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Trusts

Edward R. Holland

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TRUSTS

CY PRES DOCTRINE

*Arkansas. Bosson v. Woman's Christian National Library Ass'n*¹ was an action in equity for specific performance of a land contract. Bosson refused the conveyance on the ground that plaintiff could not convey good title because he was a charitable trustee and had no power to sell the lots in question. The question presented was whether a charitable trustee may convey marketable title to property held in trust for the purpose of erecting a public library building thereon, apply money received from such conveyance to erect a building on county land, and turn the building over to a permanent tax-supported library organization. The court found that the land was no longer suitable for a library building; that if one was built, it could not be supported out of the trust; that the county owned land which was suitable for a library and could be supported out of tax funds but had no money to erect a building.

The court, in holding that the trustee could convey good title, applied the *cy pres* doctrine. There was no express provision against selling in the trust instrument, nor were there words giving the trustees power to sell. The court said that the trustors could not foresee that the land would become unsuitable for a library building and that libraries would be maintained by public taxation. The court held that the trustee could convey good title in order to carry out as nearly as possible, under the *cy pres* doctrine, the intent of the trustors. A correct application of the doctrine seems presented in the case. The doctrine will be applied to a charitable trust if the purpose of the trust cannot be carried out; then the equity court will allow it to be carried out in a manner approaching as nearly as possible the original purpose.² However, the Arkansas court has limited the application of the

¹ —Ark.—, 225 S. W. 2d. 336 (1949).

² 2 BOCERT, TRUSTS AND TRUSTEES (1935) § 431; SCOTT, THE LAW OF TRUSTS (1939) § 399.

doctrine to trust instruments which have no express provision against sale; if there is an express provision against the sale of the land, the court will refuse to apply the doctrine.³ This is contrary to the Restatement view.⁴ Usually the courts will permit the charitable trust to fail if there is a narrow, specific charitable intent; the *cy pres* doctrine will be applied only if there is a general charitable intent.⁵ In the present case the Arkansas court indicated that it would not apply the doctrine if there was a specific provision against sale by the trustee, since it would negate a general charitable intent.

CONSTRUCTIVE TRUSTS—BREACH OF AGENT'S DUTY OF LOYALTY

New Mexico. The Supreme Court of New Mexico in *Mitchell v. Allison*⁶ held that an agent (real estate broker) who breaches his duty of loyalty in the buying of land holds the land on constructive trust for his principal. Defendant Allison was a real estate broker and had approached the plaintiff concerning certain land owned by a party in California. Plaintiff agreed that the broker should purchase the land for him and receive the regular commission. At the same time the defendant was also the agent of the party in California to sell the land, and this was not disclosed. Defendant proceeded to buy the land and put it in the name of his partner, and the defendant, on being approached by the plaintiff to carry out his agreement, said that he would convey the land less the mineral rights for three dollars an acre, which was the agreed price for the land *in toto*. Plaintiff then brought this action for damages. Apparently the land had been conveyed so that the plaintiff could not compel a conveyance from defendant. The court held that a broker who bought for himself was a constructive trustee even if he did it in the name of a partner and that it was no defense that the land could not be bought for

³ 225 S. W. 2d. at 339. See *Atkinson v. Lyle*, 191 Ark. 61, 85 S. W. 2d. 715 (1935).

⁴ 2 RESTATEMENT, TRUSTS (1935) § 381.

⁵ 2 BOCERT, TRUSTS AND TRUSTEES (1935) § 436.

⁶ ——— N. M. ———, 213 P. 2d. 231 (1949).

the price of three dollars agreed on. The broker must notify his principal of the larger price and give him the opportunity to purchase at the higher price. This case is in accord with the majority and better view.⁷ The courts so holding say that there has been a breach of a fiduciary or confidential duty and that in equity and good conscience the agent should not be allowed to keep the land.⁸ The parol agreement to create the agency is not within the Statute of Frauds, for there has been no agreement that the agent is to convey an interest in land to his principal but rather that he is to act merely as an intermediary and is to procure the land for a conveyance to his principal.⁹ The other line of cases hold that the parol agreement between the agent and the principal is essentially an agreement for the conveyance of an interest in land and as such is directly in the teeth of the Statute of Frauds.¹⁰ The view taken in the principal case seems to be preferable.

RESULTING TRUST—ABSOLUTE CONVEYANCE FOR BENEFIT OF GRANTORS

Oklahoma. In *Johnson v. Johnson*,¹¹ a recent Oklahoma Supreme Court case, the question was whether or not a resulting trust in land had been created. Defendant was the son of the plaintiffs, and it appeared that he had urged them to convey land to him in order to avoid the necessity for probate of their wills. Plaintiffs did as the son asked. Defendant received one-half of the land, and the other one-half was conveyed to the daughter, later being conveyed to her brother, the defendant. It was agreed at the time of the conveyance that defendant was to hold the land, that he would allow the plaintiffs all rights in the land during their lifetime, and that he would convey the land to anyone they de-

⁷ BOGERT, TRUSTS AND TRUSTEES (1935 § 487; 3 SCOTT, THE LAW OF TRUSTS (1939) § 495.

⁸ *Ibid.*

⁹ *Ibid.*; 3 SCOTT, THE LAW OF TRUSTS (1939) § 402.

¹⁰ *Ibid.*

¹¹ ———Okl.———, 205 P. 2d. 314 (1949).

sired. The evidence was that defendant had been paying rent to the plaintiffs. The question in the case was who was entitled to some twenty-five hundred dollars that was obtained for a lease of the land. The court concluded that defendant held on resulting trust for the plaintiffs. The trust did not come within the Statute of Frauds because it arose by operation of law. However, the court refused to cancel the deeds on the ground that the promise to reconvey was within the Statute of Frauds. The court left the deeds effective subject to the resulting trust as to possession, rents and profits during the lifetime of the plaintiffs or the survivor of them.

A resulting trust arises by operation of law; that is, from the facts proved it is presumed that the parties intended that one should hold on trust for the other even though there was no express trust agreement between the parties.¹² The most common example of a resulting trust is where one party pays the purchase price and the title is conveyed to another.¹³ In the instant case the title was conveyed for no consideration to an immediate member of the family, and it would seem from this if any presumption or inference be present, it would be one of gift to the son and daughter. The better reasoning to reach the court's result would seem to be that the son held on constructive trust because there was a confidential, blood relationship, the conveyance was induced because of the relationship, and the son would otherwise be unjustly enriched by his own wrong. If the reasoning of the instant case is followed to its logical conclusion, many gifts between persons having close blood ties would be subject to claims of resulting trusts. However, Oklahoma courts have consistently followed the reasoning in the principal case; that is, where there is an absolute conveyance and an oral agreement between grantor and grantee, the latter is said to hold on resulting trust for the grantor.¹⁴

¹² 2 BOCERT, TRUSTS AND TRUSTEES (1935) § 451; 3 SCOTT, THE LAW OF TRUSTS (1939) §§ 404, 462.

¹³ *Ibid.*

¹⁴ *Ibid.*

CONSTRUCTIVE TRUST—BREACH OF VOLUNTARY AGENCY
RELATIONSHIP

Oklahoma. In *Raper v. Thorn*¹⁵ plaintiff and defendant were friends on farms close to each other. Land separating the two farms was up for sale in a partition suit, and it was agreed between the parties that defendant should purchase the land at the auction and that he would then convey the forty acres to the plaintiff, who would pay him the purchase price. The defendant went to the sale, bought in the land, and conveyed it to his son, not a bona fide purchaser for value. The Oklahoma court declared that defendant held on constructive trust for the plaintiff and that he was bound to convey. The court said that it was not necessary that defendant be under any duty to purchase the land, or that he received any compensation for his services, or that he would have been under any liability if he had failed to act. When he purchased the land as a voluntary agent, partner, or trustee for the plaintiff, he was bound to carry out his oral agreement. On a refusal to perform his promise, the court will declare him a constructive trustee for the plaintiff.¹⁶ The decision is consistent with the accepted theory of constructive trusts. There was a confidential relationship and the creation of a voluntary agency out of the relationship. When an agent or fiduciary takes advantage of his position to enrich himself, the courts will not let him enjoy the fruits of his misconduct but will compel him to hold the property as a constructive trustee for the wronged party.¹⁷ The result appears sound although there was voluntary agency with no monetary reward for the agent.

Edward R. Holland.

¹⁵ ———Okla.———, 211 P. 2d. 1007 (1949).

¹⁶ 3 BOCERT, TRUSTS AND TRUSTEES (1935) § 487; 3 SCOTT, THE LAW OF TRUSTS (1939) § 495.

¹⁷ *Ibid.*