Affirmed in Part, Reversed and Remanded In Part and Plurality and Concurring and Dissenting Opinions filed September 13, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00427-CV

MARIE HOOVER, Appellant

V.

LEE M. LARKIN and FOUTS & MOORE, L.L.P., Appellees

On Appeal from the 269th District Court
Harris County, Texas
Trial Court Cause No. 98-53068

C O N C U R R I N G O P I N I O N

Hoover presented evidence, among other things, that Larkin asked her if she was willing to settle the case for $20,000, she agreed, and he subsequently told her that the case was settled for $20,000, but without clarifying that the $20,000 included approximately $6,000 which Hoover already owned. If Hoover's evidence is taken as true, as it must be for summary judgment purposes, a reasonable trier of fact *could* (but might not necessarily) conclude from it that: (1) Larkin breached a duty owed to Hoover by materially misstating the terms of the settlement to her; (2) Hoover was entitled to rely on

Larkin to recite the agreement accurately in open court (just as he had been obligated to do when the agreement was being initially reached); and (3) if Larkin failed to recite the agreement accurately in open court, Hoover's failure to catch the discrepancy and correct it, despite subjecting her to a binding Rule 11 agreement, did not absolve Larkin of responsibility for getting her into the jam in the first place. Because a reasonable factfinder could thus reach differing conclusions as to what happened and whether Larkin and Hoover each exercised reasonable care under the circumstances, I concur with the majority opinion that fact issues exist and, accordingly, the summary judgment cannot properly be affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed September 13, 2001.

Panel consists of Justices Edelman, Frost, and Murphy.[1]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Chief Justice Paul C. Murphy sitting by assignment.