

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

Civil Suit No: CV413 of 2011

**IN THE MATTER OF THE SUCCESSION
ACT, CAP. 249 OF THE LAWS OF
BARBADOS**

AND

**IN THE MATTER OF THE ESTATE OF
DANIEL NATHANIEL BENSKIN, DECEASED**

BETWEEN

CARLTON PETERKIN

CLAIMANT

AND

**ISHBEL CHARLES
JOAN BEVERLY DRAKES**

**FIRST DEFENDANT
SECOND DEFENDANT**

NORMAN GREAVES

INTERVENOR

*Before The Honourable Madam Justice Pamela Beckles, Judge of the
High Court*

2013: July 17

2016: June 27

Ms. Esther Obiora Arthur, Attorney-at-law for the Claimant

**Ms. Verla Depezia, Attorney-at-law for the Second Defendant and the
Intervenor**

DECISION

THE FACTS

- [1] The Claimant, Carlton Peterkin of Brooklyn, New York, United States, is the son of Daniel Nathaniel Benskin (hereafter referred to as “the deceased”) and a beneficiary of the deceased’s estate.
- [2] The First Defendant Ishbel Charles of 566 East 53rd Street, Brooklyn, New York, United States, is the deceased’s niece and the Personnel Representative of the deceased’s estate.
- [3] Joan Beverley Drakes of 113 Oxnards in the parish of St. James in this Island is the Second Defendant and is also a niece of the deceased.
- [4] The deceased died on the 11th November, 2003 and at the date of his death, there was a joint savings bank account No. 100223501 at the FirstCaribbean International Bank Barbados) Limited, Bridgetown. It was opened on the 26th November, 2002 with an initial deposit in the sum of \$1,130,797.40 and the signatories to it were the deceased and the Second Defendant.
- [5] On the 12th December, 2011 the bank informed the Claimant that there was a balance of approximately \$1,300,000.00 in the account which was closed and the money transferred to an account held jointly by the Second Defendant and her son Norman Drakes. The amount in the FirstCaribbean account now stands at \$256,306.42.

[6] On the 14th December, 2011, the Claimant filed a Certificate of Extreme Urgency and an ex parte application which sought among other things the following:

- (i) an interim Freezing Order pursuant to **Section 44** of the Supreme Court of Judicature Act, Cap. 117 and Rule 17.1 of the Supreme Court (Civil Procedure) Rules 2008 (CPR) that until judgment or further Order, the Bank by their servants or agents or otherwise howsoever be mandated to forthwith restrain from disposing of an/or dealing with Account No. 100223501 held in the name of Daniel Nathaniel Benskin and/or Eva Eudora King or any account to which the funds in savings account No. 100223501 may have been transferred.
- (ii) an Order issued pursuant to Rule 17.1 of the CPR, that FirstCaribbean International Bank (Barbados) Limited do disclose full information concerning the status of savings Account No. 100223501 and the location of the funds therein identifying the name by which it was disposed and/or its whereabouts and in whose names they may be owned to the Court within two weeks of being served with this Order.
- (iii) an Order restraining the Defendant by herself, her servants/or agents by injunction from distributing any assets of the estate of the deceased until the determination of these proceedings by the Honourable Court.
- (v) such further and/or other relief as the Court may deem just.

[7] The application was heard on the 23rd December, 2011 before the **Honourable Sir Marston Gibson, Chief Justice of Barbados**, sitting as a High Court Judge who made the following Order (the Freezing Order).

DISPOSAL OF ASSETS

- (a) The Defendant/Respondent by herself, her servants or agents or otherwise howsoever must not (i) remove from the jurisdiction any of the assets in the Estate of Daniel Nathaniel Benskin, deceased, in the jurisdiction whether in the name of the deceased or not and whether solely or jointly owned by the deceased; or (ii) in any way dispose of or deal with or diminish the value of any of the said assets whether they are in or outside of Barbados whether in the name of the deceased or not and whether solely or jointly owned. The prohibition includes the following assets in particular:
- (i) Any money to the credit of Savings Account No. 100223501 held at FirstCaribbean International Bank (Barbados) Limited under the name of Daniel Nathaniel Benskin and/or Eva Eudora King.
 - (ii) Term Deposit No. 1666733 held in the name of Daniel Nathaniel Benskin at the Bridgetown Branch of Scotia Bank; and
 - (iii) Any money to the credit of any account held at FirstCaribbean International Bank (Barbados) Limited under the name of Joan Drakes and /or Norman Drakes.
- (b) Joan Drakes, the intended Second Defendant by herself, her servants or agents otherwise howsoever must not
- (i) Remove from the jurisdiction any of her assets which are in Barbados whether in her name or not and whether solely or jointly owned by her or not; or
 - (ii) In any way dispose of or deal with or diminish that value of any of the said assets whether they are in or outside Barbados whether in her name or not. This prohibition includes the following assets in particular:

- (i) Any money to the Credit of any account held at FirstCaribbean International Bank (Barbados) Limited under the name of Joan Drakes and/or Norman Drakes.

[8] The Order also provided for disclosure of information, exceptions to the Order, duration of the Order, variation or discharge of the Order, among other things.

[9] It is not disputed that all of the money in the account was contributed by the deceased. Neither is it disputed that during the period from 26th November, 2002 until the 19th November, 2003 when the account was closed and the monies from the account were transferred to Savings Account No. 1000292392 in the name of Joan Drakes and/or Norman Cleophas Drakes, that no withdrawals were ever made from the account nor were there any further deposits made, except monthly interest payments added thereto.

[10] The Second Defendant's position is that she is entitled as sole survivor to the funds in the savings account held between the deceased and herself jointly. The Claimant's case is that the Second Defendant is a trustee of the monies under a resulting trust in favour of the deceased's estate.

ISSUE(S)

- [11] The main issue for determination is whether or not the temporary injunction/freezing Order granted by the **Honourable Sir Marston Gibson, Chief Justice of Barbados** on the 23rd day of December, 2011 should be varied or discharged pursuant to **Section 44** of the Supreme Court of Judicature Act, Cap. 117 and Rule 17.1(9) of the Supreme Court (Civil Procedure) Rules 2008.
- [12] However before this issue is addressed, the Court is of the opinion that it must first address its mind to another issue and that is whether or not the funds held in the joint bank account in the name of the deceased and the Second Defendant automatically became the property of the Second Defendant on the death of the deceased or whether or not the funds should have been held in a resulting trust for the estate, in other words is there an arguable case with respect to this issue?

THE LAW

- [13] As stated by **Simmons, C.J.** in the case of *Brathwaite v. Harper BB 2007 HC 28* the issue of joint bank accounts “is an area of law that is highly fact-sensitive and fact-dependent. Many of the cases turned on their own facts.”

- [14] Apart from the facts already cited some additional facts must be stated. Subsequent to his death, the deceased's last Will and Testament dated the 18th July, 1974 was probated and Letters of Testamentary dated the 24th August, 2004 were issued to the First Defendant on the 9th September, 2004.
- [15] In that Will the deceased bequeathed to the Claimant his dwelling house situate near Rock Dundo, Cave Hill, St. Michael. He also bequeathed his property situate at Codrington Hill, St. Michael to his sister Eva King for the term of her natural life and after her death to the Claimant absolutely. Eva King predeceased the Claimant and the deceased. She died on the 15th August, 2000 and the Claimant is now the owner of that said property. Sometime in 2011 a draft Will was found in a safety deposit box located at the deceased's home at Codrington Hill, St. Michael. As a result of this the Claimant discovered that the deceased also held a savings account No. 100223501 with his sister Eva Eudora King at FirstCaribbean International Bank (Barbados) Limited. The monies bequeath in the draft Will amounted to over a million dollars.
- [16] On the 12th December, 2011, the Bank informed the Claimant that a savings account No. 100223501 with a balance of approximately \$1,300,000.00 held in the name of the deceased and a second account

were closed and the money transferred to an account held jointly by the Second Defendant and her son Norman Drakes. The balance in that account now stands at \$256,306.42.

- [17] So that based on these facts can it be said that the monies held in the joint bank account in the name of the deceased and the Second Defendant automatically become the property of the Second Defendant upon his death or are the funds held in a resulting trust for the estate of the deceased?
- [18] At common law where there is a joint bank account with the totality of the funds contributed by the deceased, the signatories to the bank account jointly held the legal title to those funds – *Standing v. Bowring (1885) 31 Ch. D. 282* – since there was no express statement of the destination of the beneficial interests in the total funds either during the deceased’s lifetime or after his death. But equity recognized a presumption that, when the deceased opened the joint bank account, there was no intention on his part to divest himself of exclusive ownership and control of the funds in the account and constitute the Plaintiff and the Defendants as joint tenants of it. Equity leans against a joint tenancy. It interposes a presumption against an intention to create a joint tenancy and presumes that the funds are to be held on a resulting trust for the deceased. The

presumption against the creation of a joint tenancy is, however, rebuttable by relevant evidence of facts or circumstances tending to show the deceased's real purpose or intention in creating the account – Brathwaite v. Harper BB 2007 HC 28.

[19] The Court has a duty therefore to consider all of the evidence in order to ascertain the deceased's intention at the time of the opening of the accounts. Did the deceased intend to confer a gift of money on the Second Defendant or was the joint account opened as a matter of convenience?

[20] In the instant case, the deceased is the only person that contributed to the accounts. During his lifetime there were no withdrawals either by himself or the Second Defendant. It was only after the death of the deceased, that the Second Defendant withdrew the money and placed it into a joint account in her name and that of her son. It would seem that the account was treated as the deceased's personal property.

[21] It may be true that the deceased and the Second Defendant shared a close relationship but as gleaned from the cases Brathwaite v. Harper, Supra; Re Northell, deceased [2010] EWHC 1448 (Ch), a close relationship does not rebut the presumption of a resulting trust.

[22] The making of the draft Will is also extrinsic evidence which can be used to rebut the principle of *jus accrescendi* or the right of

survivorship. It is accepted that the draft Will cannot be admitted to proof as it was not done in strict compliance with the formal requirements of the statute. However in the case of Drakeford v. Colton [2012] All ER (D) 212 (May) where the Will was not executed, the Court used it as evidence to determine the deceased's intention.

CONCLUSION

- [23] It is the opinion of the Court that there is merit in the substantive matter before the Court and there is sufficient evidence to enable a Court to determine the true intention of the deceased. The real intention of the deceased can be determined by testing the evidence on cross-examination to ascertain whether the money in the joint bank account(s) belongs to the Second Defendant by virtue of survivorship or whether it reverts to the estate of the deceased under a resulting or implied trust.
- [24] The temporary injunction/freezing Order granted on the 23rd December, 2011 shall remain in force until the determination of the substantive matter or unless varied by a Court of competent jurisdiction.
- [25] Due to the length of time which has already elapsed, the parties are advised that all efforts should be made to bring this matter to a close

as expeditiously as possible. Failure to do so, could result in the temporary injunction being discharged or varied.

[26] By way of Case Management Conference the following Orders are made:

- (i) All parties to file and serve witness statements on or before the 26th July, 2016 with the necessary disclosure of documents attached thereto.
- (ii) All parties to file and serve written submissions on or before the 30th September, 2016.
- (iii) The matter is scheduled for pre-trial review on the 1st November, 2016.
- (iv) The matter is set down for trial on the 17th, 18th and 19th July, 2017.

PAMELA A. BECKLES
Judge of the High Court