

~~THE~~EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 388 OF 2005

BETWEEN:

CLARA FALBY
(Acting herein by her attorneys on record
WENDELL BRIAN FALBY of Brooklyn, New York
And SHARON MICHELLE JOHN nee FALBY of Queens, New York)

Claimant

v

VERONA PRIMUS

Defendant

Appearances: Ms. Ada Johnson for the Claimant
Mr. Parnel Campbell Q.C. and Mr. Macaulay Peters for the Defendant

2006: December 19
2007: May 18

JUDGMENT

[1] **THOM, J:** The Claimant Clara Falby is the wife of John Falby who died intestate on July 26, 2005.

[2] It is not disputed that the Claimant and John Falby lived in their matrimonial home at Mesopotamia. John Falby was a Public Servant. The Claimant had a traders' licence and operated a retail shop in the lower storey of the matrimonial home. They had a joint "and/or" account number 39264 (hereinafter referred to as "the Account") at the St. Vincent Cooperative Bank (hereinafter referred to as "the Bank"). The Claimant emigrated to the United States of America in 1994 and has not returned to St. Vincent and the Grenadines since. After the Claimant emigrated to the United States of America, the Defendant went to live at the matrimonial home. There is a dispute as to the Defendant's status that is

whether she was purely a domestic help or the common law wife of John Falby. On August 17, 2004 on the instructions of John Falby the Defendant's name was added to the Account. The Account was then in the name of Clara Falby and/or John Falby and/or Verona Primus. John Falby died on 26th July 2005 intestate. On August 8, 2005 the Defendant withdrew all of the funds from the account a total of \$25,367.17 and closed the account. She opened an account number 72310 in her own name at the same bank, and deposited the said \$25,367.17 into her account.

- [3] The Claimant claims the amount of \$25,184.55 which was in the Account.
- [4] The Claimant alleges in her statement of claim that the Defendant was a caretaker of John Falby and was put in a position of trust when her name was added to the account to enable her to withdraw money for the benefit of and on behalf of Mr. Falby. The Claimant alleges further that she is the rightful owner and or beneficiary in the estate of John Falby deceased and as such has an interest in the account.
- [5] The Defendant in her defence alleges that she being a joint holder of the Account she was beneficially entitled to the same and was entitled to deal with the funds as she saw fit. The Defendant alleges that there was a presumption of advancement.
- [6] In her counterclaim the Defendant claims inter alia an order declaring that she is beneficially entitled to the sum of \$25,367.17 (together with any interest accrued thereon) standing in her name in account number 72310 at the Bank.
- [7] Brian Falby the son of the Claimant and John Falby testified on behalf of the Claimant.
- [8] The Defendant testified on her own behalf and called five witnesses being Casper Samuel, Godfrey Rodney, Hermina Gordon, Christy Thomas and Melissa Joseph.
- [9] The evidence of Brian Falby is that he is the son of the Claimant and John Falby. John Falby died on the 26th day of July 2005. While John Falby was alive he and the Claimant

maintained the Account at the Bank. John Falby was the principal depositor. The Claimant resides in the USA. She suffered a stroke, she cannot walk and is dependant on her children. The Defendant worked as a domestic help for John Falby. She stayed at his home. The Defendant has five children. John Falby was a generous man. He purchased shares for the Defendant's grandson at the Building and Loan Association. When he visited John Falby during 2004 he saw the Defendant and her grandson at the home. He learnt she was the domestic helper. John Falby suffered a heart attack in June 2004. On 17th August 2004 the Defendant's name was added to the account to enable her to withdraw money on behalf of John Falby and for his benefit. The Claimant did not consent to the Defendant's name being added to the account. The Claimant was not aware of the addition of the Defendant's name to the account until after the death of John Falby.

[10] Under cross-examination the witness agreed that he migrated to the United States of America in 1981 and he first returned to St. Vincent and the Grenadines in January 2003. During this visit he spent four days in St. Vincent. He did not stay at his father's home but at the home of his maternal aunt. He spent one full day and the better part of two days with his father. He next returned to St. Vincent and the Grenadines in 2005 for his father's funeral. Since the Claimant migrated to the United States of America she never returned to St. Vincent and the Grenadines. John Falby never visited the Claimant in the United States of America. The witness could not say whether the Claimant deposited any money into the account. He could not say what the sleeping arrangement at his father's home was since the Claimant migrated to the United States of America.

[11] The Defendant in her evidence in chief testified that in July 1984 she commenced a secret intimate relationship with John Falby. In 1994 when the Claimant migrated to the United States of America John Falby invited her to live with him as his common law spouse. She moved into John Falby's home at Mesopotamia and they lived together as common law spouse from 1994 until John Falby died in July 2005. In 2002 he grandson who was then nine (9) months old commenced living with herself and John Falby. John Falby treated him as his child and bought some shares for him in the Building and Loan Association. She has five children and she worked as a skilled farm hand on banana farms to maintain

her children. John Falby on several occasions sent her to deposit money into the Account and to withdraw money from the Account. John Falby would fill in the withdrawal and deposit slips and sign them. In August 2004 John Falby added her name to the Account and then treated the Account as belonging to them jointly. After John Falby died on July 26, 2005, on August 8, 2005 she withdrew the sum of \$25,367.17 from the Account, closed the Account and opened an account at the said bank in her sole name.

[12] Under cross-examination the witness denied that she worked with John Falby and reiterated that she lived with him as his spouse. They slept together. She agreed that John Falby did not consider marrying her. While she lived with John Falby he had no contact with his wife. He did not send any money for her. She agreed that she did not deposit any of her own money into the account. The money that was deposited into the account was primarily John Falby's Public Service pension along with his National Insurance Pension. The witness agreed that money was withdrawn from the account according to John Falby's needs at his request. After John Falby was released from hospital in 2005 one day when she returned from Kingstown John Falby advised her to go to the Bank to sign some documents. He told her "if you don't go you will lose." She went to the Bank and signed the documents. She was not aware that the Claimant was also a joint owner of the account. She subsequently agreed the Claimant's name was on the account. She agreed that John Falby put her name on the account because it was convenient to do so. She later testified under re-examination that she did not know the meaning of convenience. She understood that if she did not go to the Bank and sign the documents she would not get the money but if she did it would be hers.

[13] The witness Melissa Joseph testified that she is an employee of the Bank and she knew the deceased John Falby as a customer of the Bank. He operated the account which was in the names of Clara Falby and/or John Falby. On 17th August 2004 John Falby went to the Bank and gave instructions for the addition of the name of the Defendant to the account. Subsequently the Defendant went to the Bank and signed documents. The witness testified she dealt with the transaction. The witness further testified that prior to August 2004, the Defendant regularly made withdrawal and deposits on behalf of John

Falby who signed the slips. On August 8, 2005 the Defendant withdrew all of the funds from the Account and opened an account in her sold name. The witness explained that there was a difference between a “joint account” and an “and/or account.” In the case of a joint account both holders must consent to the transaction, whereas with an “and/or” account either holder could deal with the Account. The Account was an and/or account.

[14] Under cross-examination the witness stated she was not certain of the date when the account was opened. Normally when a name was added the account would have a date of the addition of the name. The Account had no indication of either John Falby or the Claimant’s name being added to the Account. In the case of an and/or account the Bank would act on the instruction of one account holder. This was done when the Defendant withdrew all of the funds from the Account.

[15] The other witnesses for the Defendant all testified that they have known the Defendant to live with John Falby at John Falby’s home and the Defendant was referred to as Mrs. Falby by persons living in the area. She assisted John Falby in the shop.

[16] The issue to be determined by the Court is whether the Claimant is entitled to the \$25,184.55 in the Defendant’s account at the Bank.

[17] Learned Counsel for the Claimant submitted that the Defendant is not entitled to the money. There was no resulting trust in favour of the Defendant. The Defendant did not contribute to the funds. There was no common law relationship between the Defendant and John Falby and there was no intention for the Defendant to benefit from the Account. The Defendant was in charge of the money as a trustee and had a fiduciary duty to act in good faith to keep the money safe for the benefit of the Claimant after the death of her husband.

[18] Learned Queen’s Counsel for the Defendant submitted that the only inference that could be drawn from the evidence is that the action of John Falby was deliberately calculated to confer a benefit on the Defendant and amounted in law to a presumption of advancement.

The Defendant being one of the joint holders she was entitled to withdraw the money without being liable to the Claimant or the estate of John Falby or to any one else.

[19] Learned Queen's counsel also submitted that a joint and/or account between two or more persons renders all such joint holders beneficially entitled to the entire funds standing in the account, unless there is an agreement or arrangement between the joint holders to the contrary. Learned Queen's Counsel referred the Court to **Haslburys Laws of England** 4th Edition Volume 3(1) paragraph 154, and the cases of **Marshall v Crutwell** [1875] L.R. Eq. 328; **McEvans v The Belfast Banking Company Ltd** [1935] A.C. p. 24; **Cage and Another v King** [1961] 1 Q.B. 188; **Re Bishop National Provincial Bank Ltd v Bishop and Others** [1964] 1 Ch. p. 460.

[20] Having seen and heard the witnesses I find both the Claimant's witness Brian Falby and the Defendant to be truthful. I find the following facts being that John Falby and the Claimant were married. The Claimant emigrated to the United States in 1994 and has not returned to St. Vincent and the Grenadines. Prior to emigrating to the United States of America the Claimant operated a shop on the lower storey of the matrimonial home. After she left for the United States of America John Falby continued to operate the shop. John Falby and the Claimant had a joint "and/or" account No. 39264 at the St. Vincent Cooperative Bank Ltd. In 1994 at the request of John Falby the Defendant went to reside at the matrimonial home of John Falby. I believe the testimony of the Defendant that she lived in a common law union with John Falby. Her testimony was not contradicted. The sole witness for the Claimant Brian Falby only visited St. Vincent and the Grenadines once during the ten (10) year period that the Defendant lived with John Falby. Brian Falby spent only four days in St. Vincent and the Grenadines. During that period he did not stay at his father's home. He visited him during the day. He was not aware of the sleeping arrangements in the home. He observed the Defendant and her grandson at the home, he enquired about her status and John Falby gave him an explanation. This in my opinion does not in any way contradict the testimony of the Defendant that she was the common law spouse of John Falby. Prior to John Falby's death the Defendant conducted John Falby's banking business on his instructions. In June 2004 John Falby suffered a heart

attack. In August 2004 John Falby went to the Bank and made arrangements for the Defendant's name to be added to the Account as a joint account holder. The Account was then in the names of Clara Falby and/or John Falby and/or Verona Primus. The Defendant contributed no funds of her own to the account. John Falby died on the 26th day of July 2005. On August 8, 2005 the Defendant withdrew all of the funds from the Account and opened an account in her sole name.

[21] My research did not reveal any case of a joint account with the holders being the wife, husband and common law spouse and Counsel on either side did not refer me to any. The principle that emerges from the cases **National Provincial Bank Ltd v Bishop and Others** [1964] 1 Ch, 460; **Cage and Another v King, Helestine v Helestine** [1977] 1 AER 952 and the Privy Council decision of **Helga Stoeckert v Megie Geddes** (Executrix of the estate of Paul Geddes) No. 56 of 2003 is that where there is no indication that a joint account was kept for a specific or limited purpose each account holder can withdraw from it for his or her own benefit and any property purchased on investment made with such funds belongs to the person in whose name it was purchased or invested. If a joint account was kept only for administrative convenience, then the money put into it belongs to the account holder who provided it.

[22] In **National Provincial Bank Ltd** Stamp J said at p. 456:

“Where a husband and wife open a joint account at a bank on terms that cheques may be drawn on the account by either of them, then in my judgment in the absence of facts or circumstances which indicate that the account was intended or was kept for some specific or limited purpose, each spouse can draw upon it not only for the benefit of both spouses but for his or her own benefit. Each spouse in drawing money out of the account is to be treated as doing so with the authority of the other and in my judgment, if one of the spouses purchases a chattel for his own benefit or an investment in his or her own name, that chattel or investment belongs to the person in whose name it is purchased or invested; for in such a case there is in my judgment no equity in the other spouse to displace the legal ownership of the one in whose name the investment is purchase. What is purchased is not to be regarded as purchased out of a fund belonging to the spouses in the proportion in which they contribute to the account or in equal proportions, but out of a pool or fund of which they were at law and in equity joint tenants. It also follows that if one of the spouses draws on the account to make a purchase in the joint names of the spouses, the property purchased, since it is

purchased in joint names is prima facie, joint property and there is no equity to displace the joint legal ownership.”

[23] While in **Helga Stoeckert’s case** the Privy Council confirmed the decision of the Court of Appeal of Jamaica that the Appellant was not entitled to the funds in the joint account. The Court found that the addition of the Appellant’s name to the Account was to facilitate her ability to conveniently access the accounts which were overseas when she traveled overseas.

[24] In **Helga Stoeckert’s case** the Appellant had lived in a common law relationship with Paul Geddes (deceased) for approximately thirty years. During this period Paul Geddes added her name to bank accounts held overseas. When they separated she brought a claim in which she sought inter alia a declaration that she was entitled to one half share of the money in the bank accounts. On the evidence the Court did not find that the addition of Ms. Stoeckert’s name to the bank account as indicative of an intention that she would have a beneficial interest in the money in the accounts. Rattray P stated:

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

[25] In **Marshall v Crutwell** where the husband in adding his wife’s name to the joint account told the Bank Manager that the balance of the account would belong to the survivor of himself and his wife and money withdrawn was used for household expenses, the Court held that the circumstances were such as to make it clear that the joint account was opened for a specific purpose namely in order to enable the household to be managed by the wife during the husband’s illness.

[26] What are the circumstances in relation to the joint and/or account in the present case?

[27] The account was in the name of the Claimant, John Falby and the Defendant. There is no evidence that either the Claimant or the Defendant contributed any money to the account. The Defendant lived with John Falby from 1994 until his death in 2004. She took care of him. When he suffered a heart attack in June 2004 and was hospitalized she took care of

his needs. John Falby subsequently arranged for the Defendant's name to be added to the account and advised the Defendant that if she did not go to the Bank to sign the documents "she will lose". The Claimant's witness Brian Falby agreed that John Falby had already made provisions for all of his children by transferring real property to them. After the Defendant's name was added John Falby continued to withdraw money from the account in the same manner by signing the withdrawal slips and the Defendant would take same to the Bank. Various sums ranging from \$600 to \$3,000 were withdrawn. There was one withdrawal slip where the Defendant signed the withdrawal slip withdrawing \$500.00 from the account on November 13, 2004, that is after her name was added to the account.

[28] Having examined the activity statement of the Account and in particular the period after the Defendant's name was added to the Account; I find that there was no fixed pattern of withdrawal from the Account. After the Defendant's name was added to the Account the number of withdrawals were significantly reduced. In 2005 before the Account was closed a single withdrawal was made from the Account. This was on 4th April 2004 when \$2,700.00 was withdrawn from the Account.

[29] In view of the circumstances outlined above I do not find that the Defendant's name was added merely for administrative convenience, since John Falby continued to sign slips in the manner he did before he added the Defendant's name, the Defendant withdrew from the Account on her own and John Falby by his conduct in advising the Defendant that she would lose if she did not go to the bank and sign the documents demonstrated that he intended her to have a beneficial interest in the Account. He intended to provide for her in the event of his death. John Falby added the Defendant's name to the Account approximately two months after he suffered a heart attack and was hospitalized during which time the Defendant took care of him. The Account being an and/or account John Falby did not require the consent of the Claimant to add the Defendant's name to the Account. The Account being an and/or account the Defendant was entitled to withdraw money from the Account without the consent of the Claimant or anyone.

[30] The Claim is dismissed. Judgment is entered for the Defendant on the Counterclaim. It is hereby ordered and I do hereby declare that the Defendant is beneficially entitled to the sum of \$25,367.17 together with any interest accrued thereon standing in the Defendant's name in Account Number 72310 at the St. Vincent Cooperative Bank Ltd.

[31] The Claimant shall pay the Defendant costs in the sum of \$7,555.37.

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Gertel Thom
HIGH COURT JUDGE