

SHORT CASE NAME: Finch v. Richardson and Inspectech, LLC

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

**DAVID F. FINCH and
SHIRLEY R. FINCH,
Plaintiffs,**

vs.

///

Civil Action No: 09-C-561

**BRIAN RICHARDSON, M.D.,
ANGELA RICHARDSON, and
INSPECTECH, LLC, a West Virginia
limited liability company,
Defendants.**

ORDER ON INSPECTECH, LLC'S MOTION FOR SUMMARY JUDGMENT

This matter came for hearing on the 1st day of November 2010 pursuant to Defendant Inspectech, LLC's Motion for Summary Judgment. The Plaintiffs, David F. Finch and Shirley R. Finch ("Finches"), appeared by counsel, George J. Cosenza, Defendants, Brian Richardson, M.D., and Angela Richardson, appeared by counsel, Aaron C. Boone, and Defendant, Inspectech, LLC ("Inspectech"), appeared by counsel, William Crichton VI.

Whereupon the Court acknowledged receipt of Inspectech's Motion for Summary Judgment, Plaintiffs' Response to Motion for Summary Judgment filed by Defendant Inspectech, LLC, Defendant Inspectech's Reply to Plaintiff's [sic] Response and Supplement to its Motion for Summary Judgment, Defendant Inspectech's Supplemental Reply to Plaintiffs' Response to it's [sic] Motion for Summary Judgment, and all other accompanying documents. Further, the Court has studied the above-mentioned documents, oral arguments of counsel, and applicable case and statutory law.

Inspectech moves for summary judgment on the basis that the Inspection Agreement between Inspectech and the Finches contained a clear and unequivocal "UNCONDITIONAL RELEASE AND LIMITATION OF LIABILITY":

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CAROLE JONES
CLERK CIRCUIT COURT

It is understood and agreed that the Company is not an insurer and that the inspection and report are not intended to be construed as a guarantee or warranty of the adequacy, performance or condition of any structure, item or system at the property address. The Client hereby releases and exempts the Company and its agents and employees of and from all liability and responsibility for the cost of repairing and replacing any unreported defect or deficiency and for any consequential damage, property damage or personal injury of any nature. In the event the company and/or its agents or employees are found liable due to breach of contract, breach of warranty, negligence, negligent misrepresentation, negligent hiring or any other theory of liability, the liability of the Company and its agents and employees shall be limited to a sum equal to the amount of the fee paid by the Client for the inspection.

West Virginia law recognizes the enforceability of anticipatory releases when they are clear and unequivocal,

Generally, in the absence of an applicable safety statute, a plaintiff who expressly and, under the circumstances, clearly agrees to accept a risk of harm arising from the defendant's negligent or reckless conduct may not recover for such harm . . . When such express agreement is freely and fairly made, between parties who are in an equal bargaining position, and there is no public interest with which the agreement interferes, it generally will be upheld.

Murphy v. North American River Runners, 186 W.Va. 310, 412 S.E.2d 504 (1991).

A review of the Inspection Agreement at issue in this case indicates that the UNCONDITIONAL RELEASE AND LIMITATION OF LIABILITY was conspicuously identified and absolutely unambiguous. Additionally, the Finches appear to have released Inspectech from liability for the very damages that they seek by this lawsuit, namely the cost of repairing and replacing any unreported defect or deficiency. Particularly important to the Court's finding that the Finches clearly agreed to the anticipatory release is the fact that the UNCONDITIONAL RELEASE AND LIMITATION OF LIABILITY appears on the Inspection Agreement immediately above Mrs. Finch's signature.

Therefore, the Court finds and concludes that there is no genuine issue of material fact and that Defendant Inspectech, LLC is entitled to judgment as a matter of law that the Plaintiffs

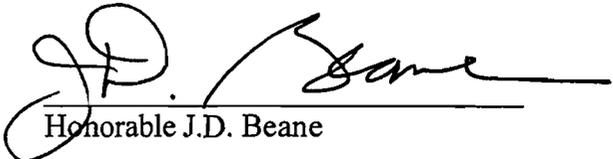
contractually released Defendant Inspectech, LLC from all liability and responsibility for the cost of repairing and replacing any unreported defect or deficiency and for any consequential damage, property damage or personal injury of any nature and that the Plaintiffs' claims in this case are dismissed as to Defendant Inspectech, LLC.

Therefore, Defendant Inspectech, LLC's Motion for Summary Judgment is **GRANTED**.

Accordingly, the Court ORDERS:

1. Defendant Inspectech, LLC's Motion for Summary Judgment is **GRANTED**;
2. The Plaintiffs' claims against Defendant Inspectech, LLC are hereby **DISMISSED** from this civil action;
3. This is a final order disposing of Plaintiffs' claims against Defendant Inspectech, LLC; and
4. The Clerk of this Court is hereby directed to forward copies of this order to counsel of record.

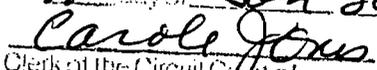
ENTER this 11th day of January 2011:


Honorable J.D. Beane

STATE OF WEST VIRGINIA
COUNTY OF WOOD, TO WIT:

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and correct copy of an original court order entered on the 11th day of Jan 2011.

Given under my hand and seal of said Circuit Court, this the 19th day of Jan 2011.


Clerk of the Circuit Court of
Wood County, West Virginia