JAMES WASNIEWSKI *v.* QUICK AND REILLY, INC.
(AC 28063)

McLachlan, Lavine and Hennessy, Js.

Argued October 9, 2007—officially released January 22, 2008

(Appeal from Superior Court, judicial district of New London, Devine, J.; Hon. Robert C. Leuba, judge trial referee.)

Thomas J. Sansone, for the appellant (defendant).

Frank J. Liberty, for the appellee (plaintiff).

Opinion

HENNESSY, J. The defendant, Quick & Reilly, Inc., appeals from the judgment of the trial court in favor of the plaintiff, James Wasniewski, finding a breach of contract and awarding damages. On appeal, the defendant claims that the court improperly concluded that (1) the requisite donative intent and delivery existed in order to create a valid gift of the brokerage account at issue, and (2) a valid enforceable contract existed between the plaintiff and the defendant. We affirm the judgment of the trial court.

The court found the following facts. The plaintiff's father, John Wasniewski, opened a brokerage account with the defendant on November 14, 1989, in the plaintiff's name and social security number. The account was funded with the proceeds of $30,000 worth of bonds issued by the Connecticut housing finance authority. The account earned $2115 per year in interest. The total value of the account, including accrued interest, was found to be $52,085. The account was closed on January 5, 2001, when the funds were withdrawn by someone other than the plaintiff and transferred to a joint account in the name of the plaintiff's father and the plaintiff's brother. The plaintiff was unaware of the account during the entire period that it was in existence. The plaintiff became aware of the account when his father mailed him a tax form 1099 for the 2001 calendar year. All statements for the brokerage account had been sent to the address of the plaintiff's father.

The plaintiff commenced a civil action against the defendant by complaint filed August 18, 2004. The plaintiff set out four causes of action, three of which were dismissed by the court after hearing argument on the defendant's motion for summary judgment filed September 2, 2005. The plaintiff's breach of contract claim was the only claim remaining before the court. In a memorandum of decision filed June 27, 2006, the court, *Hon. Robert C. Leuba*, judge trial referee, held that the account was owned by the plaintiff from the time it was created and that he was entitled to the interest and the principal pursuant to the contract implicit in the relationship between a broker and the owner of an account with that broker. The court further held that the defendant breached this contract when it transferred the funds to someone other than the plaintiff. The plaintiff was awarded $52,085 plus costs.

The defendant filed a motion for reargument on July 11, 2006, which was denied by the court. The defendant filed its appeal September 21, 2006. The defendant then filed a motion for articulation on September 29, 2006, which was granted. The court filed its articulation on October 26, 2006.

To begin, we set forth the standard of review. "The question of whether a gift inter vivos or causa mortis

has been made is within the exclusive province of the court. . . . The determination of whether a gift has been made is not reviewable unless the conclusion of the court is one which cannot reasonably be made. . . . The credibility of the witnesses and the weight to be accorded to their testimony is for the trier of fact. . . . This court does not try issues of fact or pass upon the credibility of witnesses." (Citations omitted; internal quotation marks omitted.) *Dalia* v. *Lawrence*, 226 Conn. 51, 70–71, 627 A.2d 392 (1993).

I

The defendant claims that the court improperly held that a valid gift inter vivos was created because of a lack of the requisite intent and affirmative actions necessary to perfect a gift. The plaintiff asserts that ownership of the account is not being disputed by the defendant, and, therefore, the existence of a gift is factually and legally supported by the record. We agree with the plaintiff.

"The term 'gift,' which is more appropriately applied to personal property, is the transfer of property without consideration. The two requisites of a valid gift are 'a delivery of the possession of the property to the donee, and an intent that the title thereto shall pass immediately to him.' [*Guinan's Appeal from Probate*, 70 Conn. 342, 347, 39 A. 482 (1898)]. It is not necessary that there should be a manual delivery of the thing given, nor that it should be made to the donee in person; nor is there any particular form or mode in which the transfer must be made or by which the intention of the donor must be expressed." *Main's Appeal from Probate*, 73 Conn. 638, 640, 48 A. 965 (1901). A rebuttable presumption of donative intent exists when the grantee is the natural object of the grantor's bounty. *Farrah* v. *Farrah*, 187 Conn. 495, 500, 446 A.2d 1075 (1982). We have recognized such a presumption in certain circumstances involving a parent and child. See *Zack* v. *Guzauskas*, 171 Conn. 98, 101 n.1, 368 A.2d 193 (1976). "Where actual delivery has not occurred, the resolution of the issue of whether a donor has made a constructive delivery depends on the circumstances of each case." *Fontaine* v. *Colt's Mfg. Co.*, 74 Conn. App. 730, 734, 814 A.2d 433 (2003). "By the great weight of authority no acknowledgment or acceptance of such a gift is necessary on the part of the donee, since it is highly beneficial and his acceptance is assumed." *Burbank* v. *Stevens*, 104 Conn. 17, 23, 131 A. 742 (1926). "Once the funds are deposited in an account under an individual's name, the account holder is presumed to have title to and control over those funds. See, e.g., 9 C.J.S. Banks and Banking §§ 280, 281 (1996)." *United States* v. *$79,000 in Account Number 2168050/6749900*, Docket No. 96 Civ. 3493, 1996 U.S. Dist. LEXIS 16536, at *3 (S.D.N.Y. November 7, 1996).

The court held that the plaintiff became the legal

owner of the funds in the account once they were placed in his name and under his social security number, citing 9 C.J.S. § 281 (1996).[1] From the weight of the evidence and the long-standing precedents on gifts, the holding of the court was not clearly erroneous and could reasonably have been made.

II

The defendant further claims that even if there was a valid gift, a valid, enforceable contract was never created between the parties, and the court's finding of a contractual relationship was unsupported by the evidence. The plaintiff argues that he was the legal owner of the account, and the bank became his debtor for the amount deposited into the account. We agree with the plaintiff.

"The law regarding the creation of contract rights in third parties in Connecticut is . . . well settled. In *Knapp* v. *New Haven Road Construction Co.*, 150 Conn. 321, 325, 189 A.2d 386 (1963), [our Supreme Court] quoted *Colonial Discount Co.* v. *Avon Motors, Inc.*, 137 Conn. 196, 201, 75 A.2d 507 (1950), and reaffirmed that [t]he ultimate test to be applied [in determining whether a person has a right of action as a third party beneficiary] is whether the intent of the parties to the contract was that the promisor should assume a direct obligation to the third party [beneficiary] and . . . that intent is to be determined from the terms of the contract read in the light of the circumstances attending its making, including the motives and purposes of the parties. . . . Although we explained that it is not in all instances necessary that there be express language in the contract creating a direct obligation to the claimed third party beneficiary; *Knapp* v. *New Haven Road Construction Co.*, supra, 326; we emphasized that the only way a contract could create a direct obligation between a promisor and a third party beneficiary would have to be, under our rule, because the parties to the contract so intended. Id." (Internal quotation marks omitted.) *Dow & Condon, Inc.* v. *Brookfield Development Corp.*, 266 Conn. 572, 580–81, 833 A.2d 908 (2003).

The court held that a contract existed due to the relationship between the broker and the owner of the account. The court further held that the defendant breached that contract when it transferred the funds to someone other than the plaintiff. Here, the plaintiff's father clearly created ownership rights in the plaintiff alone when the account was opened in the plaintiff's name using his social security number. On that basis, there is a clear intention that the rights of an owner would be created in the plaintiff and that he was the intended beneficiary of the contract created with the defendant. The findings of the court are not clearly erroneous.

The judgment is affirmed.

In this opinion LAVINE, J., concurred.

[1] Section 281 of volume nine of Corpus Juris Secundum (1996) states in relevant part: "Ordinarily, where a deposit is made by one person in the name of another, the rights with respect to such deposit belong to the person in whose name the deposit is made, even though the latter is unaware of the deposit, and the bank may not dispute his or her title or rights."