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Taxation

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The implications of the instant case present questions that can only be answered by future litigation. The protection afforded by the public hospital immunity statute seems to have been broadened, but whether it will protect a hospital district from an action based on an absolute liability theory, such as breach of warranty where no negligence is alleged, remains to be seen.

Another problem would be presented to the court if a case should arise involving a cause of action against a hospital or blood bank based on an injury resulting from the transfusion of contaminated or diseased blood. If the entire facts of the transaction were before the court for consideration, it seems highly questionable that the court would uphold their decision that the supplying of blood is not a sale.

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TAXATION

Inheritance Tax—Resident Vendor's Interest in Foreign Lands as Within Taxing Jurisdiction. *In re Plasterer's Estate*[1] upheld the power of the State of Washington to levy an inheritance tax upon a deceased resident's interest in Alaska lands held under partially executory contracts of sale.

At the time of testatrix' death she was a resident of Washington, and held title to three parcels of Alaska land which she had contracted to sell. Her Alaska executrix paid inheritance taxes to the Territory of Alaska upon the value of these lands. Ancillary proceedings having determined the amount due to testatrix under these contracts for sale, the State of Washington claimed that the value of testatrix' contract interest in these lands was also subject to the Washington inheritance tax, pursuant to RCW 83.04.

In order to reach this decision it was necessary for the court to find the decedent's property interest to be within the taxing jurisdiction of the state.[2] Considered as Alaska realty, it definitely was not.[3] The

[1] 149 Wash. Dec. 333, 301 P.2d 539 (1956).

[2] RCW 83.04.010 provides in part:

> All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state... shall, for the use of the state, be subject to a tax measured by the full value of the entire property...

RCW 83.04.030, concerning property outside the state, provides that property "...subject to, the jurisdiction of the [Washington courts] for distribution purposes..." is to be subject to the inheritance tax.

[3] RCW 83.04.030 expressly excepts from the inheritance tax "real property located outside the state passing in fee from the decendent owner...." The same result would be reached in case law, under constitutional considerations. See Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412 (1937).

Washington court, however, looked at this interest not as realty but in terms of the partially executory contracts for sale which gave the deceased a vendor's interest in the lands. This vendor's interest consisted of the right to receive payment for the lands, and was classified as a chose in action. Under the rule that intangible personal property has its situs at the domicile of the owner *(mobilia sequuntur personam)*,[4] the court found the deceased's interest to be within the taxing jurisdiction of the state.

The court cited and relied upon the case of *In re Eilermann's Estate*,[5] which presented a fact situation the exact converse of the present case. In that decision the decedent was a New Jersey resident who held Washington land under an executory contract of sale. The Washington court held that

> Clearly, the interest of a nonresident vendor in a contract for the sale of land situated in another state is intangible personal property. That being so, it logically follows that the vendor's interest is taxable in the state of the owner's domicile, not in the state wherein the land lies.[6]

The court thus denied its jurisdiction to levy an inheritance tax upon the nonresident vendor's interest in the Washington lands.

The same reasoning was used in the present case, the factual difference being that the decedent was a Washington resident while her lands were outside the state. Due to the converse fact situations, opposite results were reached in these two cases. The pattern, however, is consistent: the vendor's interest is treated as personal property and taxed at the vendor's domicile.

This pattern, in cases such as the present one, can lead to double taxation, when both the state of the land's situs and the state of the vendor's domicile levy inheritance taxes upon the interests which, by conflicting arguments, they find to be within their respective jurisdictions. By a similar conflict of laws, it is possible that both states could disclaim their jurisdiction and leave the vendor's interest completely untaxed.[7] That such inconsistent results could be reached under the pattern established by the *Plasterer* and *Eilermann* cases should not be a fatal objection. The jurisdictions are in fact split upon this problem of the taxable interest of the nonresident vendor, some reaching the same result that Washington has reached, and some, on the other

[4] Blodgett v. Silberman, 277 U.S. 1 (1928); *In re* Lyons' Estate, 175 Wash. 115, 26 P.2d 615 (1933); *In re* Ellis' Estate, 169 Wash. 581, 14 P.2d 37, 86 A.L.R. 734 (1932).
[5] 179 Wash. 15, 35 P.2d 763 (1934).
[6] *Id.* at 19, 35 P.2d at 765.
[7] This appears to have been the result in the *Eilermann* case.

hand, simply taxing the land as realty when it is within the state and exempting it when it is not.[8] In many states where case authority is lacking, such considerations may turn on varying statutes or tax commission policies. To expect Washington to formulate a consistent rule which would prevent such cases of double taxation or, in the alternative, no taxation at all, would be to ask the impossible. It should be noted, as did the court in the present case, that there is no constitutional immunity against double taxation.[9]

The state, in arguing for the holding that the court adopted in the *Plasterer* case, advanced two supporting theories: (1) that the executory contract for sale of the Alaska lands worked an equitable conversion, and (2) that the contract rights of the decedent vendor constituted a chose in action.[10] Either line of reasoning would have lead to the conclusion that the decedent's interest in the Alaska lands was to be considered as personal property having its situs at the decedent's domicile in Washington, and thus subject to the Washington inheritance tax. The theories were offered in the alternative, but it is submitted that they are not mutually inconsistent.

The doctrine of equitable conversion by contract is based upon the rights of the parties to an executory contract for sale of land, as defined by the remedies available in a court of equity. After the contract is executed, the purchaser has the right to an action for specific performance of the promised conveyance of land, all conditions being met, while the vendor has the right to receive the purchase price. Since equity considers as done that which ought to be done, the purchaser's true right is thus considered to be his right in the land, and the vendor's right a right to the price. By the creation of the contract, it is said, the purchaser's interest is equitably converted into realty, and the vendor's interest into personalty.[11]

The contract vendor of land has two interests: first, a fee interest in the land, and, second, a contract right to the balance of the purchase price. The doctrine of equitable conversion would operate upon the first interest and convert it to personalty. The court, however, chose to focus its attention solely upon the contract right of the deceased vendor. The personal property interest thus found in the vendor is

[8] See Annot., 78 A.L.R. 793 (1932).
[9] State Tax Commission of Utah v. Aldrich, 316 U.S. 174 (1942); Curry v. McCanless, 307 U.S. 357 (1939); Blackstone v. Miller, 188 U.S. 189 (1903); Coe v. Town of Errol, 116 U.S. 517 (1886).
[10] Reply Brief for Appellant, p. 15, 149 Wash. Dec. 333, 301 P.2d 539 (1956).
[11] Stone, *Equitable Conversion by Contract*, 13 COLUM. L. REV. 369 (1913).

quite consistent with the doctrine of equitable conversion by contract; it is also logically independent of that doctrine. The contract right could have been successfully sustained whether or not it was assumed that the vendor's interest in realty was equitably converted into personalty by the contract. In real estate transactions the contract rights of the parties are the basis upon which equitable conversion rests; these contract rights are the cause, and not the effect, of the equitable conversion. In the present case, therefore, when the court found the contract right to payment in the vendor, and found it to be personalty within the taxing jurisdiction, it had reached a point where further argument concerning equitable conversion was completely unnecessary to the decision reached.

In reaching this decision by use of contract theory only, the court by-passed the necessity for basing the decision on any equitable ownership in the purchaser. The same decision could have been reached in a jurisdiction that completely denies any equitable interest in real estate to the purchaser under an executory contract. Washington, it may be noted, has a recorded case, *Ashford v. Reese*,[12] which does deny any equitable (or legal) interest in land to such a purchaser, in effect rejecting the entire doctrine of equitable ownership.[13] It is a unique holding, unmatched in any other jurisdiction, and is completely out of step with the great body of Anglo-Saxon property law. It is submitted that the Washington court today need not, and does not, fear any conflict with the *Ashford v. Reese* doctrine. The logical implications of that doctrine have been rejected in subsequent Washington cases,[14] and the court has given clear indications that, although never expressly overruled, *Ashford v. Reese*, to the extent that it denies equitable ownership, is no longer the law of Washington.[15]

While the court has avoided the doctrine of equitable conversion

[12] 132 Wash. 649, 233 Pac. 29 (1925).

[13] This case has been commented upon in several instances in the Washington Law Review. See Lichty, *Rights and Estates of Vendor and Vendee Under an Executory Contract for the Sale of Real Property*, 1 WASH. L. REV. 9 (1925); Schweppe, *Rights of a Vendee Under an Executory Forfeitable Contract for the Purchase of Real Estate: A Further Word on the Washington Law*, 2 WASH. L. REV. 1 (1926); Lantz, *Rights of Vendees Under Executory Contracts of Sale*, 3 WASH. L. REV. 1 (1928).

[14] Comment, 22 WASH. L. REV. 110 (1947).

[15] See Griffith v. Whittier, 37 Wn.2d 351, 353, 223 P.2d 1062, 1063 (1950), wherein the opinion stated,

> Whatever we may have meant by our unfortunate choice of language in *Ashford v. Reese, supra*, it is now abundantly clear that the purchaser under an executory contract has a valid and subsisting interest in property that is the subject matter of (such a) contract.

See also Eckley v. Bonded Adjustment Co., 30 Wn.2d 96, 190 P.2d 718 (1948); *In re* Levas' Estate, 33 Wn.2d 530, 540, 206 P.2d 482, 488 (1949) (concurring opinion by HILL, J.).

in the present case, as an explanation of how the vendor's interest becomes personal property, that type of reasoning can be seen in the earlier *Eilermann* case when it handled the same issue. That case held that

> ...a vendor's interest under an executory contract for the sale of land *should be treated as personalty* for the purpose of administration.[16] (emphasis added)

This language suggests a realization by the writer of that opinion of the fictional nature of the concept used; it apparently is intended to be the language of equitable conversion, although it was never specified as such, perhaps in deference to the prior language of the court in *Ashford v. Reese.*

Applying equitable conversion in the present case, however, would have entangled the court in particular logical difficulties. It is a rule of conflicts of laws that whether realty is equitably converted into personalty would be a question to be determined by the jurisdiction in which the land lies.[17] This rule gave no difficulty in the *Eilermann* case where the lands in issue were in Washington; in cases such as the present, however, where the lands in issue lie outside Washington, the decision would be logically dependent upon the law of the foreign jurisdiction. The conflict of law thus created would preclude Washington's uniform classification of property rights for the purpose of its own state taxation; this result, if ever reached, would be unfortunate indeed. It might be questioned whether the court, by avoiding the equitable conversion argument, has actually circumvented this logical pitfall, or whether it has simply ignored it. The answer to this question depends upon whether or not the contract rights theory used in the present decision depends upon the doctrine of equitable conversion. It has already been argued above that it does not depend upon that doctrine. Therefore it follows that the court has properly avoided the application of this rule of conflicts.

If, as is here submitted, the Washington court has found a logical means of classifying for taxation purposes the vendor's interest in an executory real estate contract as personal property without resort to the doctrine of equitable conversion, it is a logical possibility that the state might levy such a tax upon a resident vendor's interest, as in the present case, and also, by denying the doctrine of equitable conver-

[16] 179 Wash. at 18, 35 P.2d at 765.

[17] Clarke v. Clarke, 178 U.S. 186 (1900); RESTATEMENT, CONFLICT OF LAWS § 209 (1934); 2 BEALE, CONFLICT OF LAWS § 209.1 (1935); See Annot., 43 A.L.R.2d 569, 576 (1955).

sion, levy another such tax upon the land itself when it lies within the state. Theoretically this is possible, but it is an unreasonable result and should not be expected. The *Eilermann* case stands as a clear indication that the court will invoke the doctrine of equitable conversion in substance if not in name, in just such a case as this; it stands as good authority that the court will deny the state's power to tax the land itself after the title holder has made a contract to sell it.

The use of legal fictions, such as equitable conversion, in application to matters of taxation has been disapproved in numerous jurisdictions. The policy behind such disapproval is that taxation is a matter of eminently practical importance and that taxes should be levied upon realities, not upon fictions.[18] On this basis it would be possible to frame a criticism of the *Plasterer* case. Actually the deceased vendor's interest, a combination of land and the contract to sell it, did include an interest in real estate. Granting that by the contract the vendor did transfer away the full beneficial ownership, according to the standard theory of the vendor-purchaser relationship, still that transfer remained subject to defeasance. Such defeasance would take place, under the forfeiture clauses common to real estate contracts today,[19] upon default of the purchaser's contract payments and foreclosure by the vendor. It could thus be argued that, in fact, the decedent did hold an interest in Alaska realty and that that property should have been taxed only in Alaska. A possible rebuttal to this argument might be that, once the contract for sale is made, the contract rights are, for practical purposes, of somewhat greater value than the fee interest remaining in the vendor, even though there remains the possibility of default of the purchaser and the foreclosure of his equities.

It is submitted, however, that the Washington court, in the *Plasterer* and *Eilermann* cases, has reached a uniform rule that the vendor's interest in an executory real estate contract is personal property and will be taxed at the domicile of the vendor only. The court has developed the logical tools to support this rule in all situations, and it may be expected that future decisions on this problem will be consistent with the results and reasoning of these two cases.

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[18] See Connell v. Crosby, 210 Ill. 380, 71 N.E. 350 (1904); McCurdy v. McCurdy, 197 Mass. 248, 83 N.E. 881 (1908); State v. Fusting, 134 Md. 349, 106 A. 690 (1919); *In re* Swift's Estate, 137 N.. 77, 32 N.E. 1096 (1893); *In re* Wolcott's Estate, 157 N.Y. Supp. 268 (1916); Latta v. Jenkins, 200 N.C. 255, 156 S.E. 857 (1931).

[19] And present in the contract involved in the present case.