St. John's Law Review

Volume 4
Number 2 *Volume 4, May 1930, Number 2*

Article 24

Trusts--Validity of Conveyance of Real Property (Matter of Brown, 252 N.Y. 366 (1930))

St. John's Law Review

failure to act, evidently born of a refusal to incur expense which would enable the covenantor to fulfil his contract. To permit mitigation of damages in such an instance would be to sanction the breach of a contractual duty, due entirely to lack of good faith or diligence. Such is not the intendment of the rule enunciated in Mack v. Patchin nor of any concept of the law.

E. P. W.

TRUSTS—VALIDITY OF CONVEYANCE OF REAL PROPERTY.—Decedent had been engaged in the real estate business, taking title to property in the names of dummy corporations, of which he was president and sole stockholder, or in the names of his clerks. He executed two instruments certifying that certain property which he had conveyed and property to be thereafter conveyed to one of these corporations belonged to his son; he also stated to others that he had given the property to his son. The conveyance of the property was made after the declaration of trust; the corporation received the deed upon this trust and for the purpose of carrying it out, and all the partners regarded the property as belonging to the son. There was no consideration for the conveyance, but an implied promise and understanding to execute a deed to the son for whose benefit the property was so transferred. After the father's death, the papers were found in the possession of the son and subsequently the corporation, by his direction, transferred the property and paid him the proceeds. By his will, the decedent attempted to divide his property equally between his son and daughter. On the accounting of the son as executor, he claimed the moneys which he had received as the purchase price for these properties, to which objections were filed by the daughter's children, through their guardian, and the co-executor of the estate. The Appellate Division, affirming the Surrogate, held that the money must be accounted for; that it belonged to the corporation. On appeal, *held,* reversed; the title which passed to the corporation was held for the son to whom the property belonged, and he was entitled to the proceeds thereof; the corporation was chargeable with the knowledge of its president that the conveyance was subject to a trust for the benefit of the son, and the entries in the corporate books that the properties belonged to the son were evidence of the fact that the corporation recognized the trust. Matter of Brown, 252 N. Y. 366, 169 N. E. 612 (1930).

---

or can convey but will not, either from perverseness or to secure a better bargain; or if he has covenanted to convey, when he knew he had no power to remedy a defect in his title; or where it is in his power to remedy a defect in his title and he refuses or neglects to do so; or when he refuses to incur expenses which would enable him to fulfil his contract." *Supra* Note 1, Mack v. Patchin, at p. 172, *per* Chief Judge Earle.

There is no particular formality required or necessary in the creation of a trust;[1] it is valid if the intention is clear. The owner of property may create a trust not only by transferring the property to another person as trustee, but also by declaring himself a trustee. The statute[2] requires that a trust relating to real property be created or declared by a deed or conveyance in writing subscribed by the party creating or declaring the trust, but if it relates to personal property, it may be made by parol. Such a declaration of trust, although gratuitous, is valid and need not be made to the beneficiary nor the writing given to him; it may be proved by admissions that the property belongs to another.[3] Any agreement or contract in writing, made by a person having the power of disposal over property, whereby such person agrees or directs that a particular parcel of property or a certain fund shall be held or dealt with in a particular manner for the benefit of another, in a court of equity raises a trust in favor of such other person against the person making such agreement,[4] and the statute of frauds will be satisfied if the trust can be manifested or proved by any subsequent acknowledgment by the trustee, as by an express declaration,[5] any memorandum to that effect,[6] or any writing in which the fiduciary relation between the parties can be clearly read.[7] In the principal case, the instruments executed were sufficient to declare a trust in the property and it was effectually declared by the entries which subsequently appeared in the corporate books.[8] Where it appears by competent written evidence that the person holding legal title is only a trustee, it opens the door for the admission of parol evidence to explain the position of the parties.[9] The conveyance to the corporation was with an understanding that it execute a deed to the son. It could not keep the property and benefit by repudiation and its own wrong.[10]

R. L.

---

[1] Steinhardt v. Cunningham, 130 N. Y. 292, 29 N. E. 100 (1891).

[2] N. Y. R. P. L., Sec. 242, Cons. L., Ch. 50; see also Cook v. Barr, 44 N. Y. 158 (1870).

[3] Porter v. Gardner, 60 Hun 571, 15 N. Y. Supp. 398 (1891); Gavin v. DeMiranda, 140 N. Y. 474, 35 N. E. 626 (1893); Miller v. Silverman, 247 N. Y. 447, 160 N. E. 910 (1928).

[4] Currie v. White, 45 N. Y. 822 (1871).

[5] Knowlton v. Atkins, 134 N. Y. 313, 31 N. E. 914 (1892).

[6] Fisher v. Fields, 10 Johns. 495 (1812).

[7] Tusch v. German S. Bank, 20 Misc. 571, 46 N. Y. Supp. 422 (App. Tr. 1897); Wright v. Douglass, 7 N. Y. 564 (1853); Hutchins v. Van Vechten, 140 N. Y. 115, 35 N. E. 446 (1893); Percy v. Huyck, 252 N. Y. 168, 169 N. E. 127 (1929); McKenna v. Meehan, 248 N. Y. 206, 161 N. E. 472 (1928).

[8] Bates v. Ledgerwood Mfg. Co., 130 N. Y. 200, 29 N. E. 102 (1891).

[9] Corse v. Leggett, 25 Barb. 389 (1857).

[10] Foreman v. Foreman, 251 N. Y. 237, 167 N. E. 428 (1929); Sinclair v. Purdy, 235 N. Y. 245, 139 N. E. 255 (1923); Amherst College v. Ritch, 151 N. Y. 282, 323, 325; 45 N. E. 876, 37 L. R. A. 305 (1897); Siemon v. Schurck, 29 N. Y. 598 (1864); Medical College Laboratory v. N. Y. University, 76 App. Div. 48, 78 N. Y. Supp. 673 (1st Dept. 1902), *aff'd* 178 N. Y. 153, 70 N. E. 467 (1904).