

No. 25336 -- William F. Poling and Candace L. Jacques v. Belington Bank, Inc., Dorothy F. Poling, V.L. Smithson, A. Houston Booth, Thomas M. Pitsenberger, Dorward L. Matlick, Robert B. Reger, Barbour County Bank, and Other Unknown Persons v. Jeanne E. Poling, Executrix of the Estate of Herman J. Poling, Jr.

Starcher, C.J., dissenting:

FILED

March 1, 2000

DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

March 3, 2000

DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I dissent to the conclusion in this case. The plaintiffs are attempting to recover the shares of stock that Belington Bank carelessly handled, and apparently negligently listed as belonging entirely to Herman Poling, Jr. I say “apparently” because the circuit court refused to allow the plaintiffs to conduct any discovery, particularly on the issue of whether the Bank had actual knowledge that Herman Poling, Jr., only owned a life estate in the stock.

The Bank in this case didn’t claim it was ignorant of the fact that Herman Poling, Jr. was entitled to only a life estate in the stock. Instead, the Bank said its ignorance is irrelevant -- it argues it is authorized to be careless and commit acts of negligence by the Uniform Act for Simplification of Fiduciary Security Transfers. The majority opinion bit the hook on this argument, holding the Bank was “under no obligation to second-guess Herman Poling, Jr.’s actions[.]” The plaintiffs in this case aren’t contending the Bank “second-guessed” anyone -- they are claiming the Bank had actual, solid knowledge it was making a mistake. Unfortunately, the circuit court dismissed the plaintiffs’ case without allowing them to conduct any discovery of that knowledge.

The plaintiffs were entirely dependent upon the evidence held by the Bank and its employees, and the majority’s opinion supports the Bank’s ability to conceal that evidence. The plaintiffs

should, at a minimum, have been afforded an opportunity to conduct discovery. “The Law demands it, Equity sanctions it, and blind justice weeps and pleads in vain.” *Gall v. Tygart’s Valley Bank*, 50 W.Va. 597, 604, 40 S.E. 390, 393 (1901) (Dent, J., dissenting).

I therefore dissent. I am authorized to state that Justice McGraw joins in this dissent.