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Trusts - Constructive Trusts - Fiduciary Status of Corporate Employees and Officers

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instant case is more reasonable than allowing the tax purchaser to take the severed mineral interest. The severed interests support a relationship analagous to that between owners of adjoining tracts of land. No one would contend that one owner's forfeiture of realty for taxes could affect the rights of his neighbor in the adjoining tract.

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TRUSTS – CONSTRUCTIVE TRUSTS – FIDUCIARY STATUS OF CORPORATE EMPLOYEES AND OFFICERS. – Employer sued a defendant employee to compel a conveyance to the employer of mineral interests acquired by the employee for his own use. Plaintiff was engaged in purchasing and developing oil and gas leases, mineral interests and royalties in land, and producing minerals therefrom. Defendant was production manager for the plaintiff in the Williston Basin where the mineral acres in dispute were located. Plaintiff corporation had a rule stating that all mineral interests purchased by employees would be considered to be held in trust for the corporation. Defendant employee did not sign any agreement to this effect or agree to it orally, but did know of the rule. Evidence proved that defendant did not use confidential information in securing the lease. The United States Court of Appeals *held* that the trial court was correct in finding that defendant was not a fiduciary of plaintiff with respect to the acquisition of mineral interests for his own benefit. *Amerada Petroleum Corporation v. Burline,* 231 F.2d 862 (10th Cir. 1956).

A constructive trust is defined as a trust raised by operation of law, imposed by a court of equity upon a person in a fiduciary or confidential relationship, in order to prevent him from holding an advantage which he gained by reason of breach of such relationship.[1] A confidential relationship is of major importance in establishing a constructive trust.[2] A fiduciary or confidential relationship is not restricted to such confined relations as trustee and beneficiary, partners, attorney and client, principal and agent,[3] but applies to all persons who occupy a position out of which the duty of good faith ought, in equity and good conscience, to arise.[4] Therefore the rule is formed that an employee in a confidential relationship is barred from using, for his own benefit, secret information belonging to his employer.[5] The rule is deceptively

1. N. D. Rev. Code, § 59-0108 (1943) (Constructive trust. Everyone who voluntarily assumes a relation of personal confidence with another is deemed to be a trustee within the meaning of this chapter, not only as to the person who reposes confidence, but as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence or over whose affairs he, by such confidence obtains any control); Bradley v. Fox, 7 Ill.2d 106, 129 N.E.2d 699, 705 (1955) (dictum); Compton v. Compton, 414 Ill. 149, 111 N.E.2d 109, 113 (1953) (dictum).

2. McDonald v. Miller, 71 N. D. 474, 16 N.W.2d 270 (1944); Young v. Bradley, 142 F.2d 658, 660 (6th Cir. 1944) (dictum); See Nelson Development Co. v. Ohio Oil Co., 45 F.Supp. 933 (E. D. Ill. 1942); City of Rochelle v. Stocking, 336 Ill. App. 6, 82 N.E.2d 693 (1948) (Mere failure to perform an agreement or to carry out a promise cannot in itself give rise to a constructive trust).

3. Cranwell v. Ogelsky, 229 Mass. 148, 12 N.E.2d 81 (1937). See Coombs v. Minor, 60 Cal. App.2d 645, 141 P.2d 491, 495 (1943) (dictum); Fipps v. Stidham, 174 Okl. 322, 50 P.2d 680, 683 (1935) (dictum) ("Confidential" and "fiduciary" relations held to be synonymous).

4. Barker v. Barker, 75 N. D. 253, 27 N.W.2d 576 (1947); Metzger v. Metzger, 338 Pa. 564, 14 A.2d 285 (1940); Risk v. Risher, 197 Miss 155, 19 So.2d 484, 486 (1944) (dictum).

5. Witmer v. Arkansas Dairies, 202 Ark. 470, 151 S.W.2d 971 (1941); Reiss v. Sanford, 47 Cal. App.2d 244, 117 P.2d 694 (1941); Empire Steam Laundry v. Lazier, 165 Cal. 95, 130 Pac. 1180 (1913) (by statute); Morrison v. Woodbury, 105 Kan. 617, 185 Pac. 735 (1919); Junker v. Plummer, 320 Mass. 71, 67 N.E.2d 667 (1946); Jewel Tea Co. v. Grissom, 66 S. D. 146, 279 N.W. 544, 545 (1938) (dictum).

simple however. Not all employer-employee relations are confidential.[6] Before the rule can be applied it must be decided when an employee is in a fiduciary capacity and what information is secret.

It has been said that there is no invariable rule which determines the existence of a confidential relationship,[7] but existence of a fiduciary relationship in a particular case is to be determined by facts established.[8] "A mere employee not an agent with respect to matter under consideration does not ordinarily occupy a position of trust toward his employer; but if an employee in course of his employment acquires secret information relating to employer's business, he occupies a position of trust analogous in most respects to that of fiduciary and must govern his actions accordingly."[9] Thus it has been held that a constructive trust over the res gained by the use of secret information, as well as a discharge of the employee is available as a remedy to an employer injured by his fiduciary.[10] This rule has been applied to a secretary who learned of his employer's future stock trading plans,[11] and to officers of a corporation who formed a partnership adverse to plaintiff stockholder's interests.[12] A confidential relationship was also held to exist where an engineer supervised production methods,[13] an industrial chemist had possession of secret formulae,[14] and where a store manager was in possession of customer credit ratings.[15]

Ordinarily the term "confidential information" is understood to mean a secret process or formula, tool, compound, or mechanism known only to its owners and those of his employees in whom it is necessary to confide for its profitable utilization.[16] A review of cases however evidences that courts have considered it a wise public policy to extend the term "confidential" to protect other types of information shown to be peculiarly essential in the owner's business.[17] However, the mere fact that the owner considers it to be secret is not con-

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6. See *e. g.*, Van Dale v. Prudential Ins. Co. of America, 225 Wis. 281, 274 N.W. 153, 159 (1937); Watkins v. Mertz, 83 Ga. App. 115, 62 S.E.2d 744 (1950).

7. See Oldland v. Gray, 179 F.2d 408 (10th Cir. 1950); Koehler v. Huller, 62 Ind. App. 8, 112 N.E. 527, 528 (1916) (dictum). 3 Bogert, Trusts § 482 (1946) (There is no uniform practice among courts in their use of phrases "fiduciary relationship" and "confidential relationship").

8. Cann v. Barry, 293 Mass. 313, 199 N.E. 905, 907 (1936) (dictum); Halper v. Homestead Building and Loan Ass'n., 59 N.Y.S.2d 689 (Sup. Ct. 1944), *aff'd* 269 App. Div. 1044, 59 N.Y.S.2d 695 (2d Dep't. 1945) (dictum).

9. Brophy v. Cities Service Co., 31 Del. Ch. 241, 70 A.2d 5, 7 (1949).

10. Ohio Oil Co. v. Sharp, 135 F.2d 303 (6th Cir. 1943) (Where an employee of a survey company, hired by plaintiff, imparted information obtained in a survey to a defendant, the defendant was held to be a constructive trustee for the plaintiff).

11. See Brophy v. Cities Service Co., 31 Del. Ch. 241, 70 A.2d 5 (1949).

12. Rosenblum v. Judson Engineering Corp., 99 N. H. 267, 109 A.2d 558 (1954).

13. State v. Kirkwood, 357 Mo. 325, 208 S.W.2d 257 (1926).

14. Marcalus Mfg. Co. v. Sullivan, 142 N.J.Eq. 434, 60 A.2d 330 (1948).

15. Friedman v. Stewart Credit Corp., 26 N. Y. S.2d 529 (Sup.Ct.1939), *aff'd* 261 App. Div. 990, 26 N. Y. S.2d 533 (2d Dep't. 1941).

16. National Tube Co. v. Eastern Tube Co., 23 Ohio C. D. Dec. 468 (1902), *aff'd* 70 N.E. 1127 (1902).

17. See Hunter v. Shell Oil Co., 198 F.2d 485 (1952) (geological data); Smith Corp. v. Petroleum Iron Works, 74 F.2d 934 (6th Cir. 1935) (machinery); Brophy v. Cities Service Corp., 31 Del. Ch. 241, 70 A.2d 5 (1949) (trading plans); Morrison v. Woodbury, 105 Kan. 185 Pac. 735 (1919) (insurance debts and expiration dates); Marcalus Mfg. Co. v. Sullivan, 142 N.J.Eq. 434, 60 A.2d 330 (1948) (chemical formulae); Friedman v. Stewart Credit Corp., 26 N.Y.S.2d 529 (Sup. Ct. 1939), *aff'd* 261 App. Div. 990, 26 N.Y.S.2d 533 (2d Dep't. 1941) (credit ratings); Talmon v. Mulcahy, 119 App. Div. 42, 103 N. Y. Supp. 936 (2d Dep't. 1907) (office methods and techniques); State v. Kirkwood, 357 Mo. 325, 208 S.W.2d 257 (1926) (production methods and manufacturing processes); Pressed Steel Car Co. v. Standard Steel Car Co., 210 Pa. 464, 60 Atl. 4 (1904) (blue prints); Simmons Hardware Co. v. Waibel, 1 S. D. 488, 47 N.W. 814 (1891) (Code system showing cost and selling prices of merchandise).

trolling.[18] If the information is in fact confidential a constructive trust for the employer will be formed only if that information was the basis for an advantage gained by the employee as against his employer.[19]

In the instant case evidence proved the defendant did not obtain or use secret data or information belonging to plaintiff in acquiring the mineral interests involved. The specific mineral leases were purchased by an agent for the defendant. The defendant did not know the exact location of such interests until they had been purchased by the agent. It is submitted that the nature of employment was such as could easily give rise to a fiduciary relationship. Applying the above principles to the instant case it can be seen that no fiduciary relationship existed with respect to the defendant's duties to plaintiff, therefore the defendant had not breached any confidential relationship and hence no constructive trust could result.

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WORKMEN'S COMPENSATION — EXTRATERRITORIAL OPERATION OF STATUTE JURISDICTION TO AWARD COMPENSATION FOR THE OUT-OF-STATE INJURY. — Claimant, a resident of Montana, presented a claim to the Industrial Accident Board of Montana based on an injury he had received while working for a Montana corporation on a section of road within the State of Idaho. The board refused compensation on the grounds that since the Montana Act is compulsory and the injury occurred outside the state it had no jurisdiction. The Montana Supreme Court, in sustaining the claim, *held* that the Montana Act was based upon the employer-employee relationship as well as being contractual; and therefore coverage should extend to the employee injured outside the state. *Morgan v. Industrial Accident Board of Montana*, 300 P.2d 954 (Mont. 1956).

One of the early attempts to solve the dilemna of out-of-state injuries in workmen's compensation cases was by use of the "tort" or "territorial theory."[1] Under this theory a state was deprived of jurisdiction where the injury occurred outside the state. Other courts adopted the "contract theory," reasoning that the compensation law became part of the employment contract and it applied even though the injury occurred outside the state.[2] These courts have laid great stress on the nature of the Workmen's Compensation Act, and have applied the contract theory where the law was elective.[3] The early courts, however, were reluctant to extend coverage to the out-of-state injury under the "contract theory" if their law was compulsory.[4]

In the instant case the contract of employment was made in Montana, the corporation was domiciled in Montana, claimant was a resident of Montana,

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18. Young v. Bradley, 142 F.2d 658 (6th Cir. 1944).
19. Smith v. Bolin, 261 S.W.2d 352 (Tex.Civ.App. 1953).

1. North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 162 Pac. 93 (1916); Union Bridge and Constr. Co. v. Industrial Comm'n, 287 Ill. 396, 122 N.E. 609 (1919); *In re* Gould, 215 Mass. 480, 102 N.E. 693 (1913).

2. Kennerson v. Thames Towboat Co., 89 Conn. 367, 94 Atl. 372 (1915); Peirce v. Bekins Van and Storage Co., 185 Iowa 1346, 172 N.W. 191 (1919); Grinnel v. Wilkinson, 39 R.I. 447, 98 Atl. 103 (1916).

3. Peirce v. Bekins Van and Storage Co., 185 Iowa 1346, 172 N.W. 191 (1919); *Contra*, Anderson v. Miller Scrap Iron Co., 169 Wis. 106, 170 N.W. 275 (1919) (where the court applied their act extraterritorially but repudiated the contract theory.)

4. See note 1 *supra*.