JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 131 OF 2001

BEFORE: **THE HON. MR. JUSTICE FORTE, P.**
THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE SMITH, J.A.

BETWEEN:	**HELGA STOECKERT**	**DEFENDANT/APPELLANT**
AND:	**MARGIE GEDDES (Executrix of Estate Paul Geddes)**	**PLAINTIFF/RESPONDENT**

Crafton Miller and Patricia Roberts-Brown instructed by Suzette Wolfe of Crafton S. Miller and Company for the appellant

Michele Champagnie, instructed by Myers Fletcher and Gordon for the respondent

October 28 and 29, 2002, and April 3, 2003

PANTON, J.A.

1. On the 29th October, 2002, we dismissed the appeal in this matter. These are our reasons.

This was an appeal from the judgment of Mrs. Justice Norma McIntosh delivered on the 23rd August, 2001. In that judgment, she declared "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."

On appeal, this Court was urged to set aside the judgment and order that the appellant is entitled to the balance in any such accounts.

2. The appellant and the late Paul Geddes commenced an intimate relationship in 1959. They lived together as man and wife from 1973 until the 16th April, 1991, when the relationship was brought to an abrupt end by Mr. Geddes. The latter, having been divorced from his first wife as long ago as 1962, married the respondent to the instant suit in May 1991. However, it was Miss Stoeckert who first sought the intervention of the Court as in April 1992 she had filed suit against Mr. Geddes claiming entitlement to one half of his assets. That

suit was determined by the Supreme Court in favour of Miss Stoeckert, in that she was awarded ~~one-sixth of Mr. Geddes' assets~~, but the Court of Appeal reversed that decision and entered judgment in favour of Mr. Geddes. Miss Stoeckert appealed to Her Majesty in Council but the Privy Council dismissed her appeal and ordered costs against her. By the time the matter had reached the Privy Council, Mr. Geddes had died and his widow, who is his executrix, was substituted as respondent to Miss Stoeckert's appeal.

3. It may have been thought that with the Privy Council's decision of the 13th December, 1999, that was an end to all claims by Miss Stoeckert to the assets of Mr. Geddes. However, that was not so. There is an account in the name of Miss Stoeckert and Mr. Geddes at the Royal Bank of Canada Europe Limited at 71 Queen Victoria Street London EC4V4DE, England. After the Privy Council's decision, both parties (that is Miss Stoeckert, the appellant, and the respondent Mrs. Geddes as executrix for Mr. Geddes) laid claim to the funds in the account.

The bank refused to disburse the funds except on the signatures of both parties. This resulted in the filing of the instant suit.

4. Before Mrs. Justice McIntosh was an originating summons seeking a declaration that Mr. Geddes' estate was entitled to the balance "in any accounts in the names of Paul Geddes and Helga Stoeckert at the Bank of Canada Europe Limited in London, England." The originating summons was grounded on the affidavit of the executrix which set out the history of the proceedings, referred to earlier, before the various Courts. It also mentioned the fact that after the bank had refused to disburse the funds a clarification of the Privy Council's judgment was sought and the Registrar at the Privy Council's Office responded that "neither the judgment nor the Order should be regarded as determinative of the interests of the parties in the bank accounts in question". The appellant has placed great reliance on this letter from the Privy Council, as well as on a document dated 10th October, 1983, headed "Mandate for Joint Account". The mandate was signed by the appellant and the late Paul Geddes. It is addressed to the Royal Bank of Canada and reads:

> "1. We hereby authorize 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 opened with you in our joint names all cheques or other orders or instructions authorizing payment signed by any of us notwithstanding that any such payment may cause the account 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 instructions 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).

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

5. In her judgment, Mrs. Justice McIntosh held that the respondent's attorneys-at-law had put forward a "sound argument" in submitting that once a dispute had arisen on the mandate and the bank had imposed different terms from those agreed by the parties, the mandate no longer applied. She further held that by the time the suit had come before Clarke, J. in the Supreme Court in October, 1995, the mandate was no longer in the contemplation of the parties as the case was conducted on the basis that both the legal and beneficial interest in the entire estate, inclusive of the bank balances, vested solely in Mr. Geddes. "The Mandate ceased to have effect long before the trial in 1995", she concluded.

6. Seven grounds of appeal were filed. In the skeleton arguments filed on behalf of the appellant, the issues were summarised as follows:

"(a) Whether the Court of Appeal's decision in Civil Appeal No. 98 of 1995 determined the question of the parties' legal and beneficial interest in the joint account in dispute? (See Grounds 1,2 & 3)

(b) Whether there was evidence to support a finding that the account was established and maintained for Mrs. Stoeckert's benefit. (Grounds 4 & 5).

(c) The legal effect of the account mandate particularly after June, 1991, when the dispute arose and whether the mandate was subsisting up to Mr. Geddes' death. (Grounds 6 & 7)

(d) Did the death of Mr. Geddes entitle Ms. Stoeckert ~~to the~~ funds in the account as the survivor in the mandate?"

7. Mr. Crafton Miller, on behalf of the appellant, submitted that the Court of Appeal had not determined the legal and beneficial interest in the joint account, as the account was not a part of the assets of the late Paul Geddes. The issue that was then before the Court, according to Mr. Miller, was whether there was a constructive trust in favour of the appellant, and not the specific question of the interest in the joint account. However, in answer to the Court, he conceded that if the decision of Clarke J. had remained undisturbed, the appellant would have been entitled to one-sixth of the account. This would have been so, he said, "although the judgment of Clarke, J. was not determinative of the entitlement of Miss Stoeckert".

8. In response, Mrs. Champagnie, for the respondent, submitted that by overturning the decision of Clarke, J. the Court of Appeal had considered the

issues in the case including Miss Stoeckert's claim to an interest in the bank account and had dismissed the claim.

The statement of claim did not form part of the record of appeal, although there is a quotation from it in the judgment of Clarke, J. At the request of the Court the statement of claim was produced and it reveals the basis of the appellant's claim and the position that she adopted at the trial before Clarke, J. Paragraph 14 of the claim reads thus in part:

> "...Further pursuant to the said agreement and common intention, and in manifestation of the said agreement and common intention, the defendant established, inter alia, joint bank accounts in Barnette Bank, Florida, United States of America, in Royal Bank of Canada Europe Ltd., in London, England, and in Cayman National Bank in Cayman Islands in the joint names of the defendant and the plaintiff."

And then, in paragraphs 20 and 21, the following is stated:

> "20. By reason of the matters aforesaid, the plaintiff states that the amounts standing in the joint accounts as of the 16th April, 1991, belong to the plaintiff and the defendant beneficially in equal shares or in such proportion as to this Honourable Court may seem just.
>
> 21. By reason of the matters aforesaid, the defendant holds on trust for the plaintiff one half (or such other proportion) of the sums withdrawn by the defendant from the joint bank accounts after the 16th April, 1991, and appropriated to his sole benefit and unjust enrichment to the deprivation of the plaintiff."

The reference to the withdrawal of monies arose from paragraph 18 in which the appellant had stated that Mr. Geddes had withdrawn the sum of US$46,031 from the Florida account leaving a balance of 24 cents.

9. In the prayer to the claim that was before Clarke, J. the appellant sought :

> "a declaration that the plaintiff is 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 the plaintiff and the defendant as of the 16th April, 1991."

When Clarke, J. came to give his judgment, he made a declaration that the appellant was entitled to one sixth, instead of one-half. Mr. Geddes appealed against this determination. The appellant cross-appealed by seeking an award in excess of the one-sixth of the value of the assets awarded to her. The Court of Appeal allowed Mr. Geddes' appeal, and dismissed the cross-appeal. On appeal to the Privy Council, the appellant sought to restore the decision of Clarke, J. In this respect, she failed. Hence, there is clear merit in the respondent's view that the instant matter relating to the bank accounts has already been adjudicated on. It should be pointed out that Clarke, J. did not leave this matter for anything to be implied as has now been suggested by Mr. Miller. Clarke J. was quite specific as in the penultimate paragraph on page 18 of his judgment, which is also at page 18 of the supplemental record of appeal, he said:

> "For reasons I have already given, 1A Braywick Road does not form part of the assets subject to the trust. But included are the shares held by the defendant in Sun and Sand Ltd., All Seasons Ltd., Jette Ltd., and Cayman Islander Ltd., (all incorporated in Cayman), **bank accounts held abroad in the joint names of the parties** as well as shares in the following companies ..."

That passage, to my mind, puts to rest the argument that the matter has not been adjudicated on. It is clear that the appellant thought that it would be financially wiser to concentrate her appellate efforts on the whole estate rather than the relatively small bank accounts which had all been lumped in the statement of claim. Indeed, Mr. Miller was bold enough to say that to us. That there has to be an end to litigation goes without saying. In my view, it is too late now for the appellant to be attempting to re-open a matter that has long ago been decided. Mrs. Justice McIntosh was, in my view, correct in holding that the appellant's submission on this point was without merit.

10. Mr. Miller disputed the finding that the mandate to the bank had ended. In his view the mandate is still an effective legal document which establishes the appellant's legal right to the account. It is agreed that the bank account was opened in Mr. Geddes' name, and then the appellant's was added in 1983. All sums of money placed in the account were placed there by Mr. Geddes. The appellant lodged no money in the account, and there is no evidence that she withdrew any either. Mr. Geddes, it is agreed, did not need the permission of the appellant to make withdrawals from the account. Despite that acknowledged position, the bank refused to pay over the sum in the account to Mr. Geddes when, upon the termination of the relationship with the appellant, he attempted to withdraw same. The bank's stated reasons for its refusal of Mr. Geddes' request was that it received, **at the same time** as Mr. Geddes'

request a communication from the appellant putting the bank on notice that she had "an interest in the funds held on deposit." The bank's position does not stand up to scrutiny when it is considered that on the face of it the appellant's name had been on the account for several years, and there is nothing to show that anyone had earlier told the bank that although her name was on the account she had no interest in it. The bank, in keeping with the mandate signed by the parties, had an obligation to pay over the sums as requested by Mr. Geddes, a signatory to the account, unless it received a written cancellation of the mandate from the other signatory. Instead, the bank proceeded to create and impose its own mandate requiring the "joint signatures" of the account holders. So, according to the bank, the appellant's signature was now required to secure the withdrawal of funds on behalf of Mr. Geddes who had placed the funds in the account.

11. Several cases were cited by the appellant in relation to the mandate. Among them were **Standing v. Bowring** (1885) 31 Ch.D. 282, **McEvoy v. The Belfast Banking Co.** (1935) A.C. 24, **Russell v. Scott** (1936) 55 C.L.R. 440 and **Young and Another v. Sealey** (1949) 1 All E. R. 92. Two of these cases ought to be discussed.

In **Standing v. Bowring** a widow, aged eighty-six, transferred some stocks from her name into the joint names of herself and the defendant Bowring, her godson, but to whom she did not stand in loco parentis. The transfer was a deliberate act done with the express intention of conferring a

benefit on Bowring although the plaintiff had been warned that such a transfer was irrevocable. She intended that she should receive the dividends during her lifetime, while the defendant, if he survived her, would become entitled as survivor to the stock. The plaintiff remarried two years later and sought the concurrence of her godson in re-transferring the stock in her name alone. Bowring, who was only then being advised that his name had been on the stock, refused to comply. An action to compel him so to do was dismissed. On appeal, it was held that the legal title of the defendant as a joint tenant of the stock was complete although he had not assented to the transfer because the legal title of a transferee of stock is complete without acceptance. Further, a transfer of property to a person without his knowledge, if made in proper form, vests the property in him at once, subject to his right to repudiate it when informed of the transfer. The plaintiff could not claim a re-transfer on equitable grounds, the evidence clearly showing that she did not, when she made the transfer, intend to make the defendant a mere trustee for her except as to the dividends.

That case may be distinguished from the instant one in that the plaintiff had intended to make an outright gift of the stock to the defendant. As Lord Halsbury, L.C., said at page 286:

> "Under these circumstances it seems to me that both the beneficial and the legal interest in these consols passed to the defendant in this suit. If both the legal and the beneficial interest were intended to pass and did pass, I do not see how any question of trust could arise."

In his judgment, Lindley, L.J. said at page 289:

> "The transfer of stock and the rights of stockholders ... depends partly on general principles and partly on the provisions of the National Debt Act ... By this statute a transferee of stock prima facie acquires the legal title to it; and if his transferor had himself a good title to the stock and a right to transfer it, and has transferred it, the transfer cannot be treated by him or by the Bank of England as a nullity. Nor is there any method by which the transferor can get back his stock without the concurrence of the transferee or some order of a competent Court requiring him to execute a transfer."

The instant case is further distinguishable when it is considered that there was a statutory provision which dealt with the passing of title to Bowring.

12. In **Russell v. Scott,** a case from the High Court of Australia, on appeal from the Supreme Court of New South Wales, the headnote reads:

> "An elderly lady and her nephew opened a joint account in the Commonwealth Savings Bank by the transfer of a large sum from an account in the lady's name. The nephew, who assisted his aunt in all her matters of business, did not contribute to the account, which was kept in funds by payments from the aunt's investments. The account was used solely for the purpose of supplying the aunt's needs. Moneys for this purpose were withdrawn by the nephew as required, the withdrawal slips being signed by both the aunt and the nephew. When the account was opened the aunt told the nephew and others that any balance remaining in the account at her death would belong to the nephew, and it was found as a fact that the aunt intended her nephew to take beneficially whatever balance stood to the credit of the account at her death. Upon his aunt's death the nephew claimed the balance of the account.

> **Held** that the presumption of a resulting trust in favour of the aunt was rebutted; the nephew's legal right by survivorship to the balance of the account prevailed and was not the subject of any resulting trust."

Starke, J., while citing **Standing v. Bowring** and others, said:

> "A person who deposits money in a bank on a joint account vests the right to the debt or the chose in action in the persons in whose names it is deposited and it carries with it the legal right to title by survivorship" (page 448),

and continued thus at page 449:

> "There is nothing in the law to forbid a person depositing moneys in the joint names of his family, or strangers: it is a form of gift, the effect of which has already been stated. But 'the rule is well settled that where there is a transfer by a person into his own name jointly with that of a person who is not his child, or his adopted child, then there is prima facie a resulting trust for the transferor."

Standing v. Bowring is cited as authority for this statement.

In their joint judgment, Dixon, J. and Evatt, J. at pages 454 and 455, said:

> "At law, of course, it was joint property which would accrue to the survivor. In equity, the deceased was entitled in her lifetime so to deal with the contractual rights conferred by the chose in action as to destroy all its value, namely, by withdrawing all the money at credit. But the elastic or flexible conceptions of equitable proprietary rights or interests do not require that, because this is so, the joint owner of the chose in action should in respect of the legal right vested in him be treated as a trustee to the entire extent of every possible kind of beneficial interest or enjoyment. Doubtless a trustee he was during her life time, but the resulting trust upon which he held

> did not extend further than the donor intended; it did not exhaust the entire legal interest in every contingency. In the contingency of his surviving the donor and of the account then containing money, his legal interest was allowed to take effect unfettered by the trust. In respect of his *jus accrescendi* his conscience could not be bound. For the resulting trust would be inconsistent with the true intention of that person upon whose presumed purpose it must depend."

Further, at pages 455 to 456, their judgment continues thus:

> "We should say that, by placing the money in the joint names, the deceased did then and there and by that act give a present right of survivorship. At law this was so and in equity too. But in equity, and as a result of the contract with the bank, at law too, the deceased might defeat the right by withdrawing the money. Some of the matters which the judgments mention appear to us to go rather to the question of fact whether the deceased was actuated by a definite intention to confer the beneficial ownership at his death upon the survivor."

McTiernan, J. agreed that the joint account holder was entitled as survivor to exercise full legal rights to the account. He did so on the basis that the Supreme Court had found that "the lady opened the joint account with the intention that the appellant should be entitled to operate on it after her death for his own benefit" (page 457). He said further:

> "Now under the terms of the assignment to him jointly with the assignor he was bound to exercise the legal rights which he thereby acquired for the purpose expressed by the assignor. His legal interest was saddled with that particular trust during her lifetime. But that trust did not exhaust the interest taken by him as a joint legal owner of the chose in action, and if there was no evidence to rebut the implication of a resulting trust he would be bound to hold the interest

> unexhausted by the particular trust subject to a resulting trust in favour of the lady or her personal representative". (page 457)

The operative feature in that case was clearly the existence of an intention on the part of the lady to confer a benefit on her nephew if she should predecease him.

13. These cases which have been referred to were considered in another case which came before this Court in 1976—**Harold George Reid and another v. Herbert Grant and Greta Reid** (1976) 14 J.L.R. 176. The headnote sets out the facts and decision thus:

> "A testator by his will left to his grandson, F.A.R. and his granddaughter, G.M.R., in equal shares, all monies standing to his credit in a savings account in a named bank. He also devised and bequeathed his residuary estate to his sons, O.L.R. and H.G.R. About four months prior to his death the testator and G.M.R. signed a document by which they authorized the bank to open a deposit account in their joint names, to honour withdrawals therefrom, and to accept discharges on deposit receipts, provided any such withdrawals or discharges were signed by, or by the order of, the testator. The document also provided that total revocation thereof could be effected by the delivery to the bank of a written notice by either the testator or G.M.R. Death of either signatories of the document did not work a revocation thereof, but the signature of the survivor to any document in acknowledgement of receipt of the outstanding balance afforded a complete discharge to the bank. All sums comprising the joint account were provided by the testator, G.M.R. being a volunteer. The amount standing in the joint account at the testator's death was £6,000. On August 17, 1963, two days after the authority to the bank to open the joint deposit account, the testator wrote the bank directing that 'in case of the death of either of us the full amount must pass over to the survivor'. On

> September 21, 1963, the testator again wrote the bank advising that G.M.R. had, contrary to his wishes, left the island, and directing the bank 'to pay no order by her'. Following his death, the testator's executor sought, by way of an originating summons, answers to the questions, inter alia,: (i) whether the sum of £6000 formed part of the assets of the testator's estate; and (ii) assuming an affirmative answer to the first question, whether F.A.R. and G.M.R. were entitled to the said sum. The Master answered the first question in the negative, holding that the sum of £6000 belonged to G.M.R. by way of advancement by the testator who had, throughout their joint lives, acted towards G.M.R. in *loco parentis*. On appeal...
>
> **Held:** (i) that upon the creation of the joint account the testator, as grantor, not only expressly reserved for his exclusive exercise in the future the matter of withdrawal and discharges, but the continuance of the joint account was reserved for termination, if either he or G.M.R. saw fit, by an express notice in writing; the inescapable inference was, therefore, that the testator, as grantor, had reserved for future determination the matter of the beneficial ownership of the funds constituting the deposit account;
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> (ii) that by the testator's letter of August 17, M.G.R. obtained the beneficial interest in the sum of £6000, contingent on her surviving the testator but subject to revocation at any time at the instance of the testator; by the letter of September 21,1963, however, the beneficial interest by survivorship conferred by the letter of August 17, had been taken away or revoked, and it followed that the £6,000 had fallen into residue and was to be distributed accordingly."

14. In the case before us, the mandate held by the bank required the payment to be made to Mr. Geddes as requested in the circumstances that existed. The first line of the mandate stating "we hereby authorise you until we or any one of us shall give you notice to the contrary in writing" means that

the bank is authorized to pay etc. at the request of either party until it receives a written notice from either party, or from both indicating that there was a wish to change the terms of the authority. In other words, the mandate in the possession of the bank was the only valid mandate until a new mandate was given by one or both parties. It was not for the bank to impose a new mandate. In the circumstances, the learned judge was correct in her finding in this regard.

15. To sum up, the bank account which is in dispute in this appeal has already been the subject of judicial determination. In any event, the mandate given to the bank was ignored by it when one of the signatories, Mr. Geddes, attempted to withdraw monies therefrom- monies which it is agreed were put into the account by him alone. By its failure to act on the mandate which it had, and by imposing new terms, the bank created a situation which has provided fodder, upon the death of Mr. Geddes, for the appellant to mount a claim on the basis of survivorship. There would have been no room for argument had the bank honoured the request of the sole depositor to withdraw his monies when the relationship between him and the appellant had broken down. The bank's failure to do that which it was obliged to do, that is, to pay Mr. Geddes his money, has not created any enforceable legal rights in favour of the appellant.