

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 20 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SHELDON G. ADELSON,

Plaintiff - Appellant,

v.

MOSHE HANANEL,

Defendant - Appellee.

No. 09-17533

D.C. No. 2:06-cv-01590-ECR-
PAL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed Jr., Senior District Judge, Presiding

Argued and Submitted April 11, 2011
San Francisco, California

Before: KOZINSKI, Chief Judge, HAWKINS and GOULD, Circuit Judges.

Plaintiff-Appellant Sheldon Adelson (“Adelson”) appeals the jury verdict judgment in favor of Defendant-Appellee Moshe Hananel (“Hananel”) in his suit for defamation, seeking a new trial because of: (1) Error in the exclusion of evidence that could have established the statement at issue was made by Hananel; and (2) Denial of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Adelson's requests for a curative jury instruction or an opportunity to respond to his opponent's repeated improper arguments and questioning.

Because the excluded evidence was of extremely limited or no probative value in proving the one factual issue the jury actually reached, and also had a high probability of confusing the jury, the district court did not abuse its discretion by excluding it. *See Obrey v. Johnson*, 400 F.3d 691, 694 (9th Cir. 2005).

Although defense counsel's actions were beneath the standard of dignity expected of trial counsel in federal court, and probably in violation of the district court's *in limine* order, given the stringent standard of review on appeal and the remedial measures taken by the district court, we cannot say the conduct so permeated the proceedings, or that the district court committed so clear an error, as to warrant a new trial. *See Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1192 (9th Cir. 2002).

AFFIRMED.