COURT OF APPEALS
DECISION
DATED AND FILED

January 14, 2009

David R. Schanker
Clerk of Court of Appeals

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Appeal No. 2007AP2190

Cir. Ct. Nos. 2003CV390
2003SC647

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

GUS LEONTIOS AND HELEN LEONTIOS,

PLAINTIFFS-COUNTER DEFENDANTS-RESPONDENTS,

V.

PWS LAKE GENEVA DEVELOPMENT COMPANY, INC.,

DEFENDANT-APPELLANT,

PAUL SWANSON,

DEFENDANT-COUNTER PLAINTIFF-THIRD PARTY PLAINTIFF-APPELLANT,

CIB BANK,

INTERVENOR,

V.

TOM LEONTIOS,

THIRD-PARTY DEFENDANT-RESPONDENT.

PWS LAKE GENEVA DEVELOPMENT COMPANY, INC. AND PAUL SWANSON,

PLAINTIFFS-APPELLANTS,

V.

GUS LEONTIOS AND HELEN LEONTIOS,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed.*

Before Anderson, P.J., Snyder and Neubauer, JJ.

¶1 NEUBAUER, J. Helen and Gus Leontios (the Leontioses) deeded their 159-acre farm and homestead to Paul Swanson for purposes of partial development and with an oral agreement that the remainder of the property would be reconveyed to them. After partial development of the property, Swanson and his development company, PWS Lake Geneva Development Company, Inc., refused to reconvey any property to the Leontioses, commencing an eviction action against Helen. In response, the Leontioses filed this action seeking the imposition of a constructive trust on the property.[1] After a bench trial, the trial court found that Swanson abused a confidential relationship with the Leontioses by repudiating the oral agreement to reconvey the property and encumbering the remaining acreage with mortgages for unrelated business ventures. The court

[1] Gus Leontios died on May 1, 2003. The trial court consolidated Swanson's small claims eviction action with Helen's action for the return of property.

further found that the retention of the property by Swanson would result in unjust enrichment, and as such, the property was held in constructive trust for the Leontioses. The trial court denied Swanson's eviction action, ordered Swanson to reconvey the remaining property to Helen, and to pay off the outstanding mortgage Swanson placed on the property. We uphold the trial court's decision and affirm the judgment.

BACKGROUND

¶2 The history of the relationship between the Leontioses and Swanson, as found by the trial court, is largely undisputed. In 1988, a judgment of foreclosure was entered against Gus Leontios (now deceased) and his wife, Helen Leontios, after they defaulted on a mortgage for their 159-acre farm and homestead in Lake Geneva, Wisconsin. By 1992, the Leontioses had been introduced at their Chicago restaurant to Swanson by their longtime friend, John Theolisaukus. Swanson was represented as an experienced business person and real estate developer who might be able to assist the Leontioses with their financial problems.

¶3 Between 1992 and 1993, Swanson loaned the Leontioses $38,500 through the execution of four notes signed by Gus and his son, Tom Leontios. Helen did not sign any notes. Thereafter, in late 1993, at several meetings at the Leontioses' Wisconsin farm, Swanson and the Leontioses orally agreed to enter into a business venture whereby Swanson would develop forty-six wooded acres of the Leontioses' 159-acre farm. The development income would be used to prevent a sheriff's sale scheduled for October 26, 1993, and to pay back the Leontioses' $38,500 debt to Swanson.

¶4 The trial court found the terms of the oral agreement between the Leontioses and Swanson consisted of the following: (1) the Leontioses would convey their property to Swanson so that he could develop a portion of it; (2) the income from the sales of the lots would be used to repay the costs of the development, the mortgage, and the personal loans of $38,500 made to the Leontioses; and (3) Swanson would reconvey the balance of the property back to the Leontioses. Thus, the oral agreement at the time of the conveyance of the property called for Swanson to advance the sums necessary to avert foreclosure and to develop and sell off as much property as necessary to reimburse him for his investment. While the parties disputed the precise terms by which Swanson was to potentially profit from the development of the forty-six acres, the trial court found that "both parties had an understanding that the conveyance … was not an absolute conveyance. Rather, the conveyance was part of a plan for the Leontioses to keep part of their farm and to pay Swanson back."[2]

¶5 On October 25, 1993, the Leontioses conveyed their farm to Swanson by warranty deed. The deed, prepared by Swanson's attorney, contained no restrictions or contingencies and did not incorporate the terms of the oral agreement. Also on October 25, 1993, Swanson delivered $267,518 to the Leontioses, who in turn paid their outstanding mortgage balance to Agribank in the same amount, thus preventing the sheriff's sale of their property. After the

[2] Swanson does not dispute that an oral agreement existed or that the property was to be reconveyed after he had been fully reimbursed for his investment. However, Swanson disputes whether he recouped his costs and investments in the development of the forty-six acres so as to warrant the reconveyance. As discussed below, the trial court made the factual finding that he had.

conveyance of the property, the Leontioses continued to live on the property, and Helen continues to live on the 5.74-acre homestead parcel.

¶6 On April 15, 1994, during the development period, Swanson formed PWS Lake Geneva Development Company, Inc. (PWS), and without the Leontioses' knowledge subsequently deeded to PWS the title to the entire 159-acre farm, still unsubdivided. Pursuant to the oral agreement, PWS developed the forty-six acre wooded parcel into a seven lot subdivision. PWS sold the seven lots between 1994 and 2000. The proceeds of the sales, as reported by Swanson to the Leontioses, were in the amount of $510,500.

¶7 Swanson contends that during this development period, he loaned approximately $250,000 to the Leontioses, although the payments were made to their son, Tom Leontios. These loans were documented by promissory notes signed by Tom in his own name, but at times he also signed Gus's and Helen's names. During the period in which these loans were made, Tom was engaged in several business transactions with Swanson unrelated to the development of the farm.

¶8 In 1997, without the Leontioses' knowledge, PWS divided the remaining 113 acres of the farm into a 5.74-acre parcel containing the home and farm buildings and a 107.26-acre parcel of farmland. Swanson testified that the 5.74-acre parcel was carved out to protect the Leontioses' homestead. Swanson's attorney prepared a residential lease for the home, however, it was never signed by the Leontioses, although a rider purportedly signed by them was admittedly signed by Tom Leontios.

¶9 Between 1997 and 1998, Swanson, as one of several guarantors, used the 107.26-acre parcel of farmland as collateral for a $4 million loan from

CIB Bank to provide funds for his business ventures in Illinois that were unconnected and unrelated to any dealings with the Leontioses. Again, the testimony at trial was that this was without the Leontioses' knowledge. On July 19, 2002, after Swanson failed to repay the CIB Bank loan, CIB Bank filed a *lis pendens* and complaint to foreclose its mortgage on the 107.26-acre farm parcel. On November 6, 2003, the 107.26-acre parcel was sold at a sheriff's sale for $351,000.

¶10 On February 26, 2002, Swanson arranged to borrow up to $240,000 from Elgin Financial Savings Bank for the 5.74-acre parcel. The testimony at trial indicated that the Leontioses were not aware that Swanson obtained this mortgage nor that he had used the proceeds for unrelated business ventures and not for the benefit of the Leontioses or the farm development. At the time of the filing of this action, Swanson had not defaulted on the mortgage, but he had tried to sell the 5.74-acre parcel.

¶11 While the exact amount Swanson received as the result of the oral agreement is in dispute, the trial court found that Swanson received $601,500 consisting of $510,500 from the sale of the lots and $91,000 from the rents received for the tillable acreage. Swanson's disbursements totaled $502,318.46—$335,655 for the land, $110,121.46 in improvements, and $56,542 in taxes. The trial court found that Swanson had benefited from the development in the amount of $99,181.54. He also received the benefit of the $351,000 from the distressed sale of the 107.26-acre parcel which went toward the default of the $4 million loan from CIB Bank. In sum, the trial court found that Swanson "has received or

retains $1,192,500 in benefits and has incurred out-of-pocket expense of $502,318.46—net benefit of $690,181.54."[3]

¶12 Following a five-day court trial, the trial court determined that a confidential relationship existed between the Leontioses and Swanson, and therefore, the oral agreement was not reduced to writing. The trial court found that (1) "both parties had an understanding that the conveyance from the Leontioses to Swanson was not an absolute conveyance but, rather, part of a plan for the Leontioses to keep part of their farm and pay back Swanson;" (2) Swanson breached the oral agreement and abused his fiduciary duties; (3) Swanson's mortgaging of the balance of the farm for purposes of unrelated business ventures constituted a "commission of wrongful acts that give rise to the imposition of a constructive trust;" and (4) Swanson was "unjustly enriched" in the amount of $450,184.50.

¶13 On July 24, 2007, the trial court entered judgment in favor Helen, ordering the "[i]mmediate reconveyance of the 5.74-acre parcel" and "[p]ayoff of the outstanding mortgage against the 5.74-acre parcel, to occur within a reasonable time, not to exceed six (6) months." Swanson appeals.

¶14 Additional facts relevant to our discussion of the issues raised on appeal will be set forth below.

[3] The $1,192,500 includes the mortgage on the 5.7-acre parcel that provided Swanson with the ability to borrow up to $240,000; the $351,000 from the distressed sale of the 107.26-acre parcel; and the $601,500 from the sale of the lots on the forty-six acre parcel and rent paid.

DISCUSSION

¶15 *Standard of Review*. The question of whether to impose a constructive trust "sounds in equity," and the ultimate decision whether to grant the equitable relief of a constructive trust is a discretionary one. ***Sulzer v. Diedrich***, 2003 WI 90, ¶16, 263 Wis. 2d 496, 664 N.W.2d 641. A constructive trust is an equitable remedy and may be imposed to prevent unjust enrichment arising when one party receives a benefit, the retention of which would be unjust as against the other. ***Connecticut Gen. Life Ins. Co. v. Merkel***, 90 Wis. 2d 126, 130, 279 N.W.2d 715 (1979). "Where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he [or she] would be unjustly enriched if he [or she] were permitted to retain it, a constructive trust arises." ***Id.*** (citation omitted). However, a constructive trust will not be imposed solely based on unjust enrichment. ***Sulzer***, 263 Wis. 2d 496, ¶20. A constructive trust will be imposed only when the party holding legal title to the property received it by means of "actual or constructive fraud, duress, abuse of a confidential relationship, mistake, commission of a wrong, or by any form of unconscionable conduct," and that person, in equity and good conscience, should not be entitled to beneficial enjoyment of it. ***Id.*** (citing ***Wilharms v. Wilharms***, 93 Wis. 2d 671, 678-79, 287 N.W.2d 779 (1980)).

¶16 Here, the trial court imposed a constructive trust based on its finding of a confidential relationship between Swanson and the Leontioses and the abuse of that relationship. Whether a confidential relationship existed between Swanson and the Leontioses is a question of fact and, therefore, we will sustain the trial court's findings unless they are contrary to the great weight and clear preponderance of the evidence. ***Sensenbrenner v. Sensenbrenner***, 89 Wis. 2d 677, 687, 278 N.W.2d 887 (1979).

1. Constructive Trust

¶17 *Unjust Enrichment*. To state a claim on the theory of constructive trust, the complainant must state facts sufficient to show (1) unjust enrichment, and (2) abuse of a confidential relationship or some other form of unconscionable conduct. ***Watts v. Watts***, 137 Wis. 2d 506, 533-34, 405 N.W.2d 303 (1987). If a plaintiff can prove the elements of unjust enrichment to the satisfaction of the trial court, he or she will be entitled to demonstrate further that a constructive trust should be imposed as a remedy. ***Id.*** at 534. Although before the trial court Swanson disputed whether he had been unjustly enriched, he does not do so on appeal. Rather, Swanson focuses his argument on the existence of a confidential relationship. Suffice it to say that the record supports the trial court's factual finding that Swanson gained financially from the parties' transaction, and as such we will not disturb it.[4] *See* ***Noll v. Dimiceli's, Inc.***, 115 Wis. 2d 641, 643-44, 340 N.W.2d 575 (Ct. App. 1983).

¶18 *Confidential Relationship.* It is undisputed that the parties entered into an oral agreement in August or September 1993 which resulted in Swanson acquiring and developing the Leontioses' property. However, the parties' understandings of the terms of the agreement vary significantly. The trial court found that the oral agreement was not reduced to writing due to the confidential relationship between Swanson and the Leontioses and that the abuse of this

[4] The trial court's findings include a breakdown of the exhibits introduced at trial pertaining to the amount of profit and loss sustained by Swanson. The trial court found that Swanson "benefited by nearly one hundred thousand dollars from the development itself." The trial court further found that as a result of encumbering the remaining acreage with mortgages for unrelated business ventures, Swanson reaped a total net benefit of approximately $690,000, and after factoring in the outstanding mortgage debt of up to $240,000, he is still unjustly enriched in the amount of approximately $450,000.

confidential relationship resulted in Swanson's unjust enrichment thereby warranting equitable relief. Swanson argues that he and the Leontioses were not in a confidential relationship. He contends that their relationship was purely a business relationship; the parties were not longtime friends or family, and the parties were not "close" in any way. Rather, Swanson contends, this was simply an "attempt[] to do a favor for some people who were down on their luck and maybe turn a buck in the process."

¶19 In its written decision, the trial court, citing 76 AM. JUR. 2d *Trusts* § 176 (2008), noted:

> There are no hard and fast rules about when a confidential relationship will be found; the court may consider a variety of factors, including the reliance of one party upon the other, the relationship of the parties prior to the incidents complained of, the relative business capacities or lack thereof between the parties, and the readiness of one party to follow the other's guidance in complicated transactions.

In light of these factors, the trial court concluded:

> A confidential relationship existed between the Leontioses and Swanson with respect to the oral agreement. Swanson was introduced to the Leontioses by a close friend, lent the Leontioses money in the years preceding the oral agreement, held himself out as a person with superior financial skills, and used his own attorney to draft the conveyance instrument in furtherance of the oral agreement. Swanson owed a fiduciary duty toward the Leontioses with respect to carrying out the oral agreement.

¶20 In finding the existence of a confidential relationship, the trial court relied on the court's observation in ***Joerres v. Koscielniak***, 13 Wis. 2d 242, 247, 108 N.W.2d 569 (1961), that a confidential relationship can exist between parties "because of their long personal friendship and mutual trust." There need not be a close familial relationship in order to find a confidential relationship; a

confidential relation can be inferred from the facts of a particular case such as parties who have been close personal friends, visited each other's homes and have trusted one another. *See* ***Gorski v. Gorski***, 82 Wis. 2d 248, 257, 262 N.W.2d 120 (1978). This was reiterated by our supreme court in ***Watts*** in which it observed that a confidential relationship "can be inferred from allegations in the complaint which show, for example, a family relationship, a close personal relationship, or the parties' mutual trust." ***Watts***, 137 Wis. 2d at 533-34.

¶21 Swanson distinguished the facts of this case from those in the cases relied on by the trial court, ***Joerres*** and ***Nehls v. Meyer***, 7 Wis. 2d 37, 95 N.W.2d 780 (1959), on the grounds that those cases involved a close personal friendship and a family relationship, respectively. ***Joerres***, 13 Wis. 2d at 246 (Joerres conveyed property to a close friend of twenty-eight years); ***Nehls***, 7 Wis. 2d at 41-43 (brother conveyed title to sister to hold in trust for mother). While the trial court acknowledged that Swanson and the Leontioses "were not family or longtime friends when they entered into the oral agreement," it nevertheless found sufficient factual grounds to find that a confidential relationship existed and that "the Leontioses reasonably relied on Swanson's oral promise, and Swanson abused their confidence by repudiating the oral agreement."

¶22 In finding a constructive trust, the trial court relied on ***Joerres*** to conclude that, even if a grantee has no fraudulent intent at the time of the transfer, if a grantor reasonably relies on a grantee's oral promise to re-convey land, the court construes fraud if the grantee later retains the property and uses it for his own gain and not for the purpose the parties agreed upon. ***Joerres***, 13 Wis. 2d at 247 (the abuse of the relationship of confidence "consists merely in [the grantee's] failure to perform his [or her] promise").

¶23 We have reviewed the record and find sufficient evidence to support the trial court's finding. The parties' business dealings prior to their oral agreement demonstrate a mutual trust. Swanson was introduced to the Leontioses by a longtime friend. Swanson understood the parties' oral agreement to give him "total control" of the development while the Leontioses would be "passive investors." Swanson testified that Helen and Gus would trust him to develop the property "according to [his] sole discretion." Helen's testimony was consistent that "[Swanson] said that he would make all the decisions, and it was okay with us." Helen perceived Swanson as having superior knowledge as to development, testifying: "We let him do everything…. We did not want to interfere at all in any way because we had no knowledge."

¶24 Further, Swanson had lent the Leontioses money prior to the farm development agreement to assist them in paying real estate taxes on the farm and for restaurant related expenses. Swanson recognized that "[a]n agreement, an oral agreement has to be mutual trust on their part and trust on my part that … I would get repaid of course."

¶25 After hearing the testimony, the trial court concluded that the Leontioses had made a sufficient showing that Swanson had a fiduciary duty to them and that Swanson had abused that confidential relationship by repudiating the oral agreement and encumbering the remaining acreage with mortgages for unrelated business ventures. Whether a confidential relationship existed between Swanson and the Leontioses is a question of fact. ***Sensenbrenner***, 89 Wis. 2d at 688. Because the trial court's findings are supported by the facts of record, we will sustain them. *See* ***id.*** Having found that the record supports the trial court's

findings of unjust enrichment and the abuse of confidential relationship, we uphold the trial court's imposition of a constructive trust.[5]

2. Statute of Frauds

¶26 Swanson next argues that the statute of frauds applies to the warranty deed signed by the parties and, as a result, "equity does not permit the court to consider conditions and reservations that were never expressed in a valid and unambiguous deed." In support, Swanson cites to WIS. STAT. § 706.04, governing "Equitable Relief," which provides:

> A transaction which does not satisfy one or more of the requirements under [WIS. STAT. §] 706.02 may be enforceable in whole or in part under doctrines of equity, provided all of the elements of the transaction are clearly and satisfactorily proved and, in addition:
>
> (1) The deficiency of the conveyance may be supplied by reformation in equity; or
>
> (2) The party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied; or
>
> (3) The party against whom enforcement is sought is equitably estopped from asserting the deficiency….

¶27 Swanson argues that the Leontioses "never claimed nor demonstrated any deficiencies in the warranty deed that assigned, for good and valuable consideration, 159 acres of the Leontios[es'] farm property to Mr. Swanson," and because "there were no deficiencies … the document must stand

[5] The trial court also found that a constructive trust could be imposed on the basis of a "commission of a wrong." Resolution of this issue is not necessary and we decline to address it. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) ("[C]ases should be decided on the narrowest possible ground.").

on its face and a constructive trust is inappropriate." We reject Swanson's argument. The trial court's decision rested on the imposition of a constructive trust, which arises by operation of law and is excluded from application of the statute of frauds under WIS. STAT. § 706.001.[6] *See also* ***Joerres***, 13 Wis. 2d at 245.

¶28 Wisconsin case law is clear that the creation of a "constructive trust" is enforced by equitable construction and the operation of law and it need not be expressed in writing to be enforceable. *See* ***Schofield v. Rideout***, 233 Wis. 550, 556, 290 N.W. 155 (1940) (Statute of frauds "excepts from its operation trusts created by 'operation of law.' Resulting trusts and constructive trusts are so created."); ***Krzysko v. Gaudynski***, 207 Wis. 608, 613, 242 N.W. 186 (1932). The equitable remedies addressed under WIS. STAT. § 706.04 and relied upon by Swanson involve the reformation of the transaction itself, not the creation of a constructive trust. *See, e.g.,* ***Wynhoff v. Vogt***, 2000 WI App 57, ¶¶20-21, 233 Wis. 2d 673, 608 N.W.2d 400 (observing that a court in equity cannot "reform a perfectly valid deed" and reversing the trial court's judgment which retitled the

[6] WISCONSIN STAT. § 706.001 provides:

> (1) Subject to the exclusions in sub. (2), this chapter shall govern every transaction by which any interest in land is created, aliened, mortgaged, assigned or may be otherwise affected in law or in equity.
>
> (2) Excluded from the operation of this chapter are transactions which an interest in land is affected:
>
> (a) By act or operation of law ….

property). We reject Swanson's contention that the statute of frauds precludes the trial court's imposition of a constructive trust.

3. Doctrine of Apparent Authority

¶29 Swanson's final argument addresses the loans he made to Tom Leontios totaling approximately $250,000 and whether Gus and Helen Leontios are liable for the loans such that they should have been considered by the trial court in arriving at an equitable resolution. Swanson argues that it was not unreasonable for him to believe that Tom Leontios was the agent for Gus and Helen Leontios during the formation of, and subsequent to, the oral agreement, and therefore the doctrine of apparent authority is applicable.

¶30 Under the doctrine of apparent authority, "a principal may be held liable for the acts of one who reasonably appears to a third person, through acts by the principal or acts by the agent if the principal had knowledge of those acts and acquiesced in them, to be authorized to act as an agent for the principal." ***Lamoreux v. Oreck***, 2004 WI App 160, ¶52, 275 Wis. 2d 801, 686 N.W.2d 722 (citation omitted). The three necessary elements are: (1) acts by the agent or principal justifying belief in the agency; (2) knowledge thereof by the party sought to be held; and (3) reliance thereon by the plaintiff consistent with ordinary care and prudence. ***Id.*** The question of the existence of the three elements necessary to establish apparent agency presents issues of fact to be resolved by the finder of fact. ***Iowa Nat'l Mut. Ins. Co. v. Backens***, 51 Wis. 2d 26, 34, 186 N.W.2d 196 (1971).

¶31 In its written decision, the trial court set forth testimony both weighing in favor and against a finding of agency before stating:

> From the totality of the evidence I am not convinced that Helen and Gus designated Tom as their agent to in any way bind them in the venture or to borrow monies for which they would be liable. [Tom] was more of a facilitator or "go" fer. Swanson repeatedly testified he was totally in charge and that the Leontioses were passive investors. It is difficult to infer from acts or representations made by Helen and Gus, if any, that Swanson reasonably believed Tom had authority to sign these notes and bind his parents. He has failed to trace proceeds from the loans to show that they benefited the farm development. I conclude the loans to Tom should not be considered in making an equitable resolution of this matter.

¶32 We have reviewed the record and the facts relied on by the trial court in reaching its decision, specifically: Helen denied that she and Gus gave authority to Tom to represent their interests in the venture; other than the first four notes totaling $38,500, Helen denied borrowing more money from Swanson; Helen flatly denied that Tom had the authority to borrow on her or Gus's behalf; Tom denied ever representing to Swanson that he was the agent for Gus and Helen Leontios; Tom never told his parents he was signing their names to the notes and he did personally receive the money; Tom was working in Swanson's office part of this time and on other projects; and the notes were draws against future commissions from these other businesses not related to the farm development. Helen also testified at trial that the Leontioses never informed Swanson that Tom was authorized to sign Gus's and Helen's names to the documents, and Swanson testified that he did not contact them to ascertain whether Tom had their authority to sign their names.

¶33 While Swanson cites to testimony indicating that it was not unreasonable for Swanson to believe that Tom Leontios was acting as an agent for Helen and Gus Leontios, the existence of an agency presents a question of fact for the trial court. *See* ***id.*** at 34. We do not overturn findings of fact unless clearly

erroneous. WIS. STAT. § 805.17(2). As long as the facts could be reached by a reasonable factfinder based upon the evidence presented, a reviewing court is required to accept them. ***Lellman v. Mott***, 204 Wis. 2d 166, 171, 554 N.W.2d 525 (Ct. App. 1996). On appeal, we review the record to locate evidence to support the trial court's findings, not for evidence to support findings the court did not make. ***Johnson v. Merta***, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980).

¶34 Here, the trial court was entitled to conclude that Helen's and Tom's testimony deserved greater weight and credibility. The weight and credibility to be given to the opinions of witnesses is uniquely within the province of the factfinder. *See* ***Bloomer Hous. Ltd. P'ship v. City of Bloomer***, 2002 WI App 252, ¶12, 257 Wis. 2d 883, 653 N.W.2d 309. Such deference to the trial court's determination of the credibility of witnesses is justified because of the "superior opportunity of the trial court to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony." ***Kleinstick v. Daleiden***, 71 Wis. 2d 432, 442, 238 N.W.2d 714 (1976). Based upon our deferential standard of review, we are unable to conclude that the trial court's finding as to apparent authority was clearly erroneous.

CONCLUSION

¶35 We conclude that the trial court properly exercised its discretion by imposing a constructive trust in favor of the Leontioses. The facts in the record demonstrate that pursuant to the parties' oral agreement, Swanson developed forty-six acres of land resulting in a profit of approximately $100,000. However, instead of reconveying the remainder of the land back to the Leontioses as agreed, Swanson subdivided the remaining land and used it as collateral—including that parcel containing the Leontioses' home—on two significant loans without the

Leontioses' consent and for business ventures unrelated to the farm development. The 107.26 acres of farmland was lost in foreclosure with a distressed sale to a third party of $351,000—to Swanson's sole benefit. Swanson's actions were contrary to the parties' oral agreement and support the trial court's conclusion that Swanson abused the Leontioses' confidence.

¶36 The facts in the record support the trial court's finding that this agreement resulted from the parties' confidential relationship, that Swanson abused that relationship and was unjustly enriched as a result. The facts additionally support the trial court's finding that there was an absence of apparent authority in Swanson's dealings with Tom Leontios. We affirm the judgment.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.