

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4178
Summary Calendar

LARRY SHAW, Plaintiff-Appellant,

versus

KENT COMPANY, Defendant-Appellee.

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HOME INDEMNITY COMPANY, Intervenor-Plaintiff,

versus

LARRY SHAW, Intervenor-Defendant,
KENT COMPANY, Intervenor-Defendant.

Appeal from the United States District Court
for the Western District of Louisiana
(90-CV-1734)

(August 6, 1993)

Before POLITZ, Chief Judge, KING and WIENER, Circuit Judges.

PER CURIAM:*

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Larry Shaw appeals an adverse bench trial judgment of his products liability claim against Kent Company. We affirm.

Background

Shaw worked as a grounds and custodial supervisor at Louisiana College in Pineville. Through this and other custodial jobs, Shaw gained substantial experience in the use of roto-buffers. The roto-buffer is a heavy machine used to polish, wax, and strip floors. It consists of a motorized, rotating pad or brush, controlled by levers on an upright handle. Guidance during operation requires less than one pound of pressure on the handle. Use of more than minimal pressure invites loss of control of the roto-buffer.

On June 26, 1989, Shaw's crew was instructed to strip the floors of Tudor Hall. A crew member applied total finish remover, a slippery liquid, to the floor in a narrow hallway. Shaw then began stripping that area with a roto-buffer manufactured by Kent. Shortly thereafter he fell and suffered back injuries. Co-workers found Shaw on the floor with the handle of the roto-buffer lying horizontally across his body. The unit was not running.

Shaw filed a state court products liability action against Kent under La. R.S. §§ 9:2800.51-59, claiming that a defective locking mechanism on the roto-buffer's handle caused the accident. Kent removed the action to district court. The district court found that the accident occurred when Shaw, after losing his footing on a slippery floor, grabbed at the roto-buffer's handle in

an attempt to regain his balance. The district court concluded that Shaw had failed to demonstrate a causal relationship between his injury and any reasonably anticipated use of the roto-buffer, or to a design defect in its handle locking mechanism, as required by La. R.S. §§ 9:2800.54(A). From the adverse judgment Shaw timely appealed.

Analysis

On appeal Shaw challenges the district court's finding that his accident resulted from a slip on the stripping fluid rather than from a design defect in the roto-buffer's handle locking mechanism. As Shaw recognizes, we review this fact finding against the clearly erroneous standard,¹ accepting it unless the record leaves us "with the definite and firm conviction that a mistake has been committed."² We find no such error here. The evidence reflects that operation of the roto-buffer requires application of only a minimal pressure to the handle. Shaw attested to his experience in roto-buffer operation. Experts testified that in examining the unit after the accident they could not cause the handle locking mechanism to slip unless they applied substantial

¹ E.g., Fed.R.Civ.P. 52(a); **Dardar v. Lafourche Realty Co.**, 985 F.2d 824 (5th Cir. 1993).

² **Anderson v. City of Besemer City**, 470 U.S. 564, 573 (1985) (quoting **United States v. United States Gypsum Co.**, 333 U.S. 364, 395 (1948)); **Dardar**.

pressure.³ In addition, Shaw testified that the narrowness of the hallway in which he was working made it impossible for him to avoid stepping in the slippery fluid. In view of this evidence, we decline to disturb the district court's finding on causation.⁴ Our resolution of this issue moots the other claims raised by Shaw.

The judgment of the district court is AFFIRMED.

³ Shaw does not suggest that the torque setting used by the experts in testing differed from that at which the locking mechanism was set on the date of the accident.

⁴ Shaw suggests that, absent direct evidence that his accident resulted from a loss of footing rather than a faulty handle locking mechanism, the district court erred in rejecting his own and Thomas Miles's contrary eyewitness testimony. We disagree. Fact findings in products liability actions may rest upon either direct or circumstantial evidence. **Molett v. Penrod Drilling Co.**, 826 F.2d 1419 (5th Cir. 1987) (citing **Joseph v. Bohn Ford, Inc.**, 483 So.2d 934 (La. 1986); **Jordan v. Travelers Ins. Co.**, 245 So.2d 151 (La. 1971)). Thus, Shaw essentially challenges implicit credibility calls, which warrant special deference from appellate courts. Fed.R.Civ.P. 52(a); **Anderson**. Where, as here, eyewitnesses testified to an account of events implausible in view of circumstances surrounding the accident, we refuse to disturb the district court's assessment of their credibility.