

rental income to plaintiff at the time he accepted the conveyances. The "knowing falsity" element of scienter is, therefore, absent.

The court is also unimpressed with plaintiff's contention of "abuse of confidence". Plaintiff and defendant were not in a confidential relationship immediately prior to the conveyances. A confidential status is not simply presumed from a father-son relationship. 76 Am.Jur. 2d Trusts §581.

III.

Plaintiff's third cause of action is that plaintiff's transfers to defendant were gifts causa mortis and as such were revocable. Plaintiff has not proven this cause of action. A gift causa mortis is a transfer made in contemplation of death from present illness or some impending peril. 38 Am.Jur. 2d Gifts §9. The "contemplation" must be an immediate, contemporaneous apprehension of death. "A vague and general impression that death may occur is not sufficient" 38 Am.Jur. 2d Gifts §9. The evidence unmistakably shows two things: first, that plaintiff did not convey in contemplation of death; and second, that plaintiff had no immediate apprehension of death to begin with. In open court plaintiff repeatedly testified that one reason for her transfers to defendant was that plaintiff hoped she, defendant, defendant's wife and defendant's child could live together as a single family unit. Plaintiff also told this court that she hoped the transfers would induce defendant to give her lifetime care. Finally, plaintiff told defendant in her January 23, 1981 letter that she wanted to make inter vivos transfers so she could personally witness and enjoy defendant's prosperity.

When plaintiff began estrogen treatments in September of 1980, she learned from her physician, Stanley E. Von Holfe, M.D., that it was possible she had an angina condition. Dr. Von Holfe told her that if in fact she had such a condition, it might be magnified by estrogen treatments. However, Dr. Von Holfe testified

JSS
/17

1181
540

4328-872