University of Baltimore Law Forum

Volume 27
Number 2 *Spring 1997*

Article 6

1997

Recent Developments: Adloo v. H.T. Brown Real Estate, Inc.: Liability Release Does Not Serve as Effective Exculpatory Clause for Broker's Own Negligence

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Adloo v. H.T. Brown Real Estate, Inc.

Liability Release Does Not Serve As Effective Exculpatory Clause For Broker's Own Negligence

By Jayci Shaw Duncan

Reversing a decision of the Court of Special Appeals of Maryland, the Court of Appeals of Maryland in *Adloo v. H.T. Brown Real Estate, Inc.*, 344 Md. 254, 686 A.2d 298 (1996), held that liability release language contained in an agreement executed between a real estate broker and a homeowner did not effectively exculpate the broker from damages that resulted from the broker's negligent acts.

Abdolrahman and Monireh Adloo ("Adloo") signed a real estate listing contract and lock-box authorization with H.T. Brown Real Estate, Inc. ("Brown") for the sale of their home. The lock-box authorization allowed Brown to show the house whenever necessary by placing the key to the house outside the door in a box secured by a combination lock. Both agreements contained clauses that stated Brown was not liable for any loss or damage to the Adloo's personal property. Brown received a call from a third party claiming to be an agent for another real estate company. He requested the lock-box combination for the Adloo residence in order to show the house to a prospective buyer. Brown eventually determined that the caller had offered false credentials, but only after giving the combination to the caller. Almost $40,000 in cash, jewelry, and other personal property was taken from the residence.

After settling a claim with their own insurance carrier, the Adloos filed a petition in the Circuit Court for Montgomery County to recover damages from Brown for the stolen property. A jury awarded the Adloos $20,000 in damages. In an unreported opinion, the Court of Special Appeals of Maryland reversed the trial court. The court of special appeals held that the exculpatory clauses in the agreements precluded the claim against Brown. The Court of Appeals of Maryland granted certiorari to decide whether the lower appellate court erred when it held that Brown was not liable for the damages.

First, the court established that exculpatory clauses in contracts are generally valid in Maryland, with a few limited exceptions. *Adloo*, 344 Md. at 259, 686 A.2d at 301 (citing *Wolf v. Ford*, 335 Md. 525, 531, 644 A.2d 522, 525 (1994)). The court reasoned that the important question in this case was whether the clauses in the signed agreements were actually exculpatory in nature. *Adloo*, 344 Md. at 261, 686 A.2d at 301. The court focused on the intent of the parties. *Id.*

The court relied upon the law of contract interpretation and construction to determine if the clauses were created to exculpate Brown from its own negligence. *Id.* The general rule states that a contract will not be interpreted to indemnify a person's own negligence unless such meaning is clearly expressed. *Id.* at 261-62, 686 A.2d at 302 (citing *Crockett v. Crothers*, 264 Md. 222, 227, 285 A.2d 612, 615 (1972)). Therefore, the court looked to the language of the lock-box agreement to determine the meaning a reasonable person would have deduced from its terms.

The court reasoned that when the language of a contract was clear and unambiguous, a literal interpretation is required. *Adloo* at 266, 686 A.2d at 304 (citing *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261, 492 A.2d 1306, 1310 (1985)). Since Maryland follows the objective law of contracts, the court held that when the terms are unclear and ambiguous, parol evidence may be introduced; otherwise, the clause is construed against the author. *Id.* (citing *Dialist Co. v. Pulford*, 42 Md. App. 173, 399 A.2d 1374 (1979)). The specific language of the lock-box agreement read that "SELLER further acknowledges that neither Listing or Selling BROKER nor their agents are an insurer against the loss of personal property; SELLER agrees to waive and release BROKER and his agents and/or cooperating agents and brokers from any respon-

sibility therefore." *Adloo* at 258, 686 A.2d at 300. The literal reading of this statement led the court to conclude that the language meant that a real estate broker is not an insurer against the loss of personal property. *Id.* at 267, 686 A.2d at 305. In addition, the court reasoned that a logical person would expect this clause to apply to situations when a real estate broker was showing the home to a prospective client and property was stolen. *Id.* at 267-68, 686 A.2d at 305.

The court pointed out, however, that it would be highly unlikely for the parties to have read this statement and to have thought of the scenario that resulted in this case. *Id.* Therefore, this clause did not address situations where a broker's own negligence directly caused the loss of property. *Id.*

Although the court did not analyze the language of the listing contract in the same step by step manner, it concluded that its language did not clearly exculpate Brown from its own negligent acts. *Id.* The clause in question stated Brown was not responsible for "vandalism, theft or damage of any nature to the property." *Id.* at 257, 686 A.2d at 300. The court reasoned that there was no mention of relieving liability due to Brown's own negligence. Thus, the court concluded it was ambiguous and was not an exculpatory clause in relation to this case. *Id.* at 268, 686 A.2d at 305.

Neither clause clearly nor unequivocally stated the parties' intention to insulate Brown from liability for its own acts of negligence. *Id.* Without such clear evidence, the court relied upon past decisions to construe the clause against the author and reinstate the damages awarded by the trial court.

The clauses in both of the agreements appeared on the surface to exculpate real estate brokers from certain liabilities. The circumstances in the instant case, however, have caused the court to read the language of those clauses literally. The holding in *Adloo* informs attorneys drafting real estate contracts of the need to provide specific language regarding the broker's own negligence. The decision also calls into question the effectiveness of a lock-box arrangement. In addition, the holding in this case could have implications beyond real estate law because all of the cases relied upon by the court dealt with different types of contract issues. Furthermore, *Adloo* demonstrates the court's desire to literally construe exculpatory clauses, and emphasizes the importance of clearly expressing the intent of the parties when drafting a contract.