

Appealing To The Public

*Christine L. Cote, et al. v. Texcan Ventures II and Nunzio DeSantis,
Cause No. 05-07-1447-CV
Fifth Court of Appeals, Dallas, Texas*

Teaching Materials

Overview.....	2
The Court of Appeals.....	2
The Panel	3
The Parties	3
The Attorneys.....	3
The Oral Argument.....	3
The Briefs.....	3
The District Court Proceeding	4
The Legal Standard	4
The Facts.....	4
The Disputed Issues	5
The Decision and Opinion	6
Questions and Additional Information.....	7

Overview

Wade West convinced the parties in this case to invest millions of dollars in what he falsely led them to believe were safe and legitimate investments. In reality, each investor was unknowingly placing money into West's hands for his personal use as part of a fraudulent "Ponzi" scheme in which West would gamble and spend a substantial portion of the investment money while paying off earlier investors with later investors' money. Ms. Cote and the Cote Family Trust invested \$1 million with West, who then used part of that money to repay two earlier investors, Mr. DeSantis and a company called Texcan.

After West was convicted of criminal charges and sent to prison, the Cotes sued Mr. DeSantis and Texcan in an effort to recover as much of the Cotes' money as possible. The Cotes argued that they were entitled to recover their money from Texcan and Mr. DeSantis under a combination of two legal doctrines: "constructive trust" and "unjust enrichment." The district (or "trial") court ruled that because all three parties were equally victims of West's fraud, the Cotes were not entitled to recover any money. The Cotes have appealed that ruling to the court of appeals arguing that the trial court misapplied the law of constructive trusts and unjust enrichment to the facts of this case.

The Court of Appeals

The Fifth District Court of Appeals is one of fourteen courts of appeals in Texas. These courts of appeals hear and rule on both civil and criminal appeals from the district courts and county courts at law in their region. The Fifth District Court of Appeals' region includes Dallas, Collin, Grayson, Hunt, Rockwall, Van Zandt, and Kaufman counties. The district courts and county courts at law are the "trial" courts where evidence is presented to juries and judges. A detailed diagram describing the Texas court system is attached at the back of this packet of materials.

When parties to a lawsuit or criminal case disagree with the outcome of their case in a trial court, they have a right to appeal to the courts of appeals and ask that the outcome in the trial court be overturned or revised. The court of appeals is required to make a decision on all cases appealed to it. It makes a decision based on the information in the "record," which includes copies of all the items—including evidence and legal documents—filed with the trial court and transcripts of the testimony given in court. The court of appeals does not consider any information, evidence, or testimony on appeal unless it is in the "record" from the trial court. After the court of appeals has ruled on a case, the court of appeals may send the case back to the trial court for another trial or additional proceedings. The court of appeals may also reverse the trial court's judgment and issue a new or corrected judgment. Additionally, if the court of appeals determines that the trial court's judgment is correct, the court of appeals can affirm the judgment.

If a party disagrees with the decision of the court of appeals, that party can ask either the Texas Supreme Court (in civil cases) or the Texas Court of Criminal Appeals (in criminal cases) to hear another appeal. Unlike the courts of appeals, the Texas Supreme Court and the Texas Court of Criminal Appeals can choose whether to hear the appeal or not. Once the Texas

Supreme Court or the Texas Court of Criminal Appeals decides a case, that decision is final unless review is sought in the U.S. Supreme Court in Washington, D.C. Like the Texas Supreme Court and the Texas Court of Criminal Appeals, the U.S. Supreme Court can choose whether to hear the appeal or not—and reviews only 70-80 cases a year out of the thousands of petitions it receives. For more information regarding the Fifth District Court of Appeals, you can visit the court’s website at <http://www.5thcoa.courts.state.tx.us>.

The Panel

The Fifth District Court of Appeals is made up of thirteen justices, including one chief justice. Each case is assigned to three justices on the Court of Appeals, often referred to as the “panel.” In certain special circumstances, cases may be heard “en banc” meaning all thirteen of the justices participate. This case has been assigned to a typical three-judge panel. After argument, each case is assigned to one of the justices on the panel to write the opinion. At times, other justices may write concurring opinions that agree with the decision or dissenting opinions that disagree with the opinion. For additional information and biographies of the thirteen justices, you can visit <http://www.5thcoa.courts.state.tx.us/AboutCourt.htm>.

The Parties

In most circumstances, the party appealing from a trial court is called the “appellant.” The party who prevailed in the district court and who is not appealing the district court’s judgment is called the “appellee.” In this case, Ms. Cote and the Cote Family Trust are the appellants and Mr. DeSantis and Texcan are the appellees.

The Attorneys

Each party is represented by an attorney that will argue the case in the court of appeals. In this case, Ms. Cote and the Cote Family Trust are represented by Timothy Duffy. Mr. DeSantis is represented by Jason Bowles, and Texcan is represented by Robert Cohen.

The Oral Argument

The appeal will be heard October 30, 2008, at the Yvonne A. Ewell Townview Center School. Ms. Cote’s attorney will have twenty (20) minutes for the initial argument. Then, the attorneys for Mr. DeSantis and Texcan will have twenty (20) minutes for argument, and Ms. Cote’s attorney will have five (5) minutes for any rebuttal argument. During this time, the attorneys will present their arguments and the justices will ask the attorneys questions.

The Briefs

When an appeal is filed, each party submits a legal document called a “brief” that explains the party’s positions and presents the arguments to the court of appeals. In this case,

Ms. Cote and the Cote Family Trust filed the initial brief to begin the appellate process. Mr. DeSantis and Texcan then filed briefs in response, arguing their legal positions. These briefs are available for review and downloading at www.dallasbar.org/appealing.

The District Court Proceeding

This case was tried in August 2007 before the Honorable Craig Smith, Judge of the 192nd District Court of Dallas County, Texas. The district court ruled that because all of the parties in this case were equally victims of West’s fraud, the Cotes were not entitled to recover any money from Mr. DeSantis and Texcan. Accordingly, the district court refused to impose the “constructive trust” requested by the Cotes because Mr. DeSantis and Texcan had not been “unjustly enriched” at the Cotes’ expense.

The Legal Standard

The “standard of review” applied by courts of appeals varies depending upon what type of issue is on appeal. Some issues, called issues of “equity,” will be reviewed based on an “abuse of discretion” standard. Because the trial court heard the evidence and saw the witnesses live, its decisions are given greater deference by the court of appeals and will be reversed only if the trial court acted in an arbitrary or unreasonable manner or without reference to any guiding legal principles. Other issues, such as the trial court’s legal conclusions, are subject to “de novo” review. Under de novo review, the court of appeals will not defer to the trial court but will approach the issue as if the court of appeals were analyzing it for the first time.

In this case, the parties disagree about which standard of review applies. The Cotes argue that the trial court’s ruling involved legal conclusions that should be reviewed under the de novo standard. Mr. DeSantis, however, argues that the trial court’s ruling is entitled to more deference because it involved the trial court’s “equitable” powers and should be reviewed only for abuse of discretion.

The Facts

This case involves three investors who were cheated out of their money by a man named Wade West. Mr. West was running what is called a “Ponzi” scheme in which he would promise investors a high rate of return if they would invest large sums of money with him. West would then instruct each investor not to tell anyone else about the investment or the investment strategy, because—according to West—the “government” might “shut the investment plan down.” West would then pay earlier investors with money he would get from later investors while spending and gambling away a substantial portion of the rest of the money.

Sometime before June 2004, West convinced Nunzio DeSantis to “invest” \$3 million, and a company called Texcan to “invest” another \$1 million. Around June 2004, West approached Christina Cote and her husband, and he convinced the Cotes to “invest” another \$1 million with him. From the Cotes’ \$1 million, West directed \$500,000 to Texcan and \$137,500

to Mr. DeSantis. Similarly, West directed \$90,000 of a fourth investor's money to the Cotes as a payment on their investment. West ultimately returned to DeSantis only \$1,260,000 of his \$3 million investment, Texcan only \$629,500 of its \$1 million, and the Cotes only \$131,606 of their \$1 million. Both DeSantis and Texcan believed that the money paid to them by West was a return on their earlier investments, and had no idea that West was running a Ponzi scheme. DeSantis spent the money given to him by West, and Texcan did likewise.

After West was sentenced to prison, the Cotes sued Texcan and DeSantis in an attempt to recover the money lost to West's fraudulent scheme. The trial court ruled that DeSantis, Texcan and the Cotes were all innocent victims of West's unlawful scheme. The trial court further ruled that the money paid by West to DeSantis and Texcan from the Cotes' \$1 million investment was not subject to a "constructive trust," nor were the two defendants "unjustly enriched" by the payments. Accordingly, the trial court ruled that the Cotes were not entitled to recover any money from either DeSantis or Texcan.

The Disputed Issues

The issue in this appeal is whether the Cotes are entitled to recover any of the money they paid to West that was then given to Texcan and DeSantis. To prevail, the Cotes must first convince the court of appeals that the trial court did not properly construe the legal doctrine of "constructive trusts."

A trust is a formal legal arrangement under which a person (called a trustee) is given control over money or other assets. That person is then legally bound to manage or hold those assets for the benefit of other people (called beneficiaries). A constructive trust is a trust that a judge may impose—to the extent that justice requires it—so that any money or assets that were turned over to a person have to be returned to the people who gave the money or assets in the first place.

For example, consider a situation where Tom (Tom for trustee) tricks Bea (Bea for beneficiary) into giving him \$1,000 and a bracelet that was given to her by her grandmother. If the circumstances of the situation so warrant, a judge might impose a constructive trust on the \$1,000 and the bracelet that Bea gave to Tom. Once the constructive trust has been imposed, Tom would be required to return both the money and the bracelet to Bea.

The Cotes are similarly arguing that the money they paid to West should be returned to them under the theory of a constructive trust. Complicating the constructive trust issue, however, is that West transferred the Cotes' money to two third parties, Texcan and Mr. DeSantis. To overcome that complication, the Cotes are arguing that, in certain circumstances, the constructive trust "follows" the money or other assets even though they have been transferred to someone else.

According to the Cotes, the constructive trust follows the underlying asset, even when transferred to someone else, so long as that someone else is not a "holder in due course." The Cotes are further arguing that someone is a "holder in due course" only if he or she gives something in return at about the same time that the underlying property (subject to a constructive trust) is transferred. Under the Cotes' argument, from the example above, the constructive trust

might still apply to the bracelet even though Tom gave the bracelet to his sister Susan as a gift, but the constructive trust might not apply to the bracelet if Susan instead paid Tom \$250 for the bracelet. The Cotes argue that, under the law, Texcan and DeSantis are not “holders in due course” because, at the time West transferred the Cotes’ money to them, they did not give West anything in return.

The situation is still more complicated because Texcan and DeSantis, thinking that the money was rightfully theirs, spent that portion of the Cotes’ money that had been given to them by West. So, the Cotes are also arguing that under the legal doctrine of “unjust enrichment,” Texcan and DeSantis should have to pay the same amount of money back to the Cotes despite having already spent it. According to the Cotes, Texcan and DeSantis have been “unjustly enriched” by receiving the Cotes’ money should be required to pay back the money that West paid them from the Cotes’ funds. Thus, the Cotes are arguing that the trial court analyzed the transaction incorrectly, and that if the court of appeals carefully analyzes the transaction step-by-step, the Cotes would be entitled to recover the \$637,500 of their funds that were transferred to Texcan and DeSantis.

DeSantis disagrees with the Cotes’ argument on several grounds. First, he argues that because the trial court was in a better position to analyze and evaluate the evidence and witnesses first-hand, the court of appeals should defer to the trial court’s decisions regarding “fairness” or “equity.” Second, DeSantis takes issue with the Cotes’ legal analysis because, in DeSantis’ view, he is a “holder in due course” (and thus the money is not subject to a constructive trust). DeSantis argues that he made an initial investment of \$3 million, and the \$137,500 that West paid him, then, was given to him “in exchange” for his initial investment—making him a “holder in due course.” Finally, DeSantis argues that the trial court correctly ruled that he, like the Cotes, was an innocent victim of West’s fraudulent scheme. In DeSantis’ view, it would be absurd to conclude that a victim of fraud—who has done nothing wrong—has been *unjustly* enriched by receiving and spending money that he believed to be rightfully his.

Texcan also disagrees with the Cotes’ position. Texcan argues that the trial court correctly analyzed the transaction by asking simply whether the money given to Texcan and DeSantis was subject to a constructive trust. Because Texcan did not know West had gotten the Cotes’ money through fraud (and because Texcan had not itself defrauded the Cotes), the trial court properly ruled that Texcan did not owe the Cotes any money.

Texcan further argues that, even if the court of appeals were to conduct the step-by-step analysis suggested by the Cotes, Texcan would still not owe any money to the Cotes because it was a “holder in due course.” According to Texcan, the law does not require a “holder in due course” to provide money or assets *at around the same time* that the underlying property is transferred. Thus, because Texcan earlier invested \$1 million with West, it was a “holder in due course” of the money that West later transferred to Texcan. As such, Texcan was not required to repay the Cotes their \$500,000.

The Decision and Opinion

After the attorneys present their arguments, the panel may take several months to decide the appeal. The court of appeals’ decision and any opinions written by the justices will be made

available for review and downloading at www.dallasbar.org/appealing. In addition, the opinion can be accessed using the case number and related information at www.5thcoa.courts.state.tx.us. It is also possible to register your email address for updates on the case, including the issuance of the final opinion. To register for email updates, send an email from your email account to caseinfo@courtstuff.com and type “Subscribe 05-05-00923-CR” in the “regarding” line.

Questions and Additional Information

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