

Beneficial ownership of joint bank accounts

(Lecture P1066 – 8.50 minutes)

The Privy Council, hearing a case which came up from the Court of Appeal of the Bahamas, have had to consider the law applicable to the beneficial ownership of joint bank accounts.

In *Whitlock v Moree* (2017), the five judges had to decide whether, on the death of one of two account-holders of a joint bank account, the beneficial interest in the account passed to the other account-holder by survivorship or whether it formed part of the deceased's estate by reason of the operation of the equitable doctrine of a presumed resulting trust, given that the deceased had provided all the money – some £137,000 at today's exchange rate – in the account.

When they originally set up the joint bank account, the deceased and his friend (Mr Moree) signed a bank form containing a standard provision which said:

'JOINT TENANCY: Unless otherwise agreed in writing, all money which is now or may later be credited to the account (including all interest) is our joint property with the right of survivorship. That means that, if one of us dies, all money in the account automatically becomes the property of the other account-holder(s). In order to make this legally effective, we each assign such money to the other account-holder (or the others jointly if there is more than one other account-holder).'

By a 3 – 2 majority, the Privy Council agreed that the provision in above applied. In delivering their decision, Lord Briggs set out his conclusion as follows:

'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.'

Three fundamental consequences flow from this conclusion:

1. whether or not the attention of the account-holder was drawn to the terms of the declaration (ie. the intention of the settlor) is irrelevant in principle, unless challenging the document on the basis of mistake, fraud, duress or undue influence;
2. there is no room for the doctrine of presumed resulting trusts; and

3. where the document, on its true construction, does deal with the account-holders' beneficial interests, then the quantification of those interests is a question of law, not fact.

Lord Briggs held that there was indeed an express declaration as to the beneficial ownership of the money in the account. The appeal was dismissed and the deceased's beneficial interest in the money passed to Mr Moree by way of survivorship. Two of the judges agreed with him.

The remaining two judges dissented from this majority view. In general terms, Lord Carnwath and Lord Wilson argued that it was not appropriate to place emphasis on legal authorities from other property contexts.

As far as bank accounts are concerned, from the point of view of the customer there is an inherent lack of permanency in a transfer to a bank account, viz:

‘The ordinary expectation is that, rather than being intended to effect a permanent transfer of value from one customer to the other, it is intended as no more than a convenient vehicle for their co-operation (for whatever reasons) in handling funds for the time being. Issues of construction should be approached against that background.’

However, this reasoning did not find favour with the other three judges.

Contributed by Robert Jamieson