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PITTSBURGH, PA., APRIL 5, 1905.

Court of Common Pleas No. 1,

ALLEGHENY COUNTY.

YOUNG v. HUNTER et al.

Attorney and client—Confidential relation—Equity—Account.

A bill in equity alleging that the defendant, an attorney at law, and related by marriage to the plaintiff, had fraudulently and in violation of his fiduciary relation of attorney obtained title to her interest in certain properties, consisting of a glass business and two pieces of real estate, and which prays for an accounting, a reconveyance, and that defendant be declared a trustee for her, will be dismissed where it appears that he did not act as plaintiff's attorney in any of the transactions concerning her property, but only as a member of the family, all of whom were interested in saving the properties. The fact that the properties were finally taken by defendant in his own name and disposed of by him was no evidence of a breach of trust, in view of the undisputed evidence in the case that defendant had advanced in money as much, if not more, than he finally received in order to save them while still in the plaintiff's possession, and also in view of the admissions of the plaintiff at the trial that she understood at the time of the conveyances to defendant that they were in payment to him of the advances.

No. 66 March Term, 1905. In equity.

MACFARLANE, J.

STATEMENT.

The plaintiff's bill avers that during the lifetime of her mother she was the owner in remainder of an undivided interest in a lot in the Eleventh ward, Pittsburgh, known as the Center avenue lot, and in a farm in Baldwin township, Allegheny county, known as the Baldwin township farm, and that upon the death of her mother, Mary N. Agnew, who held the estate for life, the plaintiff came into possession, and that by the will of her mother the plaintiff became the owner of an undivided interest in a lot in Oakmont, in this county, and was also legatee of an interest in a glass factory operated by her mother in her lifetime under the name of Agnew and Company upon the Oakmont property. That the defendant, Hunter, was married to the sister of the plaintiff and, after the death of Mary N. Agnew, was retained by the plaintiff as her attorney in all matters relating to the plaintiff's estate and continued to act for her during the settlement of the estate.

That after the death of the mother the glass business was continued by the plaintiff, her brother, Charles N. Agnew, and Mrs. Hunter, partners as Agnew and Company. That Hunter, while still her attorney, took an assignment of a judgment against the said partners, issued an execution thereon and purchased the interest at sheriff's sale of the plaintiff, her brother and Mrs. Hunter in the Baldwin township farm. That this was done without the knowledge of the plaintiff, and that Hunter never informed her of the facts but kept her in ignorance for the purpose of obtaining title in himself to the said farm, and that she did not learn that her interest was vested in another until within a few months of the time of filing this bill, he leading her to believe that she still owned her interest in the land. That Hunter, with John C. Agnew and Viola R. Agnew, owners of a one-fifth interest in the farm, on April 20, 1897, conveyed it to the Southern Land Company in consideration of stock in the said company issued to them, and that the land company took title with knowledge of the fiduciary relation existing between the plaintiff and Hunter.

That the Center avenue lot was sold at sheriff's sale on March 8, 1890, upon a delinquent tax lien to Hunter, who received a deed in his own name, and that he never informed the plaintiff that taxes were in arrears or that the property was to be sold, although he knew plaintiff was ignorant of the facts, and that had she known of the same she would have paid the judgment in order to protect her interest in the property. That at the time of this sheriff's sale Hunter obtained the plaintiff's signature to a deed

for her interest in the Center avenue lot without informing her of the nature of the paper, she being in ignorance of the same, and that she executed it because of her confidence in him and at his request without inquiry, and that she never received any of the consideration recited in the deed. That he afterward conveyed the Center avenue lot for a recited consideration of $4,700.

That while acting as her attorney he secured her signature to a deed to himself for the Oakmont property for a recited consideration of $10,000, which deed she signed under the same circumstances and for the same reason averred as to the Center avenue property. That he subsequently conveyed the Oakmont property to the Agnew Company, Limited, a limited partnership.

That she has only within the past few months learned that all of her interest in the three pieces of property were vested in Hunter, she at that time thinking that she still owned her interest in all of the land, and Hunter leading her to believe such to be the fact.

That Hunter had paid her only $70, and although he had been telling her that as soon as he had matters settled there would be a nice sum for her, he informed her in September, 1904, there was nothing left of her estate, that he had nothing for her and refused to give an accounting.

That Hunter fraudulently and in violation of his fiduciary relation obtained title to the plaintiff's interest in these properties, by reason of which he is her trustee, bound to account for and pay over to her one-third of the moneys and securities or the value thereof received by him and to account to her for the rents and profits of the said property. She prays a decree that Hunter be declared to have wrongfully obtained title to her interest, to make discovery of sales made by him and the consideration therefor; for an account; for a decree that Hunter is her trustee and that the land company be decreed to have received the title with notice of the trust; that Hunter be decreed to be her trustee for one-third of the capital stock of the company received by him, or in lieu thereof that the company be decreed to reconvey to plaintiff four-fifteenths of the land so conveyed to it; and that Hunter be decreed to transfer to plaintiff one-third of the stock of the land company received by him and be enjoined from transferring the same.

The answer, while admitting that the sale and conveyance took place, denies the averments as to the fiduciary relationship, denies that Hunter was attorney for the plaintiff and that plaintiff was ignorant of any of the facts or acted in ignorance of the effect of her actions.

In the findings John P. Hunter is termed the defendant and the Southern Land Company is called by its name, or the company.

FINDINGS OF FACT.

First. By the will of John Chambers, grandfather of the plaintiff, there was devised to his daughter, Mary N. Agnew, and after her death to her children, seven in number, two pieces of real estate: the first a lot in the Eleventh ward, Pittsburg, known as the Center avenue property, and the second a farm of 52 acres in Baldwin township, this county. One of the children, Robert L. Agnew, died in 1882, intestate, unmarried and without issue, and another, Annie E. McClung, in 1885 conveyed her interest in the said properties to her mother, Mary N. Agnew, who died on March 9, 1889, by her will devising unto three of her children, Mary H. Hunter, married to the defendant, John P. Hunter in 1886; Charles N. Agnew, and Letta C. Agnew, plaintiff, married to Elmer J. Young in April, 1895, her real estate, which consisted of a lot in the borough of Verona, now the borough of Oakmont, bequeathing to them her personal property, which consisted of the personal estates of the business of manufacturing glass, theretofore conducted by Mrs. Agnew in a factory upon the Oakmont property under the name of Agnew and Company. The three pieces of real estate above mentioned are described in the plaintiff's bill, which description is made a part of these findings.

Second. On the death of Mary N. Agnew, the plaintiff, Charles N. Agnew and Mary H. Hunter were each seized of an undivided one-third interest in the Oakmont property, and each was seized of an undivided four-fifteenths in the Baldwin township farm and the Center avenue property, a brother, John C. Agnew, being the owner of the re-

maining three-fifteenths in the two last named properties, his interest being subsequently conveyed by him to his wife, Viola R. Agnew.

Third. After his marriage in 1886 the defendant and his wife made their home with the mother and her husband and with Charles N. Agnew and Letta C. Agnew, plaintiff, the buisness of Agnew and Company being then managed by the father and Charles, who were both experienced glass manufacturers, the profits, if any there were, being used for the support of the family, excepting the defendant and his wife.

Fourth. At the death of Mrs. Agnew there was a mortgage upon the Baldwin township farm to the New York Life Insurance Company in the sum of $15,000; executed by Mrs. Agnew and her husband, together with plaintiff, C. N. Agnew and Mary H. Hunter, given to secure a bond in the same amount executed by the same parties with John P. Hunter, who executed the same as surety. Upon the Oakmont property there was a mortgage of $4,500 executed by Mrs. Agnew, plaintiff and her said brother and sister. Upon the Center avenue property there was a mortgage of the same parties for $3,000 and a second mortgage for $4,500, collateral security for the mortgage to the same person upon the Oakmont property. There was also a considerable indebtedness of Mary N. Agnew, rising out of the conduct of the glass business.

Fifth. Within a day or two of the death of Mrs. Agnew, at a conference participated in by the plaintiff, Charles N. Agnew, the defendant and his wife, it was decided that the glass business should be continued by the plaintiff, Charles N. Agnew and Mrs. Hunter as partners, under the firm name of Agnew and Company, and an informal agreement of partnership in the handwriting of Charles was executed, and in pursuance thereof the liabilities of Mrs. Agnew were charged upon the books of Agnew and Company to Charles N. Agnew, her executor. A part of her indebtedness was the sum of $2600 loaned to her by the defendant. All of her indebtedness was assumed by the partnership and carried into its books. The glass business was conducted by the partnership from that time, March 9, 1889, to November 1, 1893.

Sixth. Neither at the conference mentioned in the foregoing paragraph nor at any time after the death of Mrs. Agnew did the defendant engage to look after the interests of the plaintiff in the estate of her mother or her own estate, nor was he retained by the plaintiff to act as her attorney and counselor, nor to protect or conserve her estate, and he has not continued to so act for her during the settlement of her mother's or her own estate; and the defendant was not the attorney of the plaintiff prior to the death of her mother. He was at that time and is still an attorney-at-law in practice in the county of Allegheny, and in the family conferences which frequently took place or with the matters of the business of partnership he entered into discussions and conferences as a member of the family, as the husband of his wife, a partner, and in his own interest as a large creditor, as is hereinafter stated, but he never had control of the estate or managed it as an attorney or agent, never collected any rents, paid taxes or in any other way managed the real estate. It is true that in June, 1889, he drafted a will for the plaintiff, and that at various times he acted as attorney for the partnership in bringing and defending some suits. In 1888 plaintiff employed the law firm of Hughey & Bennet to revive a judgment held by her against her brother, John C. Agnew, and in 1890 employed the law firm of J. S. & E. G. Ferguson to issue an execution thereon, the same firm appearing for her in the matter of the bill for partition of the Center avenue property as is set forth in paragraph thirteen of these findings.

Seventh. During the existence of the partnership of Agnew and Company the defendant loaned to it by advances of cash from time to time amounts which in November, 1893, exceeded $16,000 without interest. He also endorsed and paid notes of said firm in amounts up to that time exceeding $16,000, so that he was a creditor in the sum of over $33,000. In addition, he was liable upon the $15,000 bond before mentioned and had pledged all of his property, including his life insurance, for the benefit of the firm. All of which was known to the plaintiff, except that she may not have known the exact amount of the indebtedness. To secure him

the three members of the firm on September 19, 1893, executed a mortgage to A. N. Hunter, trustee, for the defendant in the sum of $25,000 on the Baldwin township farm, which secured two judgment bonds given to the defendant, one for $11,000 and the other for $14,000; and at the same time the plaintiff with the others entered into an agreement in writing with A. N. Hunter, trustee, that the $11,000 bond was to secure the defendant for his endorsements. These papers were executed by the plaintiff with the full knowledge of the facts and an understanding of her act.

Eighth. In November, 1893, the firm of Agnew and Company was insolvent, and the defendant entered judgment on his bond for $11,000 and issued an execution thereon. It was then agreed by the three partners and the defendant that a limited parnership should be formed to take over the business, and to that end a deed was made and delivered to the defendant from Charles Agnew and the plaintiff and a limited partnership was formed under the name of Agnew and Company, Limited, to which the defendant on November 25, 1893, conveyed the Oakmont property, for which the deed had been thus made to him. The consideration in the said deed was nominal, no money passed, the transaction was understood by the plaintiff, and she did not act upon the advice of the defendant and stated on the stand that she "understood it was turning the business over to Mr. Hunter to pay himself and the creditors." Agnew and Company, Limited, was organized with a capital stock of $5,000, of which the defendant subscribed and paid $4,950. Plaintiff subscribed for $25 and Charles N. Agnew $25. In payment for the property conveyed to the Limited Company it gave to the defendant notes for $14,066.85 to be applied to the payment of debts of Agnew and Company, upon which the defendant was accommodation endorser. To secure the creditors of the former firm of Agnew and Company the defendant assigned to a trustee for said creditors the mortgage of $25,000 given to him on the Baldwin township farm, conveyed to said trustee the Center avenue property, which he had acquired, as is hereinafter set forth; transferred a policy on his life in the sum of $10,000, and delivered to the creditors the notes of the Limited Company which had been given to the defendant as consideration for the conveyance of the Oakmont property. These things were done under an agreement between all of the parties and for the purpose of securing the debts of the plaintiff and her partners in the firm of Agnew and Company.

Ninth. The plaintiff was employed in the office of Agnew and Company and continued in that of the Limited Company, of which she was the secretary and a manager, and was conversant with its business and all of these transactions. Prior to April, 1896, the defendant had advanced to the Agnew Company, Limited, $14,009.83, and the capital stock was then increased to $15,000, two new partners entering the firm. The business of the Limited Company was a failure; subsequently passed into the hands of a receiver, and the property was subject to the mortgage to Nieman of $4,500, and was subsequently sold for a sum insufficient to pay that mortgage. From the business of the limited partnership the defendant received nothing, on account of the debt due him by Agnew and Company.

Tenth. During the conduct of its business by the firm of Agnew and Company the Philadelphia Company obtained a judgment against them for $941.15 and refused to supply any further gas unless the judgment was paid, and defendant in 1893 paid the same and took an assignment thereof. In 1896 he issued an execution on this judgment, levied on the interests of Charles Agnew, the plaintiff and Mrs. Hunter in the Baldwin township farm. Of this plaintiff was fully aware, and with her brother, Charles, and Mrs. Hunter signed a waiver of inquisition and agreed that the same should be sold by the sheriff upon the *fi. fa.*, her signature being witnessed by her husband, L. C. Agnew, with whom she had been living in a separate house since her marriage in April, 1895. The property was sold by the sheriff on November 2, 1896, for the sum of $275 to the defendant, who received a deed therefor. He took the property subject to the lien of prior mortgages, aggregating $46,000, and at that time the property was not worth more than the debts against it.

Eleventh. Subsequently the Southern

Land Company was formed, the defendant conveying the undivided four-fifths of the farm to it in consideration of $34,000 of the capital stock, which was $75,000, John C. Agnew and wife conveying the remaining one-fifth in consideration of stock, and O. I. Riddle taking stock for the New York Life Insurance mortgage which had been assigned to him, thus paying and extinguishing that mortgage. The fact of the sheriff's sale, of the conveyance to the land company and of its formation was known at the time to the plaintiff. The Land Company took title without any notice of any trust or of a fiduciary relation between the defendant and the plaintiff.

Twelfth. The defendant has paid all of the debts for which he was liable as indorser; the mortgages against the Oakmont and Center avenue properties are paid, and other notes of the partners in Agnew and Company have been paid by him, so that there are now no debts of the plaintiff and her partners outstanding against them, except so far as they are liable to the defendant, who has made no claim against them so far as appears.

Thirteenth. On March 8, 1890, the Center avenue property was sold by the sheriff on a *lev. fa.* on a delinquent tax in the sum of $172.28, and was purchased by the defendant, who received a sheriff's deed therefor, he paying $3,500, which paid the costs and taxes and in part a mortgage for $3,500 to J. S. Morgan. At the same time, with a full understanding of her act, the plaintiff, with her brother, executed a deed for the said property to the defendant; and subsequently upon a bill being filed by her brother, John C. Agnew, for a partition of the property plaintiff signed an answer prepared by her attorneys, J. S. & E. G. Ferguson, in which she declared that she was not the owner of any interest, and that the said property was held by the defendant in his own right. This was done by her with a full knowledge of the meaning of her act. The defendant took title subject to the lien of a mortgage for $4,500, mentioned in the fourth paragraph hereof, and he paid the balance on the Morgan mortgage. He transferred the property to secure creditors as above stated, and subsequently it was reconveyed to him; and in 1889 he sold the same for $4,700, which was less than the amount actually invested by him in the same.

Fourteenth. In all of these matters the plaintiff had the advice of her father, her brother Charlers, and after her marriage the advice of her husband, if she saw fit to consult with him. There was employed for many years by Agnew and Company and the limited partnership a Mr. Drocourt, who had been trustee for Mrs. Agnew, and who was a man of business experience. In the execution of papers, in which her brother Charles joined, her name always followed his. Charles died in January, 1904, and Mr. Drocourt died in 1899.

Fifteenth. The total indebtedness of plaintiff and her partners to the defendant, with interest, amounts to a sum approximating $50,000, aside from his loss in the limited partnership and in his investment in the Center avenue property, and whether he will ever be fully paid is doubtful. He did not agree to take the property under any conditions. We find that he acted in good faith and fairly to the plaintiff.

CONCLUSIONS OF LAW.

1. The Southern Land Company took a good title to the Baldwin township farm described in the bill, free from any trust express or implied.

2. The defendant, Hunter, took a good title to the properties described in the bill free from any trust.

3. The defendant, Hunter, is not liable to account to the plaintiff.

4. The plaintiff is not entitled to the relief prayed for, and the bill should be dismissed at her costs.

OPINION. Filed March 11, 1905.

The averments of the bill and the findings of fact present such a contrast that some comment and a statement of some of our reasons is proper. The plaintiff avers ignorance of most of the transactions, yet upon the stand makes admissions showing an understanding of many of them; for example, she gives reasons for the transfer of the glass house property and for signing the waiver of inquisition, thus showing an intelligent comprehension at the time of these two acts. We do not believe that she has wilfully misstated facts, but think that her

mind has become fixed upon a single idea or theory and that this has led her into inconsistencies. Further, she is met with document after document, including deeds and mortgages executed by her, and it is absolutely incredible that she, a woman of more than average intelligence, could have been blind to their purpose and their contents when her name appears after that of her brother Charles, and she acknowleges many of them before a justice or notary, and when affairs of such moment must have been a matter of discussion in the household. She admits knowledge of the existence of the Land Company and that it was selling property, so that, without mentioning similar reasons, we were forced to dismiss much of her testimony as unreliable.

The answer is responsive to the bill, but we have not decided the questions of fact upon that ground. Surely if her claims were true some corroboration could be found, yet the testimony of her brother John and his wife is little, if any, support to hers; and as to the alleged arrangement at the time of her mother's death that Mr. Hunter should act for her in the settlement and management of her estate, there is not only no corroboration but her own testimony fails to show any actions which would indicate that he had so undertaken. The estate of her mother was the glass property and business. A partnership of the legatees was immediately formed, thus "settling the estate" so far as plaintiff was concerned. The partnership business was wound up and transferred to Mr. Hunter, as plaintiff testified she understood it, "to settle, to pay himself and the creditors." This, without more, disposes of her claim on that branch of the case; she knew all about it and was simply putting the burden of her debt on Mr. Hunter's shoulders. Without tedious reiteration it is enough to say that the plaintiff's case fell far short.

On the other hand, the defendant himself gave a frank and full history of his transactions and presented accounts, checks, notes, deeds, mortgages, records and other documentary evidence, together with the testimony of other and disinterested witnesses sustaining him in every particular. At a time when his money would have been of great value to him in making investments, and when, as experience has proved, conservative ventures that were then made have since doubled and trebled, and in the best years of his life, the defendant assumed and carried a burden of debt for his brother-in-law, his sister-in-law and his wife, which not only deprived him of opportunities but drove him to the brink of financial ruin.

There is a lack of fairness in the bill which largely discredits it. The plaintiff knew that Mr. Hunter had been assisting her and her partners. She knew that he was a large creditor; she knew that he held a third mortgage for a large amount on the farm; she knew all about the sales. The records were open to her and her counsel, yet, instead of stating the known facts that these sales and conveyances were made for the purpose of paying debts, for every dollar of which the plaintiff was liable as a partner; instead of stating that Mr. Hunter was a large creditor, and that voluntarily, and as she was in all decency bound to do, she had executed judgments and a mortgage to him and a deed for one of the properties; instead of stating that he had freed her from the burden of her debts and then claiming, if she wanted to, that she should have something after he was repaid; in short, instead of stating all of the facts as they were known or were available to her, she charges him with the most contemptible and the meanest acts of which an attorney can be guilty. She charges him with buying her valuable property on a tax sale and of selling another and still more valuable property on a small judgment which he had acquired in some way and imposing upon her ignorance and her implicit confidence in him and concealing the facts from her all these years.

In all fairness as well as in compliance with the fundamental rule of pleading the bill should have given the facts so as to show the actual situation.

The defendant not only acted with perfect good faith, but with remarkable generosity, and the whole history of this melancholy case does not show one act in his treatment of the plaintiff which deserves anything other than commendation.

Now, March 11, 1905, this case came on to be heard upon bill, answer and replication and, after hearing the testimony and the arguments of counsel, the bill is dismissed at the costs of the plaintiff.

For plaintiff, *Mercer, Eichenauer & Ache.*
For defendant, *S. Schoyer, Jr.*