

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2009

JM FAMILY ENTERPRISES, INC., ET AL.,

Appellant,

v.

CASE NO. 5D07-2138

WINTER PARK IMPORTS, INC., ET AL.,

Appellee.

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Opinion filed May 8, 2009

Appeal from the Circuit Court  
for Orange County,  
Renee A. Roche, Judge.

Dean Bunch and C. Everett Boyd, Jr., of  
Sutherland Asbill & Brennan LLP,  
Tallahassee, and John E. Joiner and Juli  
Ann Lund of Williams & Connolly LLP,  
Washington, DC, for Appellants.

Ladd H. Fassett and Phil A. D'Aniello of  
Fassett, Anthony & Taylor, P.A., Orlando,  
and John W. Forehand of Lewis, Longman  
& Walker, P.A., Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED. *See Loewe v. Seagate Homes, Inc.*, 987 So. 2d 758, 760 (Fla. 5th  
DCA 2008) (a release or exculpatory clause that attempts to prospectively insulate a  
party from liability for violating a statute or ordinance enacted to protect the public is  
generally unenforceable as against public policy); *VoiceStream Wireless Corp. v. U.S.*

*Communications, Inc.*, 912 So. 2d 34, 38 (Fla. 4th DCA 2005) ("a party cannot waive liability imposed by statutory provisions that are intended to protect both an individual and the public because to do so would be contrary to public policy"); *Holt v. O'Brien Imports of Fort Myers, Inc.*, 862 So. 2d 87, 89 (Fla. 2d DCA 2003) ("[A]n individual cannot waive the protection of a statute that is designed to protect both the public and the individual.") (quoting *Coastal Caisson Drill Co. v. Am. Cas. Co.*, 523 So. 2d 791, 793 (Fla. 2d DCA 1988), *approved*, 542 So. 2d 957 (Fla. 1989)); see also, 11 Fla. Jur. 2d *Contracts*§126 ("[W]here public policy would be frustrated by permitting the enforcement of an exculpatory clause that effectively immunizes a party from liability from breach of a positive statutory duty to protect the well-being of others, the exculpatory clause will not be enforced."); *Torres v. Offshore Professional Tour, Inc.*, 629 So. 2d 192, 194 (Fla. 3d DCA 1993) (same); *John's Pass Seafood Co. v. Weber*, 369 So. 2d 616, 618 (Fla. 2d DCA 1979) (same).

GRIFFIN, LAWSON and COHEN, JJ., concur.