

17-1881-cv  
*Jaffer v. Hirji*

JOSÉ A. CABRANES, *Circuit Judge*, dissenting:

The New York Court of Appeals may one day decide to transform the constructive trust doctrine into an intent-enforcing remedy. But because it has not yet done so, I respectfully dissent.

According to the New York Court of Appeals, “the constructive trust doctrine serves as a ‘fraud-rectifying’ remedy rather than an ‘intent-enforcing’ one.” *Bankers Sec. Life Ins. Soc’y v. Shakerdge*, 406 N.E.2d 440, 441 (N.Y. 1980); *see also Superintendent of Ins. v. Ochs (In re First Cent. Fin. Corp.)*, 377 F.3d 209, 216 (2d Cir. 2004) (“New York law is clear that a constructive trust is an equitable remedy intended to be ‘fraud-rectifying’ rather than ‘intent-enforcing.’”); *Binenfeld v. Binenfeld*, 537 N.Y.S.2d 41, 42 (N.Y. App. Div. 1989) (“Courts have uniformly held that a constructive trust is a fraud-rectifying remedy rather than an intent-enforcing one.” (internal quotation marks omitted)). Neither appellants nor the majority, however, identify any fact that creates a genuine dispute about whether appellees committed fraud. At most, appellants and the majority establish that there is a genuine dispute about appellant Ahmed’s subjective expectations when he conveyed title to appellee Naushad. Expectations are not enough to impose a constructive trust under New York law. *See Binenfeld*, 537 N.Y.S.2d at 42. (“Although the facts may reveal a case of unrealized expectations, we may not, without more, fashion a constructive trust.” (internal quotation marks omitted)).