Privy Council Appeal No. 56 of 2003

Helga Stoeckert *Appellant*

v.

Margie Geddes (Executrix of the estate of Paul Geddes) (No 2) *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 14th December 2004

Present at the hearing:-

Lord Hoffmann
Lord Scott of Foscote
Lord Rodger of Earlsferry
Baroness Hale of Richmond
Lord Carswell

*[Delivered by **Lord Hoffmann**]*

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1. For some thirty years the appellant Ms Stoeckert had a relationship with the late Mr Paul Geddes and for much of that time they lived together as man and wife. In 1991 Mr Geddes terminated the relationship and in 1992 Ms Stoeckert commenced proceedings against him claiming various declarations and related orders. The first was a declaration that she was —

> "entitled to one half (or such other proportion) of the sum representing the balances in all the bank accounts held in the joint names of [herself] and the defendant as of 16th April 1991."

2. Another claim was for a declaration that Mr Geddes was trustee for Ms Stoeckert for 50% "or such other proportion as the court deems just" of "all property acquired by the defendant [between] 1963 and 1991".

3. There was a trial before Clarke J in 1995. The judge said that the evidence of Ms Stoeckert, which was uncontradicted, justified the conclusion that the parties had evinced a common intention that she was to have a beneficial interest in the assets of Mr Geddes.

One of the matters upon which he relied was that Mr Geddes had added her name as a joint party with unlimited drawing rights to the bank accounts in which she was claiming a beneficial interest (which were all with overseas banks) and had done so "for their benefit and not for convenience". The common intention, in the judge's opinion, was that Ms Stoeckert should share half the assets equally with Mr Geddes's two daughters. He therefore declared that she was entitled to one-sixth of the assets of Mr Geddes as they stood on 16 April 1991. In so doing, he said expressly that "bank accounts held abroad in the joint names of the parties" were to be included in the assets in which she was to have a one-sixth share.

4. Mr Geddes appealed and the appeal was heard by the Court of Appeal (Rattray P and Gordon and Bingham JJA) in February 1997. Judgment was delivered in June 1997. The Court of Appeal allowed the appeal and entered judgment for the defendant, dismissing the whole of Ms Stoeckert's claim. Rattray P did not regard the addition of Ms Stoeckert's name to the bank accounts as indicative of an intention that she should have a beneficial interest either in the money in the accounts or the general assets of Mr Geddes:

> "... the addition of her name as a signatory to his bank accounts abroad only evidences his facilitation of her ability to access those accounts whenever she was overseas and she so desired."

In other words, so long as Mr Geddes allowed the arrangement to continue, Ms Stoeckert had the power to draw on the accounts for whatever she wanted. But that did not give her a beneficial interest in the undrawn funds so as to prevent Mr Geddes from revoking the power.

5. Gordon JA recorded the reliance by the judge upon the putting of the bank accounts in joint names as an item of evidence of a common intention to confer upon Ms Stoeckert a beneficial interest in Mr Geddes's assets and reached the conclusion that there was no such intention. He did not refer specifically to the beneficial interest in the bank accounts but appears to have regarded them as subsumed under his treatment of the assets in general. Bingham JA, on the other hand, did refer expressly to the beneficial interests in the accounts. Under the heading "The Overseas Bank Accounts" he said that Ms Stoeckert "sought to lay claim" to a half share in these accounts. He recorded the argument on behalf of Mr Geddes that as he and Ms Stoeckert were not married, there was no presumption of advancement in her favour. In the end, however, Bingham JA did not deal separately with the ownership of the accounts but

concurred with the President and Gordon JA in setting aside the judge's order and dismissing Ms Stoeckert's action.

6. Ms Stoeckert appealed to the Privy Council, which on 13 December 1999 dismissed her appeal: *Stoeckert v Geddes (unreported) Appeal No 6 of 1998*. The opinion of the Board recorded the reliance of the judge on the opening of the bank accounts as evidence of a common intention to confer a beneficial interest but endorsed the view of Rattray P that Mr Geddes had merely "facilitated her ability to draw on some, but by no means all, of his accounts". It appears to their Lordships that this is inconsistent with Ms Stoeckert having been given a beneficial interest in the undrawn funds in the accounts.

7. Mr Geddes had died on 9 June 1999, before the judgment of the Privy Council. After her appeal had been dismissed, Ms Stoeckert's attorneys wrote to the Royal Bank of Canada Europe Limited, one of the banks with which a joint account had been opened, and claimed that as survivor she was entitled to the funds. On 17 January 2000 the bank notified the attorneys acting for Mr Geddes's executrix that they proposed to act upon Ms Stoeckert's instructions. The attorneys replied saying that the courts had held that Ms Stoeckert had no beneficial interest in the money in the account. They also wrote to Ms Stoeckert's lawyers saying that unless they consented to the money being paid out to Mr Geddes's estate, they would be obliged to commence proceedings. Faced with these conflicting instructions, the bank suggested that the Privy Council be asked to clarify its order. On 25 January 2000 the attorneys for the estate wrote to the Registrar of the Privy Council, who replied upon instructions from the members of the Board who had heard the appeal:

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

8. While the first two sentences of this paragraph were true, the last was regrettable. It is understandable that the Board should have been reluctant to express the opinion that the judgment or Order *was* determinative of the interests of the parties in the bank accounts. On the other hand, the last sentence reads as an opinion that the judgment was *not* determinative. Whether it was or was not determinative depended upon a proper analysis of the pleadings and evidence, in order to decide whether the ownership of the money in

the accounts was the "subject of litigation in, and adjudication by" (*Henderson v Henderson* (1843) 3 Hare, at p. 114) the courts in Jamaica and the Privy Council. It is not a matter on which it was appropriate to express an informal opinion after the delivery of judgment.

9. On receipt of this letter, and in the absence of any consent by Ms Stoeckert to withdrawal of the funds, the executrix commenced proceedings on 7 March 2000 for a declaration that the estate was entitled to any balance of funds in the accounts.

10. The action was heard by Mrs Justice Norma McIntosh, who carefully examined the pleadings, evidence and judgments. She decided that the ownership of the money in the accounts was in issue before both Clark J and the Court of Appeal. The judge had given Ms Stoeckert a one-sixth share of the funds, including the bank accounts, and the Court of Appeal had reversed that decision and decided that the sole beneficial owner was Mr Geddes. This judgment had been affirmed by the Privy Council and was therefore determinative of the ownership of the funds. On appeal, the Court of Appeal upheld her decision. Neither court made any order as to costs.

11. Mr Crafton Miller submitted to the Board that the judge's finding of fact that the accounts had been opened "for their benefit and not for convenience" had been accepted by both the Court of Appeal and the Privy Council and led to the conclusion that Ms Stoeckert had a beneficial interest in the funds. The appellant courts had rejected the argument that this provided support for a finding of a common intention that she was to have a beneficial interest in the whole of Mr Geddes's assets, but that did not affect the judge's finding about the bank accounts.

12. Their Lordships do not accept this submission. The finding that the joint accounts were established "for their benefit" is equally consistent with Ms Stoeckert having no beneficial interest in the money in the accounts until she actually exercised her right to draw upon it. Until then, the money belonged to Mr Geddes and, as between him and Ms Stoeckert, he was entitled to terminate her right at any time. This is the construction which Rattray P put upon the bank account arrangements and which the Board approved. In any case, it is quite clear from the judgments of Clarke J and the Court of Appeal that they were intending to deal with the bank accounts as part of the entire assets in dispute.

13. It follows that Ms Stoeckert is estopped *per rem judicatam* from asserting any beneficial interest in the money in the accounts. As her claim to take the funds by survivorship depends upon the existence of a beneficial joint tenancy at the time of Mr Geddes's death, that too must fail.

14. Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed. The trial judge made no order as to costs, probably because she felt that the letter from the Privy Council had given rise to a problem which was not the fault of either party. But once the judge had given her decision, the matter had been fully clarified and any further appeal should have been at the appellant's risk as to costs. The Court of Appeal gave no reasons for not making the normal order that costs should follow the event and their Lordships cannot think of any ground upon which it would have been proper for them to deprive the successful respondent of her costs. The appellant must therefore pay the respondent's costs both in the Court of Appeal and before their Lordships' Board.