

865.75 TRUSTS BY OPERATION OF LAW¹ - CONSTRUCTIVE TRUST.

The (*state number*) issue reads:

"Is (*identify property*) subject to a constructive trust in favor of the plaintiff?"

You will note that in this issue I have used the word "trust." A trust is a legal relationship between persons. A trust exists when one person acquires or holds property under circumstances where *he* ought not retain it. A "constructive trust" is a legal relationship which arises when, under all the circumstances, it would be inequitable for the person holding the property to retain it as against the interests of the other.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by clear, strong and convincing evidence,² two things:

First, that the defendant came into possession or control of (*identify property*) under circumstances where in good conscience *he* should not retain it. In determining whether the defendant should relinquish possession or control of (*identify property*) to the plaintiff, you may consider:

[the nature of the defendant's relationship with the plaintiff,³

[whether the defendant came into possession or control of (*identify property*) as a result of a breach of some legal duty owed to the plaintiff,⁴

[whether the defendant came into possession or control of (*identify property*) as a the result of wrongful conduct by the defendant,⁵

[the plaintiff's [interest in] [contribution to] the [acquisition]
[creation] [value] of (*identify property*),⁶]

[whether the defendant's retention of (*identify property*) will
unjustly enrich *him*,⁷]

[(*state any other factors supported by the evidence*)].

And Second, that the conduct of the defendant has deprived the
plaintiff of a beneficial interest in (*identify property*) to which the plaintiff
is entitled.⁸

Finally, as to the (*state number*) issue on which the plaintiff has
the burden of proof, if you find by clear, strong and convincing evidence
that (*identify property*) is subject to a constructive trust in favor of the
plaintiff, then it would be your duty to answer this issue "Yes" in favor of
the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty
to answer this issue "No" in favor of the defendant.

1 Trusts created by operation of law are classified into resulting trusts and
constructive trusts. "[T]he creation of a resulting trust involves the application of the
doctrine that valuable consideration rather than legal title determines the equitable title
resulting from a transaction; whereas a constructive trust ordinarily arises out of the
existence of fraud, actual or presumptive - usually involving the violation of a confidential
or fiduciary relation - in view of which equity transfers the beneficial title to some person
other than the holder of the legal title. Also, a resulting trust involves a presumption or
supposition of law of an intention to create a trust, where as a constructive trust arises
independent of any actual or presumed intention of the parties and is usually imposed
contrary to the actual intention of the trustee." *Bowen v. Darden*, 241 N.C. 11, 13-14, 84
S.E.2d 289, 292 (1954).

2 *Upchurch v. Upchurch*, 128 N.C. App. 461, 464, 495 S.E.2d 738, 740, *review
denied*, 348 N.C. 291, 501 S.E.2d 925 (1998).

3 Constructive trusts are typically imposed in fiduciary relationships. *In re Gertzman*,

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115 N.C. App. 634, 446 S.E.2d 130, *review denied*, 337 N.C. 801, 449 S.E.2d 571 (1994). However, other "close" relationships also support their imposition. *See, e.g., Upchurch*, 128 N.C. App. at 464, 495 S.E.2d at 740; (husband and wife); *Guy v. Guy*, 104 N.C. App. 753, 411 S.E.2d 403 (1991) (parent and child).

4 *Colwell Elec. Co. v. Kale-Barnwell Realty & Constr. Co.*, 267 N.C. 714, 148 S.E.2d 856 (1966); *Fulp v. Fulp*, 264 N.C. 20, 140 S.E.2d 708 (1965).

5 *E.g.*, coming into possession by fraud or deception, *Guy*, or by homicide, *Bryant v. Bryant*, 193 N.C. 372, 137 S.E. 188 (1927).

6 *E.g.*, some of the present value of the property derives from the plaintiff's original contributions of money or property. *Upchurch*, 128 N.C. App. at 464, 495 S.E.2d at 740.

7 *Roper v. Edwards*, 323 N.C. 461, 373 S.E.2d 423 (1988); *Wilson v. Crab Orchard Dev. Co.*, 276 N.C. 198, 171 S.E.2d 873 (1970); *Weatherford v. Keenan*, 128 N.C. App. 178, 493 S.E.2d 812, *review denied*, 348 N.C. 78, 505 S.E.2d 887 (1997).

8 *Leatherman v. Leatherman*, 297 N.C. 618, 622, 256 S.E.2d 793, 796 (1979).