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Restitution - Constructive Trust Relief for Breach of Oral Contract to Create Trust in Land

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RESTITUTION—CONSTRUCTIVE TRUST RELIEF FOR BREACH OF ORAL CONTRACT TO CREATE TRUST IN LAND—Plaintiff mining company sued to impose a constructive trust on mineral interests purchased by the defendant employee in breach of his oral agreement with the company. The agreement included a promise to hold any property so acquired in trust for the employer at his election. Ruling that this agreement was unenforceable under the Oklahoma statute of frauds, the trial court relied on the defendant's status as an ordinary employee without duties relating to the acquisition of mineral interests or access to confidential information, and gave judgment for the defendant. On appeal, *held*, affirmed. Without proof of positive fraud or breach of fiduciary duty, the breach of an oral agreement to hold land in trust does not give rise to a constructive trust. *Amerada Petroleum Corporation v. Burline*, (10th Cir. 1956) 231 F. (2d) 862.

A constructive trust has been defined as the "formula through which the conscience of equity finds expression."¹ In cases involving the statute of frauds the chancellor should require more than the breach of an unenforceable contract before he allows his conscience to trouble him.² The English courts look for unjust enrichment as the only prerequisite to constructive trust relief.³ The accident that the constructive trust as a restitutionary remedy in practical effect affords relief which often conforms to the actual intent of the parties, especially in the simple *A-to-B* in trust for *A* situation,

¹ Cardozo, J., in *Beatty v. Guggenheim Exploration Co.*, 225 N.Y. 380 at 386, 122 N.E. 378 (1919).

² To do otherwise would completely ignore the statutory mandate. See 2 CORBIN, CONTRACTS §401, p. 373 (1950).

³ In *re Duke of Marlborough*, 2 Ch. 133 (1894). In *Bannister v. Bannister*, 2 All E. R. 133 (1948), a widow sold real estate for a reduced price in return for a promised life beneficial interest in part of the premises. The court imposed a constructive trust on this portion to prevent the defendant from being unjustly enriched by his retention of the consideration received for the breached agreement, i.e., the excess between the value of the premises and the price paid which was assumed to be equivalent to the value of the life beneficial interest. Some American courts have seemed to adopt a similar approach. See 1 SCOTT, TRUSTS, 2d ed., §44, p. 308 (1956). In Oklahoma the resulting trust concept is utilized to allow the introduction of parol evidence to show that the beneficial interest was not conveyed along with the legal estate in unenforceable express trust situations. Thus the grantor is treated as the person who has furnished the consideration for a purchase money resulting trust. See *Johnson v. Johnson*, 201 Okla. 268, 205 P. (2d) 314 (1949).

should not be regarded as fatal.⁴ It is so regarded, however, in the majority of American jurisdictions.⁵ These courts hold that unless jurisdiction can be based upon traditional equitable grounds, such as fraud or breach of fiduciary duty, the policy of the statute of frauds prevents equitable intervention in this type of case.⁶ Having thus foreclosed resort to this relatively simple restitutionary approach, the American courts have developed the enigmatic doctrine of confidential relationship.⁷ This doctrine is widely used to justify constructive trust relief in unenforceable oral trust cases, and as outlined by some courts it embraces practically every case encompassed by the English rule.⁸ Because of its emphasis on the relationship of the parties and on the requisite of confidence which its name implies, this doctrine might be defined as a constructive fiduciary relationship. Current theories of constructive fraud, involving as they do an admixture of fraud, undue influence, duress, and often a question of mental capacity, are not foreign to the concepts underlying the confidential relationship doctrine.⁹ In fact, the confidential relationship doctrine is often explained in terms of presumed fraud or undue influence.¹⁰ The doctrine is but a shorthand reference to a host of confused equitable concepts, and their aggregation into one doctrine compounds the confusion. In view of this it is not surprising to hear the chancellor accused of fitting his rules to his chosen results.¹¹ The result in the principal case, however, seems to be beyond reproach. Because the situation presents at most only a doubtful case of unjust enrichment, a denial of constructive trust relief cannot be attacked on this ground. In this connection probably the closest analogy is the unenforceable oral promise of a land vendee. In these cases the courts

⁴ For a clarification of the difference between restitution and enforcement see Ames, "Constructive Trusts Based Upon the Breach of an Express Oral Trust of Land," 20 HARV. L. REV. 549 (1907).

⁵ *Rasdall's Administrators v. Rasdall*, 9 Wis. 379 (1859); *Silvers v. Howard*, 106 Kan. 762, 190 P. 1 (1920); 1 SCOTT, TRUSTS, 2d ed., §44, p. 310 (1956).

⁶ *Sacre v. Sacre*, 143 Me. 80, 55 A. (2d) 592 (1947); 1 SCOTT, TRUSTS, 2d ed., §40, p. 293 (1956).

⁷ *Becker v. Neurath*, 149 Ky. 421, 149 S.W. 857 (1912); *Klein v. Klein*, 112 N.Y.S. (2d) 546 (1952); 35 A.L.R. 280 (1925); RESTITUTION RESTATEMENT §182 (1936).

⁸ *Seeberger v. Seeberger*, 325 Ill. 47 at 51, 155 N.E. 763 (1927); Bogert, "Confidential Relations and Unenforceable Express Trusts," 13 CORN. L. Q. 237 (1928). The broad scope of the language used by courts when applying this rule is noted in *Trossbach v. Trossbach*, 185 Md. 47 at 52, 42 A. (2d) 905 (1945), where it is stated, "Indeed, unless limited by the context, the general statement that a constructive trust arises under circumstances which render it inequitable for the holder of the legal title to retain it may be broader and less exacting than the English rule." Thus, under the confidential relation doctrine, a constructive trust has been imposed to protect a third party beneficiary of an unenforceable oral trust. See *Huffine v. Lincoln*, 52 Mont. 585, 160 P. 820 (1916).

⁹ See *Rozell v. Vansyckle*, 11 Wash. 79, 39 P. 270 (1895); *Harrington v. Schiller*, 231 N.Y. 278, 132 N.E. 89 (1921); Green, "Fraud, Undue Influence, and Mental Incompetency," 43 COL. L. REV. 176 (1943); and 23 AM. JUR., Fraud and Deceit §14 (1939).

¹⁰ 9 WIGMORE, EVIDENCE, 3d ed., §2503 (1940); Scott, "Conveyances Upon Trusts Not Properly Declared," 37 HARV. L. REV. 653 (1924); 3 BOGERT, TRUSTS AND TRUSTEES §496, p. 209 (1946).

¹¹ See 1 SCOTT, TRUSTS, 2d ed., §44.3 (1956), for an example.

commonly permit return of the consideration received as the measure of unjust enrichment.¹² In the principal case, the defendant is enriched only to the extent of the amount paid for the broken promise. This amount is difficult to ascertain since this promise entered only remotely, if at all, into the negotiation of the defendant's contract of employment.¹³ There is admittedly no mistake, actual fraud, or fiduciary relationship involved, and the court cannot be criticized for refusing to extend the confidential relationship doctrine to an ordinary employment situation without proof of the factual existence of such a relationship.¹⁴

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¹² *Turner v. White*, 329 Mass. 549, 109 N.E. (2d) 155 (1952); 3 BOGERT, TRUSTS AND TRUSTEES §479 (1946).

¹³ Although this point was not discussed in the case, it seems highly probable that the employment contract was supported only by the normal and ordinary consideration paid for the type of services rendered by the defendant. The defendant had not, therefore, been enriched at all. See principal case at 866.

¹⁴ *Renshaw v. Tracy Loan and Trust Co.*, 87 Utah 364, 49 P. (2d) 403 (1935), and *Guedry v. Jordan*, (Tex. Civ. App. 1924) 268 S.W. 191, support the proposition that there is no confidential relationship inherent in the ordinary employment situation as to matters not within the scope of the employee's duties. See 100 A.L.R. 872 (1936).