

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20403

THE MAHAFFEY APARTMENT COMPANY,

Plaintiff-Appellant,

versus

FLEMING HOVENKAMP GR; FLEMING,
HOVENKAMP & GRAYSON, PC; GEORGE
M FLEMING; DANIEL J "PETE" PETROSKI,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
H-98-CV-4242

March 12, 2001

Before POLITZ, DeMOSS, and STEWART, Circuit Judges.

POLITZ, Circuit Judge:*

The Mahaffey Apartment Company appeals an adverse summary judgment on

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

its claims for breach of fiduciary duty and misrepresentation. Mahaffey retained Fleming, Hovenkamp & Grayson to represent it in litigation involving defective polybutylene pipes. The litigation involved a very large number of claimants but was not certified as a class action. The various lawsuits ultimately were consolidated in Texas state court and settled. The state trial judge held a series of hearings to determine the fairness and reasonableness of the attorney's fees included as part of the settlement.¹ Mahaffey asserts that Fleming failed to notify it of these hearings.

Invoking diversity jurisdiction Mahaffey filed the instant action, urging violation of the Texas Deceptive Trade Practices Act, misrepresentation, and breach of fiduciary duty. Mahaffey sought \$1.2 million in actual damages, forfeiture of all attorneys' fees earned by Fleming, \$2.4 million in punitive damages, and attorney's fees incurred through this action.

A detailed review and consideration of the record, briefs, oral arguments of counsel, and applicable law persuades that the judgment appealed should be, and the same is, AFFIRMED.

¹ The trial judge's decision respecting the attorneys' fees and expenses was reversed on appeal. See In re Polybutylene Plumbing Litigation, 23 S.W.3d 428 (Tex. App. 2000).