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Equity--Fiduciary or Confidential Relations--What Constitutes

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STUDENT NOTES

EQUITY — FIDUCIARY OR CONFIDENTIAL RELATIONS — WHAT CONSTITUTES. — The existence of a fiduciary or confidential relation between the parties at the time of entering into a contract is a matter of much importance. If there is such a relationship, the utmost good faith and frankness must characterize all transactions between the parties.[1] There is not much dispute as to the effects of a confidential relation, but its existence is not always easy to establish. Story says:[2]

> "Though of strictly differing signification, the phrases 'fiduciary relations' and 'confidential relations' are ordinarily used as convertible terms and have reference to any relationship of blood, business, friendship, or association in which the parties repose special trust and confidence in each other and are in a position to have and exercise, or do have and exercise, influence over each other."

[1] Hinkle v. Hinkle, 34 W. Va. 142, 11 S. E. 993 (1890); Planters' Bank v. Hornberger, 44 Tenn. 443, 4 Coldw. 530 (1867).

[2] STORY'S EQUITY JURISPRUDENCE, (14th ed. 1918) § 370.

Any attempted definition is necessarily general, for the idea of such a relationship is one that cannot be hedged in by hard and fast lines. There are, however, some relations, or situations, which are regularly recognized as involving a high degree of confidence and trust. A few classical examples are agent and principal,[3] trustee and *cestui*,[4] attorney and client,[5] guardian and ward,[6] fiance and fiancee.[7] The significant factor is that one of the parties has justifiably come to repose confidence and trust in the other; and, for that reason, they can no longer deal at arm's length like strangers.[8]

In general, the West Virginia Supreme Court of Appeals has shown a tendency to uphold a rather high standard of good faith by those who owe a fiduciary responsibility.[9] Two recent cases, however, well illustrate the difficulties that may arise in connection with applying the confidential relations idea to particular fact situations.

In the case of *Williamson v. First National Bank of Williamson*,[10] a widow was seeking to have an antenuptial contract set aside on the ground that its full import was not made known to her before she signed it. By it she received twenty-one thousand dollars and gave up her dower rights in an estate of approximately a million and a half dollars. The court conceded that the contract would have been void for want of disclosures by the husband at the time it was made if a confidential relation had existed between the parties at that time. The pertinent facts were that in 1884, Mr. Williamson, a widower with four children, fell in love with the plaintiff, Ellen Blair, an illiterate girl of fifteen, and introduced her to his friends as his intended wife. He married another woman, but he and the plaintiff cohabited together for almost thirty years. After the

[3] Deegan's Coal Co. v. Hedrick, 91 W. Va. 377, 113 S. E. 262 (1922); Sutherland v. Guthrie, 86 W. Va. 208, 103 S. E. 298 (1920); Brooks v. Martin, 2 Wall. 70, 17 L. ed. 732 (1863).

[4] Newcomb v. Brooks, 16 W. Va. 58 (1879).

[5] Baker v. Humphrey, 101 U. S. 494, 25 L. ed. 1065 (1879); Ridge v. Healey, 251 Fed. 798 (C. C. A. 8th, 1918).

[6] McConkey v. Cockey, 69 Md. 286, 14 Atl. 465 (1888).

[7] Stahl v. Stahl, 115 Neb. 882, 215 N. W. 131 (1927).

[8] Rogers v. Brightman, 189 Ala. 228, 66 So. 71 (1914); O'Neil v. Morrison, 233 N. W. 708 (Ia., 1930); Bogie v. Nolan, 96 Mo. 85, 9 S. W. 14 (1888); Marx v. McGlynn, 88 N. Y. 357 (1882).

[9] Laing v. Crichton, 110 W. Va. 3, 156 S. E. 746 (1931); Young v. Columbia Oil Co., 158 S. E. 678 (W. Va., 1931). See comments on these cases (1931) 37 W. VA. L. Q. 449 and (1932) 38 W. VA. L. Q. 158.

[10] 164 S. E. 777 (W. Va., 1931). Rehearings denied Apr. 25 and June 11, 1932.

death of his second wife, Mr. Williamson decided that he and the plaintiff should make some change in their mode of living. They came to some sort of oral agreement on October 1, 1916, to the effect that neither was to interfere with the property of the other. Later, Mr. Williamson had the antenuptial contract, which was the subject of this suit, prepared by an attorney. The plaintiff signed it on the evening of January 2, 1917. She and Mr. Williamson were married the next morning. The court found that the antenuptial contract was merely a preliminary to the engagement and held that the parties were dealing at arm's length until the engagement was actually consummated. This decision was rendered December 8, 1931.

On April 12, 1932, the decision in *Summers v. Ort*[11] was handed down. In that case an injunction was sought to restrain the sale of certain property under a trust deed which a mother had given as surety for her son, Eugene R. Summers, in a business undertaking. Defendant, Ort, who owned a chain of grocery stores, had employed Eugene R. Summers as general manager of one store. By the contract, Summers was to reimburse Ort for any losses that the business might sustain. Apparently Ort's agent represented to Summers that the store had been a paying proposition in the past, when, in fact, the last two managers had lost money on it. There was a loss of over six thousand dollars, and Ort undertook to sell the mother's property under the trust deed. The sale was perpetually enjoined, the court holding that the contract between Ort and Summers was void because the parties stood in a confidential relation toward each other at the time it was negotiated, and Ort had not made full disclosure of all the material facts connected with the undertaking. The court said the confidential relation arose at the beginning of the negotiations leading up to the contract.

Thirteen days later, the court refused a rehearing in the *Williamson* case. It seems that the wrong result was reached in both cases.

The facts in the *Williamson* case scarcely appear to sustain the finding that the parties were not engaged to be married before the antenuptial contract was made. The only contract that would have been recognized under the Statute of Frauds[12] was

[11] 163 S. E. 854 (W. Va., 1932).

[12] W. VA. CODE (Barnes, 1916) c. 98, § 1; W. VA. REV. CODE (1931) c. 55, art. 1, § 1.

the one executed on the eve of the marriage. The whole situation indicates that the parties were engaged; at least, from the date of the October agreement. That point is really not denied, but a majority of the court thought the antenuptial contract originated at that time also. It is difficult, however, to see that the vague, general understanding reached in October was the same as the very explicit and detailed contract signed on the eve of the marriage. But even if the antenuptial contract did have its inception in the October agreement, it does not necessarily follow that the parties were dealing at arm's length when it was negotiated.[13]

The majority of the court rested its decision largely on the Illinois case of *Martin v. Collison*,[14] which did hold that until the parties became engaged, they dealt with each other at arm's length. But as Judge Hatcher pointed out in his dissent, the facts in *Martin v. Collison* differed materially from those in the *Williamson* case, in that the relations of the parties there had been merely casual until the date of the agreement. Apparently, however, no importance is generally given to this view of the Illinois court. That the parties were on the verge of marriage at the time of making the contract and later did marry are the facts that interest most courts rather than whether the engagement followed or preceded the contract.[15] In *Pierce v. Pierce*,[16] the New York Court of Appeals said, "The relation of parties who are about to enter into the married state is one of mutual confidence, and far different from that of those who are dealing with each other at arm's length." No mention was made of the necessity for an antecedent engagement. This seems to be the

[13] Estate of Harris Gosbach, Deceased, 96 Pa. Supr. Ct. 527 (1929). "A prospective husband and wife, when executing an antenuptial agreement, stand in a confidential relation one to another and the utmost good faith is required."

[14] 266 Ill. 172, 107 N. E. 257 (1914). The contract began with "Whereas the parties are about to enter into a contract of marriage . . .". The court said this language indicated that there was not an existing engagement. In DeBolt v. Blackburn, 328 Ill. 420, 159 N. E. 790 (1927), the contract started with "Whereas it is the intention of the parties hereto to enter into a marriage contract . . . ". The court held that this language indicated an antecedent engagement, distinguishing it from the prior case on the difference between the words *about* and *intention*. Such a distinction is very artificial, for if one is about to marry, he certainly has some intentions concerning the matter. It seems that the court just seized on this slight difference to get away from the bad holding of Martin v. Collison.

[15] Dehart v. Dehart, 154 S. E. 870 (W. Va., 1930); Potter's Ex'r. v. Potter, 234 Ky. 769, 29 S. W. (2d) 15 (1930); *In re* Enyart's Estate, 100 Neb. 337, 160 N. W. 120 (1916).

[16] 71 N. Y. 154, 27 Am. Rep. 22 (1877).

proper approach, for, as already indicated, a fiduciary relationship may arise from any association through which the parties have come to place special confidence and trust in each other, a contractual relationship not being always necessary.

It was apparently assumed that an antecedent engagement was the only possible basis upon which to predicate a fiduciary obligation on the part of Mr. Williamson to deal fairly by the plaintiff. No significance seems to have been given to the fact that he had dominated thirty years of the best part of her life; that she had, through years of habit, come to rely upon his judgment and advice; that he was a shrewd and experienced business man, surrounded by friends and skilled counsel; while she was an illiterate woman with no disinterested adviser. In an ordinary business transaction, unconnected with the question of marriage, Mr. Williamson would not have been permitted to take advantage of her thus to his own profit;[17] *a fortiori,* he should not have been permitted to take advantage of her in an antenuptial contract.

It appears that a confidential or fiduciary relation existed between the parties here at the time of making the contract from any of three possible views: (1) at the time an obligation in binding form was entered into the parties were pretty clearly betrothed; (2) parties entering into an antenuptial contract are normally in a fiduciary relation to each other regardless of whether the engagement precedes or follows the contract; (3) the long and intimate relations of the parties here would have put Mr. Williamson under a fiduciary obligation in dealing with the plaintiff even in ordinary business transactions.

In the *Summers* case, the opposite extreme was reached. Two men negotiated a contract which proved unprofitable for one of them. The loser escaped the consequences of his bad bargain on the ground that a fiduciary obligation had been violated by the other party. It was assumed that the contract created an agency which would, of course, entail a confidential relationship. But that is not decisive of the question as to whether or not one stranger was justified in reposing confidence and trust in another as soon as they met and before any contract of agency was executed. Such confidence would be hard to justify. The relation of attorney and client is one that places a very high fiduciary obligation on the attorney, but it has been repeatedly held that

[17] Leighton v. Orr, 44 Ia. 679 (1876); Maclean v. Hart, 141 Misc. Rep. 222, 252 N. Y. Supp. 377 (1931).

the parties deal at arm's length until the contract of employment is actually consummated.[18] It seems that should have been the result in *Summers v. Ort.* There had been no prior relations between the parties, and no reason appeared why one should have reposed unusual confidence and trust in the other before the negotiations were completed. They were ordinary strangers entering into a business transaction; and, as such, there seems to be small reason for saying that they dealt other than at arm's length.

It is worthy of note that in the *Summers* case the principal was held to the high fiduciary responsibility. That is the converse of the normal case, for, ordinarily, the agent is the dominant party.[19] The principal necessarily reposes great confidence and trust in the agent when he puts the agent in charge of his business, but the major trust that the agent puts in the principal is that the principal will pay him for his services. No notice was taken of this point in deciding the case.

It is apparent, therefore, that the fiduciary or confidential relation idea is primarily important in helping to determine the proper ethical standard for a given transaction. The two cases just discussed involve different situations. The *Williamson* case is concerned with the ethical standard for domestic relations, while the *Summers* case deals with ordinary business ethics. From the very nature of things the ethical plane of domestic relations is necessarily higher than that required in business.[20] Confidence and trust are the very foundation upon which the whole structure of domestic relations is builded. As to business affairs, high ethical standards are much to be desired; but business men are wont to investigate for themselves and rely on their own judgment rather than trust blindly to the good faith of the party with whom they are dealing. The standard set up in *Summers v. Ort* is artificial and does not accord with present day business practices and ideas. Its desirability as a business standard is

[18] Cooley v. Miller, 156 Cal. 510, 105 Pac. 981 (1909); Miller v. Loyd, 181 Ill. App. 230 (1913); State v. American Bonding and Casualty Co., 237 N. W. 360 (Ia., 1931); Coughlon v. Pedelty, 233 N. W. 63 (Ia., 1930); Elder v. Frazier, 174 Ia. 46, 156 N. W. 182 (1916); Title Guarantee Co. v. Stemberg, 119 App. Div. 28, 103 N. Y. Supp. 857 (1907); Boyd v. Daily, 85 App. Div. 581, 83 N. Y. Supp. 539 (1903); Dockery v. McLellan, 93 Wis. 381, 67 N. W. 733 (1896); 2 MECHEM ON AGENCY (2d ed.) § 2294. For an inference to the same effect, see Dorr v. Camden, 55 W. Va. 226, 46 S. E. 1014 (1904).

[19] Sperry v. Sperry, 80 W. Va. 142, 92 S. E. 574 (1917).

[20] Kline v. Kline, 57 Pa. St. 120 (1868). "There is perhaps no relation in life in which more unbounded confidence is reposed than in that existing between parties who are betrothed to each other."

probably open to serious question; but be that as it may, the fact remains that it is not justified by the present state of our law. Doubtless business standards can be elevated by judicial decisions, but the process of elevation must be well considered, gradual, and not too far in advance of ordinary business customs. On the other hand, it is scarcely necessary to suggest that the *Williamson* case falls far short of the orthodox ethical standard for domestic relations. Consequently, the West Virginia law on the subject of fiduciary or confidential relations is in a decidedly unsatisfactory state.

—GEORGE W. MCQUAIN.

PURCHASE MONEY RESULTING TRUSTS IN WEST VIRGINIA. — Purchase money resulting trusts have been a very fertile field of litigation in West Virginia. Due to the very considerable number of cases decided, the West Virginia decisions mark out for this jurisdiction the applicability of most of the rules developed in this branch of the law. The decisions are for the most part in conformity with the weight of American authority. The circumstances under which this doctrine has been invoked and applied may be roughly divided into two classes; first, situations wherein the purchaser and grantee are strangers, and secondly, wherein they are related by blood or marriage.

Where, upon a purchase of property, the conveyance of the legal title is taken in the name of one person, while the consideration is given or paid by another, the parties being strangers to each other, a resulting trust arises by virtue of the transaction.[1] The party who pays the consideration becomes in law a *cestui que* trust while the party receiving legal title is trustee.[2] This rule is founded on the natural presumption that the person who furnishes the purchase money intends the purchase to be for his own benefit. This presumption is rebuttable by the grantee.[3] The evidence must be clear and unequivocal.[4] Mere admission made by the party holding legal title that he holds the property

[1] Pumphrey v. Brown, 5 W. Va. 107 (1872); Despard v. Despard, 53 W. Va. 443, 44 S. E. 448 (1903); Smith v. Patton, 12 W. Va. 541 (1878).
[2] Pumphrey v. Brown, *supra* n. 1.
[3] Logan, Walton, Adm'rs. v. Pritt, 93 W. Va. 375, 116 S. E. 759 (1923).
[4] Cassaday v. Cassaday, 74 W. Va. 53, 81 S. E. 829 (1914).