TRUSTS - CONFIDENTIAL RELATIONSHIP - IMPOSITION OF CONSTRUCTIVE TRUST ON TRANSFEREE OF LAND ON ORAL PROMISE TO RECONVEY

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Trusts — Confidential Relationship — Imposition of Constructive Trust on Transferee of Land on Oral Promise to Reconvey — Plaintiff was induced to transfer his half interest in realty to his mother, because of her and his sister's fear that the income from the land, to which the mother was entitled during her life, might be tied up by the son's wife with whom he was having marital difficulties. There was no written evidence of the trust, but the mother had promised that she would act as trustee until the marital difficulties were settled, and then reconvey. Thereafter she conveyed to the sister, who, with knowledge of the agreement, refused to reconvey. Held, because of the confidential relationship existing between the parties, a constructive trust arose, and the son is entitled to a reconveyance. *Metzger v. Metzger*, 338 Pa. 564, 14 A. (2d) 285 (1940).

About three-quarters of the American jurisdictions have enacted provisions substantially similar to those in the English statute of frauds, which provide that no trust in land shall be proved by oral evidence, but except from this provision trusts arising by operation of law. Where inter vivos trusts involve an oral promise to reconvey to the settlor, foremost among these exceptions is that followed in the principal case: the imposition of a constructive trust on a transferee who has abused the confidential relationship existing between the parties. There can be little doubt that this doctrine, as a means of setting aside an unconditional deed conveying land, has been the subject of much indiscriminate use, because of a reluctance on the part of many courts to define within sufficiently precise lines the essentials constituting such a relationship. Rather, as pointed out by one court, there is a refusal to confine the scope of the phrase to any hampering definition for the express reason that such rigidity would unduly restrict its use. Other courts, feeling that this use is an evasion of the statute of frauds, require either some position of superiority and dominance in the transferee, or family relationship and close blood ties among the par-

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1 For citation and analysis of the statutes, see 1 *Bogert, Trusts and Trustees*, c. 4 (1935).
2 Among the exceptions to the operation of the statute are situations involving the following: fraud, actual, or inferred from circumstances surrounding the transaction; mistake; part performance; and that in the principal case.
4 *McGill v. Nichols*, 157 Md. 287, 145 A. 773 (1929). The language used by some of the courts, in fact, appears broad enough to cover any relationship within which one would conceivably transfer land in trust with no written evidence of the trust. "The term 'fiduciary or confidential relation' is a comprehensive one, and exists whenever influence has been acquired and abused or confidence has been reposed and betrayed." *Noble v. Noble*, 255 Ill. 629 at 635, 99 N. E. 631 (1912). "If a relationship of trust and confidence exists between the parties, that is to say, where confidence is reposed by one party and a trust accepted by the other . . . that is sufficient as a predicate for relief. The origin of the confidence is immaterial." *Quinn v. Phipps*, 93 Fla. 805 at 811, 113 So. 419 (1927). See also *Kochorimbus v. Maggos*, 323 Ill. 510, 154 N. E. 235 (1926); *Smith v. Sharp*, 70 Cal. App. 336, 233 P. 374 (1925); *Hatcher v. Hatcher*, 264 Pa. 105, 107 A. 660 (1919).
ties, to justify imposing a constructive trust because of confidential relationship. The foremost writers in the field have criticized the unrestricted use of the doctrine, and either have suggested some minimum basis for finding a confidential relationship, or have offered a totally different solution to the problem in question. While there is little question that the courts have not expounded a clear statement of what constitutes a sufficient confidential relationship to allow imposition of a constructive trust on the transferee, nevertheless there can be little doubt that the result reached thereby is a desirable one: that the transferee be compelled to carry out the purpose of the oral trust, and be denied what would otherwise be an unjust enrichment. It seems equally evident that to confine the phrase to close definition is to deprive equity of an effectual weapon to achieve the above result. The wide use of the doctrine, in spite of the wealth of adverse criticism, and the large arsenal of remedies devised to take the problem out of the operation of the statute of frauds, points to the desirability of the result reached. No doubt a power in a court to set aside an unconditional deed transferring land, on a finding of such a vague relationship, should have some limitations. It would seem, however, that if the courts rigidly enforced as a condition precedent to the imposition of a constructive trust the rule requiring the complainant to produce evidence which is clear, satisfactory, and convincing, the evil intended to be prevented by the statute of frauds would be largely eliminated. Certainly the incidence of fraud arising from protection to the transferee under the letter of the statute of frauds would be greater than that likely to exist if a pretended transferor were required to meet such a burden of proof.


6 For cases holding both ways on the importance of family and blood relationship, see annotation in 35 A. L. R. 280 at 311 (1925).

7 See 1 Scott, Trusts, § 44.2 (1939). Although Professor Scott believes the result reached in these cases is sound, he points out the large extent to which the courts decide the result, and then construct their reasoning.


9 Dean Ames has offered what seems to be the most logical solution to the problem: that the action should be in the nature of restitution for the recovery of the property. The statute of frauds only prevents going forward and enforcing the trusts, not going backward and restoring the previous status quo. The practical effect in the situation under discussion, where the settlor is also the cestui, would be the same as that reached by imposing a constructive trust on the transferee, but the proof problem raised by the statute of frauds would be eliminated. See Ames, “Constructive Trusts Based Upon the Breach of an Express Oral Trust of Land,” 20 Harv. L. Rev. 549 (1907).

10 See note 2, supra.

11 For a citation of cases setting forth this rule, see annotation in 35 A. L. R. 280 at 286 (1925).