

232 A.D.2d 466, 648 N.Y.S.2d 333  
(Cite as: 232 A.D.2d 466, 648 N.Y.S.2d 333)

**C**

Supreme Court, Appellate Division,  
Second Department, New York.

Donald Vincent POLINSKIE, et al., Respondents,  
v.  
Marie A. PHILLIPS, etc., Appellant.  
Oct. 15, 1996.

Quirk and Bakalor, P.C., New York City (Timothy  
J. Keane, of counsel), for appellant.

\*\*334 Michael J. Falco, Maspeth, for respondents.

\*466 In an action, *inter alia*, to impose a constructive trust, the defendant appeals from so \*467 much of an order of the Supreme Court, Queens County (Lane, J.), dated August 16, 1995, as denied her motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, the defendant's motion for summary judgment is granted, and the complaint is dismissed.

The plaintiffs sought to impose a constructive trust upon funds in accounts established by the decedent, Anne Ripko. The accounts named the sister of the decedent, Olga Scheock, as a joint tenant with a right of survivorship. The decedent's daughter, the plaintiff Patricia Polinskie, and the decedent's grandchildren, the plaintiffs Donald and Alexis Polinskie (hereinafter collectively the plaintiffs), contend that the monies in these accounts were held for their benefit and were to be distributed to them upon the death of the decedent. Since the commencement of this action, Olga Scheock died and Marie A. Phillips, as executor of her estate, was substituted as the defendant.

Contrary to the Supreme Court's ruling, the defendant demonstrated her entitlement to judgment as a

matter of law. The plaintiffs have failed to meet their burden of producing evidentiary proof in admissible form establishing the existence of material questions or facts (*see, Zuckerman v. City of New York*, 49 N.Y.2d 557, 560-562, 427 N.Y.S.2d 595, 404 N.E.2d 718). The record is bare of any evidence in admissible form that the joint accounts were established for the sake of convenience (*cf., Matter of Friedman*, 104 A.D.2d 366, 367, 478 N.Y.S.2d 695, *affd.* 64 N.Y.2d 743, 485 N.Y.S.2d 987, 475 N.E.2d 454; *Matter of Camarda*, 63 A.D.2d 837, 838-839, 406 N.Y.S.2d 193). In addition, the record does not contain any evidence to support a finding of any promise, express or implied, to convey the joint accounts to the plaintiffs. Consequently, a constructive trust cannot be imposed on these accounts (*see, Scivoletti v. Marsala*, 61 N.Y.2d 806, 808, 473 N.Y.S.2d 949, 462 N.E.2d 126; *Walker v. Hassall*, 212 A.D.2d 981, 981-982, 624 N.Y.S.2d 1000).

ROSENBLATT, J.P., and MILLER, RITTER and FLORIO, JJ., concur.

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**C** [Polinskie v. Phillips](#), 232 A.D.2d 466, 648 N.Y.S.2d 333 (N.Y.A.D. 2 Dept., Oct 15, 1996) (NO. 95-09046)

**History**

**Direct History**

=> **1** [Polinskie v. Phillips](#), 232 A.D.2d 466, 648 N.Y.S.2d 333 (N.Y.A.D. 2 Dept. Oct 15, 1996) (NO. 95-09046)

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<p>Westlaw has no direct history for this case</p>	<p>Intermediate Court</p>
<p>Intermediate Court</p>	<p>Trial Court</p>

Intermediate Court

**KeyCited Case**

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**Citing References**

**Positive Cases (U.S.A.)**

**★★ Cited**

**C** [1](#) In re Katz, 843 N.Y.S.2d 84, 86, 43 A.D.3d 442, 444, 2007 N.Y. Slip Op. 06431, 06431 (N.Y.A.D. 2 Dept. Aug 14, 2007) (NO. 2005-11748, 153/00)

**★ Mentioned**

**C** [2](#) Pereira v. Glicker, 876 N.Y.S.2d 910, 911, 61 A.D.3d 948, 2009 N.Y. Slip Op. 03497, 03497 (N.Y.A.D. 2 Dept. Apr 28, 2009) (NO. 2008-00640, 20213/06)

**Secondary Sources (U.S.A.)**

- [3](#) Bogert - The Law of Trusts and Trustees s 480, Breach of contract to bequeath, devise, or die intestate in return for personal services (2009)
- [4](#) MICHAEL PEREIRA RES, V. GARY GLICKER APPELLANTS DEF, 5/5/2009 N.Y. L.J. 37, col. 3, 37, col. 3 (2009)
- [5](#) APPELLATE DIVISION DECISION Appellate Division CASE, 8/17/2007 N.Y. L.J. 38, col. 1, 38, col. 1 (2007)