

Contracts - Beneficiary of Land Trust Does Not Have Power To Accept Offer Made to Trustee - *Schneider v. Pioneer Trust & Savings Bank*, 168 N.E.2d 809 (Ill. App. 1960)

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are so compelling as to allow no other course."²² Due to this decision, the Minnesota courts represented the most formidable support for the modern trend in respect to case law until Nevada's recent decision in the *Stine* case.

The foregoing discussion, if it has achieved its purpose, has provided the background for a better appreciation of the significance of the *Stine* decision in regard to enforcing labor arbitration agreements. This case held that a provision to arbitrate in a labor contract was enforceable, notwithstanding the fact that Nevada was committed to the common-law rule. Accepting the decisions of *Scott* and *Park* as the better view, the Nevada court chose to align itself with courts cognizant of existing conditions and ready to make necessary changes. This decision in a comparatively non-industrial state such as Nevada, is further proof of the merit of the modern trend in all states, and in regard to all types of arbitration agreements. Special consideration must be given to the fact that in rendering this decision, the Nevada court went contrary to the common-law rule, when by statute, Nevada had adopted the English common-law in regard to the enforcing of arbitration agreements.²³ It appears that the Nevada Supreme Court felt so strongly in favor of abrogating the common-law rule that they exceeded their judicial prerogative, and, in effect, entered into a legislative area. In justification of this contrary stand the court stated: "[W]e should be gravely at fault if we felt that our hands were tied by a common-law rule enunciated 350 years ago, of doubtful justification even then and of confused and uncertain interpretation ever since."²⁴

²² *Id.* at 187.

²³ NEV. REV. STAT. § 1.030 (1957), provides: "The common law of England, so far as it is not repugnant to or in conflict with the constitution and laws of the United States or the constitution and laws of this state, shall be the rule and decision in all the courts of this state."

²⁴ Local 525, United Ass'n of Journeyman & Apprentices of Plumbing v. Stine, 351 P.2d 965, 978 (Nev. 1960).

CONTRACTS—BENEFICIARY OF LAND TRUST DOES NOT HAVE POWER TO ACCEPT OFFER MADE TO TRUSTEE

Schneider filed a complaint to recover the sum of \$2,000 which had been paid to defendant Harmon to be deposited in escrow with the defendant, Pioneer Trust and Savings Bank. The deposit was made with a written offer, addressed to the Pioneer Trust and Savings Bank, to purchase certain real estate held by it as trustee for the benefit of Harmon.

Harmon was the sole beneficiary of the land trust and, according to the terms of the trust agreement, had authority to order a conveyance of the property by the bank. Harmon attempted to accept the written offer by a notation thereon. The trial court entered judgment against Harmon, and on appeal the Illinois Appellate Court affirmed on the basis that the beneficiary of a land trust does not have the power to accept an offer addressed to the trustee. *Schneider v. Pioneer Trust & Savings Bank*, 168 N.E. 2d 809 (Ill. App. 1960).

The defendant Harmon, while taking the benefits of the land trust agreement, ignored the existence of the trust in this transaction. He tried to treat an offer to the trustee as an offer to himself. From a contract viewpoint, he could not accept an offer made to the trustee. The court applied the well settled rules of contract law that the offeror has a right to choose the person with whom he deals¹ and that, in order to form a contract by offer and acceptance, the acceptance must conform exactly to the offer.² Harmon's contention that since he was the only person with authority to compel the trustee to convey the property, he could accept the offer addressed to the trustee, would have, if accepted by the court, extended the term "offeree" to include anyone who has the power to bring about the performance sought by the offeror. This would be directly contrary to the abovementioned rules of contract law.

Although the court disposed of the case on the basis of contract law, it touched upon land trusts in its dictum. In his answer to the complaint, Harmon alleged that he was the real owner of the property, with the authority to sell, and that he was ready, willing, and able to convey the real estate. As the court pointed out, this contention was completely inconsistent with the theory of land trusts.

The land trust is a trust arrangement under which the trustee holds title to the real property, but acts only upon the direction of the beneficiary, except as otherwise provided in the trust agreement. The beneficiary retains control over the property. He may manage it, rent it, develop it, collect and distribute the income, and direct the sale of the property.³ But the most important feature of the land trust is that both the legal and the equitable title in the real property is in the trustee. The

¹ *Ott v. Home Savings & Loan Assn.*, 265 F. 2d 643 (9th Cir. 1958); *Rodhouse v. Chicago Alton Ry.*, 219 Ill. 596, 76 N.E. 836 (1906); *Barker v. Keown*, 67 Ill. App. 433 (1896); CORBIN, CONTRACTS § 56 (1950).

² *Whitelaw v. Brady*, 3 Ill. 2d 583, 121 N.E. 2d 485 (1954); *Snow v. Schulman*, 352 Ill. 63, 185 N.E. 262 (1933); *El Reno Wholesale Grocery Co. v. Stoking*, 293 Ill. 494, 127 N.E. 642 (1920); *Maclay v. Harvey*, 90 Ill. 525 (1848).

³ *Barkhausen v. Continental Nat'l Bank & Trust Co.*, 3 Ill. 2d 254, 120 N.E. 2d 649 (1954); *Breen v. Breen*, 411 Ill. 206, 103 N.E. 2d 625 (1952); *Crow v. Crow*, 348 Ill. 241, 180 N.E. 877 (1932).

interest of the beneficiary is treated by the courts as personal property for all purposes.⁴ This conversion of interest from realty to personalty is based on the doctrine of equitable conversion.⁵

Under the land trust the beneficiary is able to deal with real property as personal property,⁶ but he cannot directly affect the legal title. Therefore, to sell he must act through the trustee. In the instant case, Harmon, the beneficiary, did not just attempt to assign or transfer his personal property interest—he tried to sell the land itself. In doing so, however, he learned the legal lesson of which all land trust beneficiaries might take note—namely, that while practically speaking he had complete control of the property, including the power to compel the trustee to convey, he could not directly convey the legal title himself. He had to act through the trustee, who had both legal and equitable title.

⁴ 2 *Gordan v. Gordan*, 6 Ill. 2d 572, 129 N.E. 2d 706 (1955); *Dicus v. Scherer*, 277 Ill. 168, 115 N.E. 171 (1917).

⁵ *Baker v. Commissioner*, 253 Mass. 130, 148 N.E. 593 (1925).

⁶ For a discussion of the legal benefits of holding the property as personal property see CAPLAN, *THE LAW OF THE LAND TRUSTS* 12–18 (2d ed. 1958).

CORPORATIONS—BURDEN OF PROOF ON DIRECTORS TO SHOW FAIRNESS OF TRANSACTIONS BETWEEN CORPORATIONS WITH COMMON DIRECTORS

The plaintiffs, minority stockholders of a building corporation, brought suit on behalf of themselves and all the other stockholders to require the directors of the South Parkway Building Corporation to account to the corporation for damages allegedly suffered by various transactions between the South Parkway Building Corporation and the Union Amusement Company, the two corporations having interlocking directorates with both boards of directors dominated by one individual. The chancellor ordered defendants, as directors of the corporation, to give an accounting for the benefit of the stockholders. The appellate court reversed the chancellor's decree, but the Supreme Court of Illinois reversed the appellate court on the basis that the appellate court had erred in construing Illinois law as placing upon stockholders the burden of establishing actual fraud in transactions between corporations with interlocking directorates. *Shlensky v. South Parkway Bldg. Corp.*, 19 Ill. 2d 268, 166 N.E. 2d 793 (1960).

This case required a clarification of Illinois law respecting the obligation of corporate directorates. The plaintiff stockholders claimed, and the Supreme Court ultimately held, as above indicated, that the appellate