

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2015/CLE/gen/1766

IN THE MATTER of Account Number NS213986 held jointly by Maurice Christian and Maurice Alfredo Christian as customers at ANDBANK (Bahamas) Limited

AND IN THE MATTER of the Banks and Trust Companies Regulation Act, Chapter 316 of the Revised Statute Laws of the Commonwealth of the Bahamas

BETWEEN

MAURICE CHRISTIAN

Plaintiff

AND

ANDBANK (BAHAMAS) LIMITED

1st Defendant

AND

MAURICE ALFREDO CHRISTIAN

2nd Defendant

AND

ANA MARIA SILVA MONGES

3rd Defendant

Before Hon Mr Justice Ian R. Winder

Appearances: Leif Farquharson for the Plaintiff
 Marco Turnquest for the 1st Defendant
 Van Gaitor for the 2nd and 3rd Defendants

15 July 2017, 20 September 2017 and 24 October 2018

RULING

WINDER, J

This is an action seeking to determine the beneficial ownership of funds standing to the account number NS213986 at Andbank (Bahamas) Limited.

Background

- [1.] The plaintiff, Maurice Christian, (Maurice) is the former spouse of the third defendant, Ana Maria Silva Monges (Ana Maria). The second defendant, Maurice Alfredo Christian (Alfredo), is the son of Maurice and Ana Maria.
- [2.] The first defendant, Andbank (Bahamas) Limited, (Andbank) maintains a joint account numbered NS213986 in the names of Maurice and Alfredo which hold in excess of US\$400,000. The account was opened sometime in 2013.
- [3.] It is not disputed that Maurice funded the subject account. Maurice claims to be entitled to the entirety of the funds in the said account. Ana Maria disputes this claim by Maurice and says that she is entitled to 50% of the funds held in the joint account. Ana Maria and Alfredo allege that Alfredo was named as a party of the joint account to ensure that his mother, Ana Maria, received her portion of the funds. Alfredo does not claim to be personally entitled to any portion of the funds in the joint account.
- [4.] Ana Maria's claim to 50% of the funds at Andbank is based on her assertion that the money in the account derived from the sale of assets, chiefly, real estate owned by Silva Consultores SRL. That business, and the proceeds of the sale, she says, was jointly owned by her and Maurice.
- [5.] The present action was commenced by Originating Summons filed on 4 November 2015. At trial all of the parties swore affidavits in support of their respective claims and were cross examined on those affidavits. The sole issue for determination in this matter is whether Ana Maria is entitled to 50% of the funds held on the account at Andbank.

[6.] There was no evidence of an agreement or written instrument between Maurice and Alfredo as to any interest in the subject account. The account-opening documents contained no statement or declaration concerning the respective beneficial interests of the joint account holders to the funds held.

[7.] Maurice contended, in written submissions that:

- a) There is a presumption that the funds on the material account are held on a resulting trust in favour of Maurice, as the party who placed the money there (see e.g. *Aroso v. Coutts & Co.* [2002] 1 All ER (Comm) 241
- b) Further, and in any event, it is perfectly permissible for the Court to review evidence of the subjective intention of the parties concerning beneficial entitlement to the funds. And in this case, on the evidence as a whole, Maurice, as the party who funded the material account, plainly never intended to confer any beneficial interest in the funds upon either of the Defendants, and more specifically, upon his ex-wife, Ana Maria. In this vein, unlike most cases involving a dispute as to beneficial ownership of funds held in a joint account, the relevant parties are actually all still alive to testify as to their respective intentions, including Maurice as the person who funded the material account (Cf. *Whitlock v. Moree*);
- c) Alfredo's assertion that he was only joined as an account holder 'to protect' the beneficial interest of Ms. Monges to half the funds deposited in the material account is belied by the fact that signing authority for the account was given to Maurice and Alfredo 'individually'. This is entirely inconsistent with Alfredo being joined to protect Ana Maria's alleged interest. On the contrary, it strongly supports Maurice's evidence that he only joined Alfredo on the material account in the event that he became unable to operate it himself for physical reasons, especially given his advanced age.

[8.] In *Whitlock v. Moree* [2017] UKPC 44 the Privy Council recently considered the issue of beneficial entitlement to funds held on a joint account in the context of survivorship. The context of this case however is different as it not a survivorship claim but an inter vivos claim as to right and title to the funds held at Andbank. All of the contending parties are alive and have presented their claim of right to the funds.

[9.] Having heard and observed the witnesses as they gave their evidence, I accept the evidence of Maurice that there was no arrangement for the joining of Alfredo onto the account with respect to any protection of Ana Maria's interest. I do accept however that funds deriving from the sale of jointly held assets, belonging to both Maurice and Ana Maria from the sale of joint property in the amount of \$150,000 made its way into the subject account at Andbank. In the circumstances I am satisfied that he held that sum on trust in the subject account for himself and his former spouse, Ana Maria.

[10.] In the circumstances therefore I declare that Maurice is beneficially entitled to the funds in the account save for the sum of \$150,000 which he and Alfredo hold on trust for himself and Ana Maria in equal proportion. Ana Maria therefore has a beneficial interest in 50% of the said \$150,000 or \$75,000.

[11.] I order that save for this sum, for which Anna Maria is entitled, the balance standing to the said account be made available to Maurice or to his order.

[12.] I make no order as to costs.

Dated the 23rd day of May 2019


Ian Winder

Justice