

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**Common Law and Equity Division**

**2016/CLE/gen/00755**

**BETWEEN**

**JOHN HENRY LIGHTBOURNE**

**(AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WELLINGTON  
LIGHTBOURNE, DECEASED)**

**Plaintiff**

**AND**

**BANK OF THE BAHAMAS LIMITED**

**First Defendant**

**AND**

**LEONA BURNSIDE**

**Second Defendant**

**AND**

**ANTONIA WILSON**

**Third Defendant**

**Before Hon. Mr. Justice Ian R. Winder**

**Appearances: Gregory Ambrister for the Plaintiff  
Michela Ellis for the First Defendant  
Jaunianne Dorsett for the Second and Third Defendants**

**9 and 10 August 2021; Submissions: 14, 17 and 20 December 2021**

**JUDGMENT**

## WINDER, J

This is my brief decision on the Plaintiff's claim to ownership in a joint fixed deposit account established in the name of Wellington Samuel Lightbourne (the deceased) and the Second and Third Defendants. He also claims against the First Defendant bank for the negligent management of the account.

### The Background

- [1.] The background to this action was succinctly laid out in the First Defendant's closing submissions and I gratefully repeat it here:
- [2.] On 27 January 1992, the deceased became a customer of the First Defendant's Inagua Branch by the opening of a savings account, namely account number 5704341.
- [3.] On 27 April, 2000, the Second Defendant became a customer of the First Defendant's Inagua Branch when she was added as a party to account number 5704341, with the express consent of the deceased, thereby creating a joint savings account.
- [4.] Sometime in or after 2006, the First Defendant underwent an internal exercise in which it changed the account numbers of all bank accounts held with the First Defendant at that time. By consequence, the account number of the joint savings account was changed from 5704341 to 5510003204.
- [5.] On 8 September, 2011, the joint savings account was credited with One Hundred Forty-Five Thousand, Eight Hundred Ninety-Four Bahamian Dollars and Forty-Three Cents (BSD \$145,894.43).

- [6.] On 27 September, 2011, the deceased, the Second Defendant and the Third Defendant opened a joint fixed deposit account, namely account number 161I32Y11270002, with the First Defendant.
- [7.] In order to facilitate the opening of the joint fixed deposit account, the joint fixed deposit account holders signed a "*Joint and Several To Open Account(s)*" form dated 27 September, 2011. This form governed the operation of the account.
- [8.] Additionally, the joint fixed deposit account was governed by the "Term Deposit Terms and Conditions Agreement", a copy of which was signed by the joint fixed deposit account holders on 27 September, 2011.
- [9.] The initial deposit on the joint fixed deposit account was One Hundred Thousand Bahamian Dollars (\$100,000.00). Those funds were transferred from the joint savings account held by the deceased and the Second Defendant. The transfer was affected pursuant to a "Term Deposit" form dated 27 September, 2011, signed by the deceased.
- [10.] The deceased died on 23 December, 2012. The First Defendant's records reveal that at that date, the total amount on the joint savings account was \$583.17. The total amount on the joint fixed deposit account, at that date, was \$93,250.00. The accounts remained opened after the death of the deceased and transactions continued to occur on both accounts in respect of the surviving account holders.

### The Claim

- [11.] The relief sought by the Plaintiff in his Re-Re-Amended Statement of Claim are the following:
- (1) An Order that the First Defendant pay to the estate of the deceased the funds that it paid to the Second and Third Defendants with compound interest;

- (2) A declaration that the beneficial interest in the monies held at the date of the death of the deceased in the said joint savings and fixed deposit accounts did not pass to the Second and Third Defendants by survivorship and that the monies are held by the Second and Third Defendants on trust for the Plaintiff in his capacity as personal representative of the deceased's estate; and
- (3) An order that the Second and Third Defendants, jointly and severally do pay any sum the court may find is due to the deceased's estate, within fourteen (14) days from the date of judgment.

### The Issues

[12.] The agreed issues for resolution by the Court were the following:

- (a) Whether the deceased voluntarily executed the account opening documents;
- (b) Whether the First Defendant managed the account negligently or in breach of their mandate; and,
- (c) Whether there was a resulting trust in favor of the estate as beneficiary.

[13.] The action was vigorously defended by the Defendants.

[14.] At trial the Plaintiff gave evidence on behalf of the estate. Majorie Cartwright Wilson gave evidence for the First Defendant. The Second and Third Defendants gave evidence in their case.

### Analysis & Disposition

[15.] This is a dispute among family members. Plaintiff, the brother of the deceased. The Second and Third Defendant are mother and daughter. The deceased (as is the Plaintiff) is the Uncle of the Second Defendant and the Granduncle of the Third Defendant. I am satisfied that this matter is to be resolved entirely upon the Courts

assessment of the facts. I have no hesitation in stating that I preferred the evidence of the witnesses for the Defendants.

[16.] The Plaintiff was clearly a stranger to the transactions the subject of this dispute and could provide no evidence as to the circumstances under which the account was opened. He resided in Nassau whilst the deceased, the Second Defendant and Third Defendant resided in Inagua. The evidence, which I accept, is that the deceased treated the Second Defendant as his daughter, having raised her.

[17.] In respect to the agreed issues for the trial I find as follows:

a) Wellington Lightbourne voluntarily executed the account opening documents. I accept the evidence of the Second Defendant that she witnessed the signing of the document. There is no acceptable evidence to the contrary. I also accepted the evidence that the joint saving account and the fixed deposit account were governed by and operated in accordance with the *Joint and Several To Open Accounts* form and the Term Deposit Terms and Conditions Agreement. Section 5 of the *Joint and Several To Open Accounts* form provided:

*In the event of the death or deaths of any one or more of us you are empowered to pay to or to the order of the survivor(s) or to the executors or administrators of the last surviving one of us any moneys for the time being standing to the credit of such account(s) or held by you for us.*

In the Privy Council decision in ***Whitlock and another (Appellants) v Moree (Respondent) (Bahamas) [2017] UKPC 44***, the Board considered the question of rights of survivorship in joint accounts. At paragraphs 21-27 of the Judgment ***Lord Briggs***, writing for the majority of the Board, stated:

21. Under the common law, legal title to (as opposed to beneficial ownership of) property in co-ownership can only be joint title. Survivorship, that is the devolution of those legal rights upon the survivor or survivors of joint owners is an inevitable, indeed inherent, aspect of joint legal title.

22. In sharp contrast, joint ownership (often called joint tenancy), with a right of survivorship, is only one of numerous ways in which property may be co-

owned beneficially. The interposition of a trust between the persons with legal title and the beneficial owners means that there is an almost infinite variety of ways in which the property may be beneficially co-owned, even when the beneficial owners are the same as those holding the legal title.

23. There are well-established principles which assist the courts in resolving disputes as to beneficial ownership of property, and the order in which what may be described as the contents of an equitable toolkit are to be deployed for that purpose. Thus, where the relevant property is transferred to the legal holders by a written instrument, a statement as to the beneficial ownership of the property in that instrument is usually conclusive: see *Vandervell v Inland Revenue Commission* [1967] 2 AC 291, at 312 per Lord Upjohn. The same passage makes clear that any question whether the instrument does address beneficial ownership, and any issue as to what that beneficial ownership is, falls to be decided as a matter of construction of the instrument, which is an objective process, in which evidence as to the subjective intention of the maker of the instrument is inadmissible. See also *Inland Revenue Commission v Raphael* [1935] AC 96, per Lord Wright at 142-143. Of course, the binding effect of instruments of that kind is subject to the usual equitable challenges such as fraud, duress, undue influence, misrepresentation and rectification, and to the more restricted common law doctrines of non est factum and mistake: see generally *Goodman v Gallant* [1986] Fam 106, at 114A117D.

24. Next, the co-owners receiving a transfer of property into joint names may themselves declare their agreement as to the beneficial interests on which that property is or is to be held and, if they do so in a written instrument, such as the conveyance to them, the identification of those beneficial interests will again be a matter of construction of the instrument, and recourse to doctrines of resulting, implied or constructive trust is impermissible: see *Pettitt v Pettitt* [1970] AC 777, per Lord Upjohn at 813 and *Gissing v Gissing* [1971] AC 886, per Lord Diplock at 905.

25. Persons acquiring property, in particular residential property in joint names, at least in England, have a notoriously poor track-record in making an express declaration as to their beneficial interests in relation to the property. In the numerous cases where this has not been done, equity has recourse to a variety of techniques for establishing what those beneficial interests are. They include the constructive or common intention trust, the implied trust and the resulting trust. Generally speaking, the resulting trust is the solution of last resort, where the intention of the joint holders of the property as to their beneficial interests cannot otherwise be ascertained. Indeed, in the context of joint residential property, the presumption that the beneficial interest accrues to the provider of the money has now been replaced by the opposite assumption, namely that the beneficial interest follows the joint legal title unless the contrary is shown: see *Stack v Dowden* [2007] UKHL 17; [2007] 2 AC 432, paras 53 and following.

26. These principles are by no means confined to beneficial interests in real property. *Inland Revenue Commission v Raphael* was about personal property, namely an interest in a fund. There is no reason why property which is, slightly misleadingly, described as money in a bank account should be subject to any different principles when the court is called upon to resolve a dispute about its beneficial ownership. The property in question consists, of course, not of money, but of a contractual chose in action enjoyed by the account holder (or holders in the case of a joint account) as against the bank. The rights by which that chose in action is constituted derive entirely from the contract between the account holders and the bank, whereby the account is set up and operated. Where, as here, the joint account has two account holders, there are three parties to the relevant contract, namely the account holders and the bank. It is, and must be, if it is to work at all, a single contract, not two separate contracts between each account holder and the bank. That is so, regardless of whether the account is established pursuant to a single account opening document signed by both account holders, or (as here) two identical documents, each signed by one of them. If by some mishap two separate account opening documents used to establish a single joint account are not in identical form, this may give rise to problems of construction or rectification, but it cannot give rise to separate, different, contracts.

27. 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 (by way of analogy with co-ownership of land) where a binding declaration as to beneficial interests might be expected to be found, the obvious answer lies in the account opening document. This is because it sets out the contract pursuant to which the chose in action which constitutes the relevant property is created. It will not necessarily be a document of transfer (like a conveyance in relation to land or, in England, a Land Registry Transfer) but, since it creates the relevant property, it is none the worse for that. Furthermore, 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. The fact that an account opening document, duly signed by the joint account holders, would qualify as a binding declaration of the beneficial interests in the account does not of itself answer the question, in relation to any particular document of that kind, whether it contains any such declaration. That is a separate question which depends upon the true construction of the document, in its context, in accordance with modern principles of interpretation.

Finally, at paragraph 50, ***Lord Briggs*** concludes:

50. This is, therefore, a case in which the two holders of a joint account have, by an agreement with the bank to which they were both parties, expressly set out above their signature a declaration as to the beneficial interests in that joint account which, on its true construction, provides for

any balance on the account to be the beneficial property of the survivor, upon the death of the other account holder, regardless who contributed the money to the credit of the account before that date. It is, in the Board's view, a case in which there was no need to conduct an open-ended factual analysis as to the subjective intention of Mr Lennard, since the account opening forms signed by him and Mr Moree were, by themselves, dispositive of the beneficial interest in that account, subject to any contrary agreement or later variation, and there was none.

I am not prepared to find on the evidence that there was any undue influence, coercion or anything untoward in the execution of the documents. I am satisfied that the deceased executed the documents, with full knowledge of its contents and did so voluntarily. The deceased accepted that the Defendants would have rights of survivorship upon his demise, as per the terms of the banking mandates.

- b) There was no acceptable evidence that the First Defendant operated the account negligently or unlawfully.
- c) No resulting trust was created. Having found that the deceased voluntarily executed the account opening documents, I also find that he intended that the Second and Third Defendants would have a legal and beneficial interest in the funds remaining on the account.

[18.] In the circumstances the Claim of the Plaintiff is dismissed with costs.

Dated this 13<sup>th</sup> day of January 2022.



Ian R. Winder

Justice