

Constructive Trusts and the “Elastic” Power of Equity

Law without principle is not law; law without justice is of limited value. Since adherence to principles of “law” does not invariably produce justice, equity is necessary.

- Aristotle, *Nicomachean Ethics*

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Perhaps because of their equitable, ancient, and amorphous nature, Constructive Trusts are often misunderstood by both advocates and, on occasion, the judiciary itself. Nevertheless, though rooted in age old equitable principles, Constructive Trusts have many applications; are not to be underestimated or overlooked; and can prove invaluable tools for Trusts and Estates litigators when and where they are properly used.

Preliminarily, it must be noted that the very purpose of a Constructive Trust as a remedy is often misconstrued. Constructive Trusts may be able to do many things, but the doctrine is limited insofar as it is not an “intent enforcing” mechanism, but rather a “fraud rectifying” device¹. Advocates sometimes overlook this important distinction and seek the imposition of a Constructive Trust to enforce the stated, or presumed, intentions of an individual or entity, only to be met with dismissal either pre-answer or upon Summary Judgment as it is simply not within the power of a Constructive Trust to force a Defendant’s compliance with an unfulfilled promise.

Indeed, it is sometimes helpful to think of Constructive Trusts as a Cause of Action sounding in Fraud, but one that is subject to equitable review because some essential element necessary to sustain a Cause of Action for Fraud is not present. As Constructive Trusts are often used as Fraud rectifying devices, it should come as no surprise that the applicable Statute of Limitations is six years, with a discovery rule based on the wrongful/proper “taking” analysis used in a conversion action². A

similar, but slightly different way of thinking about Constructive Trusts as a Fraud rectifying device, is to consider it as an equitable tool for preventing Unjust Enrichment³.

Generally, Constructive Trusts fall into one of two types.

1. The first common situation where the imposition of a Constructive Trust is appropriate is where one party has an equitable interest in an asset, but does not have legal title. Upon the party's attempt to enforce their equitable interests, the legal title holder refuses to acknowledge that the non-title holder has any rights. A good example of this situation is where one party invests monies in a real property, the deed is in another party's name, and legal owner of the real property thereafter denies the other party access, use, and/or rights to the real property⁴.
2. The second common type of Constructive Trust is where title of an asset is transferred from one party to another based on the promise that it will be returned⁵, or turned over to a rightful beneficiary, at a later time. Thereafter, when the party who no longer has, or can claim, legal title to the asset demands its return, the legal title holder refuses, and retains the asset in their sole ownership.

In order to establish these two common types of Constructive Trusts, a Plaintiff must plead, and subsequently prove, that:

1. A confidential and/or fiduciary relationship existed between the parties at issue;
2. Defendant made either an express or implied promise;
3. A transfer was effected by the Defendant's Promise; and
4. The Defendant was unjustly enriched by said transfer.

However, a Plaintiff is not strictly bound by these elements, nor are Constructive Trusts restricted to the two most common examples described above. Equity, after all, has evolved throughout the history of Jurisprudence to ensure justice when and where the rigid formalism of the law cannot. Indeed, given the nature of an equitable action and the fact that a Constructive Trust is primarily a device to prevent Unjust Enrichment, the Courts have allowed flexibility in the pleading standards of a Constructive Trust, i.e.: a Plaintiff need not necessarily prove each element, nor must the facts rigidly conform to the above listed elements. As the Court of Appeals has made clear that when applying Constructive Trusts: “[t]he equity of the transaction must shape the measure of relief”⁶, thus allowing the doctrine of Constructive Trusts to remedy a myriad of wrongs in many situations where the power of equity is appropriately used.

Nevertheless, just because the Court has the equitable power to apply Constructive Trusts in a host of situations, does not mean that they have not had issues determining the limitations of the doctrine, or the standards required to plead and prove why a Constructive Trust should be imposed.

In *Bower v Bower*⁷, the Monroe County Supreme Court offered a thoughtful and detailed discussion about the “conundrum” the Court faces when asked to impose a Constructive Trust outside the more familiar and commonplace fact patterns. Recognizing the “elasticity” of equity, and being guided by the broad powers outlined by the Court of appeals in *Simonds v Simonds*⁸, the Court characterized Constructive Trusts as creatures of “[u]nfettered equity” which “converts the doctrine of a constructive trust into a subjective judicial judgment about the fundamental ‘fairness’ of a transaction.”

Ultimately, the Supreme Court’s analysis is that Constructive Trusts are a loose, equitable framework within which the Court identifies wrongdoing, determines damages in terms of the degree to which a Defendant was unjustly enriched, and

orders restitution to the Plaintiff so as to prevent the Defendant from receiving a benefit from their wrongdoing.

Though it was not without hesitation that the Court defined Constructive Trusts in this manner - nor without concern or consideration as to how the Court should address the burden of proof; standards of proof; or even the absence of one or more of the accepted elements of the cause of action given the ill-defined boundaries of the doctrine – but its analysis about the nature of the Constructive Trust Doctrine, and the power which it affords the Court to ensure that substantial justice is achieved, could not be more incisive or apt.

As a legal doctrine, Constructive Trusts can offer an effective means to protect a client's equitable rights. The broad and powerful nature of this form of relief cannot be discounted, and should always be considered where and when, in the presence of unjust enrichment, a more commonplace or familiar remedy simply cannot right the wrong that has been done.

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¹ Bankers Security Life Insurance Society v Shakerdige, 49 Ny2d 939 [1980]

² Sitkowski v Petzing, 175 AD2d 801 [2nd Dept 1991]

³ Sharp v Kosmalski, 40 N.Y.2d 119 [1976]

⁴ *see generally* Washington v Defense, 149 AD2d 697 [App Div 2nd Dept 1989]

⁵ *see generally* Farano v Stephanelli, 7 AD2d 420 [App Div 1st Dept 1959]

⁶ Simonds v Simonds, 45 NY2d 233 [1978]

⁷ Bower v Bower, 42 Misc.3d 1231(A) [Monroe Sup Ct 2014]

⁸ *ibid*