TRUSTS—CONSTRUCTIVE TRUST—TRACING FUNDS INTO THE HANDS OF AN INNOCENT PAYEE-ANTECEDENT DEBT AS VALUE

James R. Bliss S.Ed.
University of Michigan Law School

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Estates and Trusts Commons

Recommended Citation
Available at: https://repository.law.umich.edu/mlr/vol46/iss1/20

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
Plaintiffs advanced $3,200 to X intending to make a loan to Y secured by Y’s note and mortgage. X delivered to plaintiffs a note and mortgage to which he had forged Y’s name, and deposited $3175 of the money in his personal bank account, which there­tofore had shown a balance of $7.09. Two days later, and before any other
deposits were made,1 $X$ withdrew $1000 from his account by check, with which he purchased a draft payable to defendant. This he delivered to defendant in satisfaction of a debt he owed defendant. Eighteen months later $X$ died, plaintiffs discovered the forgery, and in the present action sought to compel defendant to account as trustee for the funds received from $X$. Held, a constructive trust will be impressed upon funds obtained by fraud, and an innocent party, who obtained such funds in satisfaction of an antecedent debt and without change of position will be required to account therefor to the equitable owners. Meier v. Geldis, (Neb. 1947) 27 N.W. (2d) 215.

In many situations the satisfaction of an antecedent debt in consideration of the transfer of property is treated as "value" so that the transferee may hold the property free of the claims of the equitable owner thereof, always assuming the transferee's lack of notice of such claims.2 Thus, the Uniform Negotiable Instruments Law treats an antecedent debt as "value,"3 and the same result is obtained under the Uniform Sales Act where the vendor has a "defeasible" title.4 Likewise, the Uniform Fraudulent Conveyance Act5 considers the antecedent debt as "fair consideration."6 Apart from statute, however, considerable disagreement exists and numerous distinctions have been drawn. For example, it has been said that the antecedent debt is not value as against the claims of a beneficiary of an express trust, but that the contrary is the rule in the case of a constructive trust.7 It has been suggested that this is because the law favors the equities of the cestui que trust more than it favors the claims of one who through his own mistake or negligence has parted with title to his property.8 The distinction has apparently been embodied in the Uniform Sales Act.9 Likewise, distinctions have been drawn between transfers of property and of money, favoring the transferee of the latter.10 This has been stated in terms of a tracing

1 The report does not indicate the order of withdrawals, beyond the statement that $X$'s balance was sufficient to cover the check in question. The court did not seem to consider that any problem of commingling of assets existed. See 3 Scott, Trusts, §§ 515, 516, 517 and 521.2 (1939). Perhaps it was thought that de minimis doctrines applied because of the slight amount of $X$'s fund in the account at the time of deposit.

2 See, generally, 3 Scott, Trusts, §§ 474 and 475 (1939); 12 A.L.R. 1048 (1921).

3 Section 25.

4 Section 76.

5 Section 3.

6 This can hardly be considered to be a helpful analogy to the present case, as it seems to state, in terms of "antecedent debt," only the general common law doctrine that preferential treatment of a creditor is not subject to attack by an unsecured, individual creditor.

7 3 Scott, Trusts, § 475 (1939).

8 Ibid.

9 It will be noted that section 24 applies only to vendors whose title is "defeasible."

10 Apparently the common law rule as to the diversion of trust property by an express trustee is still in effect.

problem,11 as well as in the antecedent debt formula,12 and in either case con-
siderations of commercial convenience play an important part. It is interesting
to observe that had plaintiffs delivered negotiable bearer paper to \( X \), the fraudu-
lent party, in the principal case, and had \( X \) delivered the same to the defendant
in satisfaction of his antecedent debt, the defendant could have taken free of the
plaintiffs' claims.18 The decision seems to have the effect of rendering less
negotiability to money converted into a negotiable instrument than to bearer
paper. Even considering the defendant in the principal case as a donee, he could
still have taken free of plaintiffs' claims had he established a change of position in
reliance on \( X \)'s payment.14 This principle was recognized by the court, but
some requirement of affirmative reliance was apparently thought necessary. It
might well be argued that the lapse of eighteen months and the death of the
debtor, presumably insolvent, amounted to sufficient change of position to sus-
tain defendant's claim.18

James R. Bliss, S.Ed.

11 Scott v. Surman, Willes 400, 125 Eng. Rep. 1235 (1742); Miller v. Race, 1
12 Stephens v. Board of Education, 79 N.Y. 183 (1879); Rawlins Co. State Bank
v. Walters, 92 Kan. 391, 140 P. 864 (1914).
13 Uniform Negotiable Instruments Law, § 25. The decision in the principal
case was thought to be compelled by Allen Dudley & Co. v. First National Bank, 122
Neb. 443, 240 N.W. 522 (1932). That case seems to have decided the very different
question of a bank's right to set off a collateral debt of the depositor, without the
depositor's knowledge, against a draft deposited in the account of the debtor, which
draft the bank had reason to suppose was intended to cover checks issued by the debtor
in payment for property of the plaintiff.
14 3 Scott, Trusts, § 480 (1939).
15 Compare County of Jefferson v. McGrath's Exec., 205 Ky 484, 266 S.W. 29
(1924); Richey v. Clark, 11 Utah 467, 40 P. 717 (1895); Winslow v. Anderson,
78 N.H. 478, 102 A. 310 (1917). But see the interesting argument of Grand Lodge
v. Towne, 136 Minn. 72, 161 N.W. 403 (1917).