

SUMMARY OF COOK CONSULTANTS, INC. V. LARSON

700 S.W.2d 231 (Tx.App. 1985)

by

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Note: The principles in this case may not apply to every state.

In 1970, Commonwealth Development Corporation, the builder of Larson's home, contracted with Cook to execute a completion survey to locate all improvements on the lot. The survey indicated that the house was within the lot lines. Consequently, Modern American Mortgage Corporation approved Larson's loan, and Larson purchased the property. In 1977, Larson's neighbor, Bates, suspected an encroachment and hired Robert West to resurvey Larson's lot. West discovered that Larson's house encroached on Bates' property by two and one-half to six feet. Bates sued Larson, and the court ordered Larson to "remove all improvements encroaching upon [Bates'] property" within ninety days of the judgment. The parties stipulated that removal of a portion of the house was economically and physically infeasible. Accordingly, Larson, in October 1979, hired a demolition company to tear down the entire structure. She sued Stewart Title Co. for breach of contract, alleging that her title insurance policy covered the encroachment, and joined Cook, alleging negligence, breach of contract to a third party beneficiary, and breach of express and implied warranties. The jury found Cook grossly negligent and awarded Larson \$32,150.00 in actual damages and \$230,000.00 in exemplary damages. We hold that since the very purpose of the survey was, ultimately, to facilitate purchase of the house, the injury was foreseeable, and public policy dictates imposition of a duty of care to the purchaser.