

Express Disclaimer of Implied Warranty of Suitability Upheld in Commercial Lease

Gym-N-I Playground, Inc. v. Snider,

50 Tex. Sup. J. 634, 2007 Tex. LEXIS 325 (Tex. Apr. 20 2007).

In this case, the Texas Supreme Court held that an “as-is” agreement successfully disclaimed an implied warranty of suitability in a commercial lease.

Ron Snider was the founder of Gym-N-I Playgrounds, Inc., a company that manufactures playground equipment. During his tenure as president of the company, Snider constructed a 20,075 square foot building for his business. The city’s fire code required fire sprinklers to be installed in any new building larger than 20,000 square feet if the building contained certain combustible materials. It was recommended, but never required, that Snider install a sprinkler system. Snider later sold Gym-N-I to two of his employees and leased the building to the company. During the lease negotiations both parties had legal representation, and the lessees stated their awareness of the lack of a sprinkler system and forwent any inspection. When the building suffered fire loss, Gym-N-I sought to challenge the disclaimer of the implied warranty of suitability contained in the “as-is” clause, which stated in pertinent part: “Tenant [Gym-N-I] accepts the Premises ‘as is.’... IMPLIED WARRANTIES ARE EXPRESSLY DISCLAIMED AND EXCLUDED.”



Under the implied warranty of suitability set forth in the *Davidow* case, “commercial real estate landlords impliedly warrant their premises are suitable for the tenant’s intended commercial purposes.” While the court in *Davidow* did not specify the exact manners in which an implied warranty for suitability could be waived, it did provide for a waiver if the agreement’s terms alter the warranty.

Finding that in the current case, the disclaimer was expressly stated as part of the “as-is” agreement between the parties, the Court distinguished this case from prior case law finding implied warranty of suitability disclaimers invalid. The court found that a disclaimer of the implied warranty of suitability is supported by, and furthers, the public policy behind freedom of contract, which allows each party to fully negotiate each and every term and allows the parties to allocate risk as they see fit. In this case, the parties were aware of the “as-is” clause, as well as the express disclaimer it contained. Each party was represented by counsel and had the opportunity to negotiate the terms of the agreement. By assenting to the terms of the “as-is” clause, the lessees bound themselves under its provisions, and the Court upheld the express disclaimer.

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