FOURTH DIVISION
February 27, 2014

No. 1-13-1814

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TY BOSHYAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County, Illinois,
	)	County Department,
v.	)	Municipal Division.
	)	
PRIVATE I. HOME INSPECTIONS, INC.,	)	No. 2012 M1 175341
	)	
Defendant-Appellant.	)	Honorable
	)	Karen L. O'Malley,
	)	Judge Presiding

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly dismissed the purchaser's breach of contract and negligence claims against the home inspector pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2010)). The plain language of the home inspection agreement clearly and explicitly limited the damages arising from any claims brought under that agreement to the home inspection price.

¶ 2 This appeal arises from a two-count complaint filed by the plaintiff, Ty Boshyan, against the defendant, Private I. Home Inspections, Inc., alleging: (1) breach of contract and (2) negligence. The circuit court dismissed the plaintiff's complaint pursuant to section 2-619 of the

Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2010)), finding, *inter alia*, that the agreement entered into by the parties limited the defendant's contractual damages to $500. The plaintiff now appeals contending that the defendant's damages should not be limited to $500 because: (1) the clause containing the damages limitation language is ambiguous when read in context of the entire agreement, and therefore unenforceable; and (2) limiting the defendant's liability to $500 is against the public policy of our state. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record before us contains the following undisputed facts and procedural history. In March 2012, the plaintiff found a residence located at 1735 N. Winchester, Chicago, Illinois (hereinafter the property) that he wanted to purchase. On March 21, 2012, prior to purchasing the property, the plaintiff retained the defendant to perform a home inspection of the property, and the parties entered into an inspection agreement.

¶ 5 The inspection agreement is a two-page form contract drafted by the defendant. The agreement contains a total of 12 paragraphs and an addendum.[1] The core of the contract is contained in the first seven paragraphs on the first page of the agreement. The bottom of that page also contains a signature paragraph wherein the client acknowledges that he has read and understands the agreement. The first page is signed by both the plaintiff and the defendant, and

[1]We note that there is a typographical error in the numbering of the paragraphs. Although the paragraphs are numbered 1 through 13, paragraph 2 does not exist, so the contract essentially contains only 12 paragraphs and the addendum. For purposes of clarity, we will, refer to the paragraphs as they are numbered in the contract.

notes the date and time that the contract was entered into. The second page of the contract, which contains paragraphs 8 through 12, is titled "additional terms, conditions and limitations." The bottom of the second page contains signatures of the plaintiff and a witness. The second page does not contain a date or the signature of the defendant.

¶ 6 Per the inspection agreement, the plaintiff agrees to pay the defendant the sum of $500 in exchange for an inspection of the property. According to paragraph 1, the defendant, as the inspector, is required to "perform a visual inspection and prepare a written report of the apparent condition of the readily accessible installed systems and components of the property existing at the time of the inspection." Paragraph 1 further provides that "[l]atent and concealed defects and deficiencies are excluded from the inspection."

¶ 7 Paragraph 3 defines "the standard of duty and the conditions, limitations, and exclusion of the inspection," and states that they are defined by the "Standards of Practice," which are available upon request. Alternatively, paragraph 3 provides that if the state where the inspection is performed imposes more stringent standards and/or administrative rules, the state/administrative rules apply and trump the "Standards of Practice." Paragraph 3 further stipulates that the inspector is to identify "current deficiencies and not the source, proper repair, or cost of said deficiencies."

¶ 8 Paragraph 4 discusses the inspector's liability for failure to report and states that the parties agree that the inspector (its employees and agents) "assume no liability or responsibility for the costs of repairing or replacing any unreported defects or deficiencies either current or arising in the future or any property damage, consequential damage or bodily injury of any

nature." That paragraph further states:

> "If repairs or replacement is done without giving the Inspector the required notice, the Inspector will have no liability to the Client. **The client further agrees that the Inspector is liable only up to the cost of the inspection.** Not valid in State of ____."

¶ 9 Under paragraph 5 the parties agree that the inspector makes no warranties, express or implied, as to the fitness for use, the condition, performance or adequacy of any inspected structure, item, component, or system of the property.

¶ 10 Paragraph 7 limits the terms and conditions of the agreement to the four corners of the written agreement, and states, *inter alia*, that the agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

¶ 11 The second page of the agreement, which contains the "additional terms, conditions and limitations," contains paragraph 11, which states in pertinent part:

> "In the event of a claim by the Client that an installed system or component of the premises which was inspected by the Inspector was not in the condition reported by the inspector, the Client agrees to notify the Inspector at least 72 hours prior to repairing or replacing such system or component. The client further agrees that the Inspector is liable only if there has been a complete failure to follow the standards adhered to in the report or State law. *** **IN THE EVENT THAT THE CLIENT MAKES A CLAIM UNDER THIS CONTRACT ALLEGING ANY DAMAGES DUE TO THE INSPECTORS** *(sic)* **ALLEGED NEGLIGENCE, THE CLIENT, HIS OR HER SPOUSE, AND ALL**

BENEFICIARIES TO THIS CONTRACT AGREE THAT THEIR SOLE DAMAGES TO WHICH THEY MAY BE ENTITLED ARE LIMITED TO THE AMOUNT PAID FOR THE INSPECTION SERVICES."

¶ 12 The second page of the agreement also contains an addendum paragraph, which states that any dispute, including breach of contract and negligence claims arising from the inspection or inspection report shall be submitted to final and binding arbitration. The addendum specifically stipulates that the arbitration is to occur "under the Rules and Procedures of the Expedited Arbitration of Home Inspection Disputes of Construction Arbitration Services, Inc.," and that the "decision of the arbitrator appointed thereunder shall be the final and binding judgment."

¶ 13 The record reveals that after the parties entered into the inspection agreement, on March 21, 2012, the defendant performed a home inspection of the property and prepared a written inspection report detailing its findings. Relying on that report, the plaintiff subsequently purchased the property on May 9, 2012. After the closing, however, the plaintiff discovered certain defects in the property that he believed should have been noted by the defendant in his inspection report.

¶ 14 Accordingly, on December 18, 2012, the plaintiff filed a two-count complaint against the defendant alleging: (1) that the defendant had breached the inspection agreement by failing to adequately inspect the property and to provide the plaintiff with an accurate and adequate inspection report, and (2) that the defendant had breached his duty to perform the home inspection in accordance with the standards set forth in the Home Inspector License Act (225

ILCS 441/1 (West 2010)) by failing to identify certain defects in the home, namely "a discolored and rotten cedar siding," "the protruding roofing membrane," and "the water streaks on the painted surface" of the attic and garage walls. The plaintiff alleged that as a result of defendant's inferior home inspection, on September 7, 2012, he was forced to hire a contractor to repair "extensive water damage off the balcony in the rear and below the stairs to the roofing" of the property.[2] The plaintiff sought damages in the amount of $8,200.51, representing the cost of the repairs.

¶ 15 In support of his complaint, the plaintiff attached copies of: (1) the inspection agreement; (2) the defendant's inspection report; and (3) an invoice from the contractor that repaired the property, totaling $8,200.51.

¶ 16 After the plaintiff filed his complaint, on March 12, 2013, the defendant filed a motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)). First, the defendant argued that paragraphs 4 and 11 of the inspection agreement contained a liquidated damages clause, which explicitly limited the defendant's liability to fees for services rendered (*i.e.*, the $500 cost for the inspection). The defendant asserted that under the Fifth District's decision in *Zerjal v. Daech & Bauer Construction, Inc.*, 405 Ill. App. 3d 907 (2010), such liquidated damages provisions were enforceable. Second, the defendant contended that the plain language of the contract established that "latent and concealed defects and deficiencies [were] excluded from the inspection." The defendant pointed out that the plaintiff's own exhibits,

[2]The repairs included removing rotten material found on the guest bedroom deck and siding, and rebuilding the deck with new siding.

namely the invoice of the contractor hired to perform the repairs on the property revealed that the defects would not have been apparent in a visual inspection. Finally, the defendant asserted that the complaint must be dismissed because the inspection agreement mandated arbitration.

¶ 17 On April 12, 2013, the plaintiff filed his response to the defendant's section 2-619 motion to dismiss. The plaintiff argued that since the defendant had not tendered the $500 home inspection fee to the plaintiff, he was not entitled to dismissal based on any fixed damages provisions in the agreement. In any event, the plaintiff contended that the fixed damages provision of paragraph 4 did not provide a basis for dismissal since the language of the inspection agreement was vague. The plaintiff explained that when read in context of a similar provision in paragraph 11, the fixed damages provision in paragraph 4 had to be interpreted as applying only to negligence, rather than breach of contract, claims. The plaintiff also argued that the record rebutted the defendant's assertion that the damages on the roof and surrounding area were latent defects. Finally, the plaintiff asserted that the arbitration clause in the inspection agreement was not applicable since it required adherence to the arbitration rules of a company that no longer existed.

¶ 18 On April 26, 2013, the defendant filed a reply in support of his motion to dismiss rejecting all of the plaintiff's contentions, and additionally arguing that the plaintiff had already offered to refund the $500 inspection cost to the plaintiff in November 2012. In support of this contention, the defendant attached copies of emails written between the plaintiff and the defendant in the period between November 18, 2012, and November 30, 2012, establishing that such an offer was made.

¶ 19 After reviewing the parties' pleadings, on May 7, 2013, the circuit court entered a written order granting the defendant's section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2010)) "as to the $500 fixed damages being enforceable." In doing so, the court noted that if the defendant did not "retender the $500" to the plaintiff, the plaintiff could file a motion to reconsider. The circuit court then denied the defendant's motion on the basis of the defendant's remaining arguments. The plaintiff now appeals.

¶ 20 II. ANALYSIS

¶ 21 On appeal, the plaintiff concedes that the circuit court properly dismissed his negligence claim on the basis of paragraph 11 of the inspection agreement, which explicitly limits his damages for any "alleged negligence" arising from the agreement to "the amount paid for the inspection services." Nevertheless, on appeal, the defendant argues that a similar provision in paragraph 4 limiting the inspector's liability solely to "the cost of the inspection" is unenforceable as to his breach of contract claim because the language of that paragraph is: (1) ambiguous when read in context of the entire agreement, and specifically paragraph 11; and (2) against Illinois's public policy.[3] For the reasons that follow, we affirm.

---

[3]We note that in doing so, the plaintiff apparently abandons the argument he made before the circuit court that the language of paragraph 4 does not provide grounds for dismissal of his contract claim because the defendant failed to tender the $500 home inspection cost to the plaintiff. The plaintiff presumably does so because the defendant demonstrated below that the defendant had offered to refund the $500 cost of inspection and because the trial court expressly stated that it would reconsider its judgement if the defendant did not retender the said amount.

¶ 22 We begin by noting that an involuntary motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)) admits the legal sufficiency of the complaint (*i.e.*, all facts well pleaded), but asserts certain defects, defenses or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. 735 ILCS 5/2–619(a) (West 2010); *Sandholm v. Kuecker*, 2012 IL 111443, ¶55; see also *Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008) (citing *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002)); *Betts v. City of Chicago*, 2013 IL App (1st) 123653, ¶ 14. The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation. *Czarobski*, 227 Ill. 2d at 369. An "affirmative matter" under section 2-619(a)(9) is "something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004). When ruling on the motion, the court must construe the pleadings and supporting documents in the light most favorable to the nonmoving party, and accept as true all well-pleaded facts in the plaintiff's complaint and all inferences that may reasonably be drawn in the plaintiff's favor. *Sandholm*, 2012 IL 111443, ¶55 (citing *Czarobski*, 227 Ill. 2sd at 369). The question on appeal is " 'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Sandholm*, 2012 IL 111443, ¶55 (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)). We review the grant of a section 2-619 motion to dismiss *de novo*, and may affirm the dismissal on any proper basis in the record. *Barber v. American Airlines, Inc.*, 398 Ill. App. 3d 868, 878 (2010); *Sandholm*,

2012 IL 111443, ¶ 55.

¶ 23 In interpreting the home inspection agreement, our primary objective is to effectuate the intent of the parties. *Gallagher v. Lenard*, 226 Ill. 2d 208, 232 (2007); see also *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). In doing so, we first look to the plain language of the contract to determine the parties' intent. *Gallagher*, 226 Ill. 2d at 233; *Thompson*, 241 Ill. 2d at 441. If the words in the contract are clear and unambiguous, we must give them their plain, ordinary and popular meaning. *Thompson*, 241 Ill. 2d at 442 (citing *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill.2d 141, 153 (2004)). However, if the language of the contract is ambiguous, we may look to extrinsic evidence to determine the parties' intent. *Thompson*, 241 Ill. 2d at 442; *Gallagher*, 226 Ill. 2d at 233. Language in a contract is ambiguous if it is "susceptible to more than one meaning." *Thompson*, 241 Ill. 2d at 442. However, mere disagreement between the parties concerning a provision's meaning will not automatically render such language ambiguous. *Thompson*, 241 Ill. 2d at 443. Rather, instead of focusing on one clause or provision in isolation, we, as the reviewing court, must read the entire contract in context and construe it as a whole, viewing each provision in light of the other ones. See *Gallagher*, 226 Ill. 2d at 233; see also *Thompson*, 241 Ill. 2d at 441 ("The parties' intent is not determined by viewing a clause or provision in isolation, or in looking at detached portions of the contract.").

¶ 24 On appeal, the parties dispute the following provision of paragraph 4 of the inspection agreement: "The client *** agrees that the Inspector is liable only up to the cost of the inspection." The plaintiff argues that this is an exculpatory liability clause, which is ambiguous when read in context of the remainder of the agreement, particularly paragraph 11, which limits

"any damages due to the inspector[']s negligence" to "the amount paid for the inspection services." The plaintiff contends that paragraph 4 must be interpreted together with paragraph 11, so as to limit the damages to the "cost of the inspection" only to negligence, and not breach of contract, claims. The defendant, on the other hand, argues that the aforementioned provision in paragraph 4 is a liquidated damages clause that clearly and plainly sets forth the parties' intention that *any* damages arising from the breach of the inspection agreement (not just those arising out of the inspector's alleged negligence) be limited to the "cost of the inspection." For the reasons that follow, we agree with the defendant.

¶ 25 A liquidated damages clause is a provision that specifies or provides a method of determining a sum which a contracting party agrees to pay, or a deposit which a contracting party agrees to forfeit, for the breach of some contractual obligation. See Black's Law Dictionary (9th ed. 2009) at 1015 (defining a liquidated damages clause as "a contractual provision that determines in advance the measure of damages if a party breaches the agreement"); see also *Siegel v. Levy Organization Development Co., Inc*., 182 Ill. App. 3d 859, 861 ("Liquidated damages clauses do not limit a non-defaulting party's remedies, but instead provide an agreed upon measure of damages."). Unlike a liquidated damages clause, which merely limits the damages available to the non-defaulting party, an exculpatory clause is a contractual provision that excuses the defaulting party's liability. See Black's Law Dictionary (9th ed. 2009) at 648 (defining an exculpatory clause as "a contractual provision relieving a party from liability resulting from a negligent or wrongful act"); see also *Jewelers Mut. Ins. Co. v. Firstar Bank Illinois*, 213 Ill. 2d 58, 63 (2004) (holding that a clause providing that "there 'shall be no liability

on the part of said bank, for loss of, or injury to, the content of said box from any cause whatever' " was an exculpatory clause and not a limitation of damages clause).

¶ 26 In the present case, the disputed provision of paragraph 4 does not purport to exclude all liability for the inspector but rather provides for an agreed upon measure of damages that may be recovered under the inspection agreement, *i.e.*, the cost of the home inspection. Specifically and plainly, the language of the provision states that: "The client *** agrees that the Inspector is liable *only up to the cost of the inspection*." (Emphasis added.) As such, the provision is a liquidated damages clause, and not an exculpatory liability clause. See *e.g.*, *Siegel*, 182 Ill. App. 3d at 861 ("Liquidated damages clauses do not limit a non-defaulting party's remedies, but instead provide an agreed upon measure of damages.")

¶ 27 What is more, contrary to the plaintiff's assertion this liquidated damages clause in paragraph 4 is not ambiguous; rather, it is definitely expressed and not susceptible to more than one meaning. The provision clearly limits the damages available to a purchaser by stating that "[t]he client further agrees that the Inspector is liable only up to the cost of the inspection." In *Zerjal*, 405 Ill. App. 3d at 913, our appellate court held that an identical liquidated damages provision was "clear and explicit." In that case, a home purchaser brought a breach of contract action against a home inspector, alleging that the inspector failed to discover or disclose numerous defects in the home. *Zerjal*, 405 Ill. App. 3d at 909. In a home inspection contract, nearly identical to the one in the present case, the parties had agreed in paragraph 4 that the purchaser's liability was limited to the cost of the inspection. *Zerjal*, 405 Ill. App. 3d at 909-10. Just as the inspection agreement here, the contract in *Zerjal* stated that " 'The Client further

agrees that the Inspector is liable only up to the cost of the inspection.' " *Zerjal*, 405 Ill. App. 3d at 913. The only difference between the provision in *Zerjal* and the one here, is that the *Zerjal* provision was presented in "regular typeface" while the provision here is bolded and in italics.

¶ 28 The plaintiff nevertheless contends that because the last sentence of paragraph 11 specifically limits a purchaser's damages to the cost of inspection if the purchaser brings a cause of action for negligence, the provision of paragraph 4 limiting the inspector's liability to "the cost of the inspection" should likewise be interpreted as applying solely to negligence claims. We disagree.

¶ 29 "In interpreting a contract, it is presumed that all provisions were intended for a purpose, and conflicting provisions will be reconciled if possible so as to give effect to all of the contract's provisions." *Shorr Paper Products, Inc. v. Aurora Elevator, Inc.*, 198 Ill. App. 3d 9, 13 (1990). What is more, a court should not make interpretations "in a manner that would nullify or render provisions meaningless." *Thompson*, 241 Ill. 2d at 441. Rather, "[w]hen parties agree to and insert language into a contract, it [will be] presumed that it was done purposefully, so that the language employed is to be given effect." *Thompson*, 241 Ill. 2d at 441; see also *River Plaza Homeowner's Ass'n v. Healey*, 389 Ill. App. 3d 268, 277 (2009).

¶ 30 When read in context of the entire agreement it is apparent that paragraph 11 is in addition to, and not duplicative of paragraph 4. Paragraph 4 is located on the first page of the inspection agreement, which contains the core terms of the contract. Paragraph 4 spells out the limitations on the inspector's liability for failure to report defects, and ends with the liquidated damages clause limiting all damages to the cost of the inspection. Paragraph 11, on the other

hand, is located on the second page of the agreement, which spells out the "additional terms, conditions and limitations." Paragraph 11 makes no reference to the liquidated damages provision of paragraph 4, but instead provides separately (in bold, allcaps typeface) that damages based on any alleged negligence by the inspector will be limited solely to the amount paid for the inspection. Nothing in the context of paragraph 11 suggests that the limitation of damages in that paragraph is intended to supplant, modify or duplicate the damages limitation in paragraph 4. Rather, paragraph 11, is "an additional term" and speaks specifically, and more narrowly about negligence claims. To read paragraph 11, as the plaintiff would have us do, as limiting the liquidated damages provision in paragraph 4, would render the liquidated damages provision in paragraph 4 meaningless. Accordingly, we may not interpret in that manner. See *River Plaza Homeowner's Ass'n*, 389 Ill. App. 3d at 277 ("plaintiff's interpretation, which robs [a contract provision] of any meaning, cannot possibly be right.").

¶ 31 The plaintiff further contends that the liquidated damages clause of paragraph 4 is ambiguous when read in context of other provisions of the agreement. The plaintiff specifically argues that because the first sentence of paragraph 4 exculpates the inspector from any and all liability arising from its performance of the contract it is inconsistent with the provisions: (1) defining the standards of care (in paragraph 3); (2) limiting damages (the last sentences of paragraphs 4 and 11); (3) and barring liability absent timely notice (in paragraphs 4 and 11).

¶ 32 Contrary to the plaintiff's assertion, however, the first sentence of paragraph 4 does not purport to disclaim any duties. Rather, when read in context of the remainder of paragraph 4, it simply and plainly disavows any intention on part of the inspector to assume liability for a variety

of damages (costs of repairs, bodily injury, or property damage), other than the cost of inspection itself.

¶ 33 What is more, after a thorough review of the entire inspection agreement, it is this court's opinion that any layperson reading this two-page document would come away with the understanding that: in exchange for a $500 fee, the defendant will perform an inspection and provide a report consistent with the standards of duty adopted in paragraph 3, and that, in return, the plaintiff agrees that *any* damages arising under the contract will be limited to that $500. Accordingly, for all of the aforementioned reasons, we find no ambiguity in the inspection agreement, and affirm the judgment of the circuit court.

¶ 34 In doing so, we note that we would come to the same decision even if we were to interpret the disputed provision of paragraph 4 as an exculpatory clause. Our courts have repeatedly held that the rationale for enforcing both liquidated damages clauses and exculpatory clauses is the same--namely, finding a proper balance between the parties' freedom to contract and any public policy considerations which would put restraints on such freedom. See *e.g.*, *Chicago Steel Rule and Die Fabricators Co. v. ADT Sec. Systems, Inc.*, 327 Ill. App. 3d 642, 652 (2002); *First Financial Insurance Co. v. Purolator Security, Inc.*, 69 Ill. App. 3d 413, 417-18 (1979); *North River Insurance Co. v. Jones*, 275 Ill. App. 3d 175, 181-82 (1995); see also *Rayner Covering Systems, Inc. v. Danvers Farmers Elevator Co.*, 226 Ill. App. 3d 507, 512 (1983) ("While exculpatory or limitation of damages clauses are not favored and must be strictly construed against a benefitting party [citation] the basis for their enforcement is the strong public policy favoring freedom of contract."); see *McClure Engineering Associates, Inc. v. Reuben H.*

Donnelley Corp., 95 Ill.2d 68, 71-74 (1983) ("The decisions of this court have consistently reflected a judicial concern with balancing the need to respect the right to freely contract with the need to protect parties from unfair provisions in contracts involving publicly regulated activities. [Citations.] However, in the nonregulated areas the decisions of this court and those of other jurisdictions reflect a widespread policy of permitting competent parties to contractually allocate business risks as they see fit. [Citations.] 'This accords to the individual the dignity of being considered capable of making and standing by his own agreements.' [Citation.]"). Accordingly, the standard for determining the enforceability of both types of provisions has remained the same. See *Zerjal*, 405 Ill. App. 3d at 912 (noting that courts in Illinois generally "give effect to liquidated-damages provision so long as the parties have 'expressed their agreement in clear and explicit terms and there is no evidence of fraud or unconscionable oppression, a legislative directive to the contrary, or a special social relationship between the parties of a semipublic nature.' [citation.]"); *Harris v. Walker*, 119 Ill. 2d 542, 548 (1988) (holding that an exculpatory liability clause will be enforced unless: "(1) it would be against settled public policy; or (2) there is something in the social relationship of the parties militating against upholding the agreement").

¶ 35 What is more, in *Zerjal*, our appellate court explicitly held that an exculpatory liability clause in a home inspection agreement nearly identical to the one at bar did not violate any Illinois public policy, so as to be found *per se* unenforceable. *Zerjal*, 405 Ill. App. 3d at 911-12. In doing so, the court rejected an argument, identical to the one the plaintiff makes here on appeal, that the exculpatory liability clause violates the Illinois Home Inspector's Licensing Act (225 ILCS 441/1-1 *et seq*. (West 2008)), which regulates home inspection agreements in this

state, because it does not protect the public from poorly performed home inspections. *Zerjal*, 405 Ill. App. 3d at 911. In rejecting this argument, the court in *Zerjal*, explained that the Home Inspector License Act (225 ILCS 441/1-1 *et seq*. (West 2008)), addresses only licensing and regulation of home inspectors, but does not prohibit, anywhere in its language, exculpatory clauses in home inspection agreements. *Zerjal*, 405 Ill. App. 3d at 911-12. In addition, the *Zerjal* court held that the relationship between a home inspector and a home purchaser is not a "special societal relationship," such as that of common carriers-patrons and employer-employees, between which exculpatory clauses are disfavored on the basis of one party's lack of bargaining power. *Zerjal*, 405 Ill. App. 3d at 911-12. Rather, as the *Zerjal* court explained: "homeowners [are] in control of their own fate and [can obtain] a second inspection or bargain[] for different terms" with the inspector. *Zerjal*, 405 Ill. App. 3d at 912-13. Applying the rationale of *Zerjal* to the cause at bar, we would be compelled to reject the plaintiff's public policy argument.

¶ 36 III. CONCLUSION

¶ 37 For all of the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 38 Affirmed.