

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LARRY DEAN and JANETTE DEAN,

Plaintiffs-Appellants,

v

GREGORY HAMAN and SANDRA HAMAN,

Defendants,

and

BUYER'S HOME INSPECTIONS, INC.,

Defendant-Appellee.

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UNPUBLISHED

May 16, 2006

No. 259120

Barry Circuit Court

LC No. 03-000533-CH

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action for breach of contract and violation of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*, plaintiffs appeal by right the trial court's order granting summary disposition in favor of defendant Buyer's Home Inspections, Inc (Buyer's Home). We affirm.

On March 11, 2003, Buyer's Home inspected a house pursuant to a written contract with plaintiffs. Plaintiffs received a copy of the report generated from the inspection before purchasing and taking possession of the house in April 2003. Within one month of taking possession plaintiffs noticed leaks in the roof and other evidence of possible water damage. Alleging a failure to properly inspect for and report this and other conditions of the home, plaintiffs filed the instant suit against Buyer's Home in October 2003.<sup>1</sup> However, relying on a

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<sup>1</sup> Although plaintiffs' complaint also contained allegations that the sellers of the home, defendants Gregory and Sandra Haman, had fraudulently misrepresented the condition of the roof, and that Buyer's Home was negligent in failing to discover and report numerous other problems with the house, neither of these claims are at issue in this appeal.

six-month limitation period set forth in the parties' contract for inspection, the trial court dismissed plaintiffs' complaint as untimely under MCR 2.116(C)(7).

This Court reviews a trial court's decision to grant or deny summary disposition de novo. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). Questions regarding whether a claim is barred by a limitation period, and the legal effect of a contract clause, are also reviewed de novo on appeal. *Id.* Where there are no factual disputes and reasonable minds cannot differ on the legal effect of the facts, a defendant is entitled to summary disposition under MCR 2.116(C)(7) if the plaintiff's claim is barred by an applicable limitations period. *Timko v Oakwood Custom Coating Inc*, 244 Mich App 234, 238; 625 NW2d 101 (2001).

Plaintiffs first contend that because the contractual six-month limitation provision violates public policy and is both "unreasonable" and "unconscionable," the trial court erred in applying the limitation provision as a bar to their complaint. We disagree.

Initially, we note that while this appeal was pending our Supreme Court overruled the "reasonableness" test for contractual limitation periods followed in *Camelot Excavating Co, Inc v St Paul Fire & Marine Ins Co*, 410 Mich 118, 126-127; 301 NW2d 275 (1981) and relied on by the parties on appeal. See *Rory v Continental Ins Co*, 473 Mich 457; 703 NW2d 23 (2005). In *Rory, supra* at 461, the Court expressly rejected judicial assessment of the "reasonableness" of an unambiguous contractual limitations provision:

We reiterate that the judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because fundamental principles of contract law preclude such subjective post hoc judicial determinations of "reasonableness" as a basis upon which courts may refuse to enforce unambiguous contractual provisions.

Rather, the Court held that an unambiguous contractual limitation period must be enforced as written unless it violates law or public policy, or a traditional defense to contract enforcement applies. *Id.* at 470. It is not disputed that the limitation provision at issue here, which provides that "[n]o legal action . . . may be commenced against the Company after six months from the inspection date," is unambiguous. Thus, "we are compelled to enforce [the provision] as written unless it is contrary to law or public policy, or is otherwise unenforceable under recognized traditional contract defenses." *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 142; 706 NW2d 471 (2005).

Because there is no explicit statutory prohibition against contractual modification of a limitation period applicable to claims arising under a contract for home inspection – whether for negligence, breach of contract, or for violation of the MCPA – the limitation provision at issue here is not contrary to law. See *Rory, supra* at 472; see also *Clark, supra*. Furthermore, as explained in *Rory*, to constitute the public policy of this state, "a policy must ultimately be clearly rooted in the law." *Id.* at 471, quoting *Terrien v Zwit*, 467 Mich 56, 66-67; 648 NW2d 602 (2002). Thus, in ascertaining the public policy attendant contractual limitations periods, we "must look to policies that, in fact, have been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and common law." *Rory, supra*. With respect to such processes, we note that "Michigan has 'no general policy or statutory enactment . . . which would prohibit private parties from contracting for shorter

limitations periods than those specified by general statutes.” *Id.*, quoting *Camelot, supra* at 139. To the contrary, it is a fundamental principle in Michigan that parties have the “utmost liberty” to enter into any contract at their free will. *Rory, supra* at 468, quoting *Terrien, supra* at 71. Additionally, as recognized by the Court in *Rory, supra* at 471, Michigan case law has consistently held that shortened limitation periods are valid. As such, we can discern no “clearly rooted” public policy against contractual shortening of the limitation periods applicable to claims arising under a contract for home inspection.

We similarly cannot conclude that the contractual limitation period in this case is, as plaintiffs contend, unconscionable. “In order for a contract or contract provision to be considered unconscionable, both procedural and substantive unconscionability must be present.” *Clark, supra* at 143. “Procedural unconscionability exists where the weaker party had no realistic alternative to acceptance of the term.” *Id.* at 144. A term is substantively unconscionable “where the inequity of the term is so extreme as to shock the conscience.” *Id.*, citing *Gillam v Michigan Mortgage-Investment Corp*, 224 Mich 405, 409; 194 NW 981 (1923). Here, plaintiffs have failed to present any evidence that they lacked a reasonable alternative to inspection of the house by Buyer’s Home. Thus, it cannot be said that plaintiffs were not free to reject the terms of the contract presented by Buyer’s Home and the provision is not, therefore, procedurally unconscionable. See *Clark, supra* (“[i]f, under a fair appraisal of the circumstances, the weaker party was free to accept or reject the term, there was no procedural unconscionability”). Moreover, because six months is an adequate period in which to discover and file any claim that may arise from a contract for home inspection, the limitation provision is not substantively unconscionable. See *id.* (finding a six-month period of limitation in an employment contract “neither inherently unreasonable . . . nor so extreme that it shocks the conscience”).

Plaintiffs further argue, however, that summary disposition was not proper because the contractual six-month period of limitations itself violates the MCPA. Although the trial court did not address this issue, because a motion for summary disposition concerns a matter of law, and the facts necessary to the resolution of this issue have been presented to this Court, we may address this argument on appeal. See *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

In challenging the contractual limitations provision as violative of the MCPA, plaintiffs ask this Court, in the absence of any prior authority, to hold that a contractual limitation period that shortens the six-year period of limitations set by the MCPA, see MCL 445.911(7), is prohibited because it eviscerates the protections of the act. The MCPA, however, does not contain any prohibition against shortening its six-year period of limitations, and we will not read such a prohibition into the act. See *Rory supra*; see also, e.g., *Clark, supra* at 143 n 2 (“such limitations ought to be imposed by the Legislature, not the judiciary”).

Plaintiffs also contend that Buyer’s Home violated § 903(1)(t) of the MCPA by including the six-month limitation period in their home inspection contract. See MCL 445.903(1)(t). Specifically, plaintiffs claim that the provision is not “clearly stated” in the contract, and that they did not “specifically consent” to it, as required to remove a waiver of legal rights from the definition of an unfair or deceptive trade practice under § 903(1)(t). However, review of the parties’ agreement demonstrates that the six-month limitation period is in fact clearly stated on the face of the one-page contract, and appears in the same font size and style as the rest of the

contract's terms. As plaintiffs point out, the six-month limitation provision is not set apart from the rest of the inspection contract terms, and there was not a separate place in which plaintiffs were required to initial that provision. But no authority requires such mechanisms in order for a consumer to have "specifically consented" to a waiver of rights under § 903(1)(t). Moreover, although plaintiffs claim that they were "unaware" of the provision, they admit that they signed the contract; thereby acknowledging their "[a]cceptance and understanding" of all of its terms. Indeed, "[t]he law is clear that one who signs an agreement, in the absence of coercion, mistake, or fraud, is presumed to know the nature of the document and to understand its contents, even if he or she had not read the agreement." *Clark, supra* at 144-145; see also *Paterek v 6600 Ltd*, 186 Mich App 445, 450; 465 NW2d 342 (1990) ("one who signs a contract cannot seek to invalidate it on the basis that he or she did not read it or thought that its terms were different, absent a showing of fraud or mutual mistake").<sup>2</sup> Thus, because plaintiffs do not allege fraud, coercion, or mistake in their execution of the contract for home inspection, they must be found to have specifically consented to its terms. Summary disposition of plaintiffs' complaint in favor of Buyer's Home was, therefore, proper.

Affirmed.

/s/ Patrick M. Meter  
/s/ Joel P. Hoekstra  
/s/ Jane E. Markey

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<sup>2</sup> Although plaintiffs received the contract by fax, they do not allege, nor does any evidence suggest, that they could not read the contract because it had been faxed to them, or for any other reason. The limitation period was not inconspicuous or "hidden in the depths of the contract," as plaintiffs contend. Rather, as noted above, the limitations provision was stated in plain language in the same font as the rest of the terms in the one-page contract.