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## NEW SERVER

MANGIANTE v. NIEMIEC—CONCURRENCE

FLYNN, C. J., concurring. I agree with the holding of the majority that the circumstances of this case fully justify the trial court's invocation of equitable authority to award attorney's fees to the plaintiff because, although not agreed to by contract or expressly authorized by statute, without its invocation, the plaintiff would not be made whole. I further agree that if the trustee was at fault in causing the litigation arising out of a breach of fiduciary duty, it is only fair that the expense of remedying that breach should fall on the trustee causing it. Our opinion does no more than give voice to that old equitable maxim that "where one of two persons must suffer loss, he should suffer whose act or neglect occasioned the loss." H. Gibson, *A Treatise on Suits in Chancery* (2d Ed. 1907) § 52, p. 45.

I write separately because I do not believe that the "private attorney general doctrine" has any applicability to this dispute, which essentially is a private one between two family members arising out of private rights. As the cases cited by the majority in footnote 3 tell us, the "private attorney general doctrine" has been reserved generally for matters, the resolution of which affects the public at large. The term is used sometimes when the public at large is not affected directly, but when some act injurious to a private party is a part of an unfair custom or practice regularly engaged in on the part of the wrongdoer. On the record before us, I do not find either situation present.

For the foregoing reasons, I concur with the majority's decision.

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