[2023] JMCC Comm 41

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2022CD00378

BETWEEN	**JOHN GRAHAM**	**CLAIMANT**
AND	**KRISTINA GRAHAM**	**DEFENDANT**

IN OPEN COURT

Bert Samuels and Peta-Gaye Manderson instructed by Knight, Junor & Samuels, Attorneys-at-Law for the Claimant.

Stephanie Williams and Ronece Simpson instructed by Henlin Gibson Henlin, Attorneys-at-Law for the Defendant.

Heard: March 29 and 30, and September 28, 2023

Joint Bank account - Parent child relationship - Whether there is evidence of intention of the parent to be entitled to the beneficial interest in assets in joint account.

Equity - Whether the presumption of advancement applies to adult child on a parent to child transfer to displace presumption of resulting trust - Standard of proof to rebut presumption of advancement - Whether presumption of advancement rebutted by evidence of contrary intention.

C. BARNABY, J

INTRODUCTION

[1] The Claimant and the Defendant, Attorneys-at-Law are father and daughter respectively. The Defendant is also the youngest of five (5) children of the Claimant. The Claimant is in the habit of "establishing" his adult children by, among

other things, providing significant assistance for acquiring living accommodation, furniture, motor vehicles and money for living expenses.

[2] On or about 4th January 2016 whilst the Defendant was twenty (20) years old and a student at university, an investment account numbered 4200790, financed by the Claimant, was opened in the joint names of the parties at Jamaica Money Market Brokers Limited (hereinafter called "JMMB").

[3] Following a family dispute on or about 12th July 2022, the Defendant without the knowledge or consent of the Claimant sold the shares in account 4200790 and withdrew all monies from it, totalling Three Hundred and Fifty-Seven Thousand Three Hundred and Two United States Dollars (US$357,302.00). She made the withdrawals by cheque, wire transfer and account transfers using the JMMB online platform "Moneyline" between 3rd to 16th August 2022.

[4] On being made aware that the investments were being encashed, the Claimant made telephone calls to the Defendant which went unanswered and unreturned. These calls were followed up by letters dated 13th and 17th August 2022 which were sent by email to the Defendant, whereby the Claimant expressed that he suspected that they were scammed and that he was calling to alert her of what he termed the "*strange development*". He acknowledged that the Defendant was the only other person named on account 4200790 but said he felt sure that she would not have removed any money from the account without reference to him. In the first missive he asked that the Defendant communicate with him urgently, but the letter went unanswered. In the second letter the Claimant set out information he received from JMMB which showed that the Defendant gave instructions for the sale of the investments and had received the proceeds of sale. He asked her to return the monies to him "*because as you well know those monies were intended for my retirement and/or for emergencies and were never intended for you to take for your personal use."* It suffices to say that the monies were not returned.

[5] On 19th August 2022 the Claimant sought and obtained several *ex parte* orders against the Defendant pending an *inter partes* hearing. On 8th September 2022

the court made several orders, among them – that the Defendant was to pay the sum of US$355,000.00 into an interest-bearing account in the name of the attorneys-at-law for the parties pending the trial of the claim. The sums were duly paid into an account opened in the joint names of the attorneys-at-law for the Claimant and the Defendant.

[6] By Amended Fixed Date Claim Form filed 30th September 2022, the Claimant seeks the following orders against the Defendant:

> 1. *A Declaration that the Claimant is and was at all material times the sole beneficial owner of the monies in Jamaica Money Market Brokers Limited account 4200790 and the underlying investment instruments held therein.*
> 2. *Breach of an oral agreement made between the Claimant and the Defendant in or about December 2015 that the Claimant would be sole beneficial owner of the monies in Jamaica Money Market Brokers Limited account number 4200790.*
> 3. *That the Defendant account for the funds received by her or otherwise transferred by her from Jamaica Money Market Brokers Limited account number 4200790.*
> 4. *The return of 199,500 JMMB US 6% preference shares maturing January 7, 2029.*
> 5. *The return of 95,999 JMMB US 5.75% preference shares maturing March 6, 2025.*
> 6. *In the alternative, that the Claimant be paid the cost of obtaining 199,500 JMMB US 6% preference shares maturing January 7, 2029 and 95,999 JMMB US 5.75% preference shares maturing March 6, 2025.*
> 7. *That the Defendant pay the amount that have been paid by JMMB, as interest payments on 199,500 JMMB US 6% preference shares between August 3, 2022 and the trial of this action.*
> 8. *That the Defendant pay the amount that have been paid by JMMB as interest payments on 95,999 JMMB US 5.75%*

preference shares between August 3, 2022 and the trial of this action.

9. *The return of 219,641 Victoria Mutual Investments Limited shares sold by the Defendant on August 5, 2022.*
10. *In the alternative, that the Defendant pays the Claimant the cost of obtaining 219,641 Victoria Mutual Investments Limited shares.*
11. *That the Defendant pay the amount that have been paid by Victoria Mutual Investments Limited as dividend payments on 219,641 Victoria Mutual Investments Limited shares between August 3, 2022 and the trial of this action.*
12. *The sum of US$2,993.11 received by the Defendant on August 3, 2022.*
13. *An injunction restraining the Defendant, her servants and/or agents from selling, transferring, charging, encumbering, mortgaging, disposing of or otherwise dealing with the sum of Three Hundred and Fifty-Seven Thousand Three Hundred and Two United States Dollars (US$357,302.00) which sum was the proceeds of sale of the preference shares in Jamaica Money Market Brokers Limited (JMMB) account number 4200790.*
14. *Costs.*
15. *Such further and other relief as this Honourable Court thinks just.*

(sic)

[7] The request by the Claimant for relief in respect of account 4200790 is premised on the contention that the Claimant and the Defendant had entered into an oral agreement in or about December 2015 which governed the basis upon which the account would be opened and operated. The Claimant specifically pleads that he funded the account solely; and that pursuant to the oral agreement, the account was to be operated and controlled exclusively by him, and that it was a term of the agreement that the Claimant would fund, operate, control and be entitled to the

entire benefit of monies in the account including dividend payments unless he had given specific instructions to the Defendant to operate the said account.

[8] In response the Defendant says that there was no oral agreement between her and the Claimant in relation to the funds in account 4200790, save that it was a gift to her by her father as his youngest and least established child, for whom he had responsibility at the time.

[9] As it relates to the claim for relief relative to Victoria Mutual Investments Limited (hereinafter called "VMIL") shares, it is grounded on the contention that on 5th August 2022, without the knowledge or consent of the Claimant the Defendant sold 219,641 of those shares in JMMB account number 4535176 and transferred the sum of One Million One Hundred and Eleven Thousand One Hundred and Seventy-Three Jamaican Dollars and Sixty-Two Cents (JM$1,111,173.62) from the account. The Claimant says the account was funded by him solely and that he and the Defendant agreed that it was to be controlled by him. The allegations are not answered on the defence.

[10] The claim was tried on 29th and 30th March 2023 and a decision reserved on the latter date. The judgment and reasons therefore are now delivered below.

ISSUES AND SUMMARY CONCLUSION

[11] The issues which are set out be below are dispositive of the claim.

i. **Should the Claimant be permitted to pursue to a decision the relief sought in respect of account number 4535176.**

ii. **What was the intention of the Claimant in opening and solely financing joint account numbered 4200790?**

iii. **Is the Defendant assisted in establishing a gift by operation of the equitable presumption of advancement?**

[12] On consideration of the foregoing issues, and for reasons set out subsequently I find that the Claimant should not be permitted to pursue to a decision the relief sought in respect of account number 4535176 as one of three joint account holders was not a participant in these proceedings, and to permit the Claimant to pursue the relief to a decision in those circumstances would deprive that other account holder to due process. I also find that the Claimant intended to retain the beneficial interest in the monies and underlying investment instruments in account 4200790 even though it was opened in the parties' joint names. In consequence of the latter finding, although the presumption of advancement could apply to the dependant adult Defendant, the presumption of advancement is rebutted and does not assist the Defendant in establishing a gift.

REASONS

i.

Should the Claimant be permitted to pursue to a decision the relief sought in respect of account number 4535176.

[13] The Claimant seeks several reliefs in respect of account 4535176 with which he alleges that the Defendant improperly dealt. He therefore asks for the return of the VMIL shares sold or the costs of obtaining an equal number of those shares, and the amounts which would have been paid as dividends.

[14] In addition to his contention that the account was funded solely by him, the Claimant advances that it was a term of an agreement between the parties that the account would be operated and controlled by him during the period of December 2017 until 5th August 2022. To obtain the relief sought, the court would be required to find that the Claimant was entitled to the beneficial interest in the account to the exclusion of other joint account holders. By the Claimant's own admission, account 4535176 was opened in the joint names of himself, the Claimant and another of his daughter, who has not been joined as a party to these proceedings.

[15] To permit the Claimant to pursue the reliefs therefore leaves open the possibility of findings being made - possibly adverse - about the interest of a joint account holder who has not benefited from participation in these proceedings in breach of her right to due process. In the premises, the reliefs sought in respect of the VIML shares held in account 4535176 are refused.

ii.

What was the intention of the Claimant in opening and solely financing joint account numbered 4200790?

[16] It is not disputed that the Claimant funded the account opened in the joint names of the parties exclusively and that this was done voluntarily and gratuitously. There is a dispute however as to the ownership of the beneficial interest in the account. It is the position of the Claimant that he was the beneficial owner of the monies and underlying investment instruments held in account 4200790, while the Defendant says it was a gift to her from her father as his youngest and least established child. Critical to the resolution of the quarrel is the intention of the Claimant in making the gratuitous transfer of his assets to the account in the parties' joint names.

[17] For reasons which I endeavour to set out below, I find it to be more probable than not that the Claimant in opening the joint account with the Defendant intended to reserve for himself the beneficial interest in the account and is therefore beneficially entitled to the monies and underlying investments held in the said account.

[18] Considering the defence, I find it convenient to approach the question from the point of what is constitutive of gift. Although not cited by either party, I find the dictum of Blake J in **Meisels v Lichtman and others** [2008] EWHC 661 (QB) useful. At para. 72 the following extract from **Halsbury's Laws of England** 4th edition (2004) vol 20(1) at para. 1 p.3 was regarded as confirmative of the view taken of *inter vivos* gifts at common law.

"A gift made between living persons . . . may be defined shortly as the transfer of any property from one person to another gratuitously while the donor is alive and not in expectation of death. It is an act whereby ***something is voluntarily transferred from the true owner in possession to another person <u>with the full intention</u> that the thing shall not return to the donor****…"*

[Emphasis added]

[19] Of the relevant intention, Blake J conclude at para. [71] that *"[w]here there is a dispute … it is the intentions of the donor that will be crucial, rather than the more familiar exercise of ascertaining the intentions of both parties in construing the agreement."*

[20] To determine the intention of the Claimant, issues arising on the disputed evidence of the parties as to discussions had before the opening of the joint account require address.

[21] It is the Claimant's evidence that prior to opening the account he met with the then twenty (20) year old Defendant and student to advise her of his plan to open an account for investment purposes and to supply him with another source of income as he approached his retirement; and that he invited her to join him in the opening of the account. It is his further evidence that arising out of those discussions they orally agreed as follows:

> a. *[He] would be entitled to the monies and the dividends/interest generated by the account;*
> b. *[He] would have sole decision making in respect of the operation of the account;*
> c. *The Defendant would be joined to the account solely for the purpose of ensuring that in the event of sudden illness, the Defendant would be able to access the account to defray medical expenses especially in circumstances where urgent medical attention was required especially if that treatment required treatment outside the jurisdiction and the*

need for an air ambulance to lift [himself] or other members of [their] family including the Defendant to secure such treatment; and

d. *In the event of his [death] the Defendant would derive some benefit from the account and thus avoid the complications which could be involved in obtaining probate and the administration of [his] estate to have funds in hand to attend to those matters which required attention.*

[22] The Claimant admitted in cross examination that on this evidence as to the terms of the parties' oral agreement and in discussions around what he said was the parties' oral agreement, he had not specified to the Defendant that the funds in the account were to assist with his retirement.

[23] The Claimant agreed, to a limited extent, with the suggestion of opposing Counsel that there was no agreement between the parties that he would have sole decision making in respect of the account. He indicated that if he was available and could be accessed by telephone, email, or other method of contact, he would be the contact person and decision maker for the account. He went further to say if there was an emergency and he could not be reached, he would not be the decision maker at all in those circumstances, which accounted for the indication in the mandate for the account that any one of the joint account holders could sign.

[24] When asked if he agreed that a majority of the dividend payments were reinvested in the account, the Claimant disagreed. On the suggestion of Counsel for the Defendant that there was no agreement between himself and the Claimant that he would be solely entitled to the dividends/interest on the account, the Claimant said he agreed to the suggestion, to a limited extent. In his expansion of that response, he went on to say that if he was not in Jamaica, incapacitated or inaccessible and there was a need to use the money to assist members of their family, the Defendant would have access to the account and the capacity to use the account for the benefit of herself and those family members.

[25] In the face of that response, Counsel Ms. Williams accused the Claimant of having added other terms to the alleged oral agreement as it relates to access to the

account by the Defendant, in that he was now saying that access was permitted if he was not in Jamaica or was inaccessible. The Claimant - who had also insisted earlier on cross examination that he specifically told the Defendant that funds in the account were to be used to defray medical expenses in relation to any urgent medical attention he may need - agreed that he may not have used the same words in his affidavit evidence and stated that he was paraphrasing but the words he said were to the same effect. For my part, the general tenor of the Claimant's evidence in this regard appears to be that the Defendant could access and use the funds in the account if there was a medical emergency which affected members of the family and the Claimant was unable to make decisions in respect of the account.

[26] There was no attempt to challenge by cross examination the Claimant's averment that the Defendant was added to the account so that in the event of his death she would have funds in hand to attend in obtaining probate and assist in the administration of his estate.

[27] It is the Defendant's evidence that it was never communicated to her that the purpose of the account was to supply her father with another source of income or to provide for his retirement, as her father is in practice of ensuring that each of his children are "established" or "given a start" by opening joint accounts with them, among other things.

[28] The Claimant's averment as to the terms of the oral agreement was denied by the Defendant who stated *"[t]here was no oral agreement between the Claimant and I in relation to the funds held in the said JMMB Account save that it was a gift to me as his youngest and "least established" child for whom he was responsible at the time"*.

[29] On cross examination the Defendant admitted that there was a discussion between her and her father about the about the opening of the account ahead of its opening, and that in those discussions the Claimant said he was gifting her the account and that she agreed to open a joint account with him.

[30] Enquiries were made of the Defendant on two accounts during cross examination, including the one under consideration, which was opened first in time. After admitting that it was the Claimant who financed the purchase of shares in the second account which was in the joint names of three persons - one of whom is not a participant in the claim - and stating that the accounts and funds in them were a gift, the Defendant was asked what words the Claimant had used to which she responded:

> ***He said I am young; I don't have anything in my name. Don't tell anybody about the account. It is just between he and I****. The other account was another investment. I am helping you. We are opening this investment account that you will both have access to.*
>
> ***[Emphasis added]***

[31] There is no dispute that the Defendant was a twenty (20) year old student at the time the account was opened, and she may objectively be said to have been young. There is no evidence of her having had anything in her name at that point, in fact, it is her evidence that she did not own a bank account but had access to an additional credit card on one of her father's bank accounts. The account opened was in the joint names of the Claimant and the Defendant and therefore just between them. Even if I am prepared to accept that the Claimant said these words, they are incapable of establishing that the Claimant voluntarily transferred to the Defendant his monies which were used to fund the account, with the full intention that the monies and the underlying investment instruments which were held in it were not to return to the Claimant and would therefore constitute a gift.

[32] On the Defendant's evidence the Claimant has five (5) children, including the Defendant who is the youngest, to whom he has been very generous. In addition to financing their educations, he voluntarily provides them with monies and possessions in their own names and for their own use, without any evidence of his ever having had any intention that they be returned to him.

[33] It is also the Defendant's evidence that he gifted one daughter monies to assist in purchase of furniture when she relocated and for accommodation if the need arose when she moved to another jurisdiction. To another, he gifted a BMW motor car and deposit to acquire an apartment and assisted her financially in carrying out renovations on the said apartment, title to which is in the daughter's sole name. To a son, who is autistic and whom the Defendant says requires constant care, the Claimant purchased an apartment which though not registered to the son or the Claimant, is for the son's benefit; completed substantial renovations to the properties; and provides for his living expenses. For yet another son, he provided financial assistance for the acquisition of a motor car and an apartment and provides for living expenses. The Defendant also says that the Claimant held joint accounts with some of his other children.

[34] When asked on cross examination how she came to the knowledge of the alleged gifts which the Claimant had given her siblings, the Defendant indicated that it was on the advice of her siblings. None of the other siblings, particularly those with whom the Claimant held or holds joint accounts are before the court and it would be inappropriate to conclude, as suggested by the Defendant, that the Claimant is in the practice of making gifts of the monies and investment instruments jointly held in accounts with his children.

[35] For the Defendant's part, she says that at the time of opening the account under discussion, she was still attending school for which the Claimant provided funding. She was also otherwise supported by her father who saw to her living expenses and provided her with a fully maintained motor vehicle.

[36] The Claimant agreed that he made outright gifts and contributions to the education, health, and well-being of his children from time to time but says that some of the details to which the Claimant averred were inaccurate. He went on to say that when he made outright gifts to his children, the gifts were made to them absolutely and in their own names. He accepts that he had gifted a motor car which he once owned to one daughter and had provided the deposit to her to acquire an

apartment and assisted her financially in carrying out renovations on the said apartment. It is his evidence, which is unchallenged, that title to both the motor vehicle and apartment are in his daughter's sole name. Of the Defendant, he says that the car she owns was paid for by him in 2020 and registered in her sole name. That is also unchallenged.

[37] While the Claimant confirms - as averred by the Defendant - that monies in the account were investments, he says that the returns were intended to provide him with another source of income. In respect of the instant account he went on to say that he would not have gifted the Defendant such a substantial amount of money at the time because she was only twenty (20) years old and had only recently started attending university; she had no financial experience; had not yet shown the level of maturity to satisfy him that she could manage money; and had not shown what direction she was headed in life.

[38] It was submitted by Counsel for the Defendant that the above reasons do not prevent the monies and investment instruments in the account from being a gift but supports the Defendant's contention that the Claimant made a gift to her but retained control of the account for the very reasons.

[39] On their own, the youth and financial inexperience of the Defendant who did not even own a bank account are at best equivocal, in that it could support the contention of either party. They do not stand alone, however. The Claimant also avers, which is unchallenged, that if he gifted the monies and the underlying instruments in the account to the Defendant, he would be gifting her a substantial portion of his life savings, and in one fell swoop be gifting her twenty (20) times more than he has ever gifted any of his other children. While the Claimant suffers certain health challenges, absent a contemplation of imminent death at the time of opening the account - of which there is no evidence - I find it difficult to believe that the Claimant who the Defendant agrees was an avid investor, would gift to the Defendant a substantial portion of his life savings when he opened the joint account just a month shy of his sixty-first (61st) birthday. These matters do not

suggest that the Claimant transferred assets to the Defendant with the full intention that they should not return to him so as to constitute a gift to her. On the contrary, they make it more probable than not that he intended to have the beneficial interest in the moneys and underlying investment instruments in the account.

[40] The following was also averred by the Defendant, which she indicated on cross examination related to what transpired when the parties were opening the account itself.

> a. *Dividends/interest generated were paid to the Claimant because only one person could be named on the Mandate at the time, I did not have a bank account in my name. I only had a credit card which was an additional card on the Claimant's Scotiabank account. Further, the dividend payments were to be re-invested in the account.*
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> b. *There was no agreement that the Claimant alone would control decision making in respect of the Account. However, as I was in university and the account was a gift to me, by my father, it was not a problem for me to have him as primary on the account. Further, on at least one occasion instructions were given jointly by the Claimant and myself to … our financial advisor at JMMB at the time, for funds to be deducted from the account and a cheque made out to the Bank of Nova Scotia that would go towards the payment of my tuition at Norman Manley Law School. [Letter exhibited in proof referenced]*
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> c. *There was absolutely no discussion or agreement in relation to utilizing the Account for medical expenses of any nature or to supplement his income. At the time that the Account was opened, I had no knowledge of any debilitating illness that the Claimant would have been suffering from that would require emergency medical treatment as suggested by the Claimant.*
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> d. *It is denied that there was any intention for me to only derive benefit from the account upon the Claimant's death. The benefit of the account was a gift for my benefit. Therefore, even though there were other*

> *options on the JMMB Portfolio Advisory Services Schedule whereby my access to the Account could have been limited, there was not limitation, and it was indicated on the account that either party could operate the account as stated in (b) above on at least one occasion instructions were given jointly by myself and the Claimant to … our advisor at JMMB at the time, for funds to be deducted from the account and a cheque made out to the Bank of Nova Scotia that would go towards my tuition.*

[41] In response, the Claimant says the averment of the Defendant at *a*. is inaccurate as dividends were not paid to him because of a mandate but were paid periodically throughout the year. It is also his evidence that whenever he required funds which stood to the credit of the account as generated by dividend payments, he would call and/or write to his investment officer and request that a cheque be drawn and made payable to him. He would then deposit the cheques into a Bank of Nova Scotia account (hereinafter called "BNS Account") which was in the joint names of himself and another of his daughters - which monies he used to discharge his financial obligations or in whatever way he wished. He stated further that at no time was there any discussion that dividend payments were to be reinvested.

[42] Of the averment at *b*., the Claimant agreed that the Defendant signed a letter of request which he asked her to sign but could not recall whether the money was to pay for the Defendant's law school tuition. The averments at *c*. and *d*. were both denied.

[43] Among the documentary evidence agreed by the parties are two (2) documents which relate to the opening of the account: the *Portfolio Advisory Services Schedule* dated 4th January 2016 (hereinafter called *"the Schedule"),* which is the date on which the account was opened; and a standard form *JMMB's Client Contract* dated 10th August 2015 (hereinafter called *"the Client Contract"*).

[44] Of the two documents, only the Schedule required execution. It expressly states however that it comprises part of, is made pursuant to, and is governed by the

Client Contract. The signatories to Schedule acknowledge that a contract is thereby established between JMMB and its *““client”, which shall mean all of the undersigned clients.”*

[45] Clause 20 of the Client Contract provides as follows in respect of *“Joint Accounts”*:

> 1. *In the event that there is more than one client name on an account held with JMMB, then (unless the named account holders have in writing instructed JMMB to the contrary) each named account holder shall be entitled to give instructions with respect to the account (including without limitation instructions with respect to encashment of the investments credited to such account and the payment out of the proceeds of such encashment) as if such account holder were the only named account holder and without the need for the other account holder(s) to sign or otherwise authorize same, so however that JMMB may in its discretion require all of the named account holders to sign hypothecations or other instruments creating a charge or other rights in favour of JMMB with respect to the account or to sign other instructions in relation to the account if JMMB feels that it is in its interests to so require.*
> 2. *Notwithstanding clause 20(1), in the event that any investment or account held with JMMB is in the name of more than one person, those persons shall be deemed to be joint tenants with a right of survivorship unless specific written instructions to the contrary signed by each of such persons are given to JMMB prior to the death of any of them and shall be jointly and severally liable in respect of all transactions involving their accounts and investments.*

[46] My view of those terms is reflected in the following words of Brooks JA (as he then was) in **Clover Robinson v National Commercial Bank Jamaica Limited and Ors.** [2015] JMCA Civ 3, [27] and is accordingly adopted.

> *d. The fact that the terms of the joint account stipulate that the monies in the account are available to either account holder during their joint lives or to the survivor on the death of either or any of them is normally only*

> *conclusive of their respective legal interests. The terms form part of a contract which creates a liability in the bank to the account holders. The relevant terms, such as the one in this case, usually only protect the bank if it pays out the sum to one or other account holder or to a survivor…*

[47] He went on to state:

> *The bank documents are, however, not irrelevant. Although they do not normally speak to the beneficial ownership of the funds they may do so. In* ***Pecore v Pecore****, Rothstein J, writing for the majority, opined that the court should consider the documents to determine whether they affect the issue. He said at paragraph 61:*
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>> *"While I agree that bank documents do not necessarily set out equitable interests in joint accounts, banking documents in modern times may be detailed enough that they provide strong evidence of the intentions of the transferor regarding how the balance in the account should be treated on his or her death…* ***Therefore, if there is anything in the bank documents that specifically suggests the transferor's intent regarding the beneficial interest in the account, I do not think that courts should be barred from considering it.*** *Indeed the clearer the evidence in the bank documents in question, the more weight that evidence should carry." (Emphasis supplied in original)*

[48] From the Schedule, I am advised that the Claimant has an investment portfolio in his sole name and that the account forms part of that portfolio. The Claimant and Defendant are named as clients, with the former being designated the primary client and the latter, the secondary client. Although both are clients of JMMB, contact information and mailing instructions for the primary client only is required and stated. The email, mailing and residential addresses and telephone numbers of the Claimant are stated.

[49] The Schedule requires the investment risk tolerance of the client to be stated. While the Claimant's risk tolerance is stated as "Moderate", the field for the Defendant's risk tolerance has been left blank.

[50] As to signing instructions, any of the two joint account holders were permitted to sign. Although there is a field for indicating special instructions, that has also been left blank. As to electronic service requests, ETM and Moneyline were the options available to both account holders. While both parties are listed as clients, an electronic service request was only made in respect of the Claimant, which enabled him and not the Defendant to access and deal with the account using the bank's electronic banking platform, Moneyline.

[51] It is my view that the foregoing indications on the Schedule are demonstrative of the intention of the Claimant on the opening of the account that he should have sole decision making in respect of the account, subject of course to the implication of necessity that if he could not be contacted by JMMB the Defendant could exercise decision making powers in respect of the account. I so find on a balance of probabilities.

[52] It is my view that the intention of the Claimant in respect of the account can also be inferred from the treatment of dividend payments generated from investments in the account.

[53] The decision in **Shephard v Cartwright** [1955] AC 431 is relied on by the Claimant. This case has long been regarded as authority for the proposition that in determining the intention of a purchaser, the acts and declarations of the parties before, at or immediately after the time of purchase, which constitute part of the same transaction are admissible in evidence for or against the party who did the act or made the declaration, but that subsequent declarations were only admissible as evidence against the party who made them. Although reference is made only to *"subsequent declarations"* in *Snell's Equity,* 24th ed., p. 153 which was cited with approval by Viscount Simmonds, he observed at p. 446 that it is possible to find in

earlier judgments reference to *"… "subsequent" events without the qualifications contained in the textbook statement…"*

[54] In **Cartwright** the father, who was deceased at the time of the claim, had promoted several private companies and in 1929 caused shares for which he had subscribed in cash to be allotted to and registered in the names of himself, his wife and three (3) children, only one (1) of which was a minor. There was no contemporary evidence to show what the father's intention was in respect of the shares registered in the children's names and no dividend was declared until 1934, some five years after the transaction in 1929, when a substantial dividend was declared. The father instructed his accountant to show the dividend on the shares in the names of the children who were the appellants in the case as belonging to and owned by them on returns. There was no evidence to prove or even suggest that the father was causing false returns to be made to the Revenue, but the children did not receive the income. In 1934 and subsequently, the father caused the children's shares to be sold and disposed of the proceeds of sale. In the course of delivering his judgment, Viscount Simonds said this at p. 448-9 of subsequent events:

> *… there must often be room for argument whether subsequent events can be regarded as forming part of the original transaction so as to be admissible evidence of intention, and in this case it has certainly been vigorously argued that they can. But, though I know of no universal criterion by which a link can for this purpose be established between one event and another, here I see insuperable difficulty in finding any link at all. The time factor alone of nearly five years is almost decisive, but, apart from that, the events of 1934 and 1935, whether taken singly or in their sum, appear to me to be wholly independent of the original transaction. It is in fact fair to say that, so far from flowing naturally and inevitably from it, they probably never would have happened but for the phenomenal success of the enterprise.*

[55] The matter was put this way by Rothstein J who delivered the decision of the majority in **Pecore v Pecore** 2007 SCC 17, [2008] 1 LRC 441, [2007] 1 SCR 795, [2007] WTLR 1591 thus:

> *… evidence of intention that arises subsequent to a transfer should not automatically be excluded if it does not comply with the* Shephard v Cartright *rule. Such evidence, however, must be relevant to the intention of the transferor at the time of the transfer:* Taylor v Wallbridge *(1879) 2 SCR 616. The trial judge must assess the reliability of this evidence and determine what weight it should be given, guarding against evidence that is self-serving or that tends to reflect a change in intention.*

[56] It is my view that the treatment of the dividends subsequent to the opening of the joint account can properly be regarded as forming part of the original transaction and therefore admissible evidence of the intention of the Claimant in opening the account.

[57] The transaction history for the account forms part of the agreed documentary evidence in the proceedings. When it is examined, except for the transactions by the Defendant which have given rise to the claim, and one other which I will address momentarily, encashments on the account were overwhelmingly delivered to the Claimant - approximately twenty-one (21) times on my count – following the delivery of dividend deposits to the account.

[58] The agreed transaction history begins with two investment entries in the amount of US$2,991.78 on 14th April and 14th July 2016 respectively, delivered by *"JMMBGL 6% Direct Deposit"*. These deposits were made approximately three (3) and six (6) months respectively, after the opening of the joint account. It shows the first encashment on the account being made on 3rd August 2016 in the amount of US$6,569.59 which was delivered to *"John Graham"*, approximately seven (7) months after the opening of the disputed account. The encashment and delivery to the Claimant solely continued up to 9th June 2022.

[59] The Defendant suggests that the distribution and collection of dividend/interest payments by the Claimant was a matter of convenience because only one person could be named on the Mandate, and she did not have a bank account in her name. Other than the Defendant's say so, which is not supported by the documentary evidence of the account, there is no evidence that she could not be included on the Mandate as being entitled to receive dividend payments from the account for that or any other reason. There is also no evidence of the Claimant becoming entitled to receive the dividend payments because of an event after, and unrelated to the opening of the account on 4th January 2016. The Claimant at that date of account opening was the owner of the portfolio to which the account was attached, designated as the primary client, was the investor with the risk and the sole contact for the account. I therefore find it to be more probable than not that the dividend payments were made to him for this reason, flowed naturally and inevitably from the transaction and does not reflect any change in intention from the date of the transaction on 4th January 2016.

[60] Further, in the six (6) years which passed between the opening of the account and the events which have brought the parties here, there is no evidence of the Defendant having ever objected to the Claimant's receipt of dividend payments or asserted - other than in defence of the instant claim - that she was entitled to the beneficial interest of the assets in the account, which would include the dividend payments.

[61] Returning to the excepted transaction to which I referred previously, it was made on 19th July 2019 where an encashment of US$8,654.21 from the account was delivered to BNS. This is referable to a request contained in letter dated 3rd July 2019 and executed by the Claimant and Defendant to JMMB, to deduct US$8,650.00 from the account and prepare a cheque made payable to BNS. The Defendant says the deductions were made towards the payment of her tuition fee for law school.

[62] The Claimant admits that the letter of request was made but that the Defendant signed the same because he requested her to do so. He could not recall whether it was to pay the Defendant's tuition as stated by her. She was a student when the account was opened and remained so for some time, during which the Claimant supported her financially, including by paying tuition fees. It is quite possible that the sums were encashed for the purpose which the Defendant claims, which would not be inconsistent with the evidence of the Claimant that the dividend payments were used to discharge financial obligations he had. I am therefore unconvinced, without more that the monies encashed on this occasion, even if for the Defendant's benefit, is demonstrative of an intention by the Claimant to gift the moneys and underlying investment instruments in the account to the Defendant.

[63] The Defendant was asked in cross examination whether she was aware, as counsel in her own right, that she could have counterclaimed for the dividend payments which she insisted were profits or interest on the gift made to her by her father, to which she answered in the affirmative. When asked to indicate why she had not filed a counterclaim for dividends - which I observe are substantial in amount - the Defendant responded: *"My gift was the joint account with the funds. The dividends, I don't think it was unreasonable for John Graham to receive those dividends, so I don't counterclaim for them."* She nevertheless insisted that she would be entitled to the dividends and *"supposed"* that her father had varied the *"agreement"* when he took the dividend payments from the gift, he made to her in discussions they had had about the opening of the account. To be fair to the Defendant, she has on every occasion resiled from labelling the dealings with her father in the opening of the account as an "agreement", curiously however she says there was a discussion during which her father said he was gifting her the account (with which I already dealt) and that she accepted the gift.

[64] Quite apart from the curiosity, I struggle to believe that the Defendant spoke honestly of her failure to counterclaim because her conduct towards her father in respect of the account which is disclosed by the evidence is not demonstrative of benevolence. Although she did not have Moneyline access in respect of the

account as evidenced by the Schedule signed by her, she got access to the very platform and with stealth encashed the investment in the account and removed all the funds from it. Her father, believing they had been scammed sought to reach her by telephone and email. Although the Claimant knew that it was she who had made the encashments and removed the monies from the account using Moneyline, she refused to respond to him. While she attributes the failure to respond to the existence of a family dispute, her conduct wreaks of malevolence. I therefore find it to be more probable than not that the Defendant has not sought to recover the dividends by action, not out of generosity or reasonableness, but because she knows that her father intended to retain ownership of the beneficial interest in the monies and underlying investments in the account, inclusive of dividends generated.

[65] In concluding, there is no dispute that at the time of opening the account the Claimant was approaching his sixty-first (61st) birthday. When the Claimant's age at the time of opening of the account are taken together with his unchallenged evidence that the monies and underlying investments represented a substantial part of his life savings and the Defendant's youth and lack of financial experience, I find it to be more probable than not that the Claimant, who the Defendant agrees was an avid investor, intended to retain the beneficial interest in the monies and underlying investment instruments in the account even though it was opened in the parties' joint names. I am fortified in this conclusion by what I have found are the limits which exist on the Defendant in respect of the control and operation of the account pursuant to the Schedule which she signed, and the use of the assets by the Defendant as he saw fit, which commenced shortly after original transaction between the Claimant and the Defendant in opening the account and therefore flowed naturally and inevitably from it.

[66] While it is my view that the above conclusion disposes of the claim relative to account 4200790, as was aptly observed by Rothstein J in **Pecore**:

> *[5] [w]hile the focus in any dispute over a gratuitous transfer is the actual intention of the transferor at the time of the transfer, intention is often*

> *difficult to ascertain, especially where the transferor is deceased [and] common law rules have developed to guide a court's inquiry.*

Consequently, in deference to the industry of counsel who argued the case along the lines of the applicability of the presumptions of a resulting trust and advancement, I will also consider issues raised in those regards.

iii.

Is the Defendant assisted in establishing a gift by operation of the equitable presumption of advancement?

[67] As earlier indicated, there is no dispute that the account was funded solely by the Claimant. In consequence, the Claimant submits that he should have the benefit of the well-established presumption that the person who provides the money to acquire property is beneficially entitled to the property which is held on a resulting trust by the person who holds the legal title. The Claimant concedes that a presumption of resulting trust may be rebutted by the presumption of advancement but contends that the latter presumption is inapplicable to this case, as the Defendant was an adult at the time of opening of the account and purchase of the underlying investment instruments. I am unable to agree with the Claimant that the presumption of advancement is inapplicable on account that the Defendant had attained majority and was an adult at the time of opening the joint account.

[68] The approach to cases in which gratuitous transfers are challenged suggested by Rothstein J in **Pecore** was cited with approval in **Clover Robinson**. It is this,

> *[55] Where a gratuitous transfer is being challenged, the trial judge must begin his or her inquiry by determining the proper presumption to apply [presumption of a resulting trust or presumption of advancement] and then weigh all the evidence relating to the actual intention of the transferor to determine whether the presumption has been rebutted. It is not my intention to list all of the types of evidence that a trial judge can or should*

consider in ascertaining intent. This will depend on the facts of each case…

[69] The Claimant cites in aid the decision in **Oswald Douglas v Lynford Douglas & Ors** [2014] JMCA Civ 6 where an appeal against an order extending an *ex parte* interim injunction was refused. Phillips JA considered that among the competing issues between the parties, was whether the presumption of advancement is applicable to adult children and concluded that the issue still appeared arguable and may ultimately depend on the particular facts of each case. She arrived at this conclusion in light of the decision of the Privy Council in **Antoni & Anor v Antoni & Ors** [2007] UKPC 10 (26th February 2007) where the presumption was applied to adult children without comment; the majority decision of the Supreme Court of Canada a few months later in **Pecore** (3rd May 2007) that the application of the rebuttable presumption of advancement with regards to gratuitous transfers from parent to child should be preserved but be limited in its application to transfers by mothers and fathers to minor children; and the following statement of Harrison P in delivering the leading judgment of our Court of Appeal in **Spence v Spence & Ors** SCCA No 104/204 (27th July 2007), which Phillips JA regarded as obiter that:

> "*Neither has a gift to a child by its parent ever been seen as unable to attract the said presumption [of advancement] because the child has attained adulthood."*

[70] In **Pecore** where the doubt as to applicability of the presumption to adult children arises, an ageing father solely and gratuitously transferred most of his assets in a joint account which he held with one of his three adult daughters whom he assisted financially on numerous occasions. The father controlled and used the accounts after they were transferred into the joint names and declared and paid the taxes and income from the accounts. The father died leaving a will where he bequeathed properties to the said daughter, her husband and her children but made no provision for the joint accounts. On the death of her father, the daughter took control of the accounts through the right of survivorship. She and her husband subsequently divorced, and the husband claimed that her father intended that she

would hold the assets in the accounts in trust for the benefit of his estate to be distributed according to his will.

[71] It was determined at first instance that the presumption of advancement applied given the parent and child relationship and that the assets in the account belonged to the daughter. It was also found that the father intended to gift the beneficial ownership of the assets in the account to his daughter while he continued to manage and control the accounts before his death. The husband's appeal against that decision was dismissed by the Court of Appeal where it was held that there was ample evidence demonstrating that the father intended to give his daughter the beneficial ownership of the assets and that in the presence of that evidence, reliance on the presumption of advancement was unnecessary as the presumption was only relevant where the evidence of was reasonably balanced or where there was little evidence of actual intention. On an appeal to the Supreme Court, the husband's appeal was once again dismissed. In dismissing the appeal, the majority of the Supreme Court of Canada found that the trial judge erred in applying the presumption of advancement because although the daughter was financially insecure, she was not a minor child. Accordingly, the trial judge should have applied the presumption of resulting trust. The error did not affect the disposition of the appeal however, because the trial judge had found evidence which clearly demonstrated that the father intended that the balance left in the joint accounts he held with his daughter were to go to her alone on his death by operation of survivorship.

[72] Among the cases relied on by the Defendant is the decision of Judge Barber in **Re Karl Eric Watkin Wood and Anor (as joint trustees in bankruptcy of Karl Watkin) v Watkin** [2019] EWHC 1311 (Ch). The decision is in respect of an application by a trustee in bankruptcy against the daughter of the bankrupt for declarations in respect of certain properties which were purchased and registered in the daughter's sole name. Among the contentions of the applicants was that the daughter held the properties on a resulting trust for her father who was at all material times the sole beneficial owner of the properties. It was contended on

behalf of the daughter that to the extent that her father may have been the purchaser or provided value towards the purchases of the property with his own money, a presumption of advancement arose in her favour. It was advanced by the applicants, in reliance on the decision in **Pecore** that the presumption of advancement between parent and child should be restricted to minor children.

[73] Barber J rejected the submission and in so doing regarded the view of the majority in **Pecore,** that the presumption should be limited to minor children as obiter, the trial judge having found evidence of actual intention of the father that the balance remaining on the joint accounts were to go to his daughter on his death by survivorship, rendering questions on the scope of the presumption of advancement unnecessary in disposing of the appeal.

[74] On my reading of **Pecore**, the judge at first instance appears to have given two reasons for his decision one of which is that the presumption of advancement applied given the parent and child relationship and that the assets in the account belonged to the daughter; and that there was evidence of intention that the father intended to gift the beneficiary ownership of the assets in the account to his daughter while he continued to manage and control the accounts before his death. The fact that another reason was also given for the decision does not, in my view, justify regarding as *obiter dictum* the reason which is premised on the scope of the presumption of advancement.

[75] In any event, Judge Barber went on to indicate that if he was wrong in concluding that the majority view in **Pecore** was *obiter*, it did not represent English Law. It was conceded by him however, that the presumption may be weaker and more readily rebuttable in the case of an adult child who is financially independent.

[76] **Grey v Grey and others** (1677) Rep Temp Finch 338, 23 ER 185 was cited in **Pecore** as one of the earliest cases in which the presumption of advancement was applied. In that case the father purchased lands in the name of his son without declaring a trust. The purchase was determined to be an advancement of the son and no trust was implied for his father and in so doing, the court declared at p. 187:

… where there is no clear Proof of any Trust between the father and son, the law will never imply a trust, because the natural consideration of blood, and the obligation which lies on the father in conscience to provide for his son, are predominant, and must over-rule all manner of implications.

…

'Tis true where a son is married in the lifetime of his father, and by him fully advanced, and in a manner emancipated, there purchase by the father, and in the name of his son, may be a trust for the father, as much as if it had been in the name of a stranger; because in that case all presumptions or obligations of advancement cease. But where the son is not advanced, or but advanced or emancipated in Part, in such case there is no room for any construction of a trust by implication; and without clear proof to the contrary, it ought to be taken as an advancement of the son …

[77] Both the majority and Abella J in his dissent in **Pecore** agree that the presumption of advancement should be expanded to include transfers from mothers as well as fathers to their children, whether they be sons or daughters. There being an obligation on both parents to support their children, the expansion of scope is indeed appropriate.

[78] The rationale for the position of the majority as delivered by Rothstein J, that the presumption should be limited to minor children appears to be three-fold. First, that the principal justification for the presumption of advancement is the parental obligation to support dependent children; second, that affection should not be a basis upon which to apply the presumption of advancement to a transfer; and third:

[40[… because it would be impossible to list the wide variety of the circumstances that make someone 'dependent' for the purpose of applying the presumption. Courts would have to determine on a case-by-case basis whether or not a particular individual is

> *'dependent', creating uncertainty and unpredictability in almost every instance.*

[79] I am unable to agree with the majority. In the first instance, when one considers the development of the presumption as gleaned from the earliest cases including but not limited to **Grey**, it is the natural consideration of blood which is central to the presumption in respect of parent-child transfers, so that the affection which is presumed to exist because of that relationship is indeed an appropriate consideration for the court and does not cease to be relevant in applying the presumption because a child reaches adulthood. As to the impossibility of listing the wide variety of the circumstances that make someone 'dependent' for the purposes of applying the presumption, that should not be basis for excluding dependent adult children from being aided by the presumption in appropriate cases. In fact, courts generally determine whether presumptions apply on a case-by-case basis, and I do not believe the presumption of advancement as it has developed at common law should be any different. For these reasons I much prefer the dissent of Abella J, which is consistent with English common law - that the application of the presumption of advancement should not be limited only to minor children in parent-child transfers. He stated:

> *[79] Historically, the presumption of advancement has been applied to gratuitous transfers to children, regardless of the child's age. If we are to continue to retain the presumption of advancement for parent-child transfers, I see no reason, unlike Rothstein J, to limit its application to non-adult children…*
>
> *[89] Rothstein J rejects parental affection as being a basis for the presumption, stating that 'a principal justification for the presumption of advancement' in the case of gratuitous transfers to children was the 'parental obligation to support their dependent children'… With respect, this narrows and somewhat contradicts the historical rationale for the presumption. Parental affection, no less than parental obligation, has always grounded the presumption of advancement.*
>
> *…*

[98] The origin and persistence of the presumption of advancement in gratuitous transfers to children cannot, therefore, be attributed only to the financial dependency of children on their father or on the father's obligation to support his children. Natural affection also underlay the presumption that a parent who made a gratuitous transfer to a child of any age, intended to make a gift.

[99] Rothstein J relied too on the argument made in McLear v McLear Estate *(2000) 33 ETR (2d) 272 at [40]–[41], against applying the presumption of advancement to adult children, namely, that since people are 'living longer' and there are more ageing parents who will require assistance in the managing of their daily financial affairs, it is 'dangerous to presume that the elderly parent is making a gift each time he or she puts the name of the assisting child on an asset'.*

…

[100] This, with respect, seems to me to be a flawed syllogism. The intention to have an adult child manage a parent's financial affairs during one's lifetime is hardly inconsistent with the intention to make a gift of money in a joint account to that child. Parents generally want to benefit their children out of love and affection. If children assist them with their affairs, this cannot logically be a reason for assuming that the desire to benefit them has been displaced. It is equally plausible that an elderly parent who gratuitously enters into a joint bank account with an adult child on whom he or she depends for assistance, intends to make a gift in gratitude for this assistance. In any event, if the intention is merely to have assistance in financial management, a power of attorney would suffice, as would a bank account without survivorship rights.

[101] The fact that some parents may enter into joint bank accounts because of the undue influence of an adult child, is no reason to attribute the same impropriety to the majority of parent-child transfers. The operative paradigm should be based on the norm of mutual affection, rather than on the exceptional exploitation of that affection by an adult child.

…

> *[102] I see no reason to claw back the common law in a way that disregards the lifetime tenacity of parental affection by now introducing a limitation on the presumption of advancement by restricting its application to minor children. Since the presumption of advancement emerged no less from affection than from dependency, and since parental affection flows from the inherent nature of the relationship, not of the dependency, the presumption of advancement should logically apply to all gratuitous transfers from parents to any of their children, regardless of the age or dependency of the child or the parent. The natural affection parents are presumed to have for their adult children when both were younger, should not be deemed to atrophy with age.*
>
> *[103] While, as Rothstein J observes, affection arises in many relationships, familial or otherwise, it is not affection alone that had earned the presumption of advancement for transfers between father and child. It was the uniqueness of the parental relationship, not only in the legal obligations involved, but, more significantly, in the protective emotional ties flowing from the relationship. These ties are not attached only to the financial dependence of the child. Affection between siblings, other relatives, or even friends, can undoubtedly be used as an evidentiary basis for assessing a transferor's intentions, but the reason none of these other relationships has ever inspired a legal presumption is because, as a matter of common sense, none is as predictable of intention.*

[80] In the instant case, although the Defendant had attained her majority at the time of opening of the joint account, she was still dependent on her father who appears to have seen to her every financial need, including payment of tuition as she was still in school; seeing to her living expenses; providing her with a credit card linked to an account which he had; and permitting her to occupy property which he owned free of rent. She could hardly be said, in the words of the court in **Grey**, *"[to be] fully advanced, and in a manner emancipated…"* By the Claimant's own admission, at the time of opening the account, the Defendant had not shown what direction she was headed in life. In these circumstances, contrary to the submission of the Claimant, I find that the presumption of advancement applies in

respect of the joint account, which was financed by the Claimant and could operate to displace the presumption that the Defendant held the beneficial interest in the account on resulting trust for the Claimant.

[81] Having found that the presumption of advancement applies, as observed by Brooks J (as he then was) in **Granville Scott v Yvonne Adocia Scott-Robinson** 2009 HCV 01885 (27th January 2010), the onus of proof to displace the presumption lies on the party who asserts that no gift was intended. In the instant case, that party is the Claimant.

[82] While it is clear from the authorities on whom the burden of proof rests to rebut the presumption of advancement, there are differences in judicial opinion as to the standard of the burden. See for example the discussion by Brooks J at pp. 4 – 8 of **Granville Scott**.

[83] While I found myself unable to agree with the decision of the majority in **Pecore** relative to limiting the application of the presumption of advancement to minor children, there are other aspects of the decision which offer useful guidance, including the position taken on the standard of proof required to rebut the presumption of advancement - that consistent with the standard in civil cases, it should be on a balance of probabilities.

[84] Rothstein J, delivering the judgment of the majority puts it this way.

> *[43] The weight of recent authority… suggests that the civil standard, the balance of probabilities, is applicable to rebut the presumptions:* Burns Estate v Mellon *(2000) 48 OR (3d) 641 at [5]–[21],* Lohia v Lohia *[2001] EWCA Civ 1691 at [19]–[21],* Dagle v Dagle Estate *(1990) 38 ETR 164 at 210 and* Re Wilson *(1999) 27 ETR (2d) 97 at [52]. See also Sopinka et al p 116. This is also my view. I see no reason to depart from the normal civil standard of proof. The evidence required to rebut both presumptions, therefore, is evidence of the transferor's contrary intention on the balance of probabilities.*

> *[44] As in other civil cases, regardless of the legal burden, both sides to the dispute will normally bring evidence to support their position. The trial judge will commence his or her inquiry with the applicable presumption and will weigh all of the evidence in an attempt to ascertain, on a balance of probabilities, the transferor's actual intention. Thus, as discussed by Sopinka et al in The Law of Evidence in Canada (2nd edn, 1999) p 116, the presumption will only determine the result where there is insufficient evidence to rebut it on a balance of probabilities*.

[85] The above approach commends itself. For reasons earlier supplied, I have found it to be more probable than not that the Claimant intended to retain the beneficial interest in the monies and underlying investment instruments in the account even though it was opened in the joint names of himself and the Defendant. The presumption of advancement would therefore be rebutted and would not displace the presumption of resulting trust.

ORDER

[86] It is in all the foregoing premises that I give judgment for the Claimant and make the orders which appear below.

1. The Claimant is and was at all material times the sole beneficial owner of the monies and the underlying investment instruments in Jamaica Money Market Brokers Limited account 4200790.

2. The Defendant is to return 199,500 JMMB US 6% preference shares maturing January 7, 2029 to the Claimant.

3. The Defendant is to return 95,999 JMMB US 5.75% preference shares maturing March 6, 2025 to the Claimant.

4. If the Defendant is unable to return the shares referred to in orders 2 and 3 herein, she is to pay the cost of obtaining 199,500 JMMB US 6% preference shares maturing January 7, 2029 and 95,999 JMMB US 5.75% preference shares maturing March 6, 2025.

5. The Defendant is to pay to the Claimant the amount which would have been paid by JMMB as interest/dividend payments on 199,500 JMMB US 6% preference shares between August 3, 2022 and the date of judgment.

6. The Defendant is to pay to the Claimant the amount which would have been paid by JMMB as interest/dividend payments on 95,999 JMMB US 5.75% preference shares between August 3, 2022 and the date of judgment.

7. The orders sought in respect of 219,641 Victoria Mutual Investments Limited shares which were held in JMMB account number 4535176 are refused.

8. Liberty to apply.

9. Costs to the Claimant on the claim, to be agreed or taxed.

10. The Claimant's Attorneys-at-Law are to prepare, file and serve this Order.

....

Carole Barnaby

Puisne Judge