. 1974)
- Datamatic v. International Business Machines Corp., 795 F.2d 458, 464–66 (5th Cir. 1986)
- Wood Products, Inc. v. CMI Corp., 651 F. Supp. 641, 651 (D. Md. 1986)
- R & L Grain Co. v. Chicago Eastern Corp., 531 F. Supp. 201, 209 (N.D. Ill. 1981)
- American Electric Power Co. v. Westinghouse Electric Corp., 418 F. Supp. 435, 450 (S.D.N.Y. 1976)
- Western Equipment Co. v. Sheridan Iron Works, Inc., 605 P.2d 806, 810 (Wyo. 1980)
- Flintkote Co. v. W.W. Wilkinson, Inc., 260 S.E.2d 229, 232 (Va. 1979)
- General Motors Corp. v. Halco Instruments Inc., 185 S.E.2d 619, 622 (Ga. Ct. App. 1971)
- Pennington Grain and Seed, Inc. v. Tuten, 422 So. 2d 948 (Fla. Ct. App. 1982)
- Groppe Co. v. U.S. Gypsum Co., 616 S.W.2d 49, 60–61 (Mo. Ct. App. 1981)
- Peterson v. North American Plant Breeders, 354 N.W.2d 625, 632 (Neb. 1984)
- Nakanishi v. Foster, 393 P.2d 635, 640 (Wash. 1964)
- Ford Motor Co. v. Pittman, 227 So. 2d 246 (Fla. Ct. App. 1969), cert. denied, 237 So. 2d 177 (Fla. 1970)