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Validity of Deed from Client to Attorney

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It is suggested that the subject is best resolved by an examination of the substantive merits of each particular case, rather than by an application of any formal test involving "material allegation," or facts "substantially alleged." The recent Wyoming decision reflects the better view of code pleading that aider should be applied to heal defects of a pleading unless such defect has misled the adverse party to his prejudice in maintaining his action or defense upon the merits.

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VALIDITY OF DEED FROM CLIENT TO ATTORNEY

In an action to quiet title to 320 acres of land in Wyoming, plaintiff and defendant both held warranty deeds to the same property from the same or common grantor. Plaintiff, a nephew to the grantor, received his deed just prior to his aunt's death in 1941 and had it recorded immediately. Defendant, a practicing attorney in Denver, Colorado, received his deed five months before plaintiff received his but failed to record it until approximately two months after plaintiff's recording and after the death of the grantor. At the time the deed was conveyed to defendant, he was acting as the grantor's attorney. A few years prior to the conveyance, defendant had written three or four letters concerning a grazing lease on the grantor's property in Wyoming. Within the period of four or five months after the conveyance, the defendant, still acting as the grantor's attorney, handled a lease on this same property with the Continental Oil Company, in the name of and for the grantor as owner of the property. No reason was given in the testimony and evidence at the trial as to why the grantor conveyed the property to defendant other than consideration for the work he had done as her attorney, which he set at fifteen dollars, and the fact that sometime during these transactions, defendant paid the sum of nine dollars and some cents in taxes on the property.

The judgment of the trial court was for the defendant and the plaintiff appealed. *Held,* that the relationship of attorney and client existed between the grantor and defendant at the time the deed was given and that the defendant did not meet the burden resting upon him to show that his deed was a valid instrument under the circumstances in which it was given. The judgment of the lower court was reversed and remanded with instructions to quiet title in the plaintiff and that if it should appear that there was any amount of money paid as consideration for this deed by defendant which should legally be returned to the defendant, the lower court was authorized to so order in its final judgment. *York v. James,* (Wyo. 1946) 165 P. (2d) 109.

In its opinion, the court stated that the reasons the defendant had failed in his burden of proof that the deed was a valid instrument under the circumstances were that at the time the deed was given, the grantor and her husband were nearly eighty years old and in poor health; there was no reason as to why the deed was given; the defendant made no pretense that he had suggested that the grantor have independent advice concerning the deed; no reason was offered as to why the deed was not recorded until after six months and after the grantor

was dead; and in the opinion of the court twenty-four dollars and some cents was not adequate consideration for the property. The court could not justify the defendant's remaining silent at the time of the lease with the Continental Oil Company. His silence and her receiving the returns from the lease would lead her to believe that she was still the owner of the land.

The general rule, as quoted in the instant case, is ". . . a transfer, conveyance, or assignment of property by a client to an attorney is subject to avoidance and being set aside as constructively fraudulent or the result of undue influence, except to the extent that it operates as a payment of reasonable and proper fees, if the attorney fails to discharge his burden by showing that the transaction was fair, equitable, and honest, for an adequate consideration, and that the client had the benefit of impartial advice or was fully informed of the nature and effect of his act so that he was in the same position as if he had dealt with a stranger."[1] The courts in all jurisdictions where the question has been raised have adhered very strictly to this rule.[2] The rule is founded on public policy independent of any elements of actual fraud as a protection for the client against the strong influence that naturally arises from the fiduciary relationship between any attorney and his client.[3] In the case of *Verner v. Mosely,* where an attorney induced a third party to advise his client to sell her property to the attorney and another, the court held that "this was not the character of independent advice that the law requires to sever the relation of trust and confidence, once shown to exist, and remove the imputation of undue influence."[4] Courts have frequently said that in transactions where the attorney benefits, the presumption of fraud arises, but have not held that the contestor must prove the transaction is unfair. The burden of proving that the transaction is fair rests upon the attorney.[5] The fact that the disagreement arose over a written instrument signed and executed by the client will not relieve the attorney of his burden of proof. In the case of *Bonifacio v. Stuart* the client signed and delivered a conveyance of a three thirty-second property interest of the client's to his attorney when their prior oral agreement was for a two thirty-second interest. The attorney asked the court, "Can a written instrument be contradicted by a man, who simply says that he did not know what he was signing—that he did not read it?" "Most certainly, when a fiduciary relation has been shown to exist," was the answer of the court.[6] It is the duty of the attorney to advise his client as to what he is signing and the exact circumstances and facts of the transaction.[7]

1. York v. James, (Wyo. 1946) 165 P. (2d) 109.
2. Warner v. Flack, (1917) 278 Ill. 303, 116 N. E. 197, 2 A. L. R. 423; Lewis v. Helm, (1907) 40 Colo. 17, 90 Pac. 97; Thomas v. Turner's Adm'r, (1890) 87 Va. 1, 12 S. E. 149; Willin v. Burdett, (1898) 172 Ill. 117, 49 N. E. 1000.
3. Moore v. Rochester Weaver Mining Co., (1918) 42 Nev. 164, 174 Pac. 1017, 19 A. L. R. 830.
4. Verner v. Mosely, (1929) 221 Ala. 36, 127 So. 527.
5. Scott v. Hardyman, (1928) 218 Ala. 515, 119 So. 224; In re Witt's Estate, (1926) 198 Cal. 407, 245 Pac. 197; Mathews v. Robinson, 1898) 7 Kan. App. 118, 53 Pac. 81; Kisling v. Shaw, (1867) 33 Cal. 425, 91 Am. Dec. 644; Cooley v. Miller and Lux, (1909) 156 Cal. 510, 105 Pac. 981; Delasca v. Grimes, (1919) 144 Minn. 67, 174 N. W. 523; Sav. Bank v. Monnier, (1915) 169 Cal. 592, 147 Pac. 265.
6. Bonifacio v. Stuart, (1924) 52 Cal. App. 487, 199 Pac. 69.
7. Webster v. Kelly, (1931) 274 Mass. 564, 175 N. E. 69; Verner v. Mosely, (1929) 221 Ala. 36, 127 So. 527.

The general rule in reality is not as harsh as it might sound upon first having it called to mind. All that is necessary is for the client to be placed in such a position as would enable him to form an entirely free and unfettered judgment, independent of any sort of influence.[8] The court will not apply the general rule on questions that arise prior to the establishment of a fiduciary relationship between the attorney and his client. As long as the attorney deals with a prospective client at arms length or assumes a hostile attitude prior to the relationship's arising, the rule will not be applied.[9] Once the fiduciary relationship is established there is still nothing wrong with an attorney having property conveyed to himself by a client but it does place the burden of proof of the transaction's fairness upon his shoulders should the conveyance ever be questioned.[10]

The instant case clearly shows the intent of the courts to protect the fiduciary relationship that exists between any attorney and his client.[11] Canon 11 of the Cannons of Professional Ethics expresses this same purpose, "The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client."[12]

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8. Kidd v. Williams, (1901) 132 Ala. 140, 31 So. 458, 56 L. R. A. 879.
9. Tillman v. Gazaway, (1927) 128 Okl. 183, 261 Pac. 935; See Elmore v. Johnson, (1892) 143 Ill. 513, 32 N. E. 413, 21 L. R. A. 366.
10. Phipps v. Willis, (1908) 53 Or. 190, 96 Pac. 866; 5 Am. Jur. 289, Sec. 50.
11. Holdridge v. Southwest Cotton Co., (1929) 35 Ariz. 496, 281 Pac. 202; Powell v. Griffin, (1929) 178 Ark. 788, 13 S. W. (2d) 18; Ross v. Payson, (1896) 160 Ill. 349, 43 N. E. 399; Board of Comr's of Okfulskee County v. Hazelwood, (1920) 79 Okl. 185, 192 Pac. 217, 11 A. L. R. 709.
12. Cheatham, Cases and Materials on the Legal Profession, p. 121, 522.

LIABILITY INSURANCE AS AFFECTING IMMUNITY FROM SUIT

The plaintiff brought suit for personal injuries and damages to his automobile resulting from the negligence of an employee of the defendant State Highway Commission in the operation of a highway truck. The lower court sustained a demurrer to the petition on the ground that the court did not have jurisdiction of the person of the defendant or the subject of the action. *Held:* Affirmed. *Price v. State Highway Commission* (Wyo. 1946) 167 P. (2d) 309.[1]

The State Highway Commission of Wyoming, by the statute[2] creating it, "shall have the power to sue in the name of the 'State Highway Commission of Wyoming', and may be sued by such name in the courts of this state and in no other jurisdiction upon any contract executed by it." Against it, as against other

1. The action was dismissed as to the driver of the truck and his superior, the Superintendent, who were joined as defendants. Other grounds on which the demurrer was based were:
   (1) That there was a misjoinder of the parties defendant.
   (2) That the petition does not state facts sufficient to constitute a cause of action against the defendant State Highway Commission.
2. Wyo. Com. Stat. 1945, Sec. 48-101.