SUPREME COURT OF TEXAS

The Prudential Insurance Company of America v. Jefferson Associates, Ltd. and F.B. Goldman

896 S.W.2d 156 (Tex. 1995) · No. No. D-3096 · Decided May 11, 1995

SUMMARY

The Supreme Court of Texas held that a sophisticated buyer's freely negotiated "as is" agreement, which disclaimed reliance on the seller's representations and warranties, conclusively negated causation for the buyer's claims arising from the property's undisclosed asbestos fireproofing. The court concluded that the agreement barred recovery under the DTPA, fraud, negligence, and breach-of-duty theories because the buyer accepted the risk of the property's condition. The court reversed the court of appeals and rendered judgment that the buyer take nothing.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Hecht, Justice; Phillips, Chief Justice; Gonzalez, Justice; Hightower, Justice; Owen, Justice
JURISDICTION	Texas
DECIDED	May 11, 1995
DOCKET	No. D-3096
DISPOSITION	reversed
PROCEDURAL POSTURE	Prudential sought review of a court of appeals judgment affirming a jury-based trial court judgment awarding actual, punitive, and other damages to Goldman and Jefferson Associates on claims arising from the purchase of commercial real estate containing asbestos. The Supreme Court of Texas granted writ of error.
STANDARD OF REVIEW	Because the plaintiffs prevailed at trial, the evidence was viewed in the light most favorable to them. The court considered whether the evidence established causation as a matter of law and whether the contractual "as is" provision conclusively negated causation.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	The Prudential Insurance Company of America v. Jefferson Associates, Ltd., F.B. Goldman

TOPICS

contracts · real estate · consumer protection · fraud · commercial litigation

PRACTICE AREAS

contracts · real estate · consumer protection · fraud · commercial litigation · remedies

QUESTIONS PRESENTED

1. Whether a freely negotiated "as is" agreement in an arm's-length commercial real estate transaction conclusively negates causation and bars the buyer's claims for DTPA violations, fraud, negligence, and breach of the duty of good faith and fair dealing.
2. Whether the contractual provision expressly waiving any action under the DTPA was enforceable under Texas Business and Commerce Code section 17.42.
3. Whether Prudential's alleged failure to disclose possible asbestos, withholding of plans and specifications, or statements by its property manager supplied a basis to avoid the "as is" agreement.
4. Whether the evidence established that Prudential's conduct was a producing cause or actual cause of Goldman's damages.

HOLDINGS

1. A valid, freely negotiated "as is" agreement by a sophisticated buyer in an arm's-length commercial real estate transaction, when not induced by fraud or otherwise made unenforceable, conclusively establishes that the buyer accepted the risk of the property's condition and negates causation for injury based on the property's undisclosed defects or reduced value.
2. An "as is" agreement does not bar recovery when the buyer was fraudulently induced to make the agreement, when the seller concealed information that induced the agreement, when the seller impaired an inspection that the buyer was entitled to conduct, or when the totality of the circumstances makes the agreement unenforceable.
3. The contract's express waiver of any action under the Texas Deceptive Trade Practices Act was void under Texas Business and Commerce Code section 17.42, but the separate "as is" and nonreliance provisions were not a waiver of DTPA rights; they established that the seller's conduct was not a producing cause of injury.
4. A seller has no duty to disclose facts the seller does not know and is not liable for failing to disclose information the seller only should have known; the evidence did not establish that Prudential actually knew the building contained asbestos.
5. Statements that the building was "superb" or one of the finest properties in Austin were puffing or opinion rather than actionable misrepresentations of material fact, and the statement that the building had no defects other than a mechanical-room foundation problem was not shown to be fraudulent.

KEY QUOTATIONS

> *“We hold he cannot.”* (159)

> *“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.”* (161)

> *“Goldman's "as is" agreement negates his claim that any action by Prudential caused his injury.”* (161)

> *“Goldman's agreement does not say he cannot sue Prudential for violating the DTPA; it says he cannot win the suit.”* (164)

> *“Accordingly, we reverse the judgment of the court of appeals and render judgment that Goldman take nothing.”* (164)

FACTUAL BACKGROUND

F.B. Goldman purchased the Jefferson Building, a four-story commercial office building in Austin, from Prudential for $7,150,000 in 1984. The contract required Goldman to take the property "as is," with all latent and patent defects, disclaimed express and implied warranties, and stated that Goldman was relying on his own examination rather than representations about the property's condition. More than two years later, asbestos fireproofing was discovered, and Goldman and Jefferson Associates sued Prudential, asserting that Prudential misrepresented or failed to disclose the building's condition. Goldman was a sophisticated commercial real estate investor who had inspected the building before purchase, and the record contained no evidence that Prudential actually knew the building contained asbestos.

PROCEDURAL HISTORY

Goldman sued Prudential alleging DTPA violations, fraud, negligence, and breach of the duty of good faith and fair dealing after asbestos was discovered in the Jefferson Building. The jury found liability and awarded more than $6 million in actual damages and $14.3 million in punitive damages; the trial court entered a judgment totaling $25,692,571.58, and the court of appeals affirmed. The Supreme Court of Texas reversed and rendered judgment that the plaintiffs take nothing.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None. The court rendered judgment that Goldman and Jefferson Associates take nothing.

CASES CITED

- Brown v. Edwards Transfer Co., 764 S.W.2d 220, 223 (Tex. 1988)
- General Motors Corp. v. Saenz, 873 S.W.2d 353, 357 (Tex. 1993)
- McClure v. Allied Stores of Texas, Inc., 608 S.W.2d 901, 903 (Tex. 1980)
- Mid Continent Aircraft Corp. v. Curry County Spraying Serv. Inc., 572 S.W.2d 308, 313 (Tex. 1978)
- Dubow v. Dragon, 746 S.W.2d 857, 860 (Tex. App.—Dallas 1988, no writ)
- Camden Machine & Tool, Inc. v. Cascade Co., 870 S.W.2d 304, 312 (Tex. App.—Fort Worth 1993, no writ)

- Weitzel v. Barnes, 691 S.W.2d 598, 600-601 (Tex. 1985)
- Dallas Farm Mach. Co. v. Reaves, 307 S.W.2d 233, 240 (Tex. 1957)
- Cockburn v. Mercantile Petroleum, Inc., 296 S.W.2d 316, 326 (Tex. Civ. App.—Dallas 1956, writ ref'd n.r.e.)
- Robinson v. Preston Chrysler-Plymouth, Inc., 633 S.W.2d 500, 502 (Tex. 1982)
- Ozuna v. Delaney Realty, Inc., 600 S.W.2d 780, 782 (Tex. 1980) (per curiam)
- Pennington v. Singleton, 606 S.W.2d 682, 687 (Tex. 1980)
- Autohaus, Inc. v. Aguilar, 794 S.W.2d 459, 462-464 (Tex. App.—Dallas 1990), writ denied per curiam, 800 S.W.2d 853 (Tex. 1991)
- DeSantis v. Wackenhut Corp., 793 S.W.2d 670, 688 (Tex. 1990)
- Stone v. Lawyers Title Ins. Corp., 554 S.W.2d 183, 185 (Tex. 1977)
- Barnes v. Weitzel, 678 S.W.2d 747, 750 (Tex. App.—Fort Worth 1984)
- Lear Siegler, Inc. v. Perez, 819 S.W.2d 470, 471-472 (Tex. 1991)
- Southwestern Bell Tel. Co. v. FDP Corp., 811 S.W.2d 572, 576 (Tex. 1991)
- First Title Co. v. Garrett, 860 S.W.2d 74, 77 (Tex. 1993)