

COMMONWEALTH OF DOMINICA

DOMHCV2012/0005



BETWEEN:

ARCHIBALD SAMUEL

Claimant

(Lawful Attorney of Byron Goodridge, Joint Administrator pendent lite of the estate of Flora Goodridge, late of Castle Comfort, St. George, who died on the 20th day of September, 2011, deceased)

and

RONELTA DAGMA DAILEY

Defendant

(Joint Administrator pendent lite of the estate of Flora Goodridge, late of Castle Comfort, St. George, who died on the 20th day of September, 2011, deceased)

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Douglas Mendes SC and Geoffrey Letang for the Claimants
Mrs. Hazel Johnson and Lisa De Freitas for the Defendants

[2012: December 3rd, 4th]
[December 13th]

JUDGMENT

- [1] **COTTLE J:** The claimant holds a Power of Attorney for Byron Goodridge of Castle Comfort. Mr. Goodridge is the widower of Flora Goodridge (Flora). The defendant is a sister of the deceased Flora. The claimant brings the instant administration claim seeking a declaration that funds standing in a bank account are held on trust for the estate of the deceased Flora. Most of the facts are agreed. Flora opened a joint account at the Roseau branch of the Royal Bank of Canada in the joint names of herself and the defendant. The defendant accessed that account during the lifetime of Flora who was elderly and infirm.
- [2] All of the funds in the account were provided by Flora. Additionally the defendant collected rents for buildings owned by Flora and deposited these sums from time to time into the joint account. All

expenditure from the account by the defendant was for the benefit of Flora while she lived. The defendant paid household expenses including utility bills from the joint account. The defendant did not apply any of the funds to her own benefit. On the day of Flora's funeral the defendant closed the joint account. She transferred all the funds to an account at the same branch in her sole name.

- [3] The single issue which falls for determination in this claim is whether she is entitled to keep the funds in the account or whether they form part of the estate of Flora. Mr. Mendes SC submitted that the authorities show that in cases such as the present where the joint account holders are not husband and wife or parent and child there is no presumption of advancement. Here all the funds were supplied by Flora and therefore there is a presumption of resulting trust. This presumption is rebuttable by evidence but prima facie the beneficial interest in the funds remains in the estate of the deceased.
- [4] It is the intention of the parties at the time of the creation of the joint account which will determine whether the defendant or the estate will be beneficially interested in the proceeds of the bank account. Mr. Mendes SC points out that in the exercise to consider the expressed intention of the deceased at the time the account was opened, the court should look at the things done and said contemporaneously with the account opening. The way in which the parties subsequently dealt with the account may also provide some guidance.
- [5] Mr. Mendes then cited a number of decided cases including Russel v Scott [1936] 55 C.L.R 440 Marshall v Crutwell [1875] L.R 20 Eq 328 and Niles v Lake [1974] SCR 291. These cases emphasize that while the legal principles are well settled, each case will turn on its particular facts. It is for the defendant to adduce evidence to rebut the presumption of resulting trust in favour of the estate.
- [6] Mrs. Johnson for the defendant in her helpful oral argument cited the case of Webster v National Bank of Anguilla AXAHCV 2008/0098, where the learned trial judge listed 4 types of evidence that might assist in discerning the intent of the transferor of funds into a joint account.
- 1) Statements made to the (bank) officer when the account was being opened
 - 2) Evidence subsequent to the transfer
 - 3) The account opening documents
 - 4) Evidence as to who had control and use of the funds in the account.
- [7] She also cited Jose Manuel Pitta de Lacerda Aroso v Coutts & Company, a decision handed down on 30th March 2001 in the High Court in London, England. In the latter case the court considered the account opening documents. Importantly the bank's mandate contained the following provision.
- " We confirm that the funds and assets deposited with you and which may hereinafter be deposited with you shall be in our beneficial ownership and shall not be held upon trust for any other person or persons whomsoever...."***
- "We fully understand that in the event of the death of one or more of us, the survivor or survivors shall remain and be entitled to the entire assets deposited with you for the account"***
- In light of this expression of joint beneficial ownership the court held that the presumption of resulting trust was rebutted. Mrs. Johnson urges this court to reach a similar conclusion.

The Evidence

- [8] At the trial there was an effort by the defendant to adduce the account documents. This was resisted by the claimant. As it turns out the admission of this document does not assist the defendant. The banking document does not speak in terms of the beneficial interest in the funds. It merely expresses the legal position which is not disputed. Upon the death of Flora, legal title to the account passed to the defendant. The document, unlike that in the Coutts & Company case, offers no guidance as to the beneficial ownership of the funds.
- [9] The only witness who testifies as to the circumstances surrounding the opening of the bank account was the defendant. Despite being asked by the defendant and summoned to attend at trial, the bank official did not testify. In her witness statement the defendant swears that, at the opening of the account, the bank official advised them of the right of survivorship. She adds that since the opening of the account she collected rent for Flora's properties. She deposited some of the funds to the account. She would also withdraw from time to time to pay Flora's bills, groceries, medical expenses, house keeper/ caretaker costs and other expenses. When cross-examined she emphasized that up to the date of the trial she had never used any of the funds for her own purposes.
- [10] She also admitted when cross-examined that she had made an application to the court to be appointed receiver to take care of her sister's affairs. She swore an affidavit to support her application. In that affidavit at paragraph 9 she swore that the joint account had been opened by Flora **"to enable (the defendant) to conduct transactions on her behalf"**. At paragraph 20 she explains that this was a demonstration of the trust her sister reposed in her.
- [11] Nowhere in her witness statement or her viva voce evidence before the court did the defendant advance any suggestion that the deceased expressed intent that she, the defendant, would be beneficially interested in the proceeds of the bank account upon the death of Flora. It is only the expression of the legal right of survivorship that the defendant relies on to keep the funds deposited by her sister as her own. The case of Niles v Lake makes the point that this by itself does not rebut the presumption of resulting trust. It only evidences the unchallenged legal position.
- [12] Having considered the facts of this case I conclude that the defendant has adduced no evidence capable of rebutting the presumption that she holds the funds from the joint account on resulting trust for her sister's estate. Indeed the evidence of the defendant's sworn affidavit goes to show that the joint account was created simply for the convenience of the deceased, to enable the defendant to conduct certain transactions on behalf of the deceased. The way in which the defendant dealt with the account by never utilizing any of it for her own benefit is also demonstrative of her knowledge that it was not the intention of her sister that she would be beneficially interested in the money in the account.
- [13] I therefore give judgment for the claimant and make the following orders:
1. It is declared that all the funds now standing in the account into which the defendant has transferred the proceeds of the joint account form part of the estate of Flora Goodridge

2. The defendant is ordered to transfer those sums to the personal representative of the deceased

I make no order as to costs in this matter.



Brian J. Cottle

Brian Cottle
High Court Judge