

COURT OF APPEALS, SECOND APPELLATE DISTRICT OF TEXAS AT FORT WORTH

Cornelius Joe Ergonis and Linda Ann Ergonis v. William Thomas Sultzbaugh, Sharon Elliott Sultzbaugh A/K/A Sharon Carr, Ebby Halliday Real Estate, Inc., Kathy Gibson, Paul Wood Inspection Group, Inc., Caleb Wood, and James Alan Peterson

No. 02-25-00043-CV (Tex. App.—Fort Worth Mar. 19, 2026) · No. 02-25-00043-CV · Decided March 19, 2026

SUMMARY

The Texas Court of Appeals, Second Appellate District, reviewed summary judgments in a dispute arising from the purchase of a luxury home. The buyers alleged that the sellers, real-estate agent, and inspectors failed to disclose or identify foundation and structural defects. The court held that the buyers' signed "as is" agreement, disclosures, knowledge of the property's condition, and independent inspections supported summary judgment, and it affirmed the trial court's judgment.

CASE DETAILS

COURT	Court of Appeals, Second Appellate District of Texas at Fort Worth
WRITING FOR THE COURT	Elizabeth Kerr; Bassel; Walker
JURISDICTION	Court of Appeals, Second Appellate District of Texas at Fort Worth
DECIDED	March 19, 2026
DOCKET	02-25-00043-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final judgment granting traditional and no-evidence summary judgment for the sellers, the sellers' real-estate agent, and the home inspectors; awarding attorneys' fees, expenses, and costs to the sellers and agent; and awarding the buyers the \$1,299 deposited by the inspectors after a conditional stipulation to liability.
STANDARD OF REVIEW	Traditional summary judgment is reviewed de novo. The evidence is viewed in the light most favorable to the nonmovant, favorable evidence is credited if reasonable jurors could, contrary evidence is disregarded unless reasonable jurors could not, reasonable inferences are indulged, and doubts are resolved in the nonmovant's favor. A defendant is entitled to summary judgment by conclusively negating

	an essential element of a claim or conclusively proving an affirmative defense. The court reviewed traditional summary-judgment grounds before no-evidence grounds because the traditional grounds were dispositive.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is identified as published in the supplied metadata, although no reporter citation appears in the opinion text.
PARTIES	Cornelius Joe Ergonis, Linda Ann Ergonis v. William Thomas Sultzbaugh, Sharon Elliott Sultzbaugh a/k/a Sharon Carr, Ebby Halliday Real Estate, Inc., Kathy Gibson, Paul Wood Inspection Group, Inc., Caleb Wood, James Alan Peterson

TOPICS

real estate contracts consumer protection negligence appellate procedure

PRACTICE AREAS

real estate contracts torts consumer protection appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly granted summary judgment for the sellers on the buyers' breach-of-contract, negligent-misrepresentation, gross-negligence, statutory-fraud, common-law-fraud, and DTPA claims.
2. Whether the sellers' agent could be liable for negligence, gross negligence, common-law fraud, or DTPA violations based on the seller's disclosure notice, alleged statements about the property's foundation, and an alleged lifetime foundation warranty.
3. Whether the home inspectors' contractual limitation of damages to the \$1,299 inspection fee was enforceable and properly applied to the buyers' negligence claims.

HOLDINGS

1. The enforceable "as is" clause barred the buyers' fraud-, misrepresentation-, negligence-, and DTPA-based claims against the sellers because the buyers accepted the risk that their own appraisal of the property might be wrong, and the summary-judgment evidence conclusively negated reliance and causation.
2. The sellers were entitled to summary judgment because the disclosure notice identified the 2016 Jensen report and the Thompson and Sexton repairs, and the buyers' evidence did not raise a genuine issue that the sellers concealed the property's condition as of the disclosure date.
3. The sellers were entitled to summary judgment on the breach-of-contract claim because the evidence conclusively established that they transferred the existing foundation warranty, which had not expired when the property sale closed.

4. The sellers' agent was entitled to summary judgment on the buyers' negligence, gross-negligence, common-law-fraud, and DTPA claims because the seller, not the agent, completed the disclosure notice; the buyers produced no evidence that the agent knew the notice was false or that her statements about the repairs and transferable warranty were false; and the as-is clause independently negated reliance and causation.
5. The inspectors' contractual limitation of damages to the \$1,299 inspection fee was enforceable and properly applied to the buyers' negligence claims.

KEY QUOTATIONS

“By agreeing to purchase something ‘as is,’ a buyer agrees to make his own appraisal of the bargain and to accept the risk that he may be wrong.” (13)

“Accordingly, because the record evidence conclusively negates the reliance and causation elements of the Buyers’ non-contractual claims, we conclude that the trial court properly granted the Sellers’ traditional motion for summary judgment disposing of those claims by enforcing the “as is” clause.” (22)

“Here, we are not being asked to examine a pre-injury release or an indemnity clause; rather, before us is a damages cap, and Head governs.” (34)

FACTUAL BACKGROUND

The sellers' Frisco luxury home had a pier-and-beam foundation and a history of foundation and structural issues. Before selling, the sellers obtained engineering reports, completed foundation and attic repairs, and prepared a seller's disclosure notice referencing the 2016 Jensen report and the Thompson and Sexton repairs. The buyers signed an "as is" purchase agreement and the disclosure notice, personally observed apparent structural problems, and hired a home inspector and structural engineer before closing. After closing, the buyers obtained additional engineering opinions, alleged that defects had been concealed or negligently missed, and sought approximately \$2.9 million to demolish and rebuild the home.

PROCEDURAL HISTORY

The buyers first sued in Dallas County, nonsuited that action, and filed the underlying suit in Denton County against the sellers, their agent, and multiple inspectors. The defendants moved for summary judgment on the buyers' contract, tort, statutory-fraud, and DTPA claims. The 362nd District Court of Denton County granted the motions, the inspectors deposited \$1,299 into the registry after conditionally stipulating to liability, and the trial court entered final judgment after a jury trial on the sellers' attorneys' fees. The buyers appealed, challenging each group of summary-judgment rulings.

DISPOSITION

affirmed

CASES CITED

- Ford Motor Co. v. Ridgway, 135 S.W.3d 598, 600 (Tex. 2004)

- D.R. Horton-Tex., Ltd. v. Savannah Props. Assocs., L.P., 416 S.W.3d 217, 225 n.7 (Tex. App.—Fort Worth 2013, no pet.)
- Reynolds v. Murphy, 188 S.W.3d 252, 258 (Tex. App.—Fort Worth 2006, pet. denied) (op. on reh'g)
- Travelers Ins. v. Joachim, 315 S.W.3d 860, 862 (Tex. 2010)
- Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding, 289 S.W.3d 844, 848 (Tex. 2009)
- 20801, Inc. v. Parker, 249 S.W.3d 392, 399 (Tex. 2008)
- Frost Nat'l Bank v. Fernandez, 315 S.W.3d 494, 508 (Tex. 2010)
- Prudential Ins. Co. of Am. v. Jefferson Assocs., Ltd., 896 S.W.2d 156, 160-63 (Tex. 1995)
- Volmich v. Neiman, No. 02-12-00050-CV, 2013 WL 978770, at *3 (Tex. App.—Fort Worth Mar. 14, 2013, no pet.) (mem. op.)
- Hammond v. Hanser, No. 01-22-00707-CV, 2024 WL 4628675 (Tex. App.—Houston [1st Dist.] Oct. 31, 2024, pet. denied) (mem. op.)
- Millhollon v. Douglas, No. 02-18-00105-CV, 2019 WL 6334695, at *17 (Tex. App.—Fort Worth Nov. 27, 2019, pet. denied) (mem. op.)
- Hall v. Rogers, No. 01-19-00408-CV, 2021 WL 2653736, at *5-6 (Tex. App.—Houston [1st Dist.] June 29, 2021, pet. denied) (mem. op.)
- Van Duren v. Chife, 569 S.W.3d 176, 186-88, 190 (Tex. App.—Houston [1st Dist.] 2018, no pet.)
- Sealy Emerg. Room, L.L.C. v. Free Standing Emerg. Room Mgrs. of Am., L.L.C., 685 S.W.3d 816, 821 & n.4 (Tex. 2024)
- Myre v. Meletio, 307 S.W.3d 839, 843 (Tex. App.—Dallas 2010, pet. denied)
- Smith v. Nat'l Resort Cmtys., Inc., 585 S.W.2d 655, 658 (Tex. 1979)
- Marshall v. Kusch, 84 S.W.3d 781, 786 (Tex. App.—Dallas 2002, pet. denied)
- HTM Rests., Inc. v. Goldman, Sachs & Co., 797 S.W.2d 326, 329 (Tex. App.—Houston [14th Dist.] 1990, writ denied)
- Pham v. Archer, No. 02-23-00450-CV, 2025 WL 211354, at *6 (Tex. App.—Fort Worth Jan. 16, 2025, no pet.) (mem. op.)
- Pfieffer v. Ebby Halliday Real Estate, Inc., 747 S.W.2d 887, 890 (Tex. App.—Dallas 1988, no writ)
- Williams v. Dardenne, 345 S.W.3d 118, 127 (Tex. App.—Houston [1st Dist.] 2011, pet. denied)
- Lim v. Lomeli, No. 04-06-00389-CV, 2007 WL 2428078, at *4 (Tex. App.—San Antonio Aug. 29, 2007, no pet.) (mem. op.)
- Camden Mach. & Tool, Inc. v. Cascade Co., 870 S.W.2d 304, 311 (Tex. App.—Fort Worth 1993, no writ)
- Old Am. Ins. Co. v. Lincoln Factoring, LLC, 571 S.W.3d 271, 282 (Tex. App.—Fort Worth 2018, no pet.)
- Taylor v. Baylor Scott & White Med. Ctr.-Frisco, No. 05-20-00352-CV, 2022 WL 405896, at *9 (Tex. App.—Dallas Feb. 10, 2022, no pet.) (mem. op.)
- Sonic Sys. Int'l, Inc. v. Croix, 278 S.W.3d 377, 394-95 (Tex. App.—Houston [14th Dist.] 2008, pet. denied)
- Seaway Prod. Pipeline Co. v. Hanley, 153 S.W.3d 643, 659 (Tex. App.—Fort Worth 2004, no pet.)
- Rainier Southlake DST v. Woodbury Strategic Partners Fund, LP, No. 02-16-00263-CV, 2017 WL 6047725, at *12 (Tex. App.—Fort Worth Dec. 7, 2017, no pet.) (mem. op.)

- MacPherson v. Pena, No. 09-20-00221-CV, 2022 WL 17685119, at *7 (Tex. App.—Beaumont Dec. 15, 2022, no pet.) (mem. op.)
- Sherman v. Elkowitz, 130 S.W.3d 316, 321 (Tex. App.—Houston [14th Dist.] 2004, no pet.)
- Douet v. Romero, No. 14-21-00365-CV, 2022 WL 16942867, at *6 (Tex. App.—Houston [14th Dist.] Nov. 15, 2022, no pet.) (mem. op.)
- Grove v. Franke, No. 09-18-00119-CV, 2019 WL 5243152, at *4-5 (Tex. App.—Beaumont Oct. 17, 2019, pet. denied) (mem. op.)
- Atrium Med. Ctr., LP v. Hous. Red C LLC, 595 S.W.3d 188, 192 (Tex. 2020)
- Head v. U.S. Inspect DFW, Inc., 159 S.W.3d 731, 747-49 (Tex. App.—Fort Worth 2005, no pet.)
- Fox Elec. Co. v. Tone Guard Sec., Inc., 861 S.W.2d 79, 82-83 (Tex. App.—Fort Worth 1993, no writ)
- Allright, Inc. v. Elledge, 515 S.W.2d 266, 267 (Tex. 1974)
- In re Lyon Fin. Servs., Inc., 257 S.W.3d 228, 232-33 (Tex. 2008) (orig. proceeding)
- Dresser Industries, Inc. v. Page Petroleum, Inc., 853 S.W.2d 505, 506-11 (Tex. 1993)
- Green Intern., Inc. v. Solis, 951 S.W.2d 384, 386-87 (Tex. 1997)
- Silva v. Diaz, No. 05-20-00443-CV, 2022 WL 3500008, at *12 n.8 (Tex. App.—Dallas Aug. 18, 2022, no pet.) (mem. op.)

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