

ANGUILLA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHCV 0098/2008

BETWEEN:

GWENNETH WEBSTER

Claimant

And

NATIONAL BANK OF ANGUILLA LIMITED

Defendant

Before: The Hon. Madame Justice Louise Blenman

Appearances:

Ms. Tara Ruan for the Claimant

Ms. Merline Barrett for the Defendant

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2010: October 12
November 20
December 22
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JUDGMENT

[1] **BLENMAN, J:** Ms. Gwenneth Webster brings this claim against the National Bank of Anguilla Limited (The bank) on the basis of breach of contract. She seeks to recover from the bank her monies which she says that the bank negligently or unlawfully allowed her son, Mr. Akeame Mussington, to withdraw from her US dollars account. The bank denies that it acted negligently or in breach of contract in allowing Mr. Akeame Mussington to withdraw the monies.

Background

- [2] Ms. Webster opened a bank account with the bank. She says that she intended to be the sole account holder. During the process of opening the account, Ms. Webster states, that she requested the bank to put the names of her two minor children on the account, in the event that "*something untoward*" happened to her, the children would be named as the beneficiaries of the proceeds of the account.
- [3] She never intended to open a joint account. She says that she signed the Signature Account Load Sheet for the Authorized Signature Card and she signed in both signature boxes card. As a consequence, she was the only authorized signature for the account. In addition, she alone signed the "Agreement re: Joint Account" and the "Agreement re: Operation of Account". This resulted in the conclusion of a contract in relation to the opening of the US dollars account between herself and the bank, exclusively. The express terms of the agreement, she says stipulated that she alone was entitled to withdraw monies from the account. For four years, 2004-2008, she alone made withdrawals from the account.
- [4] However, on three occasions during, September 2008, the bank wrongfully or negligently permitted her son Mr. Akeame Mussington to withdraw a total of US\$8000.00 from her account. This was done without her permission or consent and in breach of contract. She is sure that he did not use her bank book in order to effect the withdrawals.
- [5] She says, further, that there was an implied term of the contract that she alone would be permitted to withdraw monies from the account.
- [6] The bank asserts that Ms. Webster had a joint account in her name and that of her son Mr. Akaeme Mussington and daughter Ms. Deja Webster. The bank denies

that it acted in breach of contract or that it was negligent when it caused the total sum of US\$8000.00 to be paid to Mr. Akeame Mussington.

- [7] The bank states that Ms. Webster opened a joint account in her name and that of her two children, Ms. Deja Webster and Mr. Akeame Mussington and did not indicate that the reason for so doing was in the event of something untoward happening to her.
- [8] The bank agrees that Ms. Webster signed the agreement in relation to the joint account and the agreement in relation to the operation of account and Signature Load Sheet. However, since her children were joint account holders, accordingly on attaining the age of maturity each of her children could have properly withdrawn monies from the joint account. In addition, the bank specifically denies that Ms. Webster said that she wanted a beneficiary account. In fact, the bank has offers no such accounts. The bank states, further, that its officer Mr. Richardson told Ms. Webster, on her opening the account, that on each of her children attaining majority they would be entitled to withdraw monies from the account.
- [9] The monies that were paid to Mr. Akeame Mussington were lawfully done, since he was an authorized holder of the joint account which Ms. Webster had created.

Issues

- [10] The issues that arise for the court to resolve are as follows-
 - (a) What is the nature of the account that Ms. Gwenneth Webster opened?
 - (b) Whether Mr. Akeame Mussington was legally entitled to withdraw monies from the account.

Evidence

- [11] Ms. Webster testified on her own behalf. Ms. Carol Morton and Mr. Glenford Richardson gave evidence on behalf of the bank.

Claimants Submissions

Nature of the Account

- [12] Learned Counsel Ms. Tara Ruan submitted that the starting position for the court's consideration is to examine the Account Opening Agreements in order to determine the terms upon which the deposit was made. The governing principle as it relates to deposits with minors is that in the case of joint deposit accounts, in the name of an adult and a minor, the contract depends on the terms on which the deposit is made. See **Halsbury's Laws of England, Volume 3, paragraph 43 (minors)**.
- [13] The terms of the agreement are as set out in the Account Opening Agreements. Ms. Ruan referred the court to the law cited in The *Practice and Law of Banking, H.P. Sheldon (17th Ed)* is instructive on page 249 in which it is stated:-

"When a joint account is opened, it is advisable to get all the parties concerned to state in writing what signatures are necessary for operations on the account. Unless this is done the banker is not safe in honouring any cheques unless signed by all the parties and if, for instance, an account is opened by one party in the joint names of himself and another, without the authority of that other, the latter must, nevertheless join in signing before the banker can safely permit any withdrawal. If the parties wish less than all to have access to or be able to withdraw securities or articles left for safe custody in their joint names, and the like, then all such matters should be included in instructions signed by all."

- [14] Next, Learned Counsel Ms. Ruan referred the court to *The Practice and Law of Banking, H.P Sheldon (17th Ed) and Husband v. Davis (1851) CB 645*.
- [15] Ms. Ruan stated that on the plain and ordinary reading of the Agreement re: Operation of Account and Agreement re: Joint Account, Ms. Webster is the only binding signature to the account. Particular reference is made to the final paragraph of the agreement re: Operation of Account where it states: "*The agreement binds only the party by whom it is signed*". Additionally, Ms. Webster provided the only signature to the Account Load Sheet and Specimen Signature Card and the only "*undersigned*" to the agreement re: Joint Account was Ms. Webster and not her son.
- [16] Further, Ms. Ruan posited that the background facts are important to give context to the interpretation of the agreements in that Ms. Webster made it known repeatedly that she only wanted her children to be beneficiaries if she died and not be able to withdraw monies while she was alive. The court, however, should also look at what was legally provided for under the agreement. It is not in dispute that Ms. Webster was the only binding signature; however the court must consider the plain and ordinary meaning of the terms to determine whether Mr. Akeame Mussington was legally entitled to withdraw the monies.
- [17] Ms. Ruan referred the court to the case of *Gene B. Samuel v. Sheron Whinfield* ANUHCV2006/0557, in which there was a review of the law as it relates to interpretation of a commercial contract. The court applied the "*reasonable person test*." The language of the agreements to a "*reasonable man*" would confirm Ms. Webster's belief and understanding of the type of account she had opened (see *Investors Compensation Scheme Ltd vs West Bromwich Building Society et al* [1998] 1 All ER 98).

[18] Learned Counsel Ms. Ruan said that applying those principles to the facts of this case the “reasonable person” having regard to the provisions of the Account Opening Agreements, the language plainly provides that Ms. Webster herself is the only person authorized to operate the account. Ms. Ruan referred the court to the Account Opening Agreement where it provides the following:-

Page 60 agreement re: joint account

“...Each of the undersigned hereby authorizes the bank to accept from time to time as a sufficient discharge for any sum or sums withdrawn from the said account any receipt, cheque or other voucher signed by an (1) one of the undersigned, without any other signature or the consent or any others of the undersigned thereto.

[19] Learned Counsel Ms. Ruan submitted that on the plain and ordinary meaning of the words, this would mean that any one of the undersigned signatures could authorize withdrawals. The bank’s witnesses agreed that the only undersigned was Ms. Gwenneth Webster since Mr. Akeame Mussington had not signed on to this agreement even after he turned 18 years.

[20] Learned Counsel Ms. Ruan said that there are no compelling reasons for the court to imply that Mr. Akeame Mussington would be permitted to authorize withdrawals. There is no cogent evidence before the court to support such an inference. Neither of the Account Opening Agreements makes any reference to minors use and operation of the account. Mr. Glenford Richardson was not able to present the court with any notes he made or any witnesses to confirm that he in fact gave Ms. Webster information which would lead her to believe that Mr. Akeame Mussington could withdraw from the account. Ms. Ruan referred the court to the law as stated in *Gene B Samuel* ibid at paragraph 14 when it states that:

“Where the contract is in writing and signed, the party signing it is usually regarded as bounded by it. Although the primary obligations are contained

*in express terms, it is quite unusual for the parties to express all of the primary obligations, or to provide for every contingency. The court, in these circumstances, usually implies terms to fill out the gaps in the contract, based on the circumstances of the contractual relationship. See **Hughes v Greenwich London Borough Council** [1993] 4 All ER 577. The terms will be implied where there is a compelling reason, or put another way, when it is essential".*

- [21] Ms. Ruan further relied on the law stated in Chitty on Contracts Vol II (29th Ed, page 412 – 413) which cited **Jackson v White and Midland Bank Ltd** in which the court relied on the Account Opening Agreement to determine the signatures needed to authorize payment from an account. That case is distinguished on the grounds that the particular account agreement required two signatures. In Ms. Webster's agreements, the signature of the "undersigned" was required to authorize payments.
- [22] Ms. Ruan also referred the court to **Young v. Sealy** [1949] 1 All ER 92 in which the nephew was a joint account holder and signatory to the account. As such he had both the legal title and beneficial interest in the account.
- [23] Learned Counsel Ms. Ruan said that in the case at bar, the children did not have legal title to the account as they were not signatories to the account. What they had was beneficial interest if their mother should pass. In **Young v Sedley** *ibid* the question for determination was what was Miss Jarman's (depositor's) intention when she transferred her monies into the joint names of herself and her nephew. In **Young v Sedley** *ibid* the mandate was the usual one providing for either party to sign and the balance to go to the survivor. She maintained full control over the passbooks and the accounts. The nephew did not make any withdrawals from the account. In that case, however, the nephew did sign the joint authority for the bank but did not himself make withdrawals. At page 101 the court stated at paragraph E that:

"The deposit accounts, however, stood on a different footing and she wanted to deal with them during her lifetime as she wished. Only what was left at her death was to go to the co-depositor, who was never expected to pay anything into the account and was not, so long as she was alive, to draw anything out for himself."

- [24] Ms. Ruan submitted that while the minor children in the present case may have been named on the account, they were not signatories, neither was there any privity of contract as it relates to them. The children gave no consideration for the agreement. Furthermore, the court should take notice that Ms. Webster was able to close the account upon her instructions alone.
- [25] Ms. Ruan reiterated that Ms. Webster's intention was that her children would benefit upon her death but would not be able to operate the account. The bank did not offer trust accounts in that manner and gave Ms. Webster the joint account documents to sign. Ms. Ruan argued that this was not truly a joint account but rather the intention was to operate as a trust account for the children.
- [26] Ms. Ruan also relied on a Canadian case, as persuasive, from the Supreme Court of Canada: *Niles et al v. Lake* [1947] S.C.R. 291 where one sister opened a joint account with her sister. She deposited all of the funds and was found to have given all of the consideration for the agreement. Her sister signed the standard bank form agreement and in signing the court found that the sister had legal title to the account however the court also found that the sister did not have beneficial title because there was no intention to give beneficial title. The court regarded that the two sources of intention are from the signed bank deposit agreement and the oral evidence from the depositor. In the case at bar, it was clear from the documents that the only signatory to the account would be Ms. Webster. She would be the only person authorized to withdraw and sign. She maintained control over the bank book. In fact, to her knowledge her son Mr. Akeame Mussington did

not know her bank account number. She made her intentions clear to the bank officer at the time she opened the account and at another instance. Accordingly, the children did not have beneficial interest in the account during Ms. Webster's lifetime.

Whether the bank acted lawfully

- [27] Learned Counsel Ms. Ruan said the bank owed Ms. Webster a duty of care in contract and tort. Ms. Ruan submitted that the bank owed Ms. Webster a duty first in contract namely: to make payments only in accordance with the Account Opening Agreements. This duty the bank clearly breached when it allowed Mr. Akeame Mussington to make withdrawals from the account. Learned Counsel Ms. Ruan submitted that the bank owed Ms. Webster a duty of care in tort. It is stated in *Paget's Law of Banking* (10th Ed. Page 165) that "*A duty of care in tort may be held to exist where the events which give rise to the duty are simply outside the range of matters which can realistically be treated as within the scope of the contract.*"
- [28] Ms. Ruan maintained that Ms. Webster further relied on the representations by Mr. Glenford Richardson and the terms of the Account Opening Agreements which specified that she was the only authorized signature to the account. The bank similarly committed a tort in allowing Mr. Akeame Mussington to withdraw the money from the account. Ms. Webster is entitled to be compensated by the bank for these breaches.
- [29] Costs have been agreed in the sum of US\$2,500.00. Ms. Webster also claims a refund of the monies withdrawn from her account in the sum of US\$8,000.00 together with interest.

Defendant's Submissions

Nature of the Account

- [30] Learned Counsel Ms. Barrett said that the bank maintains that on the 15th December, 2004 Ms. Webster requested the bank to open a joint account in the name of herself and her then minor children, Ms. Deja Webster and Mr. Akeame Mussington. Prior to opening the account, Ms. Webster was told by Mr. Glenford Richardson that putting her minor children's names on the account would mean that the children will also be joint holders of the account but would not be permitted to withdraw any funds until they attain the age of 18 years.
- [31] Ms. Barrett said that Ms. Webster was reminded of this in July 2008 when she visited the bank's premises and spoke to Mr. Glen Richardson about her concern that her son Mr. Akeame Mussington may withdraw all the monies from the account. The bank's case also is that all material times Ms. Webster was aware that her son or her daughter would be permitted to make withdrawals from the account once he/she had attained the age of 18 years. Therefore, the bank's answer to the claim is that it is not and cannot be guilty of any breach of duty in permitting Ms. Webster's son, Mr. Akeame Mussington, to withdraw monies from the account because Mr. Akeame Mussington is one of the three joint owners of the account and was over 18 years of age at the date when he made the withdrawals from the account.
- [32] Ms. Barrett said that it is settled law that the relationship between a banker and its customer is that of debtor and creditor. By virtue of that relationship monies deposited into a bank account constitute a debt due to the customer by the bank See *Foley v. Hill* [1848] 2 HL Cas. 28. The customer therefore holds the legal title to the debt or the chose in action which vests immediately upon the making of the deposit. The position is the same where the account in question is a joint account.

See *Harold George Reid and another v. Herbert Grant and Greta Reid and another* (1976) 23 WIR 91.

- [33] Learned Counsel Ms. Barrett stated that the interest of the joint account holders vests immediately even where the transferee was not intended to be allowed to draw on the account until after the death of the transferee. This position was reinforced by *Collins J in Aroso v. Coutts & Co* [2002] 1 All 241 at 252 where the judge quoted the dicta of the High Court of Australia in *Russell v. Scott* (1936) 55 CLR 440 which reads thus:

"In equity, the deceased was entitled in her lifetime so to deal with the contractual rights conferred by a chose in action as to destroy all its value, namely, by withdrawing all the money at credit. But the elastic or flexible conceptions of equitable proprietary rights or interest do not require that, because this is so, the joint owner of the chose in action should in respect of the legal right vested in him be treated as a trustee to the entire extent to every possible kind of beneficial interest or enjoyment. Doubtless, a trustee he was during his lifetime, but the resulting trust upon which he held did not extend further than the donor intended; it did not exhaust the entire legal interest in every contingency. In the contingency of his surviving the donor and of the account then containing money, his legal interest was allowed to take effect unfettered by a trust. In respect of his just accrescendi his conscience would not be bound. For the resulting trust would be inconsistent with the true intention of that person whose presumed purpose it must depend."

- [34] Moreover, the fact that one of the joint account holders did not contribute to or draw upon the joint account did not prevent the person from having a beneficial interest in the account. See *Aroso v. Coutts & Co* *ibid*. Additionally, the fact that such a person did not even know of the existence of the account does not, by

itself, prevent such a person from having a beneficial interest therein. See *Aroso v. Coutts & Co; McEvoy v. The Belfast Banking Corporation* [1935] AC 24.

- [35] Furthermore, an account does not cease to be a joint account because one of the joint account holders was a minor at the time the account was opened and did not sign any of the account opening documents. In *McEvoy*, the joint account in question was opened in the name of the father and the plaintiff who was a minor at the time. After the death of the father, the plaintiff (who by then had attained majority) sued the bank for the payments made from the funds without his authorization. One of the defences raised was that the legal title to the money was never vested in the plaintiff because the bank only contracted with the father and for the son to succeed he had to prove an independent contract. This was rejected by the court. Lord Reid, in his judgment, said:

"...The argument, if correct, appears to be inconsistent with well established banking practice and is likely to impair the confidence in deposits made in joint names. I consider it to be quite unfounded....The suggestion is that where A deposits a sum of money with the bank in the names of A and B, payable to A or B, if B comes to the bank with the deposit receipt he has no right to demand the money from the bank or to sue them if his demand is in fact partly B's or possibly that A has acted with B's actual authority. For the contract, it is said, is between the bank and A alone. My Lords, to say this is to ignore the vital difference between a contract purporting to be made by A and B with the bank to pay A or B. In both cases, of course, payment to B would discharge the bank whether the bank contracted with A alone or with A or B. But the question is whether in the case put B has any rights against the bank if payment to him is refused. I have myself no doubt that in such a case B can sue the bank...."

- [36] The Learned Judge went on to say that the contract in question is to be considered as a contract made by A on behalf of himself and B and if A had actual authority from B to make the contract, then subject to the normal principles of ratification B can ratify the contract.
- [37] Ms. Barrett said that it is clear, therefore, from the authorities cited above that at the moment the joint account is opened, the legal title to the proceeds of the account is held by the joint account holders. The authorities above also hold that the beneficial title to the proceeds of a joint account will also vest in the joint account holders unless there is evidence to suggest that on the date the account was opened the intention of the parties or the party opening the account was that the beneficial title to the proceeds of the account would be retained by one party or the party opening the account.
- [38] It is clear from the facts that Ms. Webster, at all times, knew that the account that was opened on the 15th December, 2004 was a joint with herself and her children as joint account holders even though she was the one who provided all of the monies.
- [39] Advocating further, Ms. Barrett said that Ms. Webster knew, at all material times that the account was a joint account because she signed the account opening agreement which specifically stated that the account was a joint account. In July 2008, Ms. Webster was also reminded that the account was a joint account when she visited the bank to obtain advice from Mr. Richardson on how to protect her daughter Ms. Deja Webster and the consequences that would flow from the account being a joint account.
- [40] The cases have established that the fact that the children did not know of the existence of the account or did not sign any of the account opening documents or were minors at the time when the account was opened or may not have been intended to draw on the account while Ms. Webster was still alive did not prevent

the account from being a joint account. Furthermore, the cases have also shown that the interest of the joint account holders vest immediately even where the transferee was not intended to be allowed to draw on the account until after the death of the transferee.

- [41] Ms. Barrett maintained that the evidence clearly shows that the account was opened as a joint account in the name of Ms. Webster, her son, Mr. Akeame Mussington and her daughter, Ms. Deja Webster, and that at all times Ms. Webster knew and intended to open a joint account.

Whether the bank acted lawfully

- [42] Learned Counsel Ms. Barrett further submitted that the authorities clearly establish that at the moment the joint account is opened, the legal title to the proceeds of the account vests in and is held by Ms. Webster, Mr. Akeame Mussington and Ms. Deja Webster jointly. The authorities also show that the beneficial title to the proceeds of the account will also vest in the above named joint account holders unless there is evidence to suggest that at the date the account was opened the intention of Ms. Webster was that the beneficial title to the proceeds of the account would be retained by her. In order to determine who is permitted to make withdrawals from a joint account it is important to determine whether the beneficial interest in the account also vests in the account holders equally. To determine whether the beneficial interest in a joint account also vests in the joint account holders equally, it is important to determine the intention of the transferor or the party opening the account at the time of the opening of the account.
- [43] It is settled law that where it can be shown that the intention of the transferor or the party opening the account was to achieve some other objective other than making an outright gift the court could infer that the presumption of gift has been negated and hold that the beneficial interest in the account did not vest in the other account holders. In such a case the other account holders would hold the monies on

resulting trust for the transferor. See *O'Neil and Others v. IRC; Pecore v. Pecore*.

[44] In order to rebut the presumption that an outright gift was intended, evidence would have to be adduced as to the transferor's intent at the time of transfer. The court's duty is therefore to weigh all the evidence in determining what the transferor's intention was at the time the account was opened. The law is also clear that the account agreement though important is not conclusive of the issue. See the judgment of Douglas CJ in *Bank of Nova Scotia Trust Co (Caribbean) Ltd. v. Smith-Jordan* [1970] 15 WIR 522. The Learned Judge said that the Account Opening Agreement is just one aspect of the evidence that must be weighed by the court in coming to a decision. This was also the view taken by the Supreme Court of Canada in *Pecore v. Pecore*. In that case the court commented on the fact that the account agreement is rarely a good indicator of who has the beneficial interest in the proceeds of an account.

[45] In *Pecore v. Pecore* the court listed some of the types of the evidence that the court could look at in seeking to ascertain the transferor's intent. These include:

- i) Statements made to the officer at the time the account was being opened;
- ii) Evidence subsequent to the transfer (i.e. things said or done by the transferor afterward) although the trial judge must assess its reliability guarding against evidence that is self serving and tend to reflect a change in intention.
- iii) The account opening documents (including agreements, signature cards, and any other information relating to the account);

- iv) Evidence as to who had control and use of the funds in the account.

[46] Ms. Barrett said that it is clear that ascertaining the intention of the transferor would be of critical importance in determining who is entitled to withdraw from the account and in arriving at this intention all the facts must be taken into consideration.

[47] Ms. Webster's contention that Mr. Akeame Mussington is not one of the authorized signatures on the account is also flawed and not in line with the evidence in that:

- i) Mr. Akeame Mussington is listed as one of the authorized signatures on the signature cards for the account.
- ii) The claimant was informed when the account was opened that when Mr. Akeame Mussington came of age he would be able to make withdrawals from the account and was reminded of this fact in July 2008;
- iii) The absence of Mr. Akeame Mussington's signature from any of the Account Opening Agreements for the account is not fatal to the defendant's contention that Mr. Akeame Mussington was authorized to withdraw monies from the account because the agreements themselves do not indicate who is authorized to withdraw or if they did, did not say that only the person who signed the agreement is authorized to withdraw funds from the account;
- iv) Further, the absence of a specimen signature for Mr. Akeame Mussington on the signature card or the presence of Ms. Webster's signature on the signature card for Mr. Akeame

Mussington is also not fatal to the bank's claim that Mr. Akeame Mussington is authorized to withdraw funds from the account because the purpose of the specimen signature is to provide another method of identifying the person who is the authorized signature and therefore once this person can be identified the manner by which he is identified is irrelevant. In short, it is the person that is authorized, not the signature.

- [48] Ms. Barrett said the evidence is pellucid that Mr. Akeame Mussington was one of the authorized signatures to the account and that Ms. Webster was aware that he would have been able to withdraw once he became of age. Based on that evidence and the lack of any evidence indicating that he was not to be allowed to withdraw monies from the account, Ms. Barrett submitted that the beneficial interest in the proceeds of the joint account vests in all the account holders jointly and in the absence of any instructions to the contrary, and subject to the bank's internal procedures, the bank could lawfully act on the instructions received from any joint account holders to withdraw funds from the account. See *Caitlin v. Cyprus Finance Corporation* [1983] 1 All ER 809.
- [49] The fact that Ms. Webster was the only one who signed the agreement re: Joint Account or Agreement re: Operation of Account is not conclusive in relation to the ownership of the account or the persons permitted to withdraw monies there from. Neither is the fact that Ms. Webster was the only person to make withdrawals on the account up to the September 2008 especially because Ms. Webster's son Mr. Akeame Mussington was still a minor when the account was opened and would not have been permitted to withdraw monies from the account. The cases have demonstrated this. The bank has neither acted negligently nor in breach of its contract. Accordingly, the court should dismiss Ms. Webster's claim against the bank.

Court's Analysis and Conclusion

- [50] The court has reviewed the evidence adduced in the matter and has given deliberate consideration to the very helpful submissions of both Learned Counsel.
- [51] The following represent the court's observations and findings: In addressing the issues that have been identified, the court has come to the considered opinion that the resolution of this matter, to a large extent, turns not only on the oral evidence and the witness statements that were filed but also to a large extent the documentary evidence.

The nature of the Account

- [52] The court was privileged to have been afforded the opportunity to observe and assess the witnesses as they testified particularly during the cross examination that sought to test their credibility and reliability. On a review of the witnesses, it was evident that Mr. Richardson, the bank official, was a very straight forward and honest witness who told the court exactly what had transpired. Even though he had some discomfort with having to testify in court it was clear that this was born out of having to give evidence in the court setting. On the other hand, Ms. Webster was not very forthcoming or candid with the court. This is clearly born out of the fact that she seems to hold a grievance against the bank for what she perceives to be a wrong it has done to her. In addition, on quite a few occasions, particularly in relation to the type of account that she told Mr. Richardson that she wanted to open she was less than forthright with the court.
- [53] The court also did not believe her when she said that Mr. Richardson did not remind her, in July 2008, before her son Mr. Akeame Mussington had actually withdrawn the monies, that since he had become of age he would have been entitled to withdraw sums of money from the account.

- [54] In the court's view, very little if any turned on Ms. Morton's evidence, insofar as she was able to indicate what are the general policies and procedures of the bank.
- [55] The court does not believe nor accept Ms. Webster's evidence when, faced with the document that stated that her children's names were also listed as the account holder, she said that when she signed the documents and that they were given to her to sign but not to read. This makes very little sense coming from an intelligent witness.
- [56] Further, the court does not believe Ms. Webster when she said that at the time of opening the account she told Mr. Richardson, that she wanted her children to be listed on the account in the event something untoward happened to her. In fact, there is no such account that exists in the bank. The court does not accept, as Ms. Webster would have the court believe, that she told Mr. Richardson that she wanted her two children to be listed as beneficiaries of the account in the event of her death. The fact that the signature card lists the children as authorized signatures on the account together with Ms. Webster, reinforces the court's view.
- [57] It is undisputed that Ms. Webster provided all of the monies to the account even though the children were also named as the authorized signatures, as stated above. It is noteworthy that Ms. Webster said during cross examination that she did not ask whether the children could have withdrawn from the accounts because they were all minors.
- [58] The court believes Mr. Richardson that when Ms. Webster opened the account he told her it was a joint account she was opening. The court accepts Mr. Richardson's evidence that in July 2008 when Ms. Webster visited him, at the bank and expressed her concern about her son withdrawing her money, she was reminded by him that either her son or her daughter could withdraw monies from the account once they attained the age of 18 years.

- [59] The court is ineluctably driven to conclude that Ms. Webster opened a joint account in her name and that of her minor children, Ms. Deja Webster and Mr. Akeame Mussington. At the time of opening of the account. Mr. Richardson, who is her friend of long standing, told her that it was a joint account and that her children would not be permitted to withdraw any funds until the age of 18 years.
- [60] By way of emphasis, there is no doubt that at the time of opening the joint account Mr. Richardson explained to Ms. Webster that she was in the process of opening a joint account. The bank does not facilitate any account that is known as a beneficiary account. The court accepts Mr. Richardson's evidence on this aspect of the case and rejects Ms. Webster's evidence. There is no credible or reliable evidence on which it can be properly concluded that Ms. Webster, at the time of opening the account, told Mr. Richardson that while she wanted the children to benefit from the monies if she died but that she did not want them to use the account while she was alive.
- [61] It is instructive that paragraph 1 of the agreement re: joint account states:

"The undersigned, having opened a US savings deposit account numbered as indicated above with the aforementioned National Bank of Anguilla Ltd (the bank) in our joint names, in consideration thereof do hereby jointly and severally and each with the other or other of us and also with the bank that all monies now or which maybe hereafter deposited to the credit of the said account shall continue to be the joint property of the undersigned with a right of survivorship. Each of the undersigned in order to constitute effectively the said joint deposit account together with all of the interest which may accrue thereon. Each of the undersigned hereby authorize the bank to accept from time to time as sufficient discharge for any sum withdrawn from any account any receipt cheque or voucher signed by one of the undersigned, without any other signature or the consent of any of the other undersigned thereto."

- [62] Interestingly, Ms. Webster relies on the above paragraph not for the purpose of saying that the account was a joint account but rather that she alone signed the account and was therefore the sole authorized signatory.
- [63] In view of the totality of the evidence, the court is satisfied that there is cogent evidence before the court on which the court concludes that Ms. Webster, at the time of opening the account, knew that she was opening a joint account in her name and that of her children, Ms. Deja Webster and Mr. Akeame Mussington. A significant amount of weight is attached to Mr. Richardson's evidence, on this aspect of the matter namely that he specifically told Ms. Webster that it was a joint account that she was creating.
- [64] It is evident that the Agreement re: Joint Account and Agreement re: Operation of Account were signed by Ms. Webster. It is clear also that Ms. Webster signed in both places as the authorized signatory to the accounts.
- [65] The court finds support for its conclusion that Ms. Webster did not tell Mr. Richardson that she wanted the children's name on the account as beneficiaries by the fact that at least one of the document which she signed was headed re: Joint Account. The fact that Ms. Webster alone signed as the signatory on both places of the agreement re: Joint Account does not in any way detract from its status as a joint account.
- [66] Where the contract is in writing and signed the party signing it is usually regarded as bounded by it. Although the primary obligations are contained in express terms, it is quite unusual for the parties to express all of the primary obligations, or provide for every contingency. The court in these circumstances usually implies terms to fill out the gaps in the contract, based on the circumstances of the contractual relationship. See *Hughes v Greenwich London Borough* Council

[1993] 4 All ER 577. The terms will be implied where there is a compelling reason, or put another way, when it is essential.

[67] In the case at Bar, the court is of the view that it is essential or there are compelling reasons to conclude that the terms Mr. Richardson explained to Ms. Webster in relation to her children attaining maturity are part of the agreement. Insofar as the children who were named as account holders with Ms. Webster were minors at the time of opening the account, it must be implied that upon each of them attaining majority they would be allowed to make withdrawals. This accords with the bank's policies and procedures.

[68] In view of the totality of circumstances, as stated above the court has no doubt that the account which Ms. Webster created was a joint account and that at all times she intended and knew that she was opening a joint account.

Whether the bank acted lawfully

[69] The next issue the court has to resolve is whether the bank acted either negligently or in breach of its contractual duty when it permitted Mr. Akeame Mussington to make the withdrawals. This brings into sharp focus whether Mr. Akeame Mussington was legally entitled to make withdrawals.

[70] On this issue, it is noteworthy that Mr. Richardson was very convincing and candid when he said that in July 2008, Ms. Webster went to see him and expressed her concern that should she pass, her son Mr. Akeame Mussington would take all of the money and not give any to his sister. He told her that if she had those concerns she should change the joint account by taking Mr. Akeame Mussington's name off. The court has no reason to disbelieve him.

[71] The law is very clear, the customer in whose name an account is opened holds the legal title to the debt or a chose in action which vests immediately upon a deposit

being made. See *Harold George Reid and Another v Herbert Grant and Greta Reid and Another* *ibid*. It is the law that the interest of the joint account holders vests immediately. See *Aroso v Coutts & Co* *ibid* at Page 252.

- [72] In order to determine whether Mr. Akeame Mussington was entitled to withdraw monies from the account it must be ascertained whether he held the beneficial interest in the account equally with the other account holders. In so doing, the court would have to find out what Ms. Webster's intention was at the time when she opened the joint account.
- [73] It is the law that where the intention of the transferor or party opening the account was to achieve some other purpose other than an outright gift the court would infer that the presumption of gift has been negated. See *Niles et al v Lake* *ibid*; *O'Neil and other v IRC* *ibid*; *Pecore v Pecore* *ibid*. The court in its efforts to determine whether the presumption was rebutted needs to look at the evidence in the round and ascertain the depositor's intention at the time of opening the account. See *Bank of Nova Scotia Trust Co (Caribbean) Ltd v Smith-Jordan* [1970] 15 WIR 522.
- [74] The evidence that should be analysed include statements made to the bank official at the time of opening the account; things said or done by the transferor or person opening the account afterward; the account opening documents, including the agreement; the evidence as to who had control of the funds.
- [75] In this regard, the court finds the following evidence very instructive: Mr. Akeame Mussington was one of the authorized signatures to the account and Ms. Webster was aware, at the time of opening the account, that he would have been able to make withdrawals from the account when he became of age. Ms. Webster had control of the bank account and deposited the monies. In July, 2008 she was reminded by Mr. Richardson that since Mr. Akeame Mussington was now of age he could make withdrawals. The signature cards listed Mr. Akeame Mussington as

one of the signatures to the account even though he did not sign the specimen signature card. There was no express or implied instruction given by Ms. Webster that when Mr. Akeame Mussington became of age that he should not be permitted to make withdrawals.

[76] In view of the totality of evidence, the court is of the considered opinion that Ms. Webster intended for her son Mr. Akeame Mussington to share the beneficial interest in the account, with his mother and sister Ms. Deja Webster.

[77] In view of the very cogent evidence Ms. Webster was therefore failed to persuade the court that she did not intend Mr. Akeame Mussington and Ms. Deja Webster to be beneficial holders of the account. Further there is no basis upon which the court to conclude that the bank in allowing Mr. Akeame Mussington to withdraw the monies from the joint account either acted negligently or unlawfully. Neither did the bank breach any terms of the contract.

[78] Accordingly, the bank could properly allow withdrawals from the account on the instructions from any of the beneficial holders of the account. See *Caitlin v Cyprus Finance Corporation* [1983] 1 All ER 809.

[79] Ms. Webster has therefore failed to make out her claim against the bank.

Conclusion

- [80] In view of the premises Ms. Gwenneth Webster's claim against the National Bank of Anguilla Limited is dismissed.
- [81] Costs as agreed in the sum of US\$2,500.00.
- [82] The court gratefully acknowledges the tremendous assistance of both Learned Counsel.

Louise Esther Blenman
Resident High Court Judge
Anguilla