

Second Quarter 2007

## *Court Refuses to Enforce Jury Waiver Provision in Real Estate Contract*

*Mikey's Houses LLC v. Bank of America, N.A.*

No. 02-05-00397-CV, 2007 WL 1299332 (Tex. App.—Fort Worth May 3, 2007).

**M**ikey's Houses, LLC purchases older homes for renovation and resale. In March 2003, representatives of Mikey's Houses (the plaintiff) entered into a contract with Bank of America for the purchase of a house in Fort Worth, Texas.

After signing the sales contract, the plaintiff signed a two-page, single-spaced addendum that provided: "Waiver of Trial by Jury. Seller and Buyer knowingly and conclusively waive all rights to trial by jury in any action or proceeding relating to this Contract."

After the closing, when the plaintiffs received their deed and title, they discovered that they were only sold a 30 foot strip of land, and not the house and lot they sought. After the plaintiff filed suit, Bank of America sought enforcement of the jury trial waiver. The trial court granted Bank of America's request, and the plaintiff appealed.

Although trial by jury is a constitutional right, this right may be contractually waived, provided the waiver is made knowingly and voluntarily. Due to the significance of this constitutional right, there is a presumption against a contractual jury trial waiver provision that must be rebutted by the party seeking its enforcement.

In this case, the court utilized seven key factors in determining the validity of the jury trial waiver provision: (1) the parties' skill in negotiating the particular contract signed; (2) whether the parties were represented by counsel; (3) whether the waiving party had an opportunity to examine the agreement; (4) the parties' negotiations concerning the entire agreement; (5) the parties' negotiations concerning the waiver provision; (6) the conspicuousness of the provision; and (7) the relative bargaining power of the parties.

The court found that Bank of America failed to show evidence to support a valid waiver. Neither the contract nor the addendum was negotiated and the plaintiff was not represented by counsel. Bank of America claimed the words "Waiver of Trial by Jury" were bolded and underlined; however, the court could not determine any boldness and stated that the phrase appeared to have been underlined by hand. The court of appeals therefore held the waiver provision to be invalid.



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### SPAIN HASTINGS WARD CAREY & CHAMBERS

11806 Barker Cypress  
Houston, Texas 77433  
Phone: (281) 373-0270  
Fax: (281) 373-0271

909 Fannin Street, Suite 3900  
Houston, Texas 77010  
Phone: (713) 650-9700  
Fax: (713) 650-9701

3755 Capital of Texas Highway, Suite 100  
Austin, Texas 78704  
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