

Michigan Law Review

Volume 57 | Issue 4

1959

Trusts - Resulting and Constructive Trusts - Rights of Third-Party Donee to Enforce Oral Trust of Land

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Recommended Citation

Lawrence E. Blades, *Trusts - Resulting and Constructive Trusts - Rights of Third-Party Donee to Enforce Oral Trust of Land*, 57 MICH. L. REV. 621 (1959).

Available at: <https://repository.law.umich.edu/mlr/vol57/iss4/16>

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TRUSTS—RESULTING AND CONSTRUCTIVE TRUSTS—RIGHT OF THIRD-PARTY DONEE TO ENFORCE ORAL TRUST OF LAND—Plaintiff alleged that her husband, having paid the purchase price on land intended as a gift for her, caused title to be taken in the name of defendant to hold as trustee. There was, however, no written evidence to support these contentions. Plaintiff further alleged that she took possession and made valuable permanent improvements on the land with the approval of both her husband and defendant. One year after the husband's death and three years after plaintiff's entrance, defendant filed suit for possession. In the present action to enjoin that suit and to establish her ownership, the lower court held that plaintiff failed to state a claim. On appeal, *held*, reversed, one judge dissenting. If plaintiff's allegations are accepted as true, her complaint sets out facts upon which relief could be granted. Either a resulting trust or a constructive trust might be imposed in plaintiff's behalf.¹ *Binz v. Helvetia Florida Enterprises*, (Fla. App. 1958) 104 S. (2d) 124.

Although the result of the principal case seems desirable, the theories of relief considered by the court are questionable. Generally, where one person furnishes the consideration for a conveyance of land to another, the grantee is presumed to hold for the payor under a purchase-money resulting trust.² The court in the principal case, however, seems to have

¹ The court also referred to the enforceability of the oral gift under the doctrine of part performance. This theory, however, would be to no avail if the trust transaction left plaintiff's husband with no interest to give her. Therefore, it seems that this was not considered a separate ground for relief but was being used in conjunction with the finding of a trust.

² Statutes in some jurisdictions have abolished the rule. Ky. Rev. Stat. (1956) §381.170; Mich. Comp. Laws (1948) §§555.7-555.9; Minn. Stat. Ann. (1947) §§501.07-501.09; 49 N.Y. Consol. Laws (McKinney, 1945) §94; Wis. Stat. (1957) §§231.07-231.09.

indicated that where the payor intends a gift of the land to a third party,³ the grantee may hold on a resulting trust for the third party.⁴ In finding a resulting trust for a third party, a court necessarily acts upon the express intent of the parties. Yet such an extension of the purchase-money resulting trust doctrine cannot be reconciled with the theory upon which it rests. The doctrine is justified by the belief that one who furnishes the consideration for land intends to benefit himself rather than "a stranger."⁵ From this normal expectation the payor's intention is presumed without reference to the actual understanding of the parties.⁶ Therefore, since the presumption should operate only in favor of the payor, indication of the existence of a resulting trust for plaintiff in the principal case would be unsound.⁷ But the equivocal language used by the court⁸ suggests an alternative analysis. The court may have been holding that a resulting trust did arise in favor of the payor-husband with plaintiff succeeding to his interest since his oral gift to her was enforceable under the doctrine of part performance.⁹ This analysis, however, seems defective also. While actual intent is not material in raising the presumption, it would seem that the presumption could be rebutted by evidence that the payor's actual intention was not to benefit himself.¹⁰ In the principal case, proof by defendant-trustee of the existence of an oral trust for the plaintiff would seem to constitute such evidence. To allow the trustee to prevail over the payor on the existence of resulting trust by showing the existence of an unenforceable trust which he refuses to carry out may appear unfair.¹¹

³ The opinion states that plaintiff's allegations appeared sufficient for application of the resulting trust doctrine, but fails to make it clear in whose favor the rule would operate.

⁴ For similar results, see *Lewis v. Lewis*, (Mo. 1920) 225 S.W. 974; *In re Steel*, 125 N.Y.S. 187, 68 Misc. 579 (1910); *Freeland v. Williamson*, 220 Mo. 217, 119 S.W. 560 (1909); *Siemon v. Schurck*, 29 N.Y. 598 (1864).

⁵ See, e.g., *Howe v. Howe*, 199 Mass. 598, 85 N.E. 945 (1908); *Aborn v. Searles*, 18 R.I. 357, 27 A. 796 (1893); *Marcilliat v. Marcilliat*, 125 Ind. 472, 25 N.E. 597 (1890).

⁶ For the historical and practical basis of the purchase-money resulting trust doctrine, see Scott, "Resulting Trusts Arising Upon the Purchase of Land," 40 HARV. L. REV. 669 (1927).

⁷ It might be argued that the husband was in substance making a gift of the money to plaintiff, thus making her the payor. Cf. *Gaines v. Drakeford*, 51 S.C. 37, 27 S.E. 960 (1897). But see 2 TRUSTS RESTATEMENT §453, comment a (1935), repudiating this argument.

⁸ See note 3 supra.

⁹ *Seavey v. Drake*, 62 N.H. 393 (1882); *Burgess v. Burgess*, 306 Ill. 19, 137 N.E. 403 (1922); *Kinsell v. Thomas*, 18 Cal. App. 683, 124 P. 220 (1912). The kind of "performance" ordinarily required to enforce a parol gift of land consists of taking possession and making valuable improvements with the donor's approval. See generally 2 CORBIN, CONTRACTS §441 (1950).

¹⁰ Various types of evidence can be used to rebut the presumption. For examples see 2 TRUSTS RESTATEMENT §§445-456 (1935).

¹¹ In *In re Davis*, (D.C. Mass. 1901) 112 F. 129, *affd. sub nom. In re Peabody*, (1st Cir. 1902) 118 F. 266, the court allowed the presumption to stand despite such proof. Since the defendant was unwilling to carry out the express trust, the court felt it would be "inequitable" to give weight to the evidence.

But in making the oral trust of land unenforceable, the Statute of Frauds does not make it unlawful or void.¹² If the trustee chose to perform the oral trust, the payor could not object.¹³

It was also indicated in the principal case that a constructive trust might be imposed on defendant "to prevent unjust enrichment and abuse of confidence."¹⁴ Without a showing of a confidential relationship between her husband and defendant, it is doubtful that plaintiff could recover on a constructive trust theory.¹⁵ Nevertheless, cases involving abuse of a confidential relationship¹⁶ have been recognized as an exception to the general refusal of American courts to impose a constructive trust when a trustee breaches an oral trust of land.¹⁷ Though it would seem that the trustee is unjustly enriched at the expense of the one who paid value and reposed confidence, the cases usually construct the trust in favor of the third-party donee.¹⁸ The instant case, however, suggests no apparent ground for any finding of a confidential relationship. Thus it seems possible that the court may have been relying on the trust relationship itself as indicating that confidence was reposed in defendant. It is true that some courts have been very liberal in applying the doctrine of confidential relationship.¹⁹ But expanding the concept to embrace every case involving a trust would result in the exception swallowing the rule.²⁰ Moreover, constructing a trust for the third party would be an undue violation of the Statute of Frauds since this would be giving effect to the actual intent of the parties. On the other hand, the court may have been suggesting that the constructive trust could operate in favor of the payor-husband with plaintiff succeeding to his interest on the gift analysis. Such a result, even absent confidential relationship, would find support in many writers who have criticized the American courts for not recognizing a

¹² *Dove v. White*, 211 Md. 228, 126 A. (2d) 835 (1956).

¹³ *Dickinson v. Dickinson*, 131 Conn. 392, 40 A. (2d) 184 (1944); *Hunt v. Hunt*, 202 Ark. 130, 149 S.W. (2d) 930 (1941); *Faunce v. McCorkle*, 321 Pa. 116, 183 A. 926 (1936).

¹⁴ The terms "unjust enrichment" and "abuse of confidence" are apparently used in a synonymous sense by the court. The opinion, at 127, cites a definition which makes unjust enrichment "the result of" abuse of confidence.

¹⁵ See 4 SCOTT, TRUSTS, 2d ed., §453 (1956).

¹⁶ E.g., *Stahl v. Stahl*, 214 Ill. 131, 73 N.E. 319; *Metzger v. Metzger*, 338 Pa. 564, 14 A. (2d) 235.

¹⁷ The "American rule" is illustrated by *Patton v. Beecher*, 62 Ala. 579 (1878). See cases cited in 1 SCOTT, TRUSTS, 2d ed., §44, p. 310, n. 4 (1956).

¹⁸ E.g., *Haws v. Jensen*, 116 Utah 212, 209 P. (2d) 229 (1949); *Stahl v. Stahl*, note 16 *supra*.

¹⁹ E.g., *Seeberger v. Seeberger*, 325 Ill. 47, 155 N.E. 763 (1927). See Bogert, "Confidential Relations and Unenforceable Express Trusts," 13 CORN. L. Q. 237 (1928).

²⁰ As Professor Bogert has observed, "It is difficult to imagine a grantor transferring realty to hold under oral promise in trust, unless the grantor is in considerable intimacy with the grantee and has a high degree of confidence in him." 3 BOGERT, TRUSTS AND TRUSTEES §496, p. 209 (1946).

distinction between giving restitution to the grantor and enforcing the parties' intent.²¹

Despite the court's doubtful reasoning, there were present in the principal case elements upon which relief might be granted. Plaintiff's entrance into possession and adding valuable improvements could have warranted enforcement of the oral trust by the doctrine of part performance.²² The difference between using a constructive or resulting trust theory and enforcing an express trust in some cases may be significant. A constructive or resulting trust would charge the trustee only with a duty to convey the land to the beneficiary while enforcement of the express terms of an oral trust might involve obligating the trustee to perform other duties that may have been intended in connection with his holding legal title to the land.

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²¹ See, e.g., 2 CORBIN, CONTRACTS §401 (1950); Ames, "Constructive Trusts Based Upon the Breach of an Express Oral Trust of Land," 20 HARV. L. REV. 549 (1907); Stone, "Resulting Trusts and the Statute of Frauds," 6 COL. L. REV. 326 (1906).

²² Many courts have enforced oral trusts of realty under the doctrine of part performance. See, e.g., *Dove v. White*, 211 Md. 228, 126 A. (2d) 835 (1956); *Mulli v. Mulli*, 105 Cal. App. (2d) 68, 232 P. (2d) 556 (1951); *Stewart v. Damron*, 63 Ariz. 158, 160 P. (2d) 321 (1945); *Thierry v. Thierry*, 298 Mo. 25, 249 S.W. 946 (1923). Entrance into possession and valuable improvements by the beneficiary are usually required to make the oral trust enforceable under the doctrine of part performance. See 1 TRUSTS RESTATEMENT §50 (1935).