

# David Desgro v. Paul Pack

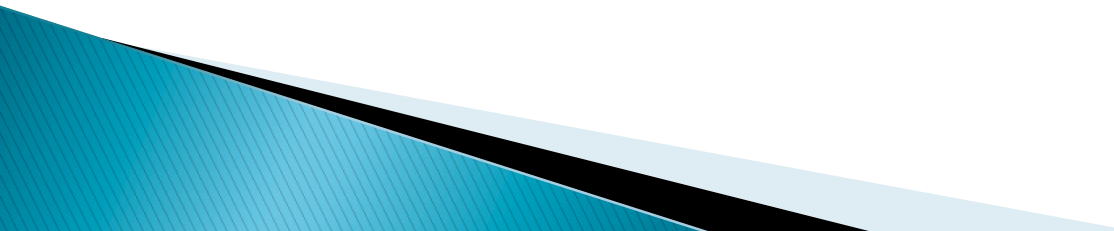
Chapter 15

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&  
Demitree Martinez

# Explain

- ▶ The trial court granted summary judgment to defendant, finding that the contractual limitation period was reasonable and enforceable. The trial court stated that plaintiff "had plenty of time to find any deficiency" because he had been living in the home for at least ten months when the contractual limitations period expired.

# Explain

- ▶ We consolidate and restate the issues raised on appeal by plaintiff as follows: A. Whether the agreement was an unenforceable contract of adhesion. B. Whether the agreement was void as against public policy. C. Whether the trial court erred in granting summary judgment based on plaintiff's failure to file this lawsuit within one year from the date of the home inspection.
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# Explain

- ▶ A grant of summary judgment is not presumed correct by this court; rather, this court must "make a fresh determination" in each case that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Watson v. Waters*, 375 S.W.3d 282, 291 (Tenn. Ct. App. 2012). In doing so, this court must consider the evidence in the light most favorable to the non-movant and draw all reasonable inferences in his favor. *Id.*

# Explain

- ▶ The interpretation and construction of a plain and unambiguous written contract is a question of law for determination by the court. It is the duty of the court to enforce the contract according to its plain terms, and the language used in the contract must be taken and understood in its plain, ordinary and popular sense. However, "the cardinal rule for interpretation of contracts is to ascertain the intention of the parties and to give effect to that intention as best can be done consistent with legal principles." Courts may determine the intention of the parties "by a fair construction of the terms and provisions of the contract, by the subject matter to which it has reference, by the circumstances of the particular transaction giving rise to the question, and by the construction placed on the agreement by the parties in carrying out its terms."

# Explain

- ▶ In this case, the agreement at issue is not an adhesion contract because it was not shown that plaintiff had to "take it or leave it" or that he was forced to acquiesce to the terms of the agreement to get the service he desired. Plaintiff did not question the terms of the agreement, did not attempt to bargain with the defendant regarding the agreement, and there was no proof that defendant told plaintiff he had to sign the document to obtain the service. Plaintiff stated that he contacted defendant at the recommendation of his realtor, but plaintiff likely could have obtained the service from someone else because plaintiff did not show that defendant was the only home inspector in the area. Accordingly, we do not need to examine the contract's provisions to determine their reasonableness because the agreement at issue is not a contract of adhesion.

# Explain

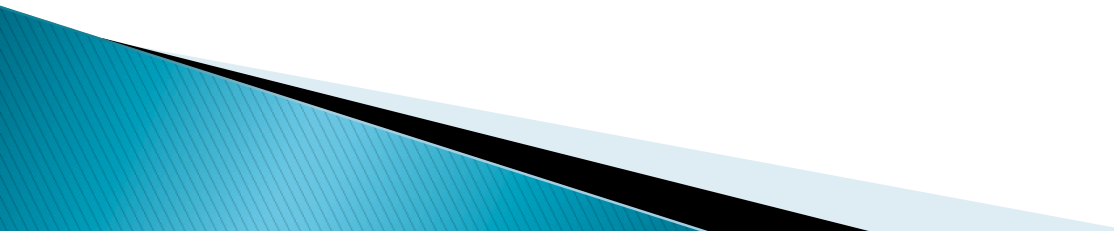
- ▶ Plaintiff also argues that the trial court erred in failing to hold that the "exculpatory" clause was void as against public policy. Our Supreme Court has held that an exculpatory clause in a contract is unenforceable when it affects the public interest. See *Crawford v. Buckner*, 839 S.W.2d 754, 758-759 (Tenn. 1992) (finding an exculpatory clause in a residential lease contract to be contrary to public policy); *Olson v. Molzen*, 558 S.W.2d 429, 432 (Tenn. 1977) (holding an exculpatory clause in a contract for medical treatment is contrary to public policy). Home inspections have been deemed by this court to be a "service of great importance to the public," and the exculpatory clauses contained in home inspection agreements have been determined to affect the public interest as well. *Carey v. Merritt*, 148 S.W.3d 912, 918 (Tenn. Ct. App. 2004); *Russell v. Bray*, 116 S.W.3d 1, 8 (Tenn. Ct. App. 2003).

# Explain

- ▶ In this case, plaintiff argues that the clause stating that plaintiff "shall have no cause of action against INSPECTOR after one year from the date of inspection" is also an exculpatory clause which should be held to be void as against public policy. Defendant argues that this is not an exculpatory clause, but rather a contractual limitation on the time period for filing suit, which the courts of this State have consistently upheld. Tennessee has long-recognized the "well-established general rule that in the absence of a prohibitory statute, a contract provision is valid which limits the time for bringing suit, if a reasonable period of time is provided, and that the general statutes of limitations are not prohibitory of such contractual provisions"



# Explain

- ▶ In this case, the language plaintiff complains of is not an unenforceable exculpatory clause. The language is a contractual limitations period, which our court has repeatedly held to be enforceable so long as the period is reasonable. The provision does not exculpate defendant from most or all liability, but rather limits the time period within which plaintiff can file suit against defendant. Thus, plaintiff's argument in this regard is without merit.
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# Explain

- ▶ Who won the case?

- ▶ Our conclusion.