

No. 25049 -- Chevy Chase Bank v. William McCamant, Jr.

Starcher, J., dissenting:

I entirely agree with the majority opinion's conclusion that a literal reading of *W.Va. Code*, 46A-2-123[1974] means that an out-of-state business that wants to use a lawyer to collect debts in West Virginia must use a West Virginia lawyer, or have their out-of-state lawyer admitted to practice in West Virginia.

This would hardly be a novel requirement. We require every other business that wants to have someone practice law for the business in this State to either use a licensed West Virginia attorney or to have their out-of-state licensed lawyer temporarily admitted to practice here. *West Virginia Rules for the Admission to the Practice of Law*, Rule 8.0 [1995]. What is wrong with the Legislature making this rule explicit as to debt collection by lawyers, as it has done in *W.Va. Code*, 46A-2-123?

In arriving at the conclusion that the Legislature could not mean what they say in this statute, the majority opinion's logic skips a critical and necessary stage in its reasoning.

The opinion first recites a principle of statutory construction to the effect that this Court will only construe statutes that are ambiguous in their language. Then the opinion quotes a principle to the effect that we will disregard absurd or unjust statutory constructions.

However, the majority opinion omits a necessary logical predicate that must exist, before one may link these two principles. The majority opinion never identifies any ambiguous language in the statute that would authorize statutory

construction to occur in the first instance. Thus, the majority's reasoning is unpersuasive.

The majority opinion says that it "refuses to believe" that the Legislature "intended" to prohibit a Maryland lawyer from sending debt collection letters, threatening West Virginians. But believe it or not, that is exactly what the Legislature did do -- in clear and unequivocal language.

I would reverse the circuit court on this issue, because the court failed to apply the statute in a correct fashion.

Accordingly, I dissent.