

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2013/0362

BETWEEN:

**Mable Phillips
(Acting through Nancy Mc Kenzie Greene as Executrix of (substituted by order 20th
May 2019)**

Claimant

and

Corrine Clara

Defendant

CONSOLIDATED TOGETHER WITH

CLAIM NO. GDAHCV2013/0387

BETWEEN:

Corine Clara

Claimant

and

**Mable Philips
Nancy Green**

Defendants

Before:

The Hon. Mde Agnes Actie

Appearances:

Ms. Celia Edwards Q.C with Ms. Celine Edwards for Corine Clara
Ms. Pauline Hannibal for Mabel Phillips
Ms. Amir Bullock Jawahir with Ms. Shanice Henry holding a watching.
brief for Republic Bank of Grenada

2021: January 22
: May 31,

JUDGMENT

- [1] **ACTIE, J:** The two claims heard together raise the issue of whether a joint bank account was a convenience account for which the co-signatory is required to give an account to the primary account holder.
- [2] I will refer to the parties by name for ease of reference considering the two claims filed by the different parties. Mable Philips who was ninety-four (94) years old at the time of filing the claim in 2013 met her demise in 2018. Nancy Mc Kenzie Greene, stepdaughter of Mable Phillips, was substituted in a representative capacity as executrix on 20th May 2019.
- [3] In Fixed Date Claim GDAHCV 2013/0362 filed on July 4, 2013 and amended on October 31, 2013, Mable Philips acting through her attorney Nancy McKenzie Greene by power of attorney claims against Corrine Clara seeking: (1) An account of all monies withdrawn by Corine Clara from (Mable's) account that was not used for her benefit between January 1, 2007 to May 16, 2013 and (2) The repayment of the sum of \$382,439.80 or such sums wrongfully applied by Corine Clara for her own use.
- [4] It is the pleaded case that Mable returned to Grenada from the USA after the death of her husband. Being advanced in age and not having any close blood relative alive, Mable checked herself into the St. Martin's Home for the aged at Crochu, St. Andrew, Grenada.
- [5] In 2004, Mable opened a joint account with Corine Clara at the Republic Bank. Mable monthly widow's pension of approximately \$3524.66 was deposited in the account. In 2006, Mable also appointed Corine Clara by Power of Attorney, to

handle her day-to-day affairs. Corine was authorized to pay the St. Martin's home and other expenses for Mable from the said account.

[6] In March 2013 Mable's stepdaughter, Nancy Mckenzie Greene, came to Grenada and removed Mable from the St. Martin's home with the intention of taking her back to the USA. On 13th March 2013, Corine filed a claim seeking to be appointed as Mable's guardian and for an order preventing Mable's removal from Grenada. By an order made on 17th May 2013, Mable was declared to be mentally competent and was given liberty to travel. The claim was discontinued and Corine was ordered to deliver the remaining funds on the account to Mable. Corine closed the account and delivered a bank draft to Mable in the sum of \$21,157.39.

[7] A bank statement obtained for the period of 2006 – 2011 disclosed that Corine made large withdrawals from the account and continued during the period of filing the claim on 13th March 2013 for guardianship. On 31st March 2013, the account had a balance of \$993.76. Mable contends that Corine withdrew a total sum of \$382,439.80 which was not put to Mable's use.

THE DEFENCE

[8] Corine Clara's in her filed defence challenges the efficacy of the power of attorney used by Nancy Mc Kenzie Greene to commence the claim. She also challenged the revocation of the power of attorney appointing her as agent for Mable . Corine alleges that both documents failed to meet the requirements of **Section 10 of the Deeds and Land Registry Act**. Corine also contends that the Justice of the Peace, before whom the power of attorney and revocation of power of attorney were executed, was not an official attestor.

[9] Corine states that Mable previously had a joint account with one Ruby Gilbert who withdrew large sums of money from the account. With respect to the balance of \$7000.00 in the account and the \$21,000.00 delivered, Corine contends that she was advised by her attorney- at- law not to keep so much money in a checking

account which carried little interest. She states that Mable withdrew \$14,000.00 which was kept in another account. She states that, upon the determination of the suit in 2013 and in keeping with the consent order, the balance in the account together with the sum of \$14,000.00 was handed to Mable.

- [10] Corine denies that the funds withdrawn were not for Mabel's benefit. In response to the claim for the accounting, Corine states that Mable gave her full authority over her affairs in Grenada and USA over all others.

Preliminary point

- [11] From the onset, the defendant (Corine) challenged Nancy McKenzie's capacity to initiate the claim on behalf of Mable Phillip. Corine contends that the power of attorney signed by a Justice of the Peace, who is not an official testator, is invalid. She further contends that the power of attorney is not registered and accordingly fails to meet the standard of proof required by Section 10 of The Deeds and Land Registry. The revocation of the power of attorney is challenged on the same grounds.

- [12] Ms. Pauline Hannibal, counsel for Mable in response relies on **Section 12 of the Magistrates Act Cap 77. Section 12 (2) of Act** provides that "every justice of the peace shall have the same power as a magistrate and to take affidavits and administer oaths". Counsel further relies on **Section 84 of Evidence Act**¹ which reads: "The court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by, a notary public, or any court, judge, magistrate, was so executed and authenticated. Counsel submits that **Section 10** of the **Deeds and Lands Act** requires the registration of a power of attorney affecting land. Counsel avers that both the power of attorney and the revocation of the power of attorney attested before the Justice of the Peace are not required to be registered as they do not deal with transactions affecting land.

¹ Cap 92

- [13] The procedural challenges can be dealt with succinctly. An oath is simply a legal acknowledgment of the authenticity of a document and a verification of the efficacy of that process. The combined effect of **Section 12 (2) of the Magistrates Act and Section 84 of Evidence Act** allows the Justice of the Peace to act as an attesting witness in verifying the acknowledgment of the parties executing a document. The power of attorney and the revocation of the power of attorney are not affecting any dealings with land and need not be registered in accordance with **Section 10 of the Deeds and Lands Act**. The court accepts that the power of attorney as properly executed instrument giving Nancy McKenzie Greene legal standing to commence the claim on behalf of Mable Phillips.

Discussions

Whether the joint account was an account for convenience

- [14] The central issue to be determined in claim **GDAHCV 2013/0362** is nature of the joint account in dispute and whether it was a convenience account.
- [15] Ms. Pauline Hannibal posits that the account was opened for the convenience of Mable Philips and relies on the common law principles enunciated in **Sabina James v Marguerite Desir et al**² and **Archibald Samuel v Ronelta Dagma Dailey** in relation to joint accounts set up for convenience.
- [16] Ms. Celia Edwards Q.C., for the defendant contends the claimant's claim is bound to fail considering the binding Privy Council decision in **Whitlock & Anr v Moree**³ delivered in 2017, after this case was filed in 2013. Ms. Edwards Q.C. contends that the contract document signed by the parties on the opening of the account is determinative of the beneficial interest and negatives the assertion of convenience or trust. Counsel states that the withdrawals made by Corine were not made as an agent of Mable but as principal as of right.

² SLUHCV 2007/0486

³ 2017 UKPC 44

[17] The standard bank form signed by both parties on 9th December 2004 provides as follows:

**“THE NATIONAL COMMERCIAL BANK OF GRENADA LIMITED
GREENVILLE**

The undersigned, having opened a *savings* deposit account numbered as indicated above with the aforementioned branch of **THE NATIONAL COMMERCIAL BANK OF GRENADA LIMITED** (herein called the Bank) in our joint names, in consideration thereof do hereby agree each with the other or others of us and also with the Bank that all moneys now or which may be hereafter deposited to the credit of the said account, and all interest thereon, shall be and continue the joint property of the undersigned with right of survivorship. Each of the undersigned, in order to constitute effectually the said joint deposit account, hereby assigns and transfers to the undersigned jointly any and all moneys which may have been heretofore or may now or hereafter be deposited to the credit of the said account, together with all interest which may accrue thereon. Each of the undersigned hereby authorizes the Bank to accept from time to time as a sufficient discharge for any sum or sums withdrawn from the said account any receipt, cheque or other voucher signed by any *one* of the undersigned, without any other signature or the consent of any others of the undersigned thereto.

The undersigned jointly and severally agree with the Bank that the death of one or more of the undersigned shall not affect the right of the survivors or any one of them, or of the sole survivor, to withdraw all of the said moneys and interest from the Bank and to give a valid or effectual discharge or receipt therefor.

The undersigned jointly and severally agree with the Bank to Pay to the Bank forthwith upon demand any overdraft, indebtedness or liability in its favour in connection with or arising out of the operation of the said account.

Unless otherwise expressly directed in writing, the Bank is hereby authorized by the undersigned and each of them to deposit to the credit of the said account all moneys and the proceeds of all cheques, promissory notes, bills of exchange, securities, coupons and orders for the payment of money received by the Bank payable to or for credit or account of any one or more of the undersigned.

[18] The signed document was witnessed by the Bank's officials. Ms Rena Clarke, bank representative, gave evidence at the trial. She produced contemporaneous manuscripts made at the time of the opening of the account as follows:

“ New A/c opened with Ms Mable Philips who is presently residing at the St Martin home at Crochu St Andrews.

Ms Philipps indicated to me that she would like Ms Clara to pay for her funeral expenses and also take care of her bills that may arise from time to time

Ms Philips also made it clear to us that she is getting old and that she wants to put everything in place for when she dies. “

[19] A declaration of source of funds for the account number 11123778 with a transaction total of \$60,000.00 reads:

Funds transferred from acc. No 11073088 in the name of Mable Phillips into new account in the name of Mable Phillips & or Corrine Clara to enable payments of bills etc.” “

[20] The remarks column of the form provides:

“Ms. Phillips is 87 yrs old and is a resident of the St. Martins Home Crochu,. She indicated that funds she would like Clara to take care of her funeral arrangements. ie on her visit

A further note provides:

“ Ms Mable Phillip came to the bank with Ms Clara to open a new account to handle what she said to be unforeseen expenses (eg Health) and also that she was responsible for her funeral expenses when she pass away. She currently has no other relative to take care of her in Grenada and has given that responsibility to Ms Clara.

[21] In **Whitlock v Moree**, there were two account holders on a joint account with the First Caribbean International Bank, with Mr Lennard (until his death in February

2010) and his friend Mr Moree. The money in the account was contributed by Mr. Leonard which had been a balance then standing to the credit of what had been Mr Lennard's sole account. On the setting up of the joint account, both Mr. Lennard and Mr. Moree signed a standard joint account opening application which included the following provision, Clause 20:

"JOINT TENANCY: Unless otherwise agreed in writing, all money which is now or may later be credited to the Account (including all interest) is our joint property with the right of survivorship. That means that if one of us dies, all money in the Account automatically becomes the property of the other account holder(s). In order to make this legally effective, we each assign such money to the other account holder (or the others jointly if there is more than one other account holder)."

- [22] The account opening form signed by Mr. Lennard also contained, in a box headed "State Purpose of Account", a manuscript note "to pay utilities" which was made by an unidentified bank official. Both forms contained, immediately above Mr Lennard's and Mr. Moree's respective signatures, a declaration in the following terms:

"I hereby declare that the information provided by me in this application is correct and complete to the best of my knowledge and that I have received, read, understood and accepted the agreement (detailed section 5 above) and the "Disclosure Documentation" and shall be bound by its terms."

- [23] The issues the Board were asked to determine were (1) Does clause 20 deal with the beneficial ownership of the joint account, or merely with the bare legal title to the chose in action against the bank represented by the account? (2) Is the fact that Mr. Lennard and Mr. Moree opened the joint account by means of a signed written application containing clause 20 determinative of its beneficial ownership, as at the

date of Mr Lennard's death or whether it formed part of Mr Lennard's estate by reason of the operation of the equitable doctrine of resulting trust (as Mr Lennard) had provided all the money.

[24] Lord Briggs giving the majority judgment said,

“ If the question is asked, in relation to money held in a joint bank account, what instrument might be thought to constitute the appropriate document where a binding declaration as to beneficial interests might be expected to be found, the obvious answer lies in the account opening document which sets out the contract pursuant to which the chose in action which constitutes the relevant property is created. Lord Briggs (at paragraph [27]), "if, as in this case, the account opening document contains an express assignment by each account holder to the two of them jointly of any money separately owned by that account holder, it does indeed constitute a document of transfer, even in the strict sense."

[25] Ms. Celia Edwards Q.C. contends that the opening document constitutes the full terms of the agreement between the parties and the court cannot look to any other evidence to determine the nature of the account.

[26] Ms. Hannibal, posits that the Privy Council decision in **Whitlock v Moree** can easily be distinguished from the case at bar. Counsel states that the sole question the Board had to determine was whether upon the death of account holder, who provided all the money on the account, formed part of the deceased estate by resulting trust. Counsel contends that the issue in the case at bar does not concern right of survivorship. It is an action brought during Mable's lifetime seeking an account of funds taken from the account that were not put to her use.

[27] I think there is much force in Ms Hannibal's assertions. The Board's decision in **Whitlock v Moree** and the authorities cited in that judgment all dealt with the beneficial interest on joint co-ownership under the survivorship principle under joint

tenancy. The Board concluded that the signed document where parties to a joint account have declared their interests is determinative of the beneficial interest, pending any subsequent variation of them by agreement or otherwise. The Board also said that the opening document can be challenged if a case of mistake or *non est factum* is being deployed, or on the basis of fraud, duress, undue influence, misrepresentation and the like, or if it is sought to be rectified. The Board decision was clearly dealing with beneficial interest upon the death of the account when it said at paragraph 33, **“If the dispute is about beneficial survivorship, one of the original account holders will have died, and be unable to give direct evidence of intention. If the presumption of a resulting trust would otherwise leave the money beneficially part of the estate of the first to die, evidence of intention by the survivor will always be self-serving”**. (My emphasis)

[28] The Board in **Moree** further held that “ where such a document upon its true construction does deal with the beneficial interests of the account holders, the question what precisely those interests are is a question of law and not a fact-finding exercise. ***Provided therefore that there is no factual uncertainty about the terms of the relevant document, an appellate court is as well placed as the trial judge to apply the law, that is, to construe the document. To this general proposition may be added this caveat: that the first instance and appellate courts which sit habitually in the jurisdiction where the relevant documents were created and signed may sometimes be better placed than this Board, because they may be better attuned to the context of business life against which the document falls to be construed.***

[29] The Privy Council is subject to a proviso which enables the local courts to make enquiries as to the true intention of the parties based on the circumstances of the case. The local courts, being more familiar and well versed with the island’s customs, are best placed to determine the issues from a more traditional standpoint. It is commonplace in small jurisdictions like Grenada for elderly vulnerable/illiterate persons to open accounts with cosignatories for convenience and to assist in the

management of their financial affairs and day to day living. The situation in this case is no different.

- [30] Ms. Hannibal, in her filed submissions, asserts that Corine Clara was added to the account as a matter of convenience to handle the affairs of Mable Phillips, who was advanced in age and physically feeble. She states that it was never the intention that Corrine would have had a beneficial share in the proceeds of the bank account for her own use during Mabel's lifetime. The true intended purpose was to pay the St Martin's home for the aged where Mable resided, with the only other authorized expenditure being small amounts for toiletries, food, medical and other miscellaneous items.
- [31] Secondly, counsel contends that Mable did not receive any legal advice as to the nature and consequences of a joint account. The bank official did not lead any evidence that Mable was given further advice.
- [32] The court notes that the **Whitlock v Moree** case contained a note at the end of the form which reads: "I hereby declare that the information provided by me in this application is correct and complete to the best of my knowledge and that I have received, read, understood and accepted the agreement (detailed section 5 above) and the "Disclosure Documentation" and shall be bound by its terms.". The opening account form in the case at bar did not contain a similar clause.
- [33] Documents negotiated and signed with the benefit of legal advice or carefully explained to the parties are given special primacy. However, the signing of the bank's standard account opening form by an elderly and vulnerable primary account holder without independent advice to achieve full precision of the agreement cannot be disregarded in a small jurisdiction like Grenada. Ms. Linda Evans, a Matron from the St. Martin's home and a witness for the defendant, states that "Mable did not have money sense and did not know the actual value of money or understood the amount in her account". This is my view is someone who needed independent advice with the bank transaction. There was no evidence that Mable obtained any

legal or independent advice when she opened the bank account or in signing the form.

[34] Certain features in the relationship and the events which led to the creation of the joint account are pertinent in deciding the true nature and intent of the account. There are several factual issues which can assist in resolving this claim. First, Mable was an elderly, 85-year-old widow who was a returning national from the USA after the death of her husband. She did not have any blood relationship in Grenada. From all accounts Mable had been previously defrauded by a confidant, Ruby Gilbert, a cosignatory on a joint account. Mable turned to the one other person whom she trusted, Corine Clara, a retired nurse, for assistance. Mable opened the joint account and also gave a power of attorney to Corine Clara to take care of all her affairs.

[35] It is also necessary to consider the terms of the standard form document which are supplanted with contemporaneous notes and instructions given by the primary account holder. In **Tyrone Burke (Chief Personnel Officer) v Otto Sam**, Baptiste JA citing Arden LJ in **Wetton v Ahmed and Others**⁴ said “contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present, and the oral evidence can then be checked against it. The approach of the judge in this is to seek to test the evidence by reference to both contemporary documentary evidence and its absence.”

[36] I am of the view that the nature of the account in dispute is amplified in the contemporaneous documents. The manuscripts and testimony of the Bank employee endorsed on the opening form all indicate the intended purpose for which Mable opened the account.

⁴ [2011] EWCA Civ. 610.

- [37] In **The Ocean Frost**⁵, Robert Goff LJ (as he then was) said “ It is frequently very difficult to tell whether a witness is telling the truth or not: and where there is a conflict of evidence.... Reference to the objective facts and documents, to the witnesses’ motives, and to the overall probabilities, can be of very great assistance to a judge in ascertain the truth”.
- [38] The contemporaneous manuscripts enable the court to evaluate the evidence of the witnesses. During the trial, I paid particular attention to Corine Clara’s demeanor. My assessment of the witness was that she was untruthful and evasive to the questions asked during cross examination. When asked “what she do with the money withdrawn”. She sheepishly responded “I did stuff” but did not lead a shred of evidence to indicate what she did with the funds withdrawn from the accounts.
- [39] Corine’s assertion that Mable gave her the money for her own use and to do as she pleased is not supported by the evidence. The widow’s pension appeared to have been Mable’s only source of income. It would be inconsistent for Mable to have given Corine the money for her own use when the same money was required to pay for Mable’s stay at the home along with her medical and funeral expenses.
- [40] Ms. Hannibal contends that adding Corine to the account was for convenience of the payment of expenses for the claimant during her lifetime and for funeral expenses. Corine Clara was given sole access to the account with a balance standing at \$157,800.76. Corine made large withdrawals between July 2007 and March 2013 totaling \$202,067.26 including a onetime withdrawal of \$100,000.00 on 15th May 2008. This amount was transferred to an account in Clara’s sole name. Corine continued to make large withdrawals from the account even after Mable was removed from the home and during the pending the claim filed by Corine. It is the evidence that Clara only spent for small items such as toiletries and medication.

⁵ [1986] A.C. 717_

Conclusion

- [41] The court taking all the evidence in the round is of the view that claimant has proved her case on a balance of probabilities. Mable was vulnerable and relied on Corine for support. She gave her total control both on the account and through a Power of Attorney. The contemporaneous manuscripts endorsed on the opening forms clearly indicate the purpose for which the account was opened. My consideration of the evidence along with the history of this case all lead to the ineluctable conclusion that the account opened with the bank was an account for Mable Phillips' convenience. To conclude otherwise would frustrate the very same purpose for which the account was opened.
- [42] The next issue is should Corine Clara provide an account of her dealings with the account. Corine Clara at Paragraph 62 of her sworn witness statement said "I say to this honorable court that any monies expended by me out of the funds of Mable Philip were used for the benefit of Mable Philip". It is necessary for Corine Clara to provide an account of all the money's withdrawn in which she alleges were used for Mable Phillips benefit. .
- [43] In summary, the court declares that the joint account number 11123778 opened with the now "Republic Bank of Grenada" with Mable Phillip and Corine Clara was an account for the convenience of Mable Phillips. Corine Clara is required to account for all the monies withdrawn from the account which were not used for the benefit of Mable Philips.

Claim 2013/0387

- [44] In claim 2013/0387 filed on 25th July 2013, Corrine Clara seeks an order against Mable Phillips and Nancy Green, for a recall, cancellation or correction of the order of Persaud J(ag) made on 17th May 2013 in Civil Suit 99 of 2013. The claimant contends that the order does not reflect that it was made by consent. The claimant

avers that the court , not having had a hearing of the substantive action on the merits, had no jurisdiction to make such an order except by consent. The claimant contends that the order was drawn by counsel for the defendant and was not sent to claimant's counsel for approval.

- [45] The defendants denied that the claim was never heard. The defendants contend that the order was an order of the court made after the judge, having examined the affidavit evidence of the parties, the social worker and Mable Philips in person, ruled that Mrs. Phillips was competent and able to travel. Counsel submits that parties both expressed their opinion that the matter be discontinued.

Analysis

- [46] An order of the court is valid unless it is set aside, varied or appealed . **CPR 42.10** provides for the correction of order under what is commonly termed “The Slip Rule” . **CPR 2000** does not provide for the cancellation or recalling of orders.
- [47] The claimant alleges that the order should have reflected that it was made by consent. This is a simple correction permitted under “ The Slip Rule” on an application to the judge. The claimant did not engage the rule.
- [48] The claimant's claim for the recall or cancelation of an order is not permissible under the CPR 2000. The filing of a new claim seeking to cancel, recall or correct an order of the court on the grounds pleaded in the claim is tantamount to a collateral attack on the order. This is an abuse of process not permitted under CPR 2000. In the circumstances, the claim stands dismissed with costs.

Order

- [49] In summary, it is hereby ordered and directed as follows :
- (1) It is declared that the joint account number 11123778 with the Republic Bank of Grenada and Mable Phillips and Corine Clara is an account for the convenience of Mable Phillips.

- (2) Corine Clara shall provide the estate of Mable Phillips with an account of moneys withdrawn from the joint account number 11123778 with the Republic Bank of Grenada which were not applied for Mable Phillips benefit within thirty (30) days of today's date.
- (3) At the end of the accounting, Corine Clara shall pay the estate of Mable Phillips all moneys withdrawn from the account which were not put to Mable Phillips' use and benefit within thirty (30) days of the report.
- (4) Unless there is compliance with paragraphs 2& 3 above, Corine Clara shall pay the estate of Mable Phillips the sum of \$382,439.80 within sixty (60) days of today's date.
- (5) Prescribed costs pursuant to CPR 65.5
- (6) Interest at the rate of 6% from the date of judgment until payment in full.
- (7) Claim **GDAHCV2013/0387** stands dismissed with costs assessed in the sum of \$2000.00

Agnes Actie

High Court Judge

By the Court