

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA
REGULAR JURISDICTION

2019-HC-BER-CIV-SOC-73

BETWEEN:

ANALISA STACIA ARETHA PORTER, in her capacity as administrator ad litem of the estate of STANLEY KENWYN PORTER, deceased, by virtue of Order of Court dated the 2nd May, 2019 and made by the Honourable Justice Simone Morris-Ramlall in application number 115-FDA of 2019.

Claimant

-and-

DORETH CHRISTIAN

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Murseline Bacchus for the Claimant

Mr. Arudranauth Gossai for the Defendant

Delivered November 10th 2020

DECISION

The Parties, through their Attorneys-at-Law agree that the facts in this case are to a large material extent agreed upon and therefore the issue to be determined is of a legal nature and therefore the Court will make a determination and rule without conducting a trial.

The Court indicated to Counsel for the parties that based on the letter dated March 5th 2019 from Republic Bank (Guyana) Limited to Mr. Bacchus as the Claimant's Attorney-at-Law, the documents creating the account/s are essential for the Court to properly determine the issues in this case and to that end both Counsel consented

to the Court obtaining such documents by subpoena without a trial, which was done by the Court.

The Claimant is the only child of Stanley Kenwyn Porter, deceased, who died in February 2019, intestate.

At the time of his death, Stanley Porter, deceased, and his sister, the Defendant, were the joint holders of a bank account with Republic Bank (Guyana) Limited.

It has been confirmed by Counsel for the Parties that the Defendant has withdrawn all of the monies that were in the account.

The Claimant claims that she is entitled to all of the monies that was in the account at the date of death of Stanley Porter, deceased, based on the fact that she is the sole beneficiary of the Estate of Stanley Porter, deceased, in accordance with the rules of intestacy.

The Defendant contends that in accordance with the principle of survivorship, upon the death of Stanley Porter, deceased, she became the sole account holder and the sole person entitled to the funds in the account by operation of law.

The starting point in the analysis is the determination of with whom the legal right to the funds lie on the death of Stanley Porter and by law that right will vest in the Defendant, since, prior to his death she possessed a joint legal title to the account along with Stanley Porter.

It stands to reason that upon the death of Stanley Porter the legal title to the account vested solely in the Defendant.

Therefore the claim that the balance of funds in the account at the time of death of Stanley Porter formed part of the Estate of Stanley Porter, deceased must be based in equity, which given the facts in this case, can only be either a presumption of advancement or a presumption of a resulting trust.

A presumption of advancement cannot be raised in favour of the Defendant since the Defendant is the sister of the deceased and historically a presumption of advancement only arises where the individual receiving the benefit is a spouse or child of the person transferring his interest.

In this regard the question then arises as to whether a resulting trust has been created whereby the Defendant is now a trustee of the Estate of Stanley Porter, deceased, of the balance of funds in the account.

ISSUE I

Was the Defendant holding the monies in the bank account on trust for Stanley Porter and as a consequence a resulting trust has been created whereby the Defendant is now a trustee of the Estate of Stanley Porter, deceased, of the balance of funds in the Republic Bank (Guyana) Limited account.

LAW

Resulting trusts also known as presumed resulting trusts arise in the absence of an express declaration where a person holds legal title in circumstances where they can not be taken to have full equitable ownership.

Presumed resulting trusts, maybe more appropriately referred to as **presumed intention** resulting trust, arise either from voluntary transfer of the legal estate or by contribution to the purchase price. In these situations it is presumed that the person did not intend to make a gift of the property or money unless there is a clear intention that they did so intend. In such circumstances a resulting trust arises and the transferor or the person making the contribution retains or takes a share in the beneficial interest.

As Lord Browne-Wilkinson stated in **Westdeutsche Landesbank Girocentrale v Islington** LBC [1996] 2 WLR 802;

"A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention."

And as Justice Rothstein of Canada's Supreme Court explained in the decision of **Pecore v Pecore** [2007] SCC 17;

"A resulting trust arises when title to property is in one party's name, but that party, because he or she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner. While the trustee almost always has the legal title, in exceptional circumstances it is also possible that the trustee has equitable title."

The resulting trust attempts to dispose of the property in the manner the person who transferred it would have wanted if he had anticipated the situation.

It is a trust implied by law, **as determined by a court**, that a person who holds title or possession was intended by agreement, **implied by the circumstances**, with the intended owner to hold the property for the intended owner.

Therefore, the holder is regarded by the Court as a trustee of a resulting trust for the proper owner as beneficiary.

Although it is truly a legal fiction, the presumed resulting trust forces the holder to honour the intention and prevents unjust enrichment.

It rather seems that equity creates a presumed resulting trust to solve those rare dilemmas for which the law has no other fair solution and it is for this very reason whether a presumed resulting trust arises is dependent almost exclusively on the facts of the case before the Court.

It is important to note that should the circumstances presented prima facie raise the presumption of a resulting trust, that is no more than an indication of who has the onus of proof.

As was stated by Dixon and Evatt JJ in **Russell v Scott** (1936) 55 CLR 440 @ 451, a case decided in the High Court of Australia [Australia's highest Court];

"It is true a presumption that he is a trustee is raised by the fact of his aunt's supplying the money that gave the legal right a value. As the relationship between them was not such as to raise a presumption of advancement, prima facie there is a resulting trust. But that is a mere question of onus of proof. The presumption of resulting trust does no more than call for proof of an intention to confer beneficial ownership."

The Court therefore must first determine whether there has been an ascertainment of the beneficial interests in the property constituted by the account [the monies].

The steps in the determination of who is entitled to the beneficial interest are;

Firstly, if there is a document creating or transferring the property then that document must be construed and interpreted by the Court to determine whether the intention of the transferor can be ascertained and if it can be then there must be no further scrutiny in the matter for it is a matter of law and does not require a fact finding mission.

As Lord Briggs stated in **Whitlock and Another v Moree** [2017] UKPC 44;

"That where two or more holders of a joint account all sign an account opening document (or separately sign identical documents) which, on their true construction, declare or set out their respective beneficial interests in the property constituted by the account (loosely, the money in the account), then those are the beneficial interests of the account holders, pending any subsequent variation of them by agreement or otherwise, and an examination of the subjective intentions of the account holders, or of those of them who place money in the joint account, is neither relevant nor permissible. Still less is recourse to the doctrine of presumed resulting trusts permissible, because the potential beneficial owners have declared what are their beneficial interests by signed writing."

Secondly, if there is no document creating or transferring the property or if the intention of the transferor cannot be ascertained from such a document, then a presumption of resulting trust arises and the Court must then consider all of the relevant circumstances surrounding the creation or transfer of the property to determine the intentions of the transferor.

FACTS

The material facts are as aforementioned and additionally the account agreement, signed by Stanley Porter [the deceased] and Doreth Christian [the Defendant], as produced by Republic Bank (Guyana) Limited to the Court contains the following provision;

"In the case of an account indicated on the reverse of this card as a joint account, each of the undersigned in order effectually to constitute said account a joint account hereby assigns and transfers to all the undersigned jointly and to the survivor or survivors of them all moneys heretofore or hereafter at credit of said account and accrued interest thereon, if any, to be the joint property of the undersigned and the property of the survivor or survivors of them. For valuable consideration received, the undersigned hereby agree jointly and each with the other(s) of them and also with the Republic Bank (Guyana) Limited that all moneys heretofore or hereafter at credit of said account and accrued interest thereon, if any, shall be and continue the joint property of the undersigned with right of survivorship, and that said bank may accept as a sufficient discharge of any sums withdrawn from said account any order or receipt signed by any one or more of the undersigned without any signature or consent of the other(s) and that the death of one or more of the undersigned shall not affect the right of the survivors or any one of them or the sole survivor to withdraw said money and interest ..."

In addition to the foregoing facts, based on the documents produced by Republic Bank (Guyana) Limited to the Court, Stanley Porter opened the account on January 12th 2010, the account was then made a joint account with the addition of Josephus Porter on July 7th 2011 and after the death of Josephus Porter, the account was

again made a joint account with the addition of Doreth Christian on October 9th 2018.

Of importance, both times that the account was made a joint account, the agreement signed by Stanley Porter and the other joint account holder contained the aforementioned clause.

ANALYSIS

The clause in the account agreement in itself results in a failure of the Claim herein since it sets out very clearly the beneficial interests of the account holders of a joint account with Republic Bank (Guyana) Limited and there has been no claim or contention that that has been varied in any way or form.

Although it is not necessary to establish that Stanley Porter was aware of the ramifications of that clause, the fact that Stanley Porter signed a similar agreement before and was in fact himself previously a beneficiary under the survivorship clause is conclusive evidence that he would have been well aware of the effects of the clause.

CONCLUSION

The Defendant is not a trustee of the Estate of Stanley Porter, deceased, of the balance of funds in the Republic Bank (Guyana) Limited account.

In the circumstances the Claim is dismissed with costs to the Defendant in the sum of \$500,000.00 which is to be paid on or before December 11th 2020.

