IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E86/2000

BETWEEN	MARGIE GEDDES (Executrix of the Estate of Paul Geddes)	PLAINTIFF
AND	HELGA STOECKERT	DEFENDANT

Mrs. Michelle Champagnie for the plaintiff instructed by Messrs. Myers Fletcher & Gordon.

Mr. Crafton Miller and Miss Suzette Wolfe for the defendant, instructed by Messrs. Crafton Miller & Co.

HEARD: JANUARY 17 AND 18;
MARCH 26 AND AUGUST 23, 2001

N. E. McINTOSH, J.

Mrs. Margie Geddes, in her capacity as Executrix of the estate of Paul Geddes seeks a declaration that the estate is entitled to the balance in any accounts held in the names of Paul Geddes and Helga Stoeckert, at the Bank of Canada Europe Ltd. in London England (property, the Royal Bank of Canada, Europe Ltd.) In essence, that is the prayer contained in her Originating Summons dated March 7, 2000.

The balance in this bank account, numbered 512-300-5 (or 512-330-5) was part of the assets of Mr. Geddes in 1992 when, by Writ of Summons dated January 28, 1992 Miss Stoeckert sought declarations that:-

a. she was entitled to one half (or such other proportion) of the sums representing the balances in all the Bank accounts held in the joint names of Helga Stoeckert and Paul Geddes as of the 10th day of April, 1991 and

b. Paul Geddes was trustee for Helga Stoeckert of 50% or such other proportion as the court deemed just of all assets, property acquired by or in the name of Paul Geddes, during the period of 1963 to 1991 or during such period as the court deemed just.

Clarke J. presided at the trial of that action in October, 1995 and in his written judgment delivered on December 19, 1995 he expressed certain findings of fact one of which has a particular bearing on the application before this court, namely his finding that

> "..... between 1983 and about 1989 he (referring to Mr. Geddes) established respectively in their joint names <u>for their benefit and not for convenience</u> three not insubstantial bank accounts of interest bearing status, namely in Royal Bank of Canada, Europe Limited, in London, England ....." (emphasis mine)

His Lordship continued

> "On those facts I find that there was an express oral agreement as contended for by Mr. Miller. Those facts are, in my view, of great cumulative force. When taken together, as they must in the circumstances of this case, they provide, in my opinion, sufficient direct evidence of the oral agreement pleaded by Miss Stoeckert of a common intention – between herself and Mr. Geddes that both would have beneficial interests in the assets vested in him."
>
> He went on to say
> "In equity, common intention alone will not suffice: the plaintiff must also prove that she acted to her detriment in the reasonable belief that by so acting she was acquiring a beneficial interest in the defendant's assets. She has to manifest a link between the common intention and the actions relied on as a detriment."

After an examination of Miss. Stoeckert's evidence which he accepted as true he concluded as follows:-

"Miss Stoeckert has therefore, in my opinion, shown the vital link between the common intention and the actions relied on as a detriment. I am satisfied that she did act to her detriment on the faith of the common intention between her and Mr. Geddes that she was to have a beneficial interest in his assets. Accordingly she has

satisfied the condition for the creation of a trust in her favour in the assets of Mr. Geddes as they existed down to 16th April, 1991. Those assets are trust property"

His Lordship then quantified Miss Stoeckert's share in the assets and expressed it thus:-

> "I therefore make this binding declaration of right that Miss Stoeckert is entitled to one sixth (1/6) share of the value of Mr. Geddes' assets as at 16th April 1991 and that he accordingly holds the said share upon trust for her."

He then identified the assets which were subject to the trust and said:-

> "...included are the ..... bank accounts held abroad in the joint names of the parties..."

So it was that the bank accounts held in the joint names of Helga Stoeckert and Paul Geddes, including the account held at the Royal Bank of Canada, Europe Limited, in London, England, came to be placed in the melting pot with all the other assets and one single declaration was made awarding to Miss Stoeckert a one-sixth share of the combined assets although she had sought a separate declaration for her interest in the joint bank accounts.

In February, 1997, the matter went before the Court of Appeal at the instance of Mr. Geddes. The prayer was that the judgment of Clarke J. be set aside and that judgment be entered for the appellant, Paul Geddes.

After reviewing the record of the evidence at first instance and the findings and conclusions of the learned trial judge as expressed in his written judgment, the

Court of Appeal concluded that

> " the evidence disclosed no basis upon which the learned trial judge could properly have concluded, as he did, that Miss Stoeckert was beneficially entitled to a proportion of the assets of which Mr. Geddes is the legal owner."

Their Lordships then allowed the appeal and set aside the judgment of Clarke J. entering in its stead judgment for the appellant Paul Geddes. The effect of their Lordships' judgment was therefore to confirm that both the legal and beneficial interest in all the assets to which Clarke J's judgment applied vested in Mr. Geddes. Since those assets were held to include the overseas joint bank accounts it followed that Miss Stoeckert was adjudged to have no beneficial interest in the balances standing to the credit of those accounts.

That decision was appealed in 1998 as Miss Stoeckert sought to have the decision of Clarke J. restored by the Judicial Committee of the Privy Council. However, in a judgment delivered on December 13, 1999, by Lord Saville of Newdigate, their Lordships' Board upheld the decision of the Court of Appeal stating that:

> "no agreement arrangement understanding or common intention that Helga Stoeckert should have a beneficial share in Mr.

> Geddes' assets can be spelt out of the facts and matters relied upon by the judge, whether viewed separately or cumulatively."

After receiving the Privy Council's judgment, Miss Stoeckert's Attorneys-at-law had wasted no time in giving instructions to the Royal Bank of Canada Europe Ltd. (hereinafter referred to as the Bank) for the release of the funds held in the account, to their client. The instructions were contained in a letter dated January 6, 2000 and were based on her attorneys' interpretation of the judgment. Particular reference was made to page 6 of the judgment as supportive of the interpretation that Miss Stoeckert was now entitled to the balance held in the said account.

At page 6 their Lordships had said:

> "The gift of shares in Desnoes and Geddes Ltd. and the establishment of joint accounts again are not matters that suggest that Helga Stoeckert was or was to be the beneficial owner of a share in Mr. Geddes' assets..
>
> ..... these actions showed that when Mr. Geddes wanted to provide for Helga Stoeckert he made her an outright gift or facilitated her ability to draw on some but by no means all of his accounts."

This was the view expressed by Rattray P. in his judgment and their Lordships of the Privy Council expressed their agreement with his reasoning.

The Bank was quite prepared to act on the instructions of Miss Stoeckert's attorneys and on January 17, 2000 a Mr. W. A. Paradine, Assistant Manager, Global Private Banking, sent a facsimile transmission to the attorneys-at-law acting for Mrs. Geddes, referring to the Privy Council's judgment and advising of the Bank's intention:

> "to disburse funds and close account No. 512-330-5 held on our books, in accordance with the above ruling upon expiry of 14 days from the date hereof as directed by Ms. Stoeckert."

The response to this transmission was instantaneous in the form of a letter of even date from Mrs. Geddes' attorneys-at-law, instructing the bank to release the sums standing to the credit of the account, to their client, as Executrix of Mr. Geddes' estate, Mr. Geddes having died by then.

The letter stated as follows:-

> "The order is clear that Miss Stoeckert now has no entitlement to these accounts"

and, in support of that view, they too quoted from page 6 of the Privy Council's judgment as indicated above.

The Bank now found itself in an "unacceptable position" and in a letter to the attorneys-at-law for both parties, Mr. Parradine wrote as follows:

> "Clearly this is an unacceptable position for the bank and it has no intention of being arbiter in this situation. In the circumstances we would request that both legal firms liaise and provide us with irrevocable non-contradictory instructions regarding ultimate ownership of these funds failing which we would suggest that you revert to the Privy Council to provide greater clarity to the order, in particular how Bank accounts held in the joint names should be treated".

The course adopted was to seek "greater clarity" from the Privy Council and those efforts resulted in a letter from the Registrar of the Privy Council acting on the instructions of their Lordships' Board. This letter was dated February 18, 2000 and stated as follows:-

"The question of the interest of the parties in the joint bank accounts was not directly raised as an issue in the appeal. The existence of these accounts was only referred to as an evidential matter from which inferences might be drawn as to Mr. Geddes' intentions towards the appellant with respect to his estate as a whole. Neither the judgment nor the Order should be regarded as determinative of the interests of the parties in the bank accounts in question."

A need for further clarification was generated by this statement as the parties have formed different views as to its meaning and effect.

Submissions were made on behalf of Miss Stoeckert that what their Lordships were saying was that the issue of the parties' interest in the joint bank accounts was directly raised neither in the Court of Appeal nor in the Privy Council. The accounts were mentioned but only evidentially in the course of arguments concerning Mr. Geddes' estate as a whole. Therefore, the submission continued, the remaining determination on the issue is the finding of Clarke, J. who held that the joint bank accounts were established for their benefit and not for convenience, thus confirming that Ms. Stoeckert had a beneficial interest in the accounts.

It was further submitted that since Mr. Geddes did not argue the point before the appellate courts, his estate is now estopped from raising it again before this Court. The case of Haystead v. Commissioner of Taxation (1926) A.C 155 at page 165 was cited. In that case the Privy Council was asked to assess for correctness the answers given to questions in a special case which had been stated for the opinion of the Full Court of Australia by Starke J.

In a judgment delivered by Lord Shaw the Board stated that:

> "Parties are not permitted to begin fresh litigation because of the new views they may entertain of the law of the case or new versions which they present as to what should be a proper apprehension by the Court of the legal result

> either of the construction of the documents
> or the weight of certain circumstances."

Support for the view that the findings of Clarke, J. were not disturbed by the Court of Appeal was said to be contained in the judgment of the Privy Council where the Board stated that:

> "The Court of Appeal did not reverse any
> findings of fact. What that Court did and,
> in the view of their Lordships, rightly
> did, was to reverse the conclusion
> of the judge that the facts found
> established as a matter of law
> the alleged agreement arrangement
> understanding or common intention."

Their Lordships had expressed that view in response to a criticism by Miss Stoeckert's Attorney-at-Law that the Court of Appeal had reversed the findings of fact of the judge at first instance "notwithstanding that Mr. Geddes had called no evidence to rebut the evidence of his client". The Board was of the view that that criticism was unjustified - only the conclusions based on those findings were reversed.

On the other hand, it was submitted by the plaintiff's attorneys-at-law that the issue of the beneficial interest in the joint overseas bank account was directly raised in the Court of Appeal and that in setting aside the judgment of the learned trial

judge the Court of Appeal had in fact set aside the decision that Miss Stoeckert was beneficially entitled to a share in the balances held in those accounts.

It was further submitted that the comment by the Privy Council must be taken to relate only to the hearing before their Lordships Board; that it is the Court of Appeal's decision on the issue that prevails and that the plaintiff is in no way estopped from now seeking to give effect to that judgment. If indeed there is any issue of estopped it would operate against the defendant who failed to raise directly the issue of the joint bank accounts before the Privy Council.

It would seem that there was no separate ground of appeal relating to the joint bank accounts before the Court of Appeal. In my view, there would be no need for that since Clarke J. had not treated with them separately and it is quite clear from the judgment of that court that the bank accounts received much attention in the arguments there, on behalf of the Appellant. The submission advanced to the contrary, in this hearing, is therefore without merit.

Specific references were made to these accounts by their Lordships in their reasoning and they arrived at their own conclusions about Miss Stoeckert's claim to a share in the balance held therein at the relevant time. There is even a section in the judgment of Bingham, JA which is headed

"The Overseas Bank Accounts."

Further, his Lordship left no doubt that arguments were advanced directly and expressly concerning the joint bank accounts when he said:-

> "It is the appellant's contention that, given the circumstances relating to the respective accounts the learned trial judge ought to have concluded that the appellant was the owner of the funds remaining in the accounts. The Respondent's name being added was a mere facility to her, if while the relationship lasted the parties happened to be travelling in the country where the accounts were located and they were in need of funds for whatever reason."

Clearly, their Lordships were in agreement with this view.

Gordon and Bingham JJA were mindful that a Court of Review ought not lightly to interfere with a trial judge's findings of fact as that judge has the advantage of seeing and assessing the witnesses – [See Watt (or Thomas) v. Thomas (1947) 1 ALL ER at page 582 followed in Walters v Shell Co. (W.I) Ltd. (1983) 20 JLR 5]. They were nevertheless of the view that interference was warranted in this case.

In his reasoning Bingham JA said:-

> "While an Appellate Court ought not to interfere with the findings of a trial judge who has the advantage of seeing and hearing witnesses as to fact, where on an examination of the printed record it is clear that his assessment was

> erroneous then the evidence below becomes at large for the Appellate Court to examine and where the circumstances so warrant to come to a different conclusion."

Their Lordships felt obliged to look critically at the evidence given by the plaintiff at first instance and clearly felt that the circumstances warranted a conclusion that was different from that reached by the learned trial judge.

The Honourable President had this to say of the joint bank accounts:-

> "His placing of her name on the accounts is consistent with the suggestion made to her by counsel for Mr. Geddes that this was done so that she could draw on the account if she so required whenever she travelled overseas."

He noted that she never did draw on these accounts.

He further expressed the view that:

> "His gift of shares in the Desnoes and Geddes Limited to her only evidences the fact that whenever he wanted her to benefit from his assets he made her an outright gift. Likewise the addition of her name as a signatory to his bank account abroad only evidences his facilitation of her ability to access those accounts whenever she was overseas and she so desired."

Their Lordships found it significant that her name was not added to any of Mr. Geddes' local bank accounts and also that at least one of his overseas bank accounts was in the name not only of Mr. Geddes and Miss Stoeckert but also of a Mr. John

Martinez, thus supporting the view that the addition of her name was a mere facility and not evidence of Mr. Geddes' intention that Miss Stoeckert should be beneficially entitled to the balance held in the overseas accounts.

Gordon, JA made the observation that Miss Stoeckert had made no contribution to the accounts in England and the United States and pointed out that when the relationship ended Mr. Geddes had sent her a cheque representing funds from the Cayman Bank account – the only account to which she had contributed.

He continued:

> "the trial judge fell into error when he found for the plaintiff Miss Stoeckert."

Bingham JA concluded that:-

> "Given the facts of this case and the law applicable, on neither ground can the findings and conclusions reached by the learned trial judge below be sustained."

It therefore follows that in the judgment of the Court of Appeal the trial judge's finding that the accounts were set up for the mutual benefit of the parties and not for convenience and the conclusion based on that finding, namely that there was a common intention that Miss Stoeckert was beneficially entitled to 1/6 share of the balances held in the account at the Royal Bank of Canada, Europe Limited, could be sustained neither on the facts of the case nor the law applicable

Their Lordships held that there was no such common intention and no action on the part of Miss Stoeckert to her detriment in reliance on any common intention. On the contrary the relationship had proved to be most advantageous for her.

In the words of the Honourable President:-

> "There is in this case no act relied upon in support of her claim, which is not consistent with and cannot be referable to the natural love and affection existing between the parties."

The trial judge's conclusion was accordingly reversed and full legal and beneficial interest in the balances held in the account at the Royal Bank of Canada Europe Limited were thereby restored to Paul Geddes. Since no arguments were advanced before their Lordships' Board taking issue with the decision of the Court of Appeal, as it related to the joint bank accounts that is the decision which stands.

The Mandate

The intervening death of Mr. Geddes brought into focus the Mandate upon which the account at the Royal Bank of Canada, Europe Ltd. was established. This Mandate was executed on the 10th of October 1983, and by its terms the parties instructed the bank as follows:

1. We hereby authorise you until we or any one of us shall give you notice to the contrary in writing:

(a) To pay and debit to any account(s) for the time being opened with you in our joint names all cheques or other orders or instructions authorising payment signed by any of us notwithstanding that any such payment may cause the accounts to be overdrawn or increase an existing overdraft.

(b) To deliver up anything held by you by way of security or for safe custody collection or any other purpose whatsoever on our account against the written receipt of instruction of any of us.

(c) To credit to any joint account in our names any amount received payable to any one of us individually.

2. On the death of any one of us then any money for the time being standing to the credit of the said account (s) and anything held by you whether by way of security or for safe custody or collection or any purpose whatsoever may be held to the order of the survivor (s).

3. We agree that any liability incurred by us to you in respect of the above instruction shall be several as well as joint."

Prior to the hearing before Clarke, J. a dispute had arisen concerning the entitlement to the balance held in this account. The relationship between the parties had terminated on April 16, 1991. Mr. Geddes had sought to transfer to his sole name the balance in the account and had written to the

Bank to this effect on June 6, 1991. He received a letter dated June 18, 1991 under the hand of R. H. Scott, Manager, Commercial and Retail Banking, in the following terms:-

"Dear Mr. Geddes,

Account No. 512-300-5

We are in receipt of your letter dated June 6, 1991 which we received at the same time as a communication from Helga Stoeckert, the other party to the joint account.

As she has put us on notice as having an interest in the funds held on deposit, we are unable to act on your signature alone with regard to transferring the balance of the account to your sole name, notwithstanding we hold a joint agreement mandate dated October, 1983 authorizing any one of you to sign.

Accordingly, in the interests of all the parties we will only act on joint signatures prior to disposing of or transferring any account balances to sole names or third parties."

(emphasis mine).

Even after receiving a letter from Miss Stoeckert's attorneys-at-law dated July 30, 1991 indicating that Miss Stoeckert was "entitled to 50% interest in the joint account with Mr. Geddes" and a letter from Mr. Geddes' attorneys-at-law requesting that the unclaimed 50% be accordingly paid to Mr. Geddes, the bank declined to act in accordance with the terms of the mandate.

The letter on behalf of Mr. Geddes had stated:-

> "You are free and indeed under a positive duty to honour the account mandate and Mr. Geddes' instructions to you with

> regard to that remaining 50% which
> is free from any claim."

But the bank responded that legal advice received prevented the bank from releasing 50% of the funds without obtaining the joint written authority of Ms. Stoeckert. A later correspondence from the bank dated November 5, 1992 stated that the bank could only disburse funds in the present context of a dispute either on the joint instructions of the account holders or on a court order.

It was submitted on behalf of Ms. Stoeckert that notwithstanding this dispute the mandate continued to have effect and that by virtue of its terms the legal and beneficial interest in the balance held in this account vested in both parties. It was further submitted that the account subsisted for their joint benefit, right up to the date of Mr. Geddes' death and that on his death both the legal and beneficial interest then vested in Miss Stoeckert.

The attorneys-at-law for Mrs. Geddes argued that the mandate no longer applied once the dispute had arisen and that based on the correspondence between the bank and the parties, the bank had in effect imposed different terms from those agreed by the parties, now requiring joint signatures or a court order. This in my view, is sound argument. Clearly the Bank was not prepared to act on the terms of the mandate and it therefore ceased to be applicable.

By the time the matter came up for hearing before Clarke J. in October, 1995 the mandate was clearly not in the contemplation of either party. The case was conducted on the basis that both the legal and beneficial interest in his entire estate as it stood on April 16, 1991, inclusive of the balances held in the overseas bank accounts, vested solely in Mr. Geddes. So it was that Clarke, J. in his written judgment said:-

> "Where, as here, one party to a former settled concubinary relationship claims a beneficial interest in property, the legal title to which is vested in the other a lawyer would be on safe ground, if he advised that the claimant could only succeed if he or she established the existence of a trust."

He went on to say

> "in other words the question whether a party to a marriage or common law relationship acquires rights to property the legal title to which is vested in the other must be answered in terms of the law of trust."
> (emphasis mine)

In the Court of Appeal no issue was taken with that approach and their Lordships had similarly given expression to the legal principle involved quoting from Sir Nicholas Browne-Wilkinson VC in Grant v Edwards [1986] 2 ALLER 426 As follows:

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> "The principle is stated that if the legal estate in the property is vested in only one of the parties (the legal owner), the other party, (the claimant) in order to establish a beneficial interest has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership"

and Bingham, JA. had referred in his reasoning to the legal title in respect of all the property to which the award in the court below relates vesting in the appellant Paul Geddes.

Therefore the defendant can no longer contend that the mandate has any application in this matter and that by virtue of its terms the legal and beneficial interest were jointly held and now vests in Miss Stoeckert alone, entitling her to the balance held in this account. The mandate ceased to have effect long before the trial in 1995.

In accordance with the decision of the Court of Appeal I therefore declare that the estate of Paul H. Geddes is entitled to the balance held in any accounts in the names of Paul Geddes and Helga Stoeckert at the Royal Bank of Canada, Europe Limited, in London, England.

There is no order as to costs.

On the application of the defendant a stay of execution of this judgment is granted for a period of six weeks from the date hereof.