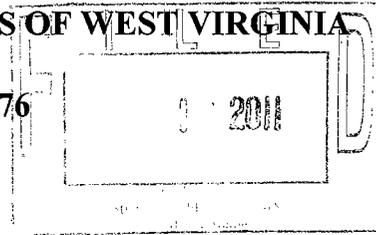


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 11-0276



**DAVID F. FINCH AND
SHIRLEY R. FINCH,**

Petitioners,

v.

**INSPECTECH, LLC, a West
Virginia limited liability company,**

Respondent.

Appeal from a final order
of the Circuit Court of Wood
County (09-C-561)

PETITIONERS' REPLY BRIEF

**Counsel for Petitioners,
David F. Finch and Shirley R. Finch**

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NOW COME the Petitioners, David F. Finch and Shirley R. Finch, by and through their attorney, George J. Cosenza and for their reply brief in the above-cited matter state as follows:

ARGUMENT

THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA ERRED IN GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

As further argument in support of the Petitioners' initial brief and in response to the brief filed by the Respondent, Inspectech, LLC, the undersigned asks the Court to consider the case of Carey v. Merritt, 148 S.W.3d 912 (Tenn. App., 2004). In that case, the plaintiffs entered into a contract to purchase a home in Shelby County, Tennessee. The contract of sale provided that the plaintiffs could hire a home inspector to examine various aspects of the home, including the plumbing, heating, air conditioning, electrical wiring, and the roof. The report of the inspector was to determine what, if any, repairs the homeowners needed to perform to place the house in good repair before the plaintiffs took possession of the property. The plaintiffs hired Donald Merritt to conduct the inspection which he completed, examining the roof, attic, heating/cooling system, plumbing, electrical system, and other miscellaneous items.

Before Merritt would release his inspection report of the home, he required the plaintiffs to sign a document entitled "Exclusions and Limitations of this Inspection and Report". This document provided, in pertinent part, "[t]his company assumes no liability and shall not be liable for any mistakes, omissions, or errors in judgement [sic] of an employee

beyond the cost of the report. This limitation of liability shall include and apply to all consequential damages, bodily injury and property damage of any nature.”

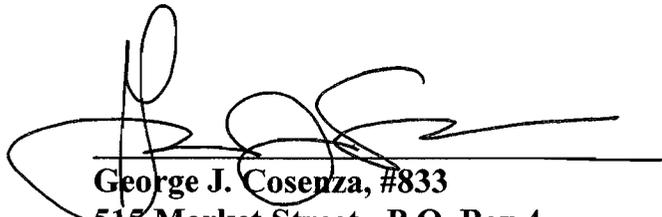
The plaintiffs took possession, after receiving the report, which indicated there were no significant problems with the home. The plaintiffs closed on the property and took possession. Shortly after taking possession, the plaintiffs discovered water damage to the home and leaks in the roof, none of which were mentioned in the inspection report. In addition, the plaintiffs alleged that, after the first rain, numerous other leaks were revealed causing water damage in virtually every room of the house. The plaintiffs filed suit against the homeowners/sellers and the inspector, Merritt. The inspector filed a motion for summary judgment citing the language in the agreement limiting his liability. The lower court granted his motion for summary judgment and the plaintiffs appealed on the grounds that the exculpatory agreement was void against public policy and the agreement was unenforceable because the plaintiffs did not agree or assent to the exculpatory provision until after the inspection had been performed. In reversing the lower court, the Tennessee Court of Appeals considered the issues raised by the plaintiffs. The Court held that the exculpatory clause in the inspector’s contract was contrary to public policy and void.

The Carey case is eerily similar to the issue before the Court herein. The Court considered various factors to determine if an exculpatory clause violates public policy. Those factors in Tennessee are akin to the factors adopted by this Court in Kyrazis v. University of West Virginia, 192 W.Va. 60, 450 S.E.2d 649 (1994). After considering all

of those factors as they apply to home inspections, the Court reached its conclusion as aforesaid.

The Petitioners request that the Court give substantial weight to the Carey decision in reaching its decision herein and grant the relief sought by the Petitioners, David F. Finch and Shirley R. Finch.

Dated this 13 day of July, 2011.

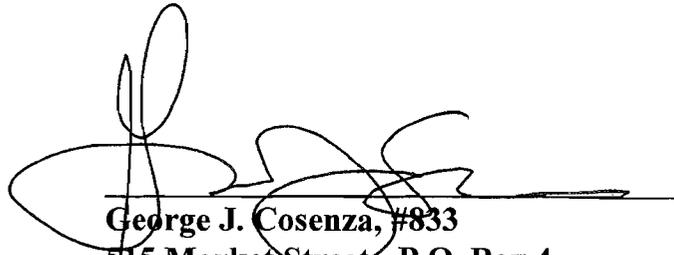
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Counsel of Record for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of July, 2011, true and accurate copies of the foregoing **PETITIONER'S REPLY BRIEF** were deposited in the U.S. Mail contained in a postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

William Crichton, Esquire
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A handwritten signature in black ink, appearing to read 'George J. Cosenza', is written over a horizontal line. The signature is stylized and somewhat cursive.

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