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Restitution - Constructive Trusts - Family Arrangements With Respect to Land Entered Into by Oral Trust

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RESTITUTION—CONSTRUCTIVE TRUSTS—FAMILY ARRANGEMENTS WITH RESPECT TO LAND ENTERED INTO BY ORAL TRUST—A mother, desiring to divide real property among five children, conveyed two of five shares by separate deeds to her daughter, Edith. Although no instructions were written, it was intended that Edith hold one share for her brother, John, who was mentally ill. Edith had no knowledge of the deed to this share at the time, as it was held by another brother, although the deed of her share was delivered to her. It does not appear when Edith first learned of the deed or the trust. When John died she was told of the deed by her other brother, but she refused to convey John's share to his widow and only son as requested. In an action by the widow and son against Edith, the trial chancellor imposed constructive trust relief in their favor. On appeal, *held*, affirmed. Chancery will not permit Edith to enrich herself at the expense of others. *Kent v. Klein*, 352 Mich. 652, 91 N.W. (2d) 11 (1958).

When a settlor conveys land to an intended trustee upon oral trust for himself or for an intended beneficiary, and the trustee subsequently renounces the trust, both an action to enforce the trust or for restitutionary relief are usually prevented by the statute of frauds or the parol evidence rule.¹ Exceptions to a denial of restitution are found (1) where the trustee is guilty of fraud,² and (2) where the trustee's actions, although not fraudulent, constitute a breach of a confidential relationship with the settlor.³ The principal case might be analyzed in terms of whether it falls within the second exception above. Courts are divided on the question whether the family relationship is a confidential relationship, such as to warrant relief in case of breach.⁴ Assuming that it is, the problem presented is whether Edith's actions as trustee constituted a "breach" of the relationship. As the general rule is usually formulated, to breach a confidential relationship the trustee must induce the conveyance, or the settlor must convey relying on the trustee's promise to obey the trust.⁵ Neither of these circumstances existed in the principal case. Because of various uncertainties in the facts of the case as presented, however, it is possible to argue that the decision represents an expansion of the concept of acts which constitute a breach of confidential relationship. If Edith learned of the oral trust and the deed at substantially the same time, and if she accepted the conveyance while intending not to obey the oral trust, this could be characterized as a wrongful act sufficient for a breach. Likewise, if Edith did originally

¹ Enforcement of express trust and equitable relief prevented by statute of frauds: *Salter v. Bird*, 103 Pa. 436 (1883); *Funk v. Engel*, 235 Mich. 195, 209 N.W. 160 (1926). Enforcement and equitable relief prevented by the parol evidence rule: *Bonham v. Craig*, 80 N.C. 224 (1879). The rule as to equitable relief is apparently different in England, at least in the settlor's trust situation. *Davis v. Otty*, 35 Beav. 208, 55 Eng. Rep. 875 (1865).

² See, e.g., *Brison v. Brison*, 75 Cal. 525, 17 P. 689 (1888); *Lantry v. Lantry*, 51 Ill. 458 (1869). 1 SCOTT, TRUSTS, 2d ed., §44.1 (1956). BOGERT, LAW OF TRUSTS, 3d ed., 347 (1952).

³ See, e.g., *Goldsmith v. Goldsmith*, 145 N.Y. 313 at 318, 39 N.E. 1067 (1895); *Silvers v. Howard*, 106 Kan. 762, 190 P. 1 (1920). Cf. *Becker v. Neurath*, 149 Ky. 421, 149 S.W. 857 (1912). 1 SCOTT, TRUSTS, 2d ed., §44.2 (1956). BOGERT, LAW OF TRUSTS, 3d ed., 348 (1952). When the settlor creates the trust for a named beneficiary, the beneficiary is generally granted relief in both the fraud and confidential relationship situations. Professor Ames, however, felt that only the settlor should be entitled to constructive trust relief. Ames, "Constructive Trust Based Upon the Breach of an Express Oral Trust in Land," 20 HARV. L. REV. 549 at 553 (1907). Compare Costigan, "Trusts Based on Oral Promises To Hold in Trust, To Convey, or To Devise, Made by Voluntary Grantees," 12 MICH. L. REV. 423 at 430 (1914). Costigan also suggests at 443 that the settlor might have no enforceable interest at all.

⁴ Family relationship recognized as a confidential relationship: e.g., *Rice v. Rice*, 184 Md. 403, 41 A. (2d) 371 (1945) (mother and father to son); *Metzger v. Metzger*, 338 Pa. 564, 14 A. (2d) 285 (1940) (son to mother); *Hatcher v. Hatcher*, 264 Pa. 105, 107 A. 660 (1919) (mother to son). Family relationship not recognized as confidential relationship: e.g., *Revel v. Albert*, (Iowa 1917) 162 N.W. 595 (mother to daughter).

⁵ *All v. Prillaman*, 200 S.C. 279, 20 S.E. (2d) 741 (1941); *Hewelt v. Hewelt*, 245 Mich. 108, 222 N.W. 119 (1928); *Goldsmith v. Goldsmith*, note 3 supra. RESTITUTION RESTATEMENT §183 (1937).

intend to obey the trust, acceptance of the conveyance could be characterized as a ratification of the arrangement which made her later refusal to convey wrongful. This analysis will not stand, however, if Edith in fact learned of the trust *after* she accepted the conveyance. In this alternate interpretation of the facts, acceptance could not be characterized as either wrongful or a ratification of the arrangement. The only other act by Edith was retention of the land, and if retention alone is a breach it would seem that constructive trust relief could be given in every such case in which a confidential relationship exists. This would be a definite departure from accepted doctrine. On either interpretation of the facts the case is an extension beyond existing authority, though it seems clear that the correct result was reached.⁶

A second analysis of the case is suggested by the great amount of objective evidence demonstrating the mother's intent to create a trust.⁷ Such evidence serves one of the same purposes as the presence of an inducing promise and reliance thereon, in ensuring that the purpose of the statute of frauds (protecting a trustee from fraudulent parol claims⁸) will not be circumvented,⁹ but it also serves an additional purpose. Although courts do not explicitly mention the influence of objective evidence of the intent to create a trust, it would seem that a court which is convinced by such evidence that the trustee was not intended to have the land will probably be more disposed to find that a confidential relationship and inducing promise are proved.¹⁰ It would seem that objective evidence of the intent

⁶ It has been argued in the context of the settlor's trust situation that restitution should be granted in all cases involving invalid oral trusts of land, just as it is in other arrangements rendered unenforceable by the statute of frauds. Stone, "Resulting Trusts and the Statute of Frauds," 6 COL. L. REV. 326 (1906). The argument can also be applied in other trust situations.

⁷ Such evidence included the mother's plan of division, with one child getting two shares and the incompetent son receiving no share at all, the delivery of one deed to the daughter, and the non-delivery of the deed of the share intended for the brother.

⁸ It is generally asserted that this is the purpose of the statute. 1 SCOTT, TRUSTS, 2d ed., §40 (1956); SMITH, THE LAW OF FRAUDS §311 (1907).

⁹ It seems obvious that a necessary element of the beneficiary's case would be to negative the possibility that the conveyance by the settlor was intended to benefit the trustee. No writer or court seems to have suggested that objective evidence of the intent to create a trust is especially important in this type of case. But see 35 A.L.R. 280 (1925), which suggests that to hold that an inducing promise is a basis for relief "does not wholly abrogate the Statute of Frauds, but leaves it to operate as a presumption against the existence of a trust." Also cf. *Chance v. Graham*, 76 Ore. 199 at 210-214, 148 P. 63 (1915); *Bohm v. Bohm*, 9 Colo. 100 at 111, 10 P. 790 (1886).

¹⁰ Many sources suggest that the idea of breach of a confidential relationship as a basis for constructive trust relief has been invented to give the courts wide latitude to consider the "equities" of a case. 1 SCOTT, TRUSTS, 2d ed., §44.2 (1956); POMEROY, EQUITY JURISPRUDENCE, 4th ed., §956 (1918). Bogert, "Confidential Relations and Unenforceable Express Trusts," 13 CORN. L. Q. 237 (1928); note, 31 N.C. L. REV. 242 (1953). Objective evidence inconsistent with an intent to benefit the trustee is sometimes emphasized in cases where relief is granted. See, e.g., *Springer v. Springer*, 144 Md. 465, 125 A. 162 (1924)

to create a trust greatly influenced the court in the principal case. The court placed emphasis on the fact that there were separate gifts of land to the five children, with a conveyance of two shares (but delivery of the deed of only one) to one child, as well as on other circumstances of the case.¹¹ The decision could thus be said to demonstrate that in certain fact situations a search for the trustee's specific wrongful act may be rather academic except as it provides a further justification for the result reached.

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and *White v. Ross*, 160 Ill. 56, 43 N.E. 336 (1895), where the courts emphasized the great improbability of a gift to the trustee under the circumstances of the case.

¹¹The court indicated that it was convinced that the land was intended for the brother, and stated that chancery will not close its eyes to "what is clear to the rest of mankind." Principal case at 656.