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BUSINESS TRANSACTION NEWSLETTER

AS IS, WHERE IS MEANS WHAT IT SAYS

In the case of Pritchett v. Comas Montgomery Realty & Auction Co., the court dealt with the interpretation of advertising and contracts related to an auction sale. Comas Montgomery Realty & Auction Co. ("Comas") conducted an auction of a commercial building. Pritchett (the "Plaintiff") attended the auction due in part to advertisements circulated by Comas stating the building to be auctioned contained 11,500 sq. ft. On the day of the auction, but prior to its commencement, Plaintiff signed a "Terms Of Sale" form that stated everything was being sold "AS IS, WHERE IS" with no guarantee of any kind. Additionally, the auctioneer announced that the bids were based solely upon each person's inspection and without physical warranty in an AS IS condition. The Plaintiff was the successful bidder on the property. After acquiring the property, the Plaintiff determined that the building had only 9,300 sq. ft. instead of 11,500 sq. ft. As a result, the Plaintiff sued Comas alleging it negligently represented the size of the building.

The Court of Appeals stated that the issue presented before the court was whether the exculpatory language in the terms of the Sale Agreement and oral terms announced prior to the commencement of the auction negated the Plaintiff's actual reliance. The court ruled in favor of Comas by holding that the "AS IS" language negated any reliance that the Plaintiff made on advertisements. The court explained that it was disclosed that the sale was "AS IS, WHERE IS" with no guaranty, and Comas negated any essential element of reliance due to the fact that the Plaintiff agreed to his own inspection. The court ruled that there was no negligent misrepresentation and that such could occur only when a plaintiff justifiably relies on faulty information supplied by a defendant who, acting in the course of his own business in which he has a pecuniary interest, fails to exercise reasonable care in obtaining or communicating relevant information. The Court wrote also that conditions of the sale at auction that were announced at the auction were binding upon the bidder. Therefore, there was no fraud, intentional misconduct, or gross negligence by the auction company.

MY RECOMMENDATION: Whether you are the buyer or the seller of property, whether at auction or by private sale, be sure that the terms of the contract are what you expect them to be, and be cautious and prudent in reviewing a contract before signing it. Always be cautious of preprinted form contracts.

Yours very truly,

RAINEY, KIZER, REVIERE & BELL, P.L.C.

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