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A PURCHASER'S RIGHTS IN THE MIDDLEMAN ESCROW

The recent decision in *Majewsky v. Empire Construction Co.*¹ harshly delimits the rights of innocent purchasers in California. This case involved the instantaneous conveyance of real property from *A* to *B* to *C*, and raised the question whether judgment liens against *B* attached to the property during the transaction, taking priority over the interest obtained by *C*, a bona fide purchaser. In affirming the trial court despite two vigorous dissents,² the supreme court held that the interest acquired by *B* in the real property during this transaction was sufficient to support the attachment of judgment liens, and consequently, *C*'s interest in the property was subject to these liens. This Note will attempt to isolate the controlling issues in *Majewsky*, to determine the correctness of the court's disposition of the case, and to consider the merits of alternative theories advanced to support a different result.

The Majewsky Decision

The situation in *Majewsky*, in somewhat greater detail, involved an action by Adolfo and Consuelo Majewsky (party *C*) to quiet title as against judgment liens claimed by the defendant, judgment creditors of Allen and Dorothy Waugh (party *B*). Irving and Beatrice Cuslidge (party *A*), the original owners of Blackacre, entered into an agreement with the Waughs, judgment debtors, whereby the latter agreed to purchase the property for \$11,000. Waugh, seeking to resell the property at a profit, contacted a real estate broker, who in turn contacted the plaintiffs. After a preliminary title check, the Majewskys entered into an agreement with the Waughs to purchase the property for \$12,500. The names of Allen and Dorothy Waugh, the intermediate parties, did not appear on the agreement, however, which was signed by the broker as "agent for sellers."³ Thus the Majewskys were unaware that the Waughs were involved in the transaction and assumed that they were purchasing the property directly from the Cuslidges, whose names were given as owners on the preliminary title report. Both agreements, along with the purchase money advanced entirely by the Majewskys, were deposited in the same escrow, which was closed with title passing instantaneously from the Cuslidges (*A*) to the Waughs (*B*) to the Ma-

1. 2 Cal. 3d 478, 467 P.2d 547, 85 Cal. Rptr. 819 (1970).

2. *Id.* at 486, 489, 467 P.2d at 553, 555, 85 Cal. Rptr. at 825, 827.

3. *Id.* at 481, 467 P.2d at 549, 85 Cal. Rptr. at 821.

jewskys (C). The money flowed in the opposite direction, with the Waughs, the broker, and the title company each exacting a profit.⁴

The dispositive issue in *Majewsky* is whether judgment liens against the Waughs amounting to over \$50,000 attached to Blackacre as title passed through them. This question may be resolved by determining the interest the Waughs acquired during the transaction. Since judgment liens are solely the product of statute,⁵ the interests to which they will attach are limited by the statute creating them. In California, a judgment lien will attach only to "the real property of the judgment debtor, not exempt from execution, . . . owned by him at the time, or which he may afterward and before the lien expires, acquire. . . ."⁶ California courts have consistently construed the term "real property" quite strictly when used in connection with judgment liens. For a judgment lien to attach, the judgment debtor must have a vested legal interest in the real property in question.⁷ A judgment lien will not attach to a mere equitable interest in land,⁸ such as that obtained by a vendee under a contract for purchase of real property.⁹ Nor will a judgment lien attach to naked legal title,¹⁰ such as that held by a trustee under a trust¹¹ or by a vendor under a purchase agreement for real property.¹² Therefore, if the Waughs' interest were anything less than a fully merged "real property" interest—if it were

4. *Id.* at 480-83, 467 P.2d at 549-50, 85 Cal. Rptr. at 821-22.

5. *Boggs v. Dunn*, 160 Cal. 283, 116 P. 743 (1911); *Ackley v. Chamberlain*, 16 Cal. 181 (1860).

6. CAL. CODE CIV. PROC. § 674.

7. *People ex rel. Ford v. Irwin*, 14 Cal. 428 (1859); *Cook v. Huntley*, 44 Cal. App. 2d 635, 641, 112 P.2d 889, 892 (1941); *Belieu v. Power*, 54 Cal. App. 244, 247, 201 P. 620, 621 (1921).

8. *Homeland Bldg. Co. v. Reynolds*, 49 Cal. App. 2d 176, 178, 121 P.2d 59, 61 (1942); *Cook v. Huntley*, 44 Cal. App. 2d 635, 641, 112 P.2d 889, 892 (1941); *Poindexter v. Los Angeles Stone Co.*, 60 Cal. App. 686, 687-88, 214 P. 241, 242 (1923); *Belieu v. Power*, 54 Cal. App. 244, 247, 201 P. 620, 621 (1921).

9. *Oaks v. Kendall*, 23 Cal. App. 2d 715, 719, 73 P.2d 1255, 1257 (1937); *Belieu v. Power*, 54 Cal. App. 244, 247, 201 P. 620, 621 (1921).

10. *Wheeler v. Trefftz*, 228 Cal. App. 2d 271, 274, 39 Cal. Rptr. 507, 509 (1964); *Schriber v. Title Ins. Co.*, 156 Cal. App. 2d 700, 707, 320 P.2d 82, 86 (1958); *Spear v. Farwell*, 5 Cal. App. 2d 111, 114, 42 P.2d 391, 392-93 (1935); *Iknoian v. Winter*, 94 Cal. App. 223, 225, 270 P. 999, 1000 (1928); *Riverdale Mining Co. v. Wicks*, 14 Cal. App. 526, 536, 112 P. 896, 900 (1910).

11. *Riverdale Mining Co. v. Wicks*, 14 Cal. App. 526, 536-37, 112 P. 896, 900 (1910); *Zenda Mining & Milling Co. v. Tiffin*, 11 Cal. App. 62, 65-66, 104 P. 10, 12 (1909).

12. *In re Estate of Reid*, 26 Cal. App. 2d 362, 369, 79 P.2d 451, 456 (1938); *Hunt v. Inner Harbor Land Co.*, 61 Cal. App. 271, 214 P. 998, 999 (1923), holding that the vendor under an executory contract to convey land retains mere naked title. In all cases where a judgment debtor holds only naked legal title, judgment liens cannot attach. See cases cited in note 10 *supra*.

a mere equitable interest, or naked legal title—then no judgment liens could have properly attached.

The supreme court held that the interest acquired by the Waughs was a fee simple absolute. They were not involuntary trustees of either a resulting or constructive trust, because the facts of the case did not support the conclusion that either trust had been created.¹³ Moreover, because the agreement between the Cuslidges and the Waughs was not expressly conditioned upon the execution of the Waugh-Majewsky contract, the Waughs could not be considered a mere conduit for passage of title.¹⁴ Therefore, the court concluded that when title was transferred to the Waughs in the escrow, they became the "actual owners," if only momentarily, and the judgment liens attached.¹⁵

Alternative Dispositions of the Case

There are three possible theories under which the court in *Majewsky* might have concluded that the Waughs did not acquire the interest necessary to support a judgment lien, viz: resulting trust, constructive trust, or equitable conversion.

A. The Resulting Trust Theory

A resulting trust may arise by operation of law in three distinctly different factual situations: where an express trust fails; where an express trust does not exhaust the trust estate; or where property is transferred to one person and the purchase price is paid by another.¹⁶ Only the last situation, which may give rise to what is called a purchase money resulting trust, is relevant to a discussion of the *Majewsky* case. In California, the purchase money resulting trust is a statutory creation:

When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.¹⁷

The requisites of this statute are apparently satisfied by the facts of the case. The property was transferred from the Cuslidges to the Waughs, while the consideration therefor was supplied entirely by the Majewskys. Therefore, dissenting Justice Mosk contended, as a matter

13. *Majewsky v. Empire Constr. Co.*, 2 Cal. 3d 478, 485-86, 467 P.2d 547, 552-53, 85 Cal. Rptr. 819, 824-25 (1970). These theories, and the reasons why the court concluded they were inapplicable to the facts at bar, are discussed in greater detail in the text accompanying notes 16-45 *infra*.

14. *Id.* at 482-84, 467 P.2d at 550-51, 85 Cal. Rptr. at 822-23.

15. *Id.* at 484, 467 P.2d at 551, 85 Cal. Rptr. at 823.

16. See 4 G. BOGERT, *THE LAW OF TRUSTS AND TRUSTEES* § 451 at 498 (2d ed. 1964); 5 A. SCOTT, *THE LAW OF TRUSTS* § 404.1 at 3214 (3d ed. 1967).

17. CAL. CIV. CODE § 853.

of law, a trust should be presumed to result in favor of the Majewskys, who paid the purchase money.¹⁸ The court, however, refused to evoke the presumption; the reason for its refusal becomes clear only after the relationship between the parties is evaluated.

For a resulting trust to arise, it must be evident from the conduct of the parties that the payor intended that the transferee act as trustee.¹⁹ In fact, it is their relationship which gives rise to the inference of intent.²⁰ This intent need not be specifically mentioned, either orally or in writing.²¹ Indeed, if it were expressly stated, an express trust rather than a resulting trust might arise. But the intent must be apparent from the behavior of the settlor,²² and generally it is required that this intent be shared by both the transferee and the payor.²³ One California court explained the relevance of the conduct and relationship of the parties to the creation of a resulting trust in the following manner:

A resulting trust is not founded on the simple fact that money or property of one has been used by another to purchase property. It is founded on a relationship of the two, on the fact that as between them, consciously and intentionally, one has advanced the consideration wherewith to make a purchase in the name of the other. The trust arises because it is the natural presumption in such a case that it was their intention that the ostensible purchaser should acquire and hold the property for the one with whose means it was acquired.²⁴

In *Majewsky*, however, there was *no* relationship between the Waughs (the transferees) and the Majewskys (the payors). Unaware that the Waughs were their immediate grantors, or that their money was in effect used to transfer title to the Waughs, the Majewskys could not have intended that the Waughs acquire the land for the payors' benefit. When the Majewskys transferred the money under the sales contract, they believed that they would receive the entire interest in the land in return. In fact, they were unaware that title had passed through

18. 2 Cal. 3d at 487, 467 P.2d at 553, 85 Cal. Rptr. at 825 (1970).

19. *Lezinsky v. Mason Malt Whiskey Distilling Co.*, 185 Cal. 240, 251, 196 P. 884, 890 (1921); *accord*, *Berniker v. Berniker*, 30 Cal. 2d 439, 447, 182 P.2d 557, 562-63 (1947); *Seabury v. Costello*, 209 Cal. App. 2d 640, 645, 26 Cal. Rptr. 248, 251 (1962); 4 G. BOGERT, *THE LAW OF TRUSTS AND TRUSTEES* § 454 at 517 (2d ed. 1964); 5 A. SCOTT, *THE LAW OF TRUSTS* § 404.2 at 3215 (3d ed. 1967).

20. "[T]he intention is inferable, as has been said, from the conduct of the parties and lack of family relationship." *Jackson v. Jackson*, 150 Ga. 544, 546, 104 S.E. 236, 237 (1920).

21. 4 G. BOGERT, *THE LAW OF TRUSTS AND TRUSTEES* § 454, at 517 (2d ed. 1964).

22. *Id.*

23. *Love v. Watkins*, 40 Cal. 547, 568 (1871); *Basket v. Crook*, 86 Cal. App. 2d 355, 362, 195 P.2d 39, 44 (1948).

24. *Lezinsky v. Mason Malt Whiskey Distilling Co.*, 185 Cal. 240, 251, 196 P. 884, 890 (1921).

the Waughs until months later.²⁵ It is therefore meaningless to argue that it was the intent of the parties that the Waughs would act as the Majewskys' trustee when the payors did not know of the existence of the transferees.

Furthermore, it is well settled that there can be no resulting trust if the payor has not *consented* to the vesting of legal title in the transferee.²⁶

It is only then that the payor will expect the grantee to be a trustee for him. If [the payor's] money pays for land but without his consent the deed for it is made out to someone else, there is no room for presuming that [he] wanted that person to be a trustee for [him].²⁷

It is, of course, clear that the Majewskys did not consent to the vesting of any interest, either legal or equitable, in the Waughs. As discussed above, the Majewskys were not apprised of the Waughs' role in the transaction until several months later. Thus, for the same reason that it cannot be argued that the Majewskys intended that the Waughs act as their trustee, it is not possible to maintain that the Majewskys, as payors, consented to the transfer of legal title to the Waughs.

According to the court,²⁸ the *Second Restatement of Trusts* was dispositive of the argument that a trust had resulted:

[W]hen a transfer of property is made to one person and the purchase price thereof is paid by him with money or other property belonging to another with the consent of the latter, a resulting trust arises in his favor.

If the other person did not consent to the use of his money or other property in making the purchase, or *did not consent* that the property purchased should *be transferred* to the transferee, a *constructive trust* and not a resulting trust arises.²⁹

The court, however, held that there was no constructive trust for reasons which will be analyzed in the following section.

B. The Constructive Trust Theory

The constructive trust is an equitable remedy imposed on wrongfully acquired property to prevent unjust enrichment.³⁰ In California, a

25. *Majewsky v. Empire Constr. Co.*, 2 Cal. 3d 478, 481-82, 467 P.2d 547, 549, 85 Cal. Rptr. 819, 821 (1970).

26. G. BOGERT, *HANDBOOK OF THE LAW OF TRUSTS* § 74, at 195 (4th ed. 1963).

27. *Id.*

28. 2 Cal. 3d at 485-86, 467 P.2d 547, 549, 85 Cal. Rptr. 821 at 824.

29. *RESTATEMENT (SECOND) OF TRUSTS* § 440, comment h (1959) (emphasis added). *But see* *Shanahan v. Crompton*, 92 Cal. 9, 28 P. 50 (1891); *Padilla v. Padilla*, 38 Cal. App. 2d 319, 100 P.2d 1093 (1940). These two cases are distinguishable from *Majewsky* because the parties involved were husband and wife and the funds used to pay for the property were community property. The respective courts held that the relationship of the parties established the necessary intent despite the lack of consent.

30. *RESTATEMENT OF RESTITUTION* § 160 (1937).

constructive trust arises whenever a person gains something "by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act. . . ." ³¹ The person unjustly enriched becomes constructive trustee of the thing possessed for the benefit of the person who would otherwise have had it. ³²

In his dissent ³³ Justice Tobriner offered a theory for the imposition of a constructive trust in *Majewsky*. He reasoned that the Waughs were guilty of a breach of warranty by their failure to disclose the judgment liens against themselves. The grant deed which the Waughs submitted into escrow warranted as a matter of law that the estate to be conveyed was free from judgment liens incurred by the transferor. ³⁴ Since the property was in fact subject to judgment liens, the Waughs breached the warranty upon delivery of the deed into escrow. Failure to disclose the judgment liens was fraudulent, if the Waughs knew or should have known of their existence. If, on the other hand, the Waughs were justifiably unaware of the liens, the transaction was nevertheless based on a mutual mistake of fact. Either fraud or mistake is a ground for the imposition of a constructive trust. ³⁵

The unjust enrichment was clear from the record. Before the title company could distribute the money received from the Majewskys, it had to receive a deed from the Waughs to them. ³⁶ Misled by the Waughs' deed, whose warranties could not be performed, the title company distributed the money. Since the warranties were breached, this distribution, in accordance with the escrow instructions, constituted a misappropriation of the money, which should have been impressed with a constructive trust in the hands of the Waughs. But the Cuslidges acquired the \$11,000 as innocent purchasers for value without notice, and equity cannot follow trust property when it passes into the possession of a bona fide purchaser. ³⁷ Equity can, however, follow the misappropriated trust property into its product, ³⁸ provided that the

31. CAL. CIV. CODE § 2224.

32. *Id.*

33. 2 Cal. 3d at 489, 467 P.2d at 555, 85 Cal. Rptr. at 827.

34. A grant deed warrants that grantor's estate is "free from encumbrances done, made or suffered by the grantor. . . ." CAL. CIV. CODE § 1113. "Encumbrances" includes "all liens upon real property." CAL. CIV. CODE § 1114.

35. CAL. CIV. CODE § 2224.

36. *Kelly v. Steinberg*, 148 Cal. App. 2d 211, 306 P.2d 955 (1957).

37. *Estate of Lyon*, 163 Cal. 803, 127 P. 75 (1912); *Nidever v. Ayers*, 83 Cal. 39, 23 P. 192 (1890).

38. G. BOGERT, *HANDBOOK OF THE LAW OF TRUSTS* § 161, at 418 (4th ed. 1963). "If A is a trustee for B, and the original trust res is certain land, A violates the trust by selling the land to X . . . [when] A then deposits the proceeds of the sale in a bank to the credit of A personally; . . . [B] may follow the proceeds of the original property into the bank account. . . ." *Id.*

original property is clearly traceable.³⁹ Here, the product of the \$11,000 was the land in question, and a constructive trust could have been placed on it as it was clearly identifiable as the product of the purchase money. The \$1,500 which the Waughs kept as their profit would also be subject to the trust.⁴⁰

The majority in *Majewsky* dismissed the theory of a constructive trust as a possible remedy, concluding that the Waughs were neither guilty of any wrongdoing, nor unjustly enriched.⁴¹ The court said that the Waughs did *not* intentionally use the Majewskys' funds to purchase the property:

It is only when the entire middleman escrow, after being closed, is viewed in retrospect that one may say that *in effect* the Waughs used the funds. But the establishing of a single escrow was due solely to a decision and practice of the title company. . . . [When it was called upon to make a simultaneous closing of the two escrows, the company] took the "short-cut" of crediting the Waughs with \$12,500 coming from the Majewskys' [*sic*] and debiting them with the \$11,000 due the Cuslidges.⁴²

The court, however, missed the point. As Justice Tobriner argued, the Waughs' submission of an invalid warranty deed constituted the wrongful act which resulted in the misappropriation of the Majewskys' money.

The court's conclusion that the Waughs were not unjustly enriched is equally fallacious. The apparent basis for this conclusion is the belief that the mere use of the Majewsky's money to facilitate transfer of Blackacre to the Waughs did not of itself amount to unjust enrichment.⁴³ This conclusion would be correct if the benefit which accrued to the Waughs through the use of the money had only been momentary and without detriment to the Majewskys. But the plaintiffs did suffer a considerable pecuniary loss. The Waughs received a \$1,500 profit from the sale and, since a constructive trust was not imposed, the property was applied to reduce their outstanding indebtedness. In return, the Majewskys received real property so encumbered with liens that it is virtually valueless.⁴⁴ To prevent the Waughs' unjust enrichment, a constructive trust should have been impressed upon their \$1,500 profit and the property in question. As involuntary trustees, the Waughs would never have acquired more than naked legal

39. *People v. California Safe Deposit & Trust Co.*, 175 Cal. 756, 759, 167 P. 388, 389 (1917); *Wells, Fargo & Co. v. Robinson*, 13 Cal. 133, 140 (1859).

40. *Majewsky v. Empire Constr. Co.*, 2 Cal. 3d 478, 491, 467 P.2d 547, 556, 85 Cal. Rptr. 819, 828 (1970).

41. *Id.* at 486, 467 P.2d at 553, 85 Cal. Rptr. at 825.

42. *Id.*

43. *Id.*

44. *Id.* at 490, 467 P.2d at 556, 85 Cal. Rptr. at 828.

title to the property, an interest to which judgment liens cannot attach.⁴⁵

Under Justice Tobriner's theory all the elements for a constructive trust were present: misfeasance by the Waughs resulting in their own unjust enrichment to the detriment of the Majewskys. The court was in error, therefore, for failing to apply this remedy. It is true, of course, that the Majewskys had, in the alternative, an action for breach of warranty against the Waughs. It would have been futile to pursue this remedy, however, as the Waughs were obviously insolvent. Rather, on the basis of a constructive trust theory, the Majewskys should have been permitted to recover that for which they bargained—the property.

C. Equitable Conversion

Finally, the doctrine of equitable conversion could have been applied in *Majewsky*. This remedy, unlike a resulting or constructive trust, does not arise by operation of law. It is utilized by a court having equitable powers only when essential to achieving manifest justice.⁴⁶ It was obviously unjust for the Majewskys to provide \$12,500 consideration for real property and not receive that property. Although the court did not consider the concept of equitable conversion, it will be useful to apply it to the facts of the case, for such application will clearly demonstrate that the Waughs had no interest to which a judgment lien could attach.

Equitable conversion is a fiction,⁴⁷ based on the premise that equity regards as done that which ought to have been done.⁴⁸ It provides that when a specifically enforceable contract for the sale of land is executed, the vendee is deemed the equitable owner of the real property, and the vendor the owner of the purchase money.⁴⁹ In *Majewsky*, when the contract between the Cuslidges and the Waughs was executed, the former retained the legal title and received an equitable lien on the land for the purchase price; the latter acquired an equitable interest in Blackacre.⁵⁰ Upon the execution of the contract between the Waughs and the Majewskys, the equitable interest in Blackacre

45. See text accompanying notes 10-11 *supra*.

46. *In re Estate of Gracey*, 200 Cal. 482, 253 P. 921, 925 (1927); *Vigli v. Davis*, 79 Cal. App. 2d 237, 179 P.2d 586, 597 (1947).

47. *Parr-Richmond Indus. Corp. v. Boyd*, 43 Cal. 2d 157, 165-66, 272 P.2d 16, 22 (1954); *Vigli v. Davis*, 79 Cal. App. 2d 237, 255, 179 P.2d 586, 597 (1947).

48. *Parr-Richmond Indus. Corp. v. Boyd*, 43 Cal. 2d 157, 165-66, 272 P.2d 16, 22 (1954); *Hanes v. Throckmorton*, 57 Cal. 368, 382-83 (1881).

49. *In re Estate of Dwyer*, 159 Cal. 664, 675, 115 P. 235, 240 (1911); *Vigli v. Davis*, 79 Cal. App. 2d 237, 254-55, 179 P.2d 586, 597 (1947).

50. This equitable interest was not subject to the attachment of judgment liens. *People ex rel. Ford v. Irwin*, 14 Cal. 428, 434 (1959); *Poindexter v. Los Angeles Stone Co.*, 60 Cal. App. 686, 688, 214 P. 241, 242 (1923); *Belieu v. Power*, 54 Cal. App. 244, 247, 201 P. 620, 621 (1921); *Cockerill, Equitable Conversion in California*, 1 S. CAL. L. REV. 309, 319 (1928).

passed to the Majewskys, while the legal title remained in the Cuslidges.⁵¹ This interest, however, was only naked legal title.⁵² When the escrow was closed the title passed from the Cuslidges to the Waughs to the Majewskys. Since the Cuslidges had already divested themselves of the equitable estate, however, only naked legal title passed from them. Furthermore, since the equitable estate was in the Majewskys prior to the closing of the escrow, the Waughs were in effect no more than a mere conduit for passage of title.⁵³ Under the doctrine of equitable conversion, therefore, the Waughs never acquired the fully merged real property interest necessary to support the attachment of judgment liens. They successively possessed the equitable interest and naked legal title, interests to which no judgment liens could attach.⁵⁴

The basic requirement for the application of the equitable conversion doctrine is that the contract be capable of specific performance at the time of execution.⁵⁵ If the vendor does not have the title he agreed to convey, there can be no specific performance, and consequently no equitable conversion.⁵⁶ This requirement presents no problem in relation to the contract between the Cuslidges and the Waughs, of course, because the Cuslidges obviously had title when they executed their agreement. However, it does raise the question whether the interest the Waughs possessed at the time they entered into the agreement with the Majewskys was sufficient to render this contract specifically enforceable. Technically, the Waughs had no title, but under the contract with the Cuslidges, they did have an equitable interest in the property and the right to claim legal title upon performance. This interest is deemed sufficient to make the subsequent contract between the Waughs and the Majewskys specifically enforceable.⁵⁷ In fact, in a suit for specific performance, the Majewskys could compel the Cuslidges to transfer the legal title to himself.⁵⁸

51. In one case "a contract by purchaser to sell to a third person, while purchaser's contract with vendor was still executory, was treated as a conveyance of purchaser's equitable ownership, the same as an assignment." Pound, *The Progress of the Law, 1918-1919*, 33 HARV. L. REV. 813, 822 (1920), citing *Miedema v. Wormhoudt*, 288 Ill. 537, 541, 123 N.E. 596, 598 (1919).

52. *In re Estate of Reid*, 26 Cal. App. 2d 362, 369, 79 P.2d 451, 455-56 (1938); *Hunt v. Inner Harbor Land Co.*, 61 Cal. App. 271, 273, 214 P. 998, 999 (1923).

53. When one is a mere conduit, there is no interest to which a judgment lien can attach. *Zenda Mining & Milling Co. v. Tiffin*, 11 Cal. App. 62, 65, 104 P. 10, 12 (1909).

54. See text accompanying notes 8 & 10 *supra*.

55. H. McCLINTOCK, *HANDBOOK OF PRINCIPLES OF EQUITY* 286-87 (2d ed. 1940).

56. *Parr-Richmond Indus. Corp. v. Boyd*, 43 Cal. 2d 157, 168, 272 P.2d 16, 24 (1954).

57. *Miller v. Dyer*, 20 Cal. 2d 526, 529, 127 P.2d 901, 902 (1942); *Friedrich v. Roland*, 95 Cal. App. 2d 543, 550, 213 P.2d 423, 427 (1950).

58. *Miller v. Dyer*, 20 Cal. 2d 526, 530, 127 P.2d 901, 903 (1942).

Conclusion

Despite the availability of the three aforementioned theories, the court refused to protect the Majewskys' interest in the property. Two factors appear primarily responsible for this result. First, the factual context of the case was a hybrid. Since the operative facts of the case were similar to those of the classic textbook illustration of a resulting trust, the court considered this theory as if it were the only viable solution. The Majewskys' ignorance of the Waughs' participation in the transaction, however, rendered this theory inapplicable. Without knowledge of the transfer of title to the Waughs, the Majewskys could not have consented thereto, and consequently there was no basis for the necessary inference that the transfer was a product of the mutual intent of the parties to create a trust. Without the requisite intent, the theory of resulting trust crumbled.⁵⁹

Despite the outward similarities to a resulting trust, the situation was ripe for the imposition of a constructive trust. Under Justice To-briner's theory, all the essentials for a constructive trust were present, *viz*: the Waughs' commission of a wrongful act, their consequential unjust enrichment, and the detriment to the Majewskys' interest in the land.⁶⁰ But here the second critical factor influenced the court's decision. The Waughs, in the view of the court, were innocent of any intentional wrongdoing.⁶¹ The court's erroneous failure to impress the property with a constructive trust was based upon the absence of any scheme by the Waughs to defraud the Majewskys. Good faith, however, is no defense against a constructive trust.⁶² Despite the Waughs' good faith, they wrongfully caused the misappropriation of the purchase money. A trust should have been impressed on the product of that money. The court was in error for its failure to invoke this remedy.

The same just result would have been achieved under the theory of equitable conversion. Moreover, neither the confusing factual nature of the case nor the Waughs' ostensible good faith would have affected its application. The theory is solely dependent upon the execution of a specifically enforceable land sale contract.⁶³ It is therefore exempt from the many mechanical requisites of resulting and constructive trusts which turned the court's deliberations into an exercise in form rather

59. See text accompanying notes 19-29 *supra*.

60. CAL. CIV. CODE § 2224.

61. *Majewsky v. Empire Constr. Co.*, 2 Cal. 3d 478, 486, 467 P.2d 547, 553, 85 Cal. Rptr. 819, 825 (1970).

62. *Lakin v. Sierra Buttes Gold Mining Co.*, 25 F. 337, 341 (9th Cir. 1885).

63. See note 55 *supra*.

than justice. The sole rationale for the application of equitable conversion is the achievement of justice, a result which the decision in *Majewsky* unfortunately failed to attain.

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