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## Constructive Trust -- Fiduciary Relationship -- Bank Official and Loan Applicant

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two analogies. The first was to a matrimonial situation in which the court took jurisdiction over a foreign-appointed administrator at his request as a matter of comity.<sup>19</sup> The second analogy was to the federal system in which the court voiced grave doubts that the courts in other states must give this regardless of where they were appointed, but with the qualification that whatever judgments might be rendered would be subject to all of the laws of the state making the appointment including the probate law.<sup>20</sup> The judgments given in these two analogies were weak because they were subject to complete review in other jurisdictions, and even in the instant case the court voiced grave doubts that the courts in other states must give this judgment "full faith and credit."<sup>21</sup>

Until there is a decision by the court of last resort on this point, there can be no settled law. Moreover, there seems to be a conflict of authority and reasoning on this point between federal and state courts. At present, these judgments can validly be rendered, but they are subject to complete review by the courts of another state. As a matter of fact, if followed at all, they will be followed by the courts of other states only as a matter of comity.

### CONSTRUCTIVE TRUST—FIDUCIARY RELATIONSHIP— BANK OFFICIAL AND LOAN APPLICANT

An applicant for a loan from a cooperative bank brought suit in equity to obtain title to land, which a bank official had bought in his wife's name. Through his position on the bank's security committee, he had secured, in expressed confidence, oral information regarding the land's value, location, and low purchase price from the applicant. A statute<sup>1</sup> required two members of the security committee to approve a written application containing this information before a loan could be granted. The trial court dismissed the complaint. *Held*, that the official holds the land under a constructive trust for the loan applicant, as a result of having purchased it in violation of the fiduciary relationship that existed because of the information conveyed to him in confidence. *Warsofsky v. Sherman*, 93 N.E.2d 612 (Mass. 1950).

The rule is well established that breach of a fiduciary or confidential relationship<sup>2</sup> will cause courts of equity to impress a constructive trust on the profits or property gained thereby.<sup>3</sup> The trustee will be compelled to convey

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19. *Id.* at 878.

20. *Id.* at 879.

21. *Id.* at 881.

1. MASS. ANN. LAWS c. 170, § 26 (1948).

2. The terms fiduciary and confidential are used interchangeably; see Bogart, *Confidential Relations and Unenforceable Express Trusts*, 13 CORNELL L. Q. 237 (1928) (suggesting that the former term be limited to the more formal and customary relationships).

3. *Yamins v. Zeith*, 322 Mass. 268, 76 N.E.2d 769 (1948); *Beatty v. Guggenheim Exploration Co.*, 225 N.Y. 380, 386, 122 N.E. 378, 380 (1919) (Cardozo, J., "When

the legal title to the person whose confidence he has betrayed,<sup>4</sup> even though he may have filed title in another's name.<sup>5</sup> Normally he will receive the purchase price, so that both parties are returned to their previous conditions.<sup>6</sup> The difficulty lies in determining whether there is a relationship that, when breached, will give rise to a constructive trust. Although the courts have avoided exactly defining the limits within which a fiduciary relationship will be recognized,<sup>7</sup> certain relationships<sup>8</sup> are presumed to prevent the parties from dealing with each other as strangers at arm's length.<sup>9</sup> Some social, moral, domestic, or even personal relationships are also fiduciary.<sup>10</sup> Ordinarily, however, more than mutual respect or confidence is needed to make a business relationship fiduciary, unless there is a reasonable belief that one party is acting in the other's behalf instead of in his own.<sup>11</sup> Generally, one will be declared a fiduciary whenever he has abused his influence or betrayed the confidence reposed in him.<sup>12</sup> Nevertheless, courts have shown a tendency to limit this broad general principle by denying this relationship "between mortgagor and mortgagee, pledgor and pledgee, and applicant for a loan and proposed lender."<sup>13</sup> It is the last named exception with which the instant case comes into conflict.

property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee."); 3 BOGERT, TRUSTS AND TRUSTEES § 481 (1946); 3 POMEROY, EQ. JUR. § 956 (5th ed. 1941); 3 SCOTT, LAW OF TRUSTS § 462 (1939); 1 BAYLOR L. REV. 217 (1948); 9 BENCH AND BAR (N.S.) 95 (1914).

4. 3 SCOTT, LAW OF TRUSTS § 462.3 (1939).

5. 3 SCOTT, LAW OF TRUSTS § 462.2 (1939).

6. *Ibid.*; Bogert, *supra* note 2; Lang v. Giraud, 311 Mass. 132, 40 N.E.2d 707 (1942); Cann v. Barry, 283 Mass. 313, 199 N.E.2d 905 (1936).

7. Halker v. Homestead Building & Loan Ass'n, 59 N.Y.S.2d 689 (Sup. Ct. 1944); Cann v. Barry, *supra* note 6.

8. Broker and principal, Spritz v. Brockton Sav. Bank, 305 Mass. 170, 25 N.E.2d 155 (1940); *cf.* Fish v. Teninga, 330 Ill. 160, 161 N.E. 515 (1928). Coadventurers, Cann v. Barry, *supra* note 6. Employer and employee, Horn Pond Ice Co. v. Pearson, 267 Mass. 256, 166 N.E. 640 (1929); Essex Trust Co. v. Enwright, 214 Mass. 507, 102 N.E. 441 (1913). Physician and patient, Woodbury v. Woodbury, 141 Mass. 329, 5 N.E. 275 (1886). Trustee and beneficiary, 3 POMEROY, EQ. JUR. § 956 (5th ed. 1941); 3 SCOTT, LAW OF TRUSTS § 462 (1939); 9 BENCH AND BAR (N.E.) 95 (1914).

9. 3 POMEROY, EQ. JUR. § 956 (5th ed. 1941); 3 SCOTT, LAW OF TRUSTS § 462 (1939); *see* Yamins v. Zeitz, *supra* note 3, 76 N.E.2d at 772; Halker v. Homestead Building & Loan Ass'n, *supra* note 7, at 691.

10. Metcalf v. Ledey, Wheeler and Co., 140 Fla. 149, 191 So. 690 (1939); Hawkes v. Lackey, 207 Mass. 424, 23 N.E. 828 (1911); Laue v. Moore, 151 Mass. 87, 23 N.E. 828 (1890); 3 POMEROY, EQ. JUR. § 956a (5th ed. 1941).

11. Yamins v. Zeitz, *supra* note 3; Plumer v. Luce, 310 Mass. 789, 39 N.E.2d 961 (1942); Comstock v. Livingston, 210 Mass. 581, 97 N.E. 106 (1912).

12. Reed v. A. E. Little Co., 256 Mass. 442, N.E. 918 (1926); 3 BOGERT, TRUSTS AND TRUSTEES § 482 n.11 (1946); *accord*, Tate v. Williamson, L.R. 2 Ch. 55, (1856) (Lord Chelmsford, L.C., "Whenever . . . confidence is necessarily reposed by one, and the influence which naturally grows out of that confidence is abused, or the influence is exerted to obtain an advantage at the expense of the confiding party, the person so availing himself of his position will not be permitted to retain the advantage, although the transaction could not have been impeached if no such confidential relation has existed").

13. Carpenter & Carpenter, Inc. v. Kingham, 56 Wyo. 314, 109 P.2d 463, 475 (1941); 3 BOGERT, TRUSTS AND TRUSTEES § 482 (1946). *But cf.* Nichols v. Martin, 277 Mich. 305, 269 N.W. 183 (1936) (mortgagee held a fiduciary).

In the few previous decisions involving misuse of information given in loan applications,<sup>14</sup> emphasis has been placed on the applicant's well established right<sup>15</sup> to prevent the intervention of any buyer through obtaining an option on the property,<sup>16</sup> estoppel when the applicant made no objection to the conduct of the proposed lender until two years later,<sup>17</sup> and failure to convey any new information to a loan company already negotiating for the property for itself, in holding against the existence of a fiduciary relationship. Since those cases were from other jurisdictions, the court in the present case was free to rely on analogous situations. Neither gratuitous assistance by an old friend who later acted in his own self-interest<sup>18</sup> nor false evaluation of machinery by an appraiser so that he could buy it for himself,<sup>20</sup> was sufficient to create a fiduciary relationship. However, the latter holding, relied on by the lower court in the instant case, was modified by a very recent decision<sup>21</sup> which followed previous holdings that brokers in that jurisdiction are in a principal and agent relationship<sup>22</sup> in decreeing a constructive trust when a broker bought for himself property which he was employed to purchase.

While the court gave some consideration to these previous cases, in the main it based the present decision on the broad general law<sup>23</sup> and the equities of the situation. It emphasized the loan applicant's request that the matter of obtaining a loan be discussed in strictest confidence, which implied the understanding that the bank's security officer would use the information thus revealed only in determining whether to grant a loan on the property.<sup>24</sup> A statute<sup>25</sup> requires that all possible information be furnished to cooperative banks and that this be carefully considered by their security committees before any loans are granted. This serves to protect the banks, whose customers ordinarily can furnish as security only the property being purchased.<sup>26</sup> It also makes it incumbent upon the prospective borrower to reveal information which, lacking some protection, may deprive him of the need for the loan through enabling the recipient of the information to purchase the property for himself.

It is submitted that, in justice, customers should not be subjected to the personal acquisitiveness of bank officials who would obtain bargains for

14. *Halker v. Homestead Building & Loan Ass'n*, *supra* note 7, at 691.

15. *Coleman v. Applegarth*, 68 Md. 21, 11 Atl. 284 (1887).

16. *Goldman v. Harford Road Bldg. Ass'n*, 150 Md. 677, 133 Atl. 843 (1926).

17. *Smith v. Harwell*, 199 Ark. 757, 136 S.W.2d 172 (1940).

18. *Halker v. Homestead Building & Loan Ass'n*, *supra* note 7.

19. *Fletcher v. Bartlett*, 157 Mass. 113, 31 N.E. 760 (1892); *cf. Carpenter & Carpenter, Inc. v. Kingham*, *supra* note 13.

20. *Salter v. Beal*, 321 Mass. 105, 71 N.E.2d 872 (1947).

21. *Berenson v. Nirenstein*, 93 N.E.2d 610 (Mass. 1950).

22. *Spritz v. Brokton*, *supra* note 8.

23. See note 12, *supra*.

24. *Warsofsky v. Sherman*, 93 N.E.2d 612 (Mass. 1950).

25. ANN. LAWS OF MASS. c. 170 § 26 (1948).

26. *Warsofsky v. Sherman*, *supra* note 24; *Lowell Co-operative Bank v. Co-operative Central Bank*, 287 Mass. 338, 191 N.E. 921 (1934); *see Greenfield Savings Bank v. Abercrombie*, 211 Mass. 252, 255, 97 N.E. 897,899 (1912).

themselves by misusing confidential information. Public confidence, it should be remembered, is essential to lending agencies.<sup>27</sup> Since statutory prohibition<sup>28</sup> against loan officers taking fees, gifts, or making unsound investments<sup>29</sup> serves to protect banks against unconscionable acts by their officials, it seems that the courts should make them quasi-agents of the applicants dealing with the banks or in some other way establish a fiduciary relationship between them in every such case. The present decision could also serve as authority for requiring officials of banks other than co-operative banks, indeed of any lending agency that necessarily, because of statutory requirement or otherwise, acquires confidential information regarding the contemplated purchase, to deal honorably with those whose confidence they hold, and to use the information only for its intended purpose.

### DOMESTIC RELATIONS—WIFE'S CAUSE OF ACTION FOR LOSS OF CONSORTIUM DUE TO NEGLIGENT INJURY TO HUSBAND

Because of defendant employer's negligence, plaintiff's husband was injured, suffering severe and permanent injuries to his body, as a consequence of which plaintiff was deprived of his aid, assistance and enjoyment, specifically sexual relations. Plaintiff's husband received compensation for his injuries pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act,<sup>1</sup> which provides<sup>2</sup> exclusive liability for employers. Plaintiff brought action against defendant to recover for loss of consortium. Trial court entered a judgment for defendant, on motion that the court lacked jurisdiction and the complaint failed to state a cause of action. *Held*, on appeal, judgment reversed for plaintiff; a wife has a cause of action for loss of consortium due to a negligent injury to her husband. *Hittaffer v. Argonne Co.*, 183 F.2d 811 (D.C. Cir. 1950), *cert. denied*, 71 S.Ct. 81 (1950).

Prior to the announcement of this decision, there was unanimity of authority denying the wife a cause of action in these premises.<sup>3</sup> On the

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27. *Lowell Co-operative Bank v. Co-operative Central Bank*, *supra* note 26.

28. ANN. LAWS OF MASS. c. 170 § 43.

29. *Greenfield Savings Bank v. Abercrombie*, *supra* note 26.

1. 44 STAT. 1424 *et seq.*, 33 U.S.C. § 901 *et seq.* (1946).

2. 44 STAT. 1426, 33 U.S.C. § 905 (1946).

3. *E.g.*, *Tyler v. Brown-Service Funeral Homes Co.*, 250 Ala. 295, 34 So.2d 203 (1948); *Sobolewski v. German*, 32 Del. 540, 127 Atl. 49 (1924); *Cravens v. Louisville & Nashville R.R.*, 195 Ky. 257, 242 S.W. 628 (1922); *Emerson v. Taylor*, 133 Md. 192, 104 Atl. 538 (1918); *Gearing v. Berkson*, 223 Mass. 257, 111 N.E. 785 (1916); *Nash v. Mobile & Ohio R.R.*, 149 Miss. 823, 116 So. 100 (1928); *Tobiassen v. Polley*, 96 N.J.L. 66, 114 Atl. 153 (1921); *Maloy v. Foster*, 169 Misc. 964, 8 N.Y.S.2d 608 (Sup. Ct. 1945); *Landwehr v. Barbas*, 241 App. Div. 769, 270 N.Y. Supp. 534 (2d Dep't 1934). Only one court ever had allowed the action, *Hipp v. E. I. duPont de Nemours & Co.*, 182 N.C. 9, 108 S.E. 318 (1921), and that court subsequently effectively reversed its position, *Hinnant v. Tide Water Power Co.*, 189 N.C. 120, 126 S.E. 307 (1925);