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Contracts—Constructive Trusts

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where termination is specified in a certain manner, it could not imply a condition that the principal has a right to terminate the agreement by selling the building. The result reached by the court, which perhaps can be justified by the ambiguity of the agreement,[45] seems to argue from the fact of the stipulation of an express termination agreement to the finding of a contract of employment. The case principally relied on by the court did not involve such a situation,[46] since it dealt with the breach of a definitely established employer-employee relationship negotiated between the employer and a trade union, providing employment for a definite period at a guaranteed weekly wage. Here the very point in issue is whether any employer-employee relationship was ever contemplated.

The dissenters, led by Judge Dye, feel that when the contract is read in the light of its avowed purpose, it is, in form and tenure, the usual real estate management agreement, which could be converted into an employment contract only by lifting the word "employ" and "employment" out of context. Further provisions in the agreement indicated a marked similarity to the usual provisions in a management agreement which is terminated when the subject matter is extinguished by a bona fide sale after notice.

Constructive Trusts

A person who delivers monies to another with instructions to pay them to a third person may intend either to make the receiver an agent for himself or to constitute him a trustee for a third person.[47] If the former intention is found, the third person will have no right of action to recover the monies;[48] if the latter be the intention, a cause of action for money had and received will arise in favor of the third person.[49] It is the intention of the owner, and not that of the receiver which is determinative of the relationship formed.[50]

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45. After stating that defendants were employed, the parties thereafter were exclusively referred to as principal and agent.

46. *Hudak v. Hornell Industries,* 304 N. Y. 207, 106 N. E. 2d 609 (1952) noted in 4 SYR. L. REV. 146 (1952).

47. 2 WILLISTON, CONTRACTS, § 351 (Rev. ed. 1936).

48. *Erb v. Banco di Napoli,* 243 N. Y. 45, 152 N. E. 460 (1926); *Noyes v. First Nat. Bank,* 180 App. Div. 162, 167 N. Y. Supp. 288 (1st Dep't 1917), *aff'd* 224 N. Y. 542, 120 N. E. 870 (1918).

49. 2 WILLISTON, *op. cit.* § 353.

50. *Sayer v. Wynkoop,* 248 N. Y. 54, 59, 161 N. E. 417, 418 (1928). While an explicit declaration of trust may be involved, *Rogers Locomotive & Machine Works v. Kelly,* 88 N. Y. 235 (1882), circumstances which show beyond reasonable doubt that a trust was intended to be created is sufficient. *Beaver v. Beaver,* 117 N. Y. 421 (1889). The latter situation presents a question of fact for the jury. *Read v. Morford,* 203 App. Div. 166, 196 N. Y. Supp. 433 (1st Dep't 1922).

The Court of Appeals, in a unanimous decision, held that no trust relationship was established where the defendant, a Roumanian corporation agreed to aid in the servicing of a government bond issue, known as the "Roumanian Four Percent Consolidated Loan of 1922."[51] The General Bond named the British Overseas Bank, Ltd. as "the financial agents of the government for the service of said Bonds" and designated it as "Trustee for the Bondholders." Defendant's duties were set out in an agreement with the Ministry of Finance.[52] In 1933, the Roumanian government forbade further export of currency, but provided for continued deposits with the defendant bank. It appeared that all deposits ceased after 1937.

Plaintiff bondholder, a Swiss corporation, alleged that the Roumanian government continued payments up to October 1, 1941 but presented no proof to substantiate its claim. Roumanian law, which governed the contract, was not pleaded or proved, but the court held that plaintiff's proof of such law, would not, in any event, establish a cause of action under New York Law[53] sufficient to justify the issuing of a warrant of attachment.[54]

The claim that bondholders are third party beneficiaries of defendant's agreement with the government is clearly contrary to well settled New York Law.[55] The court then proceeded to analyze the claimed trust relationship. "The facts are, first, there was no promise on the part of defendant to pay bondholders, and second, there was no breach by defendant of the agreement which it actually did make." Control of the funds was at all times retained by the government. The obligation to procure and transmit the funds were made subject to the directions of the government.

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51. *Ehag Eisenbahnwerte Holding Aktiengeselkschaft v. Banca Nationala A Romaniei,* 306 N. Y. 242, 117 N. E. 2d 346 (1954).

52. Art. 4—The bank "obligates itself to make all payments out of above mentioned transfers to it and to procure necessary foreign exchange." Art. 6—The bank would "assume the task of conveying the various remittances . . . *following the instructions given by* the Minister of Finance." Deposits were made "at the Bank of England wherefrom, in accordance with directions given by the Ministry of Finance . . . the required remittances would be made to the British Overseas Bank and its subagents."

53. See 3 BEALE, CONFLICT OF LAWS, § 622 A. 2.

54. C. P. A. § 903.

55. Reliance on *Lawrence v. Fox,* 20 N. Y. 268 (1859) was specifically rejected in *Staten Island Cricket & Baseball Club v. Farmer's Loan & Trust Co.,* 41 App. Div. 321, 58 N. Y. Supp. 460 (2d Dep't 1899); *Noyes v. First National Bank, supra* note 48. If bondholders are to be regarded as mere incidental beneficiaries, they have no cause of action. 4 CORBIN, CONTRACTS, § 779 D (1951); *Matter of Connecticut Co.,* 95 F. 2d 311 (2d Cir. 1938).

The court correctly found plaintiff's complaint failed to state a cause of action. The bank was a mere agent of the government and could only pay subject to the direction of its principal.[56]

Negotiable Instruments Law

A couple approached a bank to obtain a loan for the purchase of a car. After requiring them as payees to endorse a cashier's check for $1,000 to a specific car agency, the bank issued the check in return for a note for the same amount. Upon tender, a partner of the agency noticed a further recital on the reverse side of the check stating it was in full payment of a car. He declined to accept the check, since he knew that the payees had already purchased a car on which they owed a balance of only $200. The payees endorsed the check with the name of the agency and the purported signatures of two agency officials and, a few days later, approached a grocery store owner, with whom they had dealt previously. After examining the endorsements, and requiring an endorsement in blank from one of the payees, the storekeeper cashed the check. Subsequently, the bank refused to honor the check.

The Court of Appeals held, in *Hall v. Bank of Blasdell*,[57] that the plaintiff storeowner was a holder in due course, rejecting the claim of the bank that under the facts plaintiff could not even be a holder.

The defendant's argument was threefold:

1. since the check was not accepted by the agency, it was never negotiated,[58]
2. the unauthorized signing of the agency's name as indorsee was a forgery,[59] and
3. even if the payees had the power to endorse and deliver, they had not in fact done so.[60]

In rejecting the defendant's first assertion, the court pointed out that this would necessitate a finding that the defendant regarded the payees as mere messengers, and intended to make the agency the true party in interest.[61] Since there was no indebted-

56. See *In re Interborough Consol. Corp.*, 288 F. 334, (2d Cir. 1923) for comparison with situation where a fund is set aside to meet declared dividend payments.
57. 306 N. Y. 336, 118 N. E., 2d 464 (1954).
58. *Negotiable Instruments Law* § 35.
59. *Id.* § 42.
60. *Id.* § 60.
61. The court distinguished *Wolfin v. Security Bank of New York*, 170 App. Div. 519, 156 N. Y. Supp. 474 (1st Dep't 1915), *aff'd* 218 N. Y. 709, 113 N. E. 1068 (1916). There, the maker required the payee to endorse the instrument to the plaintiff, and instructed him to deliver the note to the plaintiff. It was held constructive delivery was effected so as to vest the plaintiff with legal title to the instrument.