Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-137

NOVEMBER TERM, 2006

Michael Gregoire	}	APPEALED FROM:
	}	
v.	}	Franklin Superior Court
	}	
Armand Gregoire and Janet Gregoire	}	
	}	DOCKET NO. S317-05 Fc

Trial Judge: Geoffrey Crawford

In the above-entitled cause, the Clerk will enter:

Plaintiff Michael Gregoire appeals from the trial court=s order declaring the parties= rights in a parcel of real property. The court concluded that the parties shared a common understanding that the property would be held for the benefit of Michael=s parents, Armand and Janet Gregoire, during their lifetimes, and that the law thus supported the imposition of a resulting trust. Michael argues that the trial court erred by: (1) imposing a resulting trust sua sponte without giving him notice or an opportunity to brief the issue; (2) failing to make essential findings of fact; (3) refusing to enforce the unambiguous language in the deed; (4) misconstruing the law regarding resulting trusts. We reverse and remand for a new hearing.

Michael is the son of Armand and Janet. In 1986, when Michael was twenty-one, the parties executed a warranty deed for a parcel of real property in St. Albans (ASwanton Street property@). The deed provided that the property was transferred to AArmand Gregoire and Janet Gregoire, husband and wife, as tenants by the entirety, and Michael Gregoire, joint tenant with rights of survivorship.@ Armand and Janet provided a $15,000 down payment for the property. All of the parties signed a mortgage for the balance, although the mortgage payments, as well as all other costs, were made solely by Armand through his business. Approximately twenty years later, after the parties had a falling out, Michael filed a complaint for declaratory judgment. He alleged that his parents failed to recognize his legal interest in the property, they failed to pay him any portion of the commercial rents collected for the property, and they had Afrozen him out@ of all business decisions related to the property. Parents responded that the property had been placed in Michael=s name solely for purposes of estate planning and to avoid the necessity of probate upon the death of one of his parents. They asserted that at no time had it been intended that Michael would have a current interest in the property, and whatever legal interest Michael had in the property was properly held in trust for the benefit of parents.

After a merits hearing, the trial court issued an order agreeing with parents that Michael=s present interest in the property was held in trust for the benefit of parents during their lifetime. The court made the following findings. Before his retirement, Armand operated two businesses in St. Albans; he sold cars and he also operated a car wash. Both businesses were operated as a sole proprietorship in Armand=s name. Michael began working for his father after graduating from high school. In 1986, Armand and Janet decided to purchase two acres of land with a commercial building in St. Albans. They decided to hold title jointly with Michael so that he could receive the property upon their deaths outside of the probate process. As noted above, parents provided the down payment, and Armand made all of the payments on the mortgage. In 1987, Armand leased the property to a NAPA Auto Parts distributor for a ten-year term. During this time, Michael was living at his parents= home and working for his father=s business. Parents began to vacation in Florida for three months per year, and they trusted Michael to keep the businesses operating smoothly while they were gone. Michael was authorized to write checks and take other action on parents= behalf. In 2004, Armand decided to retire and to liquidate his business. When the sale of his inventory did not cover his debts, Armand sold other property he owned to cover the deficiency. Both buildings on the Swanton Street property are

currently leased, and parents depend on the rental income for their living costs.

As previously stated, throughout the ownership of the property, Armand, through his business, made all of the payments on the mortgage and all payments for taxes, upkeep, and other improvements. Michael never made any payments toward the mortgage, nor did he contribute any money toward expenses for the property. Michael never demanded a share of the rental income from the property until his father liquidated his business and retired in 2004. With his job in his father=s business gone, Michael then sought a half-interest in the rental income from the property. The court found that Armand and Janet never intended to direct rental income from the property to their son, and between 1986 and 2004, Michael had no expectation of rental income from the property. Michael similarly had no intention of putting any money into the property personally. He had been content to let his father=s business pay the mortgage and other expenses and to wait to receive sole ownership of the property after his parents= death.

The court concluded that these facts presented a Atextbook case@ for imposing a resulting trust, which may be recognized when one party provides the funds to purchase property and the other holds title. The essential elements of this rule, the court explained, were the payment of consideration and the parties= intent at the time of the conveyance. In this case, it found that the parties= original intent was not in dispute. The evidence strongly supported a finding that all three parties to the deed intended that Armand should pay for the property and receive the rents as party of his wholly-owned car business, and the parties had followed this plan for nearly twenty years. As in other resulting trusts cases, Armand and Janet made all the payments and Michael received an interest in the propertyCin this case, a joint tenancy with right of survivorshipCwithout making any payments himself. The court concluded that a change in Michael=s attitude and personal needs did not support a change in the parties= common understanding that the property would be held for the benefit of Armand and Janet during their lifetimes. The court thus exercised its equitable authority to enforce the parties= original agreementCthat despite the language in the deed establishing a joint tenancy, Armand and Janet would pay for and receive the income from the property while they are alive. Michael appealed from this decision.

Michael raises numerous arguments on appeal. We agree with his assertion that the court committed

reversible error by imposing a resulting trust when the issue was not raised, briefed, or argued by the parties. Despite parents= suggestion to the contrary, parents focused their arguments on whether a constructive trust should be imposed while Michael defended against that remedy with evidence to defeat any claim of fraud or wrongdoing. Because a resulting trust differs from a constructive trust, we conclude that the parties are entitled to present evidence tailored to this issue. We therefore reverse and remand for a new merits hearing.

The law recognizes two types of implied trusts: resulting trusts and constructive trusts. Stated simply, a resulting trust is imposed to implement the parties= intent; a constructive trust is imposed to prevent the unjust enrichment of another. More specifically, a Aresulting trust@ has been defined as A[a] remedy imposed by equity when property is transferred under circumstances suggesting that the transferor did not intend for the transferee to have the beneficial interest in the property.@ Black=s Law Dictionary 1551 (8th ed. 2004). ABecause the transferee . . . is not entitled to the beneficial interest in question, and because that beneficial interest is not otherwise disposed of, it remains in and thus is said >to result= (that is, it reverts) to the transferor or the transferor=s estate or other successors in interest.@ Restatement (Third) of Trusts, ' 7, cmt. a. The transferee Ais said to hold the property upon a resulting trust for the transferor,@ and so Athe beneficial interest that is held in resulting trust is simply an equitable reversionary interest implied by law.@ Id.

Like a resulting trust, a constructive trust is also an equitable remedyCone that is imposed to prevent the unjust enrichment of another. See Black=s Law Dictionary 1547 (8th ed. 2004). Thus, we have recognized that A[i]t is a familiar principle of equity that a trust is implied whenever the circumstances are such, that the person taking the legal estate, whether by fraud or otherwise, cannot enjoy the beneficial interest without violating the rules of honesty and fair dealing.@ McGann v. Capital Sav. Bank & Trust, 117 Vt. 179, 189 (1952); see also Beatty v. Guggenheim Exploration Co., 122 N.E. 378, 380 (N.Y. 1919) (AA constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.@).[1] The Restatement (Third) of Trusts, ' 7, cmt. d, states the difference

between a resulting trust and a constructive trust as follows:

> A constructive trust is imposed not because of the legally inferred intention of the parties but because the court concludes that the person holding the title to the property, if permitted to keep it, would profit by a wrong or would be unjustly enriched. Thus, unlike either a resulting trust or an express trust, a constructive trust is remedial in character.

As the trial court found, we recognized one type of resulting trust (a Apurchase-money resulting trust@) in Tokarski v. Gates. There we stated, A[a]s a general rule, when a conveyance of land is made to one person, and the purchase money is paid by another, a resulting trust is thereby created . . . for the use and benefit of the person paying the money.@ 138 Vt. 220, 222 (1980) (citation omitted); see also Restatement (Third) of Trusts, ' 7, cmt. c., and ' 9 (discussing purchase-money resulting trusts). The Restatement explains this type of trust as follows:

> Sometimes a transfer of property is made to one person and the purchase price is paid by another, and no express trust is declared and no other agreement is made to allocate the beneficial rights in the property. Often the presumption in these cases is that the transferee is intended to take no beneficial interest and therefore hold the property on resulting trust for the person who paid the purchase price. . . . If, however, the transferee in a case of this type is the spouse, child, or other natural object of the bounty of the payor, the presumption is not of resulting trust but of gift, with the transferee presumptively taking the beneficial interest. . . . In either of these situations, the presumption, whether of resulting trust or gift, may be rebutted in whole or in part by evidence of a different intention.

Id. ' 7, cmt. c. (citations omitted).

Thus, a party who seeks to establish the existence of a resulting trust

> does not do so by showing that the transferor manifested an intention to create it. The case is made by showing circumstances which raise a presumption that the person making the transfer or causing it to be made did not intend to give the transferee the beneficial interest in question, and thus that the interest remained in the transferor or payor or his or her estate.

Restatement (Third) of Trusts, ' 7, cmt. a.

In Tokarski, we concluded that the facts presented did not warrant the imposition of a resulting trust. In that case, the plaintiff and defendants jointly decided to purchase a parcel of land. Title to the property was taken in all of the parties= names, with plaintiff receiving an undivided one half-interest, and defendants, who were husband and wife, receiving the other half-interest as tenants by the entirety. Tokarski, 138 Vt. at 221. Plaintiff paid the down payment and the balance of the purchase price was financed by a note and mortgage executed by all of the parties. Id. Plaintiff paid all of the mortgage payments, while defendants, after the first year, paid all of the taxes. Id. Plaintiff later claimed that he was the owner of the entire parcel under a resulting trust.

We rejected this argument, finding that the essential elements of this type of resulting trust were Athe payment of consideration and the parties= intent at the time of the conveyance.@ Id. at 222. We explained that there was no showing that the plaintiff had paid the consideration but failed to receive a beneficial interest in the property, nor was there any clear showing that the parties originally intended that only the plaintiff hold legal title. We noted that, although the plaintiff paid the down payment, all of the parties had signed the mortgage and note to secure the balance due on the property. By doing so, we explained, the defendants provided Aconsideration@ for the transaction because they Atook on an obligation and exposed themselves to liability in the event of a default.@ Id. We also pointed to evidence of the parties= intent at the time of the conveyance that they would jointly hold the property. We thus upheld the trial court=s conclusion that a

resulting trust should not be imposed.

In the instant case, one could similarly argue that Michael provided Aconsideration@ for the real estate transaction by signing the mortgage note, even though he made no payments on this obligation, and did not contribute in any way toward the expenses of the property. Nonetheless, as reflected by the discussion above, the parties= intent is the determinative factor and the imposition of a resulting trust is dependent on all of the surrounding circumstances that go to this issue. Because the parties did not argue below that a resulting trust existed, they did not tailor their evidence and arguments accordingly.[2] We thus conclude that the matter must be reversed and remanded for a new merits hearing to allow the parties to present additional evidence and argument and to allow the court to directly address whether a resulting trust, or alternatively, a constructive trust, should be imposed.

We are not in the position, as parents argue, to decide on appeal that the facts presented at the hearing support the imposition of a constructive trust. Given the nature of this type of remedy, and the absence of any findings directly addressing this issue, it is for the trial court, not this Court, to determine in the first instance whether a constructive trust should be imposed. See Sec=y v. Irish, 169 Vt. 407, 419 (1999) (recognizing that trial court has fundamental duty to make all findings necessary to support its conclusions, resolve the issues before it, and provide a basis for appellate review). The trial court may conclude that this remedy is appropriate after a new merits hearing. To the extent that Michael raises other arguments on appeal, we find it unnecessary to address them in light of our conclusion that the matter must be reversed and remanded.

Reversed and remanded.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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[1] We note that while some courts require that a fraud must exist at the time that the title is acquired before a constructive trust will be imposed, we have stated that the better-considered cases Ago to the extent of holding that when one conveys the title to his property to another in reliance upon the latter=s promise, a conscientious obligation is imposed, a violation of which for the grantee=s own advantage is such a fraud that equity will make him a constructive trustee for the benefit of the grantor or his beneficiary. And this will be so, though the grantee enters into the agreement with an honest intention of performing it.@ Miller v. Belville, 98 Vt. 243, 248 (1924).

[2] Michael=s argument concerning the Aplain language@ of the deed may be one factor in this analysis, but we do not agree with his assertion that he is entitled to judgment in his favor solely on this basis given that resulting and constructive trusts are equitable remedies.