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Case Notes

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Case Notes / Contracts—Breach—Action for Damages When Death Results from Breach of Contract. *Zostautas v. St. Anthony De Padua Hospital,* 123 Ill., 2d 326, 178 N.E. 2d 303 (1961).

AN ACTION WAS BROUGHT BY THE PARENTS of a five year old boy to recover damages arising out of the breach of an express contract to perform a tonsilectomy which resulted in the child's death. In the circuit court the surgeon, anesthetist, hospital and nurse were joined as defendants in a complaint containing six counts, setting forth claims under the wrongful death statute and breach of contract.

The circuit court dismissed the fourth count against the defendant surgeon which alleged breach of contract. The plaintiff appealed, *held,* that a common law contract action does not lie when death resulted from the breach of a contract expressed or implied, to perform an operation. *Zostautas v. St. Anthony De Padua Hospital,* 123 Ill., 2d 326, 178 N.E. 2d 303 (1961). The court did say, however, that while the breach of contract action could not be enforced, there could be liability under the Illinois Wrongful Death Act.

A similar result, although based on entirely different facts, was reached in the much commented case of *Kilberg v. Northeast Airlines,* 9 N.Y. 2d 34, 211 N.Y.S. 2d 133, 172 N.E. 2d 526 (1961); 10 CATHOLIC U. L. REV. 88 (1961); 74 HARV. L. REV. 1652 (1961); 49 GEO. L. J. 768 (1961); 49 CALIF. L. REV. 187 (1961). There the plaintiff's intestate, before boarding a plane in New York, bought a ticket for transportation to Massachusetts and that defendant, by causing his death in the crash, breached its contract to carry him safely. As a result, the passenger's estate and his dependents suffered substantial damage for which his administrator sued and which included "loss of accumulations of prospective earnings of the deceased." The court did not allow recovery on the breach of contract action. It stated that relief, if any, may be obtained only upon proof of defendant's negligence under a wrongful death act.

Presumably in both *Zostautas* and *Kilberg,* counsel for the petitioner thought that either their action would not lie under the wrongful death act or that the amount of recovery under the traditionally applicable wrongful death act would be unjust. In *Zostautas,* the court for the first time interpreted the fact situation presented as con-

stituting a "default" within the terms of the Illinois Wrongful Death Act (*supra* at 307).

In *Kilberg*, if the New York court were to follow the traditional view, it would have applied the whole Massachusetts Wrongful Death Act with its $15,000 limitation of liability. Petitioner would have preferred to have had the unlimited liability set by the New York Wrongful Death Act.

Today the law seems clear that an action for damages will not lie when death results from a breach of contract. In actions based on contract, liability is predicated on the failure to perform an agreed undertaking rather than upon negligence. Damages are usually restricted to the payments made, the expenditure for nurses and medicines, or "other damages that flow naturally from the breach thereof." *Conklin v. Draper*, 229 App. Div. 227, 241 N.Y.S. 534 (1930). They do not include the patient's pain and suffering as in malpractice actions. *Robins v. Finestone*, 308 N.Y. 543, 127 N.E. 2d 330 (1955). It is generally held that a contract action can be maintained when the patient survives; however the law seems to be a maze of conflicting decisions and rationalizations in actions where the patient has died as in the *Zostautas* case.

The authority regularly cited for the proposition that damages are not recoverable for wrongful death is *Baker v. Bolton*, 1 Camp. 493, 170 Eng. Rep. 1033 (1808), in which Lord Ellenborough without referring to authority, said: "In a civil court, the death of a human being could not be complained of as an injury." The case has been widely criticized as "embodying a careless overstatement of the law without any supporting authority and induced by confusion of thought," 13 VAND. L. REV. 605 at 613, see also *Osborn v. Gillett*, L.R. 8 Ex. 88, at 96 (1873); 3 HOLDSWORTH, A HISTORY OF ENGLISH LAW (3d ed. 1923).

Most early English cases followed the *Baker* case with a few exceptions. *Jackson v. Watson*, 2 K.B. 193 (1909); *Bradshaw v. Lancashire and Yorkshire Ry.*, L.R. 10 C.P. 189 (1875). In the *Jackson* case a husband brought an action for breach of implied warranty on canned food which resulted in the death of his wife. The damages sought were for the loss of his wife's services after her death along with medical and funeral expenses. The court reasoned that the rule in *Baker v. Bolton* had no application to an action for breach of warranty since it was independent of the wrong, and the death of the wife was only an element in ascertaining damages and not an essential part of the action.

In the United States, early case law was contrary to that of the English. The courts allowed recovery resulting from wrongful deaths. *Sullivan* v. *Union Pac. R.R.*, 23 Fed. Cas. 368 (No. 13599) (C.C. Neb. 1874); *Cross v. Guthery*, 2 Root 90 (Conn. 1794) where the action could be framed *ex contractu*. However these early cases were discredited, *Mobile Life Insurance Co. v. Brame*, 95 U.S. 754 (1877), or ignored, *Connecticut Mut. Life Ins. Co. v. New York and N.H.R.R.*, 25 Conn. 265 (1865), and the trend began reversing itself in both state and federal courts until they generally agreed in the broad proposition that "at common law, no civil action could be maintained for the death of a human being, caused by the wrongful act or negligence of another, or for any damages suffered by any person in consequence of such death." *Hyatt v. Adams*, 16 Mich. 185 (1848), 13 VAND. L. REV. 616, n. 55 (1960).

Some courts have abandoned the common law principal "actio personalis moritur

cum persona" (a personal action dies with the person) in contract actions of this nature and have taken a more practical approach. They point out the impossibility of calculating the pecuniary value of a life as the reason for denying recovery in wrongful death cases. *Van Beeck v. Sabine Towing Co.*, 300 U.S. 342, 344-45 (1937); *Van Amburg v. Vicksburg, S. & P. R.R.*, 37 La. Ann. 650, 651 (1885). Many writers on jurisprudence reason that because of the awful magnitude of the wrong, neither courts nor juries have been entrusted by the law with the function of estimating it. *Connecticut Mut. Life Ins. Co. v. New York & N.H.R.R.*, 25 Conn. 265, 273 (1856). Courts using this as a basis for the rule were in effect declaring that "because the compensation cannot be adequate there shall be no compensation at all." POLLOCK, TORTS 66 (9th ed. 1912).

In the words of Chief Justice Stone, "for every breach of a contract made on good consideration the law awards some damage." *Hagen v. Riley*, 13 Gray. 515 (1859). The damages available for breach of contract generally fall into two classes, either compensatory (direct and consequential) or nominal. Death being the direct result of the breach of contract, a value would have to be placed on life itself to adequately compensate those entitled to bring the action. The difficulty of doing this need not rule out recovery for compensatory damages. Such damages are those which may fairly and reasonably supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of its breach. See RESTATEMENT, CONTRACTS § 330 (1932); *Duncan v. St. Luke's Hospital*, 98 N.Y.S. 867, 871, 113 App. Div. 68 (1906). In the *Zostautas* case the loss to the parents, if the child died, could have reasonably been contemplated by the surgeon. This loss could take the form of deprivation of love and affection due the parents, funeral expenses, or the son's contribution to the family income. Nominal damages, by definition also apply to cases of this nature.

Many judges wishing to retain the established rule of law, but being unsatisfied with the historical basis for the rule, have sought justification on moral grounds. This is shown by a Michigan court speaking through Judge Christiancy in the *Hyatt* case when he said, "To the cultivated and enlightened mind, looking at human life in the light of the Christian religion as sacred, the idea of compensating its loss in money is revolting." *Hyatt v. Adams, supra* at 191.

A Massachusetts court, faced with a fact situation very similar to the one confronting the Illinois court in the *Zostautas* case, held that a husband could not recover for loss of his wife's society, care and comfort resulting from her death, in a common law contract action against a physician for breach of his implied agreement to render necessary and proper medical care to the wife. The court stated that elements of damage arising from death were barred in contract actions, as well as tort actions, and allowed the husband only damages for the wife's treatment. *Sherlag v. Kelley*, 200 Mass. 232, 86 N.E. 293, 19 L.R.A. 633 (1908).

In the *Zostautas* case Judge Solfisburg said: "This court has joined in the criticism of that common law rule which apparently originated from a misreading of English legal history and has refused to expand its corollaries, nevertheless, we do not believe that a distinction should be made whereby the rule is invoked only in tort but not in contract actions where the breach of contract causes death." (Citations omitted).

Thus it seems the court is unwilling to break with what it finds to be admittedly

ill-founded precedent and maintains the course of inextricable confusion which surrounds cases of this nature.

JOSEPH J. BAKER

Personal Property—Gifts—Copyright—Delivery of Future Profits.

Speelman v. Pascal, 10 N.Y. 2d 313, 178 N.E. 2d 723 (1961).

DEFENDANT'S INTESTATE owned 98% of a corporation which, in turn, owned the exclusive rights to compose and produce a musical version of Shaw's "Pygmalion." Several months before his death, defendant's intestate signed and delivered to plaintiff a letter which purported "to confirm to you our understanding that I give you" a certain percentage "from my share of the profits" in the musical. When the donor died, not only had the play not been produced but no contract had been let with suitable composers to write it. The donor's administrator, however, was successful in letting such a contract pursuant to which a musical was written and produced. On the question of whether a gift had been made, the court *held* there was a valid gift. *Speelman v. Pascal,* 10 N.Y. 2d 313, 178 N.E. 2d 723 (1961).

The court in this case simply held the gift valid without stating the legal theory it used as the basis of its holding. However, the court made reference to equitable assignments and deeds of gift. Perhaps the court could have said that the donor made a gift of an undivided share of his license to use the play, thus holding that present rights in existing property were the subject of the transfer. The court, nevertheless, made it clear that the profits were given, and not a share of the license itself. The court thus held that "prospective profits" of a non-existent play were given before the contract to have the play written was completed; thus holding that present rights in non-existent property were given.

The court enforced the donor's apparent intent but in so doing it held, in effect, that non-existent property may be treated as property (by reason of the possibility of its being realized), and, as such, it can be given in a court of equity. It has been said, *"Nemo Dare Potest Quod Non Habet,"* that is, no man give that which he hath not. Fleta, Lib. 3. C. 15 sec. 8 says: "the subject of a gift must be certain" 2 Kent Comm. 566, 13th Ed. "A gift cannot be made to take effect in the future" 12 R.C.L. "Gifts" Sec. 9. It is with respect to these somewhat doctrinaire statements that this case will be discussed. Equity will enforce an assignment of future property. The legal reasoning supporting the transfer is that there is a present contract for the future transaction, and equity demands an adequate consideration to support the present

contract. *Hite v. Hite,* 120 Ohio St. 253, 166 N.E. 193 (1929), noted 28 Mich. L. Rev. 1058 (1930). The concept of equitable assignments, demanding consideration, would be misapplied to gift cases; all the cases cited by the court for the proposition that future property may be given, involved consideration, but there was none in this case.

A gift of a chattel inter vivos may be accomplished by a deed of gift without a livery of the subject matter itself. See BROWN, THE LAW OF PERSONAL PROPERTY 131 (2d ed. 1955). The delivery of the deed is symbolic or constructive delivery of the property. *McGavic v. Cossum,* 72 App. Div. 35, 76 N.Y. Supp. 305 (1902). The New York courts take the liberal position, holding that an informal instrument *i.e.* without a seal, may be a valid deed of gift. *Young v. Young,* 80 N.Y. 422, 36 Am. Rep. 634 (1880), *dictum, In Re Cohn* 187 App. Div. 392, 178 N.Y. Supp. 225 (1919). "Where a gift is evidenced by a writing rules as to delivery are somewhat relaxed." *In Re Brown's Ex'r,* 130 Misc. 865, 226 N.Y. Supp. 1, 15 (1927). In the case at hand, the question of whether non-existent property could be presently delivered became obscured when the court said that this variety of proprty (assuming that it was property) could be delivered symbolicaly. The court's allusion to *Farmers Loan and Trust Co. v. Winthrop,* 270 App. Div. 356, 202 N.Y. Supp. 456 *mod.* 238 N.Y. 477, 144 N.E. 686 (1924), as authority for the proposition that a symbolic delivery could be effected by a strong expression of intent seems not only to be dictum but also inapplicable. That case involved a gift of a power of attorney authorizing the donee to reduce to possession the subject matter of the gift. There Judge Cardozo said at page 487, "We assume without deciding that such effect will be allowed if . . . there is an intention that the title of the donor shall be divested and presently transferred." This case, the *Speelman* case, involves the gift of something to which the donor had no title.

Whatever the method, when applied to gift cases, delivery would still seem to presuppose the existence of the property to be given. "Every species of property, if it is in esse, may be the subject of a gift." 38 C.J.S. p. 808. A Kentucky case, *Banks v. Marksberry,* 3 Littel 275 (1823) is said to be authority for the proposition that future property may be the subject of a gift. This, however, is somewhat doubtful. There the future offspring of a female slave were given by a father to his son, and the court said that the blood relation of the father and the son was consideration for the future transaction, implying that what had been accomplished was a covenant to stand seised. "A gift is a present passing of title." BROWN, *supra* at 131. "A gift inter vivos is a gift in praesenti, a consummated and completed act, and has no reference to past or future events." *In Re Birdsall's Estate,* 22 Misc. 180, 49 N. Y. Supp. 450, 463 (1897).

The New York courts would seem to hold that property which is the subject of a gift must be certain. *In Re Delapenha's Estate,* 176 Misc. 732,28 N.Y. Supp. 2d 975,978 (1941). There it was said, "the thing given must be identified. A 'gift' unlike a will, is never ambulatory. The definitely ascertained property passes at the time of donation." However, the Delapenha's case was not mentioned in the case of *In Re Roosevelt's Will,* 73 N.Y. Supp. 2d 821 (1947). In the Roosevelt case Mr. Roosevelt's papers were given to a library. Mr. Roosevelt gave an instrument said to be a 'deed' to his papers, and manually delivered the papers in existence, prior to this "memoranda" of delivery. The question arose as to whether the "memoranda" covered papers written after its delivery. There the court said (at page 826), "acceptance of a gift need not be made immediately at the time of delivery. It is sufficient if the gift

is accepted and the exercise by the donee of dominion over the subject of the gift or the assertion of a right thereto by him is generally held to be evidence of his acceptance." The court there did not directly answer the question of what constitutes a valid delivery. It seemed to suggest that a gift may be held in abeyance, and allow addition or accumulations to the subject of the gift to which the donee may claim title after some partial acknowledgement of ownership. The Roosevelt case would seem to overrule the Delapenha's case; however the Roosevelt case cites no authority whatsoever in the course of its opinion, and perhaps may be treated as a case *sui generis,* due to the personalities involved.

The attempt to give that which was non-existent at the time when the transfer had to take effect was a gift could only be of future profits, and thus no more than a promise. *In Re Birdsall's Estate, ibid.* "Until the donor has divested himself absolutely and irrevocably of title, dominion, and control of the gift, he has the power to revoke, and a court of equity will not compel him to complete his gift." *Curry v. Powers,* 70 N.Y. 212, 26 Am. Rep. 577 (1877); *Lehr v. Jones,* 74 App. Div. 54, 77 N.Y. Supp. 212 (1902). Here the donor had no title to future profits. He had the rights to receive the profits. Judge Page, dissenting in *In Re Cohn, supra* said at p. 231, "the intention to give is often established by the most satisfactory evidence, although the gift fails. Instruments may be ever so formally executed by the donor, purporting to transfer title to the donee, or there may be the most explicit declaration of the intention to give, or an actual present gift, yet, unless there is a delivery, the intention is defeated." *Young v. Young, ibid; Jackson v. Twenty-third St. Ry. Co.,* 88 N.Y. 520 (1882); *In Re Crawford,* 113 N.Y. 560, 21 N.E. 692 (1889). The profits would accrue to the donor by way of the license to use the play, and the production of the musical from it. It would seem that the profits in question would have to come into existence, though not necessarily possession, before they could be given; that is, profits and ownership of them would then be ascertainable. One may give rights to presently existing property, but the gift of present rights to future and unascertainable property has not been recognized in the area of gifts until this case, which is a departure from the traditional position.

The holding, that the intention to give property or to do an act combined with a promise may create legally enforceable rights and duties, can have far-reaching consequences.

STEPHEN B. POTTER

Security Transactions—Deeds of Trust—Trustees—Conflict of Interests.

Sheridan v. Perpetual Building Association, 299 F. 2d 463 (D.C. App. 1962).

IN A DEED OF TRUST TRANSACTION involving Sheridan as the borrower and the Perpetual Building Association as the lender, the trustees named therein were officers and directors of Perpetual. At a foreclosure sale after default, a bid sufficient to release all parties from their obligations was made by a responsible party who later rescinded. The trustees took no action against the purchaser, although, under the conditions of the sale, the trustees could have resold at the cost and risk of the defaulting purchaser or availed themselves of any legal or equitable rights against him, among these being specific performance in equity or damages at law. Instead, the treasurer of Perpetual undertook to declare the purchaser's deposit forfeited and released him from his bid.

A second foreclosure sale produced a lower bid than the first sale and resulted in a deficiency for which Sheridan was held accountable by both the District and Circuit courts. Upon rehearing *in banc,* the court reversed on the ground that the decision made by the treasurer to release the defaulting purchaser from his bid appeared "prima facie to have been a decision by and in the interest solely of the lender." The case was remanded to the lower court for the determination as to whether a breach of fiduciary obligation had in fact occurred. The court, in a footnote, expressed what may put an end to the heretofore dubious union of creditor-dominated trustee and lending institution: "... the rule [requiring a fiduciary with conflicting interests to bear the burden of proving fidelity to the trust] applies wherever a trustee with conflicting interests takes action, such as foreclosure, seriously affecting the borrower's interest. Substitution of independent trustees prior to the taking of any such action would seem to offer a measure of protection to all concerned." *Sheridan v. Perpeual Building Association,* 299 F. 2d 463 (D.C. App. 1962).

The past decisions of the District of Columbia courts dealing with the essential problem in the *Sheridan* case appear to have reluctantly tolerated close economic relations between trustees and the lending institutions rather than explicitly prohibiting such ties. The cases, in general, hold that economic ties with the lending institutions do not, of themselves, disqualify a trustee or incapacitate him from fulfilling his duties; but a charge is cast upon the courts to scrutinize very closely all that is done in the execution of the trust. *Clark v. Trust Co.,* 100 U.S. 149 (1879); *Realty Investment & Securities Corp. v. Rust,* 71 App. D.C. 213, 109 F.2d 456 (1939); *Canelacos v. Hollway,* 75 U.S. App. D.C. 58, 123 F.2d 934 (1941); *Alpar v. Perpetual Building Association,* 104 U.S. App. D.C. 341, 262 F.2d 230 (1959); *Admiral Co. v. Thomas,* 106 U.S. App. D.C. 266, 271 F.2d 849 (1959).

However, there is affirmative duty to make a full disclosure of the relationship; and the burden is upon the trustee to prove good faith. *Holman v. Ryon,* 61 App. D.C. 10, 56 F.2d 307 (1932); *Spruill v. Ballard,* 61 App. D.C. 112, 58 F.2d 517 (1932); *Earll v.*

Pickens, 72 U.S. App. D.C. 91, 113 F.2d 150 (1940); *Realty Invest. & Sec. Corp. v. Rust, supra; Canelacos v. Hollway, supra.*

Admonishments have been issued by the court on a few occasions. They point out the "impropriety of the exercise of a power of sale under a deed of trust by a trustee who is, or is associated with, the owner of the debt secured." *Canelacos v. Hollway, supra,* at 59. "The conflict between such a trustee's interest and his duty to the debtor has led us to restrain such sales and substitute a disinterested trustee." *Canelacos v. Hollway, supra,* at 59; *Kent v. Livingstone,* 65 App. D.C. 291, 83 F.2d 316 (1936); *Spruill v. Ballard, supra,* at 114.

Prior to the nineteenth century, no mortgage was effective to transfer a title so as to foreclose the owner's equity of redemption without the intervention of a court of equity, even though the debtor, as he frequently did, agreed to such an arrangement. Making the creditor the arbiter of his own case was looked upon, in the words of Judge Cabell in *Chowning v. Cox,* 1 Randolph (22 Va.) 306, 312, 10 Am. Dec. 530 (1823) as "contrary to the clearest principles of justice"; for economic realities demonstrated that the "borrower is a slave to the lender."

By the latter part of the same century, an increasing number of courts permitted the exercise of the power of sale by the creditor without the court's intervention, assigning as their reasons the convenience of the creditor and the importance of the freedom of contract. Thus, equity courts slowly retreated from their time-honored position as the paladin of the borrower until the deed of trust arose as a happy compromise between rigid debtor protection and creditor convenience. The deed of trust provides an inexpensive and expeditious method of satisfying debts on default of payment and removes the necessity of the intervention of the courts. Nevertheless, the courts, although recognizing its advantages, are also impressed by the precarious position of the borrower in the very summary nature of the deed of trust. Undoubtedly, the relaxation in the deed of trust of the strict, uncompromising rule that equity imposed upon a sale in the mortgage transaction is predicated upon the theory that the trustee is a disinterested third party acting as a fiduciary agent of the debtor and creditor, thus removing any opportunity for oppression by the creditor and assuring fair treatment to the debtor. The keystone to the proper functioning of the deed of trust, therefore, is the disinterestedness of the trustee.

In theory, the disinterestedness would best be protected by completely prohibiting officers and employees of lending institutions from acting as trustees under deeds of trust involving the lending institution with which they are affiliated. Thus, the borrower would receive the ultimate in protection. Yet, in practice, such prohibition would emasculate the deed of trust of its inherent advantage to the creditor in that valuable time, effort, and greater expenses would be involved in procuring, if at all possible, totally disinterested trustees for all their deed of trust transactions. Since securing loans by deeds of trust is the most prevalent if not universal method in effect in the District of Columbia, the additional problems resulting would be multifarious and complex.

To insinuate that the lending institutions are engaged in a nefarious scheme to exploit the public would certainly be a grave injustice to them. Without a doubt, the lending institutions of the District of Columbia have exhibited the utmost candor and honesty in their loan transactions. The practice of utilizing employees as trustees

has its merits in the eyes of the lenders in keeping policies flexible, expenses at an unoppressive level (which saving is passed on to the borrower), and the trustee present at a moment's notice. Yet, as the court pointed out in the *Sheridan* case, such practice is "subject to suspicion and criticism." The keystone of the deed of trust's proper functioning has been annihilated. To contend that such a trustee is a disinterested party and not subject to creditor influence is "to indulge a credulity in the disinterestedness of human nature which experience does not justify." *Spruill v. Ballard, supra,* at 114. The law cannot accurately measure the influence of a trustee with his associates.

Trustees named in a deed of trust "... sustain a fiduciary relationship to the debtor as well as the creditor" *Church v. Holmes,* 60 App. D.C. 27, 46 F.2d 608 (1931); *Holman v. Ryon, supra,* at 13; *Spruill v. Ballard, supra,* at 114; "... should be impartial and above suspicion" *Sheridan v. Perpetual Building Assoc.,* supra; "... should scrupulously avoid placing [themselves] in a position where their interests might conflict with the interests of those whom [they] represent." *Holman v. Ryon, supra,* at 13; "... upon a showing of interest ... ought not to be permitted to continue serve." *Kent v. Livingstone, supra,* at 291; *Canelacos v. Hollway, supra,* at 59.

Whether the lending institutions' present altruisitic policy is based upon morals, business necessities or public relations, the fact remains that the human element is involved and "considering that human nature must be dealt with, the rule [inhibiting a fiduciary from assuming antagonistic positions to his principal in matters involving the subject matter of the trust] does not stop with actual violations of such trust relations, but includes within its purpose the removal of any temptation to violate them." *U.S. v. Mississippi Valley Generating Co.,* 364 U.S. 520, 550.

The determinative factor upon which the courts have relied in the past is the disclosure or non-disclosure of the relationship between the trustee and the lender. However, note Judge Bazelon's concurring opinion in the *Admiral* case, *supra,* at 268, "... disclosure of trustee's dual capacity is not meaningful if, in reality, the borrower *must* accept him in order to obtain the loan." [Italics mine.]

The court, in the *Sheridan* case, appears to have reached the limit of its remedial powers in dealing with creditor-dominated trustees by casting upon them the burden of proving good faith and by suggesting the substitution of independent trustees prior to the taking of any action affecting the borrower's interest. Perhaps the ultimate answer which would both insure the borrower's position and retain the convenience and expeditiousness of the deed of trust for the lender lies in the solution evolved by several state legislatures (See, *e.g.,* Colorado Revised Statutes [1953], 18-3-1) whereby an office of public trustee is created. Such officer is to be named in all deeds of trust as the trustee. Failure to do so would result in foreclosure through the courts.

What effect the *Sheridan* case will have upon the lending institutions and their policies toward their trustees remains to be seen. At present, the indication is that they will perhaps employ more propriety in the selection of trustees in order to avoid the bad public relations resulting from the court's chastisement.

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