

...Joyce L. HOLLEN, Appellant, v. Wesley D. FITZWATER,  
Personal Representative of the Estate of Kenneth Otto  
Valberg, Deceased, Valberg Building Materials, Inc., an  
Oregon corporation, Jack K. Valberg, James D. Valberg and  
Gary ...

Hollen v. Fitzwater

CA No. A73127

COURT OF APPEALS OF OREGON

125 Ore. App. 288; 865 P.2d 1298; 1993 Ore. App. LEXIS 2112

July 28, 1993, Argued and submitted

December 15, 1993, Decided

December 15, 1993, Filed

**SUBSEQUENT HISTORY:**

[\*\*\*1]

Reconsideration Denied April 13, 1994. *Petition for Review Denied May 10, 1994 (319 Or 80).*

**DISPOSITION:**

Reversed.

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Plaintiff landowner filed a declaratory judgment action against defendants, the personal representative of the estate of the landowner's husband, the landowners' sons, and the family company (company), regarding the ownership of certain tax lots. The company filed a counterclaim for a constructive trust on certain other lots. The Circuit Court, Clackamas County (Oregon) imposed a constructive trust, and the landowner appealed.

**OVERVIEW:** The landowner and the deceased owned lots as tenants by the entirety. The company contracted to sell the lots, and the landowner and the deceased signed the contract in their corporate capacities. The landowner, who was also a real estate agent, signed the earnest money agreement as the selling agent. The buyers made payments on the contract to the landowner and the deceased, who then transferred the funds into the corporate account. After the death of the deceased, the sons discovered that the landowner held legal title to the lots. The sons prepared a quit claim deed that transferred the landowner's interests in the lots to the company. The landowner refused to sign the deed. The court held that the sons had failed to prove a constructive trust. Although there was

125 Ore. App. 288, \*; 865 P.2d 1298, \*\*;  
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evidence of a fiduciary relationship, there was no proof that the landowner violated a duty imposed by that relationship. Even if the landowner had orally agreed to sell the property to the buyers, there was no convincing evidence that she consented to or participated in the alleged oral sale of the property to the company. Thus, she could not have breached a fiduciary duty by refusing to convey the lots to the company.

**OUTCOME:** The court reversed the order that imposed a constructive trust on the landowner's property, holding that there was no convincing evidence that the landowner violated a duty imposed by her fiduciary relationship by retaining legal title to the lots.