

DISTRICT OF COLUMBIA COURT OF APPEALS

Carleton v. Winter

901 A.2d 174 (D.C. 2006) · No. 04-CV-768 · Decided June 15, 2006

SUMMARY

The District of Columbia Court of Appeals affirmed judgment in favor of the real estate agent and her employer, holding that the agent's recommendation of a home inspector did not establish fraudulent misrepresentation or liability under the Consumer Protection Procedures Act, and that expert testimony was required to establish the agent's professional standard of care. The court vacated judgment for the home inspection company and inspector because a genuine dispute existed regarding negligent performance and the enforceability of the contractual limitation of liability, particularly if the conduct constituted gross negligence. The case was remanded for further proceedings.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Kern, Senior Judge; Farrell, Associate Judge; Kramer, Associate Judge
JURISDICTION	District of Columbia
DECIDED	June 15, 2006
DOCKET	04-CV-768
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from summary judgment and judgment as a matter of law entered against the Carletons in claims arising from a residential real estate transaction and home inspection.
STANDARD OF REVIEW	De novo review of summary judgment and judgment as a matter of law; abuse-of-discretion review of the exclusion of expert testimony.
PRECEDENTIAL VALUE	published
PARTIES	Jennifer Carleton, John Carleton v. Suzanne Winter, Home Tech Systems, Inc., Robert Phillips

TOPICS

- real estate
- negligence
- professional negligence
- consumer protection
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Winter's recommendation of Phillips constituted fraudulent misrepresentation.
2. Whether Winter's recommendation subjected her or her employer to liability under the District of Columbia Consumer Protection Procedures Act.
3. Whether expert testimony was required to establish the standard of care applicable to Winter as a real estate agent recommending a home inspector.
4. Whether the Carletons' proffered expert was qualified to testify regarding a real estate agent's fiduciary duties and standard of care.
5. Whether a contractual limitation of liability to the inspection fee barred claims against HTSI and Phillips when the alleged conduct could constitute gross negligence.
6. Whether the record required remand for factual and legal proceedings concerning gross negligence and enforceability of the limitation clause.

HOLDINGS

1. Winter's recommendation of Phillips was not actionable fraudulent misrepresentation because the record did not show that her statements were false or that she knew them to be false.
2. Winter's recommendation of Phillips did not bring Winter or her employer within the District of Columbia Consumer Protection Procedures Act because the Act does not impose guarantor liability on a private person who recommends another merchant's goods or services.
3. Expert testimony was required to establish the applicable standard of care for a real estate agent's fiduciary duties in recommending a home inspector because those duties were not within the common knowledge of a layperson.
4. The trial court did not abuse its discretion by excluding the Carletons' proffered expert because his experience concerned home inspection practices, not the fiduciary duties and standard of care of a real estate agent selecting a home inspector.
5. The trial court erred in treating the contractual limitation of liability as clearly restricting HTSI and Phillips' liability to the \$430 inspection fee where the record presented a genuine dispute over negligent performance and the alleged conduct could constitute gross negligence.

KEY QUOTATIONS

"fraudulent misrepresentation requires, inter alia, a false representation as well as knowledge of the falsity." (178)

"Real estate agents owe manifold duties to persons they represent; whether and to what extent those duties include "vouching" for careful performance by a home inspector they recommend are questions on which only the standards of the profession — as articulated by an expert — can enlighten a jury." (179)

"We conclude, however, that the law is not so clear on that issue." (181)

“Accordingly, given the possibility that the negligence amounted to not ordinary negligence but gross negligence, the judgment of the trial court in favor of appellee HTSI and appellee Phillips must be vacated and this case is remanded to the trial court for further proceedings consistent with this opinion.” (182)

FACTUAL BACKGROUND

The Carletons purchased an old, poorly maintained Washington, D.C., residence after real estate agent Suzanne Winter recommended home inspector Robert Phillips and Phillips reported that the visibly sagging rear wall had merely settled. After renovations began, contractors and an architect identified a serious structural defect, and the rear wall collapsed. The Carletons incurred approximately \$169,000 in repair and relocation expenses and sued Winter, her employer, Phillips, and Home Tech Systems, Inc.

PROCEDURAL HISTORY

The trial court rejected the Carletons' claims against real estate agent Suzanne Winter and her employer, concluding that Winter's recommendation of the home inspector was not actionable fraudulent misrepresentation, did not fall within the District of Columbia Consumer Protection Procedures Act, and required expert testimony that the Carletons' proffered witness could not provide. As to Home Tech Systems, Inc. and Robert Phillips, the court found a genuine dispute concerning negligent performance of the inspection but ruled that their liability was limited to refund of the \$430 inspection fee. The Court of Appeals affirmed the judgment for Winter and her employer, vacated the judgment for HTSI and Phillips, and remanded.

DISPOSITION

other

REMAND INSTRUCTIONS

The trial court must determine whether triable issues exist concerning whether Phillips's assessment of the wall constituted gross negligence rather than ordinary negligence, address the enforceability and scope of the contractual limitation of liability, and permit the parties to make an appropriate factual and legal presentation concerning gross negligence. The court may also decide whether John Carleton's signature bound Jennifer Carleton to the agreement.

CASES CITED

- Columbia Plaza Tenants' Ass'n v. Columbia Plaza Ltd. P'ship, 869 A.2d 329, 332 (D.C. 2005)
- Brown v. Nat'l Acad. of Sciences, 844 A.2d 1113, 1117-18 (D.C. 2004)
- Howard v. Riggs Nat'l Bank, 432 A.2d 701, 704-10 (D.C. 1981)
- Bennett v. Kiggins, 377 A.2d 57, 61 (D.C. 1977), cert. denied, 434 U.S. 1034 (1978)
- Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs, 634 A.2d 433, 437-39 (D.C. 1993)
- District of Columbia v. Hampton, 666 A.2d 30, 35 (D.C. 1995)
- McNeil Pharm. v. Hawkins, 686 A.2d 567, 579 (D.C. 1996)
- Joy v. Bell Helicopter Textron, Inc., 999 F.2d 549, 558 (D.C. Cir. 1993)

- Thoma v. Kettler Bros., Inc., 632 A.2d 725, 728-29 n.8 (D.C. 1993)
- District of Columbia v. Mitchell, 533 A.2d 629, 639 (D.C. 1987)
- Lewis v. Washington Metro. Area Transit Auth., 463 A.2d 666, 673-74 (D.C. 1983)
- Haidak v. Corso, 841 A.2d 316, 322 (D.C. 2004)
- Houston v. Security Storage Co., 474 A.2d 143, 144 (D.C. 1984)
- Farina v. Mt. Bachelor, Inc., 66 F.3d 233, 235 (9th Cir. 1995)
- Hanks v. Powder Ridge Rest. Corp., 885 A.2d 734, 747-48 (Conn. 2005)
- Murphy v. N. Am. River Runners, 412 S.E.2d 504, 510 (W. Va. 1991)
- Baker v. Roy H. Haas Assocs., 629 A.2d 1317, 1321 (Md. Ct. Spec. App. 1993)
- Maiatico v. Hot Shoppes, Inc., 287 F.2d 349, 351 (D.C. Cir. 1961)
- Winterstein v. Wilcom, 293 A.2d 821, 824 (Md. Ct. Spec. App. 1972)
- Adloo v. H.T. Brown Real Estate, Inc., 686 A.2d 298, 301 (Md. 1996)
- Spargnapani v. Wright, 110 A.2d 82, 84 (D.C. 1954)
- Farmer v. Farmer, 526 A.2d 1365, 1369 (D.C. 1987)
- In re Walker, 856 A.2d 579, 586 (D.C. 2004)
- Chesser v. Troiano, 61 A.2d 629, 632 (D.C. 1948)