

**IN THE SUPERIOR COURT OF PENNSYLVANIA
WESTERN DISTRICT**

No. 541 WDA 2023

Mary Joan Gidor, Appellee

v.

**Benjamin E. Mangus d/b/a
Mangus Inspections, Appellant**

**ON APPEAL FROM THE COURT OF
COMMON PLEAS OF CRAWFORD
COUNTY, PENNSYLVANIA**

**BRIEF OF AMICUS CURIAE
THE INTERNATIONAL ASSOCIATION OF
CERTIFIED HOME INSPECTORS**

Timothy Maffett
Attorney I.D. No. 331584
BAKER, DONELSON, BEARMAN, CALDWELL &
BERKOWITZ, PC
100 Light Street, 19th Floor
Baltimore, MD 21202
Telephone: 410-862-1058
Email: tmaffett@bakerdonelson.com
*Counsel for Amicus Curiae
The International Association of
Certified Home Inspectors*

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I. STATEMENT OF INTEREST OF AMICUS CURIAE

As the world's largest association of residential and commercial property inspectors, the International Association of Certified Home Inspectors ("InterNACHI") is greatly interested in this case. InterNACHI, founded in 1996 by a Pennsylvania native, is a non-profit 501(c)(6) with over 26,000 members worldwide and over 800 members across the Commonwealth of Pennsylvania. InterNACHI provides education, training, professional development support for its members worldwide, and operates the InterNACHI School, the only home inspector school accredited by a national accrediting agency of the U.S. Department of Education. For over twenty years, InterNACHI has invested significant financial resources and time to improve the home inspection industry which benefits home inspectors and ultimately consumers worldwide.¹

II. INTRODUCTION

The home inspection profession serves a vital role in the real estate industry. Home inspectors provide a snapshot

¹ No one other than *Amicus Curiae*, its members, or its counsel paid in whole or in part for the preparation of this brief nor authored in whole or in part the *amicus curiae* brief. See PA. R.A.P. § 531(b)(2).

regarding the condition of the subject home which serves to further inform a purchasing decision. But home inspections are not invasive and are not designed to uncover hidden defects. (See 68 Pa.C.S. 7502(a), defining “home inspection” as “a noninvasive, visual examination...; see *also* 68 Pa.C.S. 7508(a)(3) requiring home inspector to inform consumer in written report that “results of this home inspection are not intended to make any representation regarding the presence of absence of latent or concealed defects....) Indeed, the typical home buyer pays \$350-\$425 per inspection. (See *How Much Does a Home Inspection Cost in Pennsylvania*, by Alice Klein, August 8, 2023, <https://www.houzeo.com/blog/how-much-does-a-home-inspection-cost-pennsylvania/>.)

Thus, the home inspection report essentially serves as the starting point for the home buyer to understand the apparent condition of the property at that point in time and to trigger the consumer to fully investigate the characteristics of the subject property. In fact, the typical report includes a list of items as to which the home buyer should conduct further inquiry. In short,

home inspectors are not sureties and by conducting an inspection do not assume responsibility for all issues regarding the subject property, particularly latent defects. See 68 Pa.C.S. § 7508(a)(3). Indeed, as expounded on below, the Pennsylvania General Assembly expressly recognized this fact in allocating risk under the Home Inspection Law. *Id.*

In addition to the remedies available under the Home Inspection Law, the marketplace provides the home buyer numerous products and services available to help mitigate the risk of subsequent home system failures. These products and services include, for example: home warranties for major systems failures and buy-back programs. See *e.g.*, InterNACHI Buy-back program: <https://www.nachi.org/buy.htm>.

In 2000, after careful consideration, the Pennsylvania legislature adopted a comprehensive law that on its face was designed to occupy the entire field of legislation regarding home inspectors' duties to homeowners in conducting home inspections. The result of this effort was passage of the Pennsylvania Home Inspection Law ("Act" or "PHIL") in

December 2000. Among other things, the Act includes: the home inspector's duty of care (68 Pa.C.S. §7504); remedies for breach of that duty (68 Pa.C.S. §7505); a precise provision which specifies the outer limit, one-year from delivery of the inspection report, for a purchaser to commence suit against the home inspector. (68 Pa.C.S. §7512, "statute of limitations"); and the period of time during which an inspector must maintain insurance; specifically, one-year from the date of delivery of the latest home inspection report prepared (68 Pa.C.S. §7509(b), "Liability Insurance"). The Pennsylvania legislature is best positioned to conduct the risk allocation between inspector and home buyer. By enacting PHIL, the legislature unequivocally placed limits on the home inspector's duties and legal risk, including by expressly limiting the period of liability to one-year from the date of delivery of the report. This was a rational and well-informed decision by the Pennsylvania General Assembly because common sense and experience confirm that a dwelling is not a static environment, it changes with occupancy and use

and the occupant is best positioned to continue to evaluate and mitigate that risk.

Here, the trial court supplanted the legislative risk assessment and risk allocation. By judicial fiat the trial court eliminated any objective temporal limits regarding home inspector liability. Respectfully, by doing so, the trial court exceeded its boundaries and assumed the role of a one-person super-legislature that effectively rewrote and removed any objective time limits on home inspector liability.

The trial court's decision if left uncorrected will ultimately adversely impact consumers. For example, it is foreseeable that if there is no objective time limit regarding a home inspector's liability, as originally established by the Pennsylvania General Assembly in the Home Inspection Law, 68 P.A.C.S. 7512, home inspectors will be compelled to increase inspection costs to defray additional liability insurance costs. It is also conceivable that without objective time limits regarding by when a claim must be brought many prospective home inspectors will avoid the profession altogether, thereby providing consumers fewer choices

for home inspection services. Accordingly, for these reasons and the additional reasons stated below, InterNACHI respectfully supports reversal of the trial court's decision. InterNACHI implores this Court to rectify the trial court's error to provide home inspectors, consumers, and the real estate industry certainty regarding temporal limits on liability for home inspections.

III. ARGUMENT²

A. The Pennsylvania Home Inspection Law 68 Pa.C.S. § 7512 unambiguously requires a civil action to be commenced within one year of delivery of the report.

It is axiomatic that in construing a statute the judiciary's central task is to discern and implement legislative intent. See e.g., *Columbia Gas of Pa., Inc. v. Carl E. Baker, Inc.*, 446 Pa. Super. 481, 667 A.2d 404, 408 (Pa. Super. 1995) ("In interpreting a statute, we are also required to ascertain and effectuate the intent of the legislature as expressed in the statute.") (citation omitted). Moreover, "[t]he best indication of legislative intent is the plain

² Amicus Curiae will endeavor to limit "me too" arguments to the extent practical and instead focus on statutory analysis not expounded upon below and related public policy considerations.

language of the statute.” *Roverano v. John Crane, Inc.*, 657 Pa. 484, 226 A.3d 526, 535 (Pa. 2020) (citation omitted).

Also, in construing a statute, the court should read the sections of the statute in harmony together and construe them to give effect to all of the statute’s provisions. *Roethlein v. Portnoff Law Assocs., Ltd.*, 623 Pa. 1, 81 A.3d 816, 822 (Pa. 2013) (citation omitted) (Recognizing that in effectuating the words of the legislature, the court should not interpret statutory words in isolation, but must read them with reference to the context in which they appear.)

Against this backdrop of long-established precepts of statutory construction, Amicus Curiae respectfully submits that the trial court abandoned these principles and disregarded the plain language of 68 Pa.C.S. § 7512 in arriving at its decision. An objective examination of the law confirms that it clearly states that any action must be commenced within one-year of the delivery of the inspection report. Regardless of nomenclature, it is intended to operate as a statute of repose. The express language of the statute confirms as much and unambiguously states:

An action to recover damages arising from a home inspection report **must be commenced within one year after the date the report is delivered.**

68 Pa.C.S. § 7512 (emphasis added). With all due deference to the trial court, the Pennsylvania General Assembly could not have been any clearer in placing a one-year limit on home inspector liability.

This conclusion is buttressed by another key liability-related provision of the Act. Specifically, 68 Pa.C.S. § 7509(b)(1) mandates under the threat of criminal liability for non-compliance that the “home inspector shall maintain insurance under subsection (a) for at least one year after the latest home inspection report is delivered.” Surely, the legislature would not have limited the home inspector’s duty to maintain liability insurance to a one-year period following delivery of the inspection report if Section 7512 was not intended to limit temporal liability to one year after the report is delivered to the homeowner. *Cf. Roethlein*, 81 A.3d at 822 (The court should read each statutory provision so as to be compatible with other provisions of the same statute.)

The analysis should end here, as confirmed by decades old Pennsylvania jurisprudence, which regrettably the trial court did

not follow. See e.g., *White Deer Twp. v. Napp*, 985 A.2d 745, 754 (Pa. 2009) (citing 1 Pa.C.S. § 1921(a)) (The clearest indication of legislative intent is generally the plain language of a statute.); *Marshall v. Commonwealth*, 197 A.3d 294, 309 (Pa, Cmwh. 2018) (quoting 1 Pa.C.S. § 1921(b)) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”).

The trial court seemingly to achieve a paternalistic goal disregarded other key statutory language that supports this interpretation of Section 7512. For example, the Act confirms that home inspectors are not providing a warranty and focus on what is “visible and apparent.” See 68 Pa.C.S. § 7508(a)(3). It also bears emphasis that the trial court’s role is not to protect litigants beyond the limits set by the legislature. *Cf. Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 330, 126 S. Ct. 961, 163 L. Ed. 2d 812 (2006) (“A court cannot use its remedial powers to circumvent the intent of the legislature.”). Respectfully, by doing so, the trial court prioritized the interests of one Commonwealth

constituent over another, which is a function best left to the legislature.

The trial court also placed too much importance on the heading of 68 Pa.C.S. § 7512, captioned “statute of limitations.” In doing so, the trial court disregarded the legislative directive regarding statutory construction found in 101 Pa.C.S. § 23.41(b), which states that “section headings do not constitute part of the law and may be added or changed in editing statutes for printing.”

It is also noteworthy that a long line of Pennsylvania court decisions determined that 42 Pa.C.S. Section 5536 was a statute of repose despite use of the word “limitations” in the text of the statute. See *Vargo v. Koppers Co.*, 552 Pa. 371; 715 A.2d 423 (Penn. 1998). More specifically, § 5536 states that “a civil action or proceeding brought against any person lawfully performing or furnishing the design, planning, supervision or observation of construction, or construction of any improvement to real property must be commenced within 12 years after completion of construction.” § 5536(a). But that law also incorporates language associated with a statute of limitations including, subsection 5536

(b)(2), which states that the “limitation prescribed by subsection (a) shall not be asserted by way of defense by any person in actual possession or control, as owner, tenant or otherwise” and § 5536 (c), which provides that “[n]o extension of limitations. -- This section shall not extend the period within which any civil action or proceeding may be commenced under any provision of law.” Despite repeated use of the word “limitation” in § 5536, and despite the absence of the word repose in the subject statute, a legion of Pennsylvania courts has concluded that this statute is a statute of repose. See *e.g.*, *Vargo*, 715 A.2d at 425-26. This precedent is instructive in the case *sub judice* and supports the conclusion that §7512 is intended to operate as a statute of repose.

B. Public Policy considerations support conclusion that 68 Pa.C.S. § 7512 is a statute of repose.

The conclusion that the Pennsylvania General Assembly meant what it stated in 68 Pa.C.S. § 7512, namely that the consumer has one-year from receipt of the inspection report to file a lawsuit against the inspector is also supported by myriad public policy considerations. These considerations include the fact that the consumer is best positioned to mitigate the risk of latent

defects through insurance products, proactive home maintenance efforts and simple vigilance. It bears repeating that a home once occupied does not present a static environment, and use of major home systems will cause wear and tear that lead to system failures and the discovery of latent defects.

Also, by effectively abrogating the law, the trial court eliminated any objective temporal limits on the inspector's liability, thereby forcing the prudent inspector to procure additional insurance coverages beyond the requirements of the Pennsylvania law. Common sense and experience dictate that this additional cost will ultimately be borne by all consumers.

Finally, the objective interpretation of 68 Pa.C.S. § 7512 does not leave the consumer without legal recourse. Indeed, in the case of concealed home defects, a thorough investigation of the facts should lead to the original tortfeasor, who should bear the responsibility for the harm they set in motion, whether it's failure to abide by building codes or more egregious conduct. Accordingly, InterNACHI respectfully submits that 68 Pa.C.S. § 7512 is clear

and not ambiguous on its face. All the surrounding circumstances and policy reasons stated above further support this conclusion.

IV. CONCLUSION

For all the foregoing reasons, Amicus Curiae respectfully requests that the trial court's decision be reversed and that this honorable Court hold that 68 Pa.C.S. § 7512 is unambiguous and require any action against a home inspector to be commenced within one year of the date of the delivery of the inspection report.

Respectfully submitted,

/s/ Timothy Maffett

Timothy Maffett

Attorney I.D. No. 331584

BAKER, DONELSON, BEARMAN,

CALDWELL & BERKOWITZ, PC

100 Light Street, 19th Floor

Baltimore, MD 21202

Telephone: 410-862-1058

Email:tmaffett@bakerdonelson.com

On behalf of Amicus Curiae

*The International Association of
Certified Home Inspectors*

CERTIFICATION PURSUANT TO PA.R.A.P. 531

Pursuant to Pennsylvania Rule of Appellate Procedure 531(b)(2)(i) and (ii), Amicus Curiae, InterNACHI, certifies that no person other than Amicus Curiae and its members contributed money intended to fund the brief's preparation or submission nor authored in whole or in part the *amicus curiae* brief.

/s/ Timothy Maffett
Timothy Maffett
Attorney I.D. No. 331584

CERTIFICATE OF CONFIDENTIALITY PURSUANT TO PA.R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Timothy Maffett
Timothy Maffett
Attorney I.D. No. 331584

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/s/ Timothy Maffett
Timothy Maffett
Attorney I.D. No. 331584

CERTIFICATE OF SERVICE

I, Timothy Maffett, do hereby certify that I have this day caused to be served the foregoing *Amici Curiae* Brief by electronic service via PACFile and via electronic mail.

/s/ Timothy Maffett
Timothy Maffett
Attorney I.D. No. 331584

DATE: 18 August 2023