FEDERATION OF ST CHRISTOPHER AND NEVIS
ST CHRISTOPHER CIRCUIT

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO SKBHCV 2010/0244

BETWEEN:

MARIAN LOUISE NORFORD
(Administratrix of the Estate of Mabel Norford, deceased

Claimant

AND

ST CHRISTOPHER-NEVIS-ANGUILLA NATIONAL BANK LTD

Defendant

Appearances
On the written submissions of:
Mr Nassibou Butler for the Claimant
Mr Stephen Hector and Mrs Ermelin Sebastian-Bobb for the Defendant

……..
2011: June 15
2012: January 12
……..

DECISION

Introduction and background

[1] LANNS, M: In the year 1976, Mable Norford, late of Ponds Pasture, Basseterre opened a bank account with the St Kitts-Nevis-Anguilla National Bank. She was the only authorised signatory for the account. She alone signed the Agreement in relation to the operation of the account. This resulted into the conclusion of a contract in relation to the opening and operation of the account between Mable Norford and the Defendant Bank exclusively. The signature card indicated that the name of the account was "Trust". The

letters and words "T/F Franklyn and / Louise" appear after Mable Norford's signature. She deposited and withdrew monies from the account freely from time to time between 1976 and 2008.

[2] Mable Norford died intestate on 30th June 2008. Upon her death a balance remained in the account.

[3] Letters of Administration of the Estate which by law devolves to and vests in the personal representative of Mabel Norford were on the 17th day of November 2009 granted by the Eastern Caribbean Supreme Court at the Registry thereof at Basseterre in the Island of St Christopher to Marian Louise Norford, (Louise Norford) the natural daughter, and one of the persons entitled to share in the estate of the deceased Mable Norford.

[4] According to the Grant of Letters of Administration, an Affidavit in verification of the account of the estate of the deceased has been duly filed wherein it is shown that the gross value of the deceased estate amounts to $9,000. The documents leading to the Grant of Letters of Administration are not before the court so the court has no knowledge as to the contents of the inventory of the estate.

[5] On 17th January 2011, Louise Norford (in her capacity as Administratrix of the estate of Mable Norford, deceased) filed an Amended Claim Form and Statement of Claim in which she claims against the Defendant Bank payment of the sum of $8,267,67 which she says is the amount standing to the credit of Mabel Norford, deceased on her savings account No 1000005 at the Defendant Bank. Louise Norford asserts that this sum of money forms part of the estate of Mable Norford. She pleads that despite repeated demands, the Defendant Bank refuses to deliver the money.

[6] Louise Norford also claims a Declaration that all monies standing to the credit of Mabel Norford, deceased, on her savings account No 1009905 at the Defendant Bank forms part of the estate of Mabel Norford, and as such, are payable to Marian Louise Norford, as Administratrix of the Estate.

[7] Louise Norford also claims interest pursuant to Section 27 of the West Indies Associated States Supreme Court Act No 17 of 1975, costs and further and other relief.

[8] In paragraphs 5 to 6 of the Amended Statement of Claim, Louise Norford alleges, among other things that in or about 1975, her mother, Mable Norford opened a savings account No 1009905 at the Defendant Bank. Louise Norford says that she was present when the account was opened, and heard a conversation between her mother and the Bank clerk. Mabel Norford is said to have told the clerk the reason for opening the account, whereupon the clerk is said to have advised Mabel Norford what she had to do in order for any of her children to make deposits or withdraw money from the account on her behalf in case of her illness or death. A savings account was accordingly opened in the names "Mabel N. Norford T/F Franklyn &/or Louise Norford" which is to say Mabel N. Norford, in trust for Louise Norford and or Franklyn Norford.

[9] Louise Norford asserts that her mother withdrew monies from the account periodically, and at one time during her illness she sent her son Franklyn to withdraw the sum of $400.00

[10] Louise Norford pleads that her mother has always said that whatever money she has left on the Bank at the time of her death was to cover her funeral expenses, and that she has never intended that the monies held on the account was to be held by her for her children

[11] Louise Norford further pleads that in her capacity as Administratrix of the Estate of her deceased mother, she attended at the Defendant Bank to withdraw the money standing on Account No 1009905, but she was told that she could not draw the money because it was trust property. Louise Norford says that by reason of the Bank's refusal to pay the money, she is unable to settle her mother's funeral expenses and just debts.

[12] Hence the suit.

[13] The Defendant Bank filed an Amended Defence on 31st January 2011, in which it neither admit nor deny most of the allegations or contentions of the Claimant. It however, specifically refutes the allegation that a conversation between the deceased and a Bank clerk took place, in which the clerk is alleged to have advised the Claimant to state "Mable Norford in trust for any one of her children". Also, it specifically denies that Franklyn withdrew moneys from the account. The Defendant Bank asserts that the deceased opened the Account as a trust account for the benefit of Franklyn and or Louise Norford and that the deceased intended to create a trust for them.

[14] The Defendant contends that the monies do not form part of the estate of the deceased, but, are held on trust for Franklyn Norford and or Louise Norford. Furthermore, the Defendant Bank pleads that the monies held in the account are trust monies and are to be dealt with in accordance with the Trust Act of 1996.

Case management Conference

[15] At a case management conference held on 15th March 2011, discussions ensued as to whether or not this matter should go to trial or whether the parties should attempt to settle the matter privately, or by way of mediation. In the end, the case management conference was adjourned to 5th April 2011 to allow the parties to consider relevant authorities and to hold discussions with a view to settlement.

[16] When the case conference resumed on 5th April 2011, the parties had not met. They sought a further adjournment to 4th May 2011. By 4th May 2011 when the matter next came before me, Mr Butler had filed skeletal arguments and authorities but the Defendant had not had an opportunity to reply. Still, they had not met to negotiate a settlement. The Defendant was given an opportunity to reply to the written submissions of the Claimant, and the matter was further adjourned to 15th June 2011 for further case conference.

[17] When the matter came back before me, the parties requested that the court consider the issue as to whether or not the money held at the Defendant Bank in Account No 1009905 in the name of "Marie N. Norford T/F Franklyn & or Louise Norford" forms part of the estate

of the deceased Mabel Norford, or whether the account was held on trust in favour of Louise Norford and Franklyn Norford - the children of the deceased, and therefore falls to be managed in accordance with the Trust Act of 1996.

[18] To my mind, these are the only issues in the case, and it would appear that I am being asked, to conduct a mini trial, at this stage of the proceedings, without witness statements or without the aid of full evidence, and without any undertaking by either counsel to be bound by any decision I make, with the possibility that any decision I make will be open to appeal, and be subject to be remitted to the master for directions for trial. This seems to be an inappropriate use of the court's resources.

[19] Notwithstanding these concerns, for what it is worth, I go on to consider the submissions put forward by counsel for the parties.

Claimant's submissions

[20] Mr Butler prefaced his submissions with a discourse on the three certainties that must be present for the creation of a trust - certainty of intention, certainty of subject and certainty of object. He then examined the facts as stated in the statement of claim and went on to submit that those facts indicate that there was no intention on the part of the deceased to create a trust in the context of the Trust Act of 1996.

[21] Next, Mr Butler examined the Defence. In doing so, he pointed to the signature card which the deceased had signed, setting out the terms of the agreement between the Defendant Bank and the deceased as stated on the signature card. Equity looks at the intention and not the form, contended Mr Butler. So far as Mr Butler is concerned, this intention may be gleaned from the Agreement on the signature card, the authorization to the Defendant Bank, the conduct of the deceased and the fact that she was able to withdraw and deposit monies "ad Lib" and retained control over the savings account which was inconsistent with an intention to create a trust.

[22] As to certainty of subject matter, Mr Butler submitted that there is no certainty of subject matter because the deceased was free to withdraw any amount of money from the account at any time; so it cannot be said what sum of money is to be held upon trust. The probability existed that the account could have been depleted prior to the depositor's decease.

[23] Moreover, argued Mr Butler, the Bank has authority to withdraw monies from the account at any time for any debt due to the Bank and also for Bank Charges incidental to the account.

[24] To support his position that there is no certainty of subject matter, Mr Butler relies on two cases including Sprange v Barnard 1789, in 2 Bro. C.C. 585. In that case, a testatrix by her Will left £350.00 to her husband for his sole use, and at his death, the remaining part of what is left, and he does not want for his own wants and use, to be divided between the Testatrix's brother and sister equally. It was held that there was no trust because there could be no certainty as to what would be left for the brother and the sister because he was entitled to dissipate the entire fund.

[25] Mr Butler concluded his submissions by reemphasizing that based on the course of conduct of the deceased, Mabel Norford, and the contents of the signature card, it is clear that Mabel Norford was owner in her own right of the funds in the Bank.

Defendant's submissions

[26] Mr Hector prefaced his submissions by giving a definition of a trust account as outlined in Halsbury's Laws of England, Fourth Edition, Reissue Volume 3 (1) Paragraphs155-157:

> *"A trust account "is opened by a customer acting as a trustee or fiduciary and designated as a trust account or in some other way to indicate its fiduciary nature."*

[27] Counsel then submitted that based on the definition as set forth in Halsbury's, the designation element of the trust account is satisfied by the heading of the signature card

wherein the word “Trust” is placed under the name of the account, and further buttressed by the designation “Mabel N. Norford T/F Franklyn & or Louise Norford”

[28] Counsel further submitted that in relation to Account No 1009905, the three certainties for the creation of a trust are present. Counsel developed his argument by submitting that even though the exact amount on a day to day basis might be unknown to a beneficiary, whatever is held in the account up to the point that the trustee makes the funds available to the beneficiaries, or whatever balance remains at the date of death of the “trustee” is solely for the benefit of the beneficiaries.

[29] In relation to Sprange v Barnard, Mr Hector submitted that the decision in that case is distinguishable from this case because there, unlike here, it was impossible to determine “the remaining part of what was left”. In seeking to develop that point, Mr Hector submitted that even though there is no statement as to what portion each beneficiary should receive, the maxim “equity is equality” would apply, so as to allow the remaining trust funds to be divided equally among the beneficiaries.

[30] As to certainty of objects, Mr Hector is of the view that the intended beneficiaries were clearly named as Franklyn & or Louise Norford. By counsel’s submission, the inclusion of their names on the signature card without assigning any rights shows that the deceased chose to retain control of the funds for their use and benefit at the relevant point in time.

[31] In relation to certainty of intention, Mr Hector submitted that this is central to determining whether the account is in fact a trust account. So far as counsel was concerned, the execution of a signature card designated “Trust account” and the fact that for over thirty years the deceased made no attempt to add the names of the beneficiaries as signatories to the account authorizing them to withdraw from, or make deposit to the account, clearly suggests that the intention of the deceased was that the account was intended to be a trust account.

[32] As to whether the monies standing to the credit of the deceased forms part of the estate of the deceased, Mr Hector was adamant that the monies do not form part of the estate of the deceased. Counsel submitted that account No 1009905 is a trust account that fits the definition and qualification of a "common trust" set forth in section 13 (1) of the Trusts Act of 1996. Accordingly, submitted counsel, the personal representative of the estate of Mable Norford deceased, may appoint a new trustee to deal with the trust monies for the benefit of the named beneficiaries.

[33] In his reply, Mr Butler emphasized that the nature of an account is different to the name of the account. He cited the case of Foley v Hill [1848] 2 HL Cas.28 for the proposition that the relationship of banker and customer is that of debtor and creditor – not trustee and beneficiary. For there to be a trust account, a trust must be created, submitted counsel. The language used by Mabel Norford to the Bank clerk was that she wanted to open a bank account to save money for her burial - not to save money for her children who were all adults, argued counsel. Further, argued counsel, Mabel was not seeking to open a trust account. She wanted to open a savings account. It is incorrect to suggest from the word "Trust" and the words "T/F Franklyn and /or Louise" that the account was to be carried as a Trust Account.

Discussion and decision

[34] There is, to my mind, one issue for determination in this matter and it is this: What is the nature of the account opened by Mabel Norford at the Defendant Bank. Is it a trust Account? Or is it a Savings Account.

[35] Mr Butler is of the view that it is a savings account and as such it forms part of the estate of Mabel Norford, deceased. Mr Hector on the other hand says it is a trust account. On Mr Hector's submission, Louise Norford as personal representative of the estate of Mabel Norford deceased must appoint a new trustee to deal with the trust monies for the benefit of the named beneficiaries. The purported "named beneficiaries" are the same persons who would be entitled to benefit upon the intestacy of their mother, Mabel Norford.

[36] The starting point for the court's consideration must be an examination of the Bank Deposit Agreement so as to determine the terms upon which the deposit was made.

[37] The limited evidence reveals that on 13th September 1976, Mabel Norford executed a standard document called a "[B]ank-depositor agreement" by which she agreed that Account No 1009905 shall be carried on by the Bank as a Checking or Savings Account and that all funds on deposit in the said account shall be governed by all rules and practices of the said Bank relating thereto including, but not limited to interest, service charges, etc. The Agreement expressly authorised the Bank to apply the account towards any indebtedness due to the Bank from the depositor. At the head of the Agreement there is provision for the name of the account and for the account number. Under the words "Name of the Account" is hand written the word "TRUST". And under the words "Number of Account" is also hand written the number "100-9905". It will be convenient to reproduce the Agreement for emphasis:

"NAME OF ACCOUNT	NUMBER OF ACCOUNT
TRUST	100 – 9905

The undersigned enters into this bank-depositor agreement with the ST KITTS-NEVIS – ANGUILLA NATIONAL BANK LTD and agrees that this account shall be carried by the bank as a *CHEQUING *SAVINGS ACCOUNT and that all funds on deposit in the said account shall be governed by all rules and practices of the said Bank relating thereto including, but not limited to interest, service charge, etc.

The Bank is authorised to apply this account towards any indebtedness due to the Bank from the depositor.

Name (Mr. Mrs. Miss)	Mabel N. Norford T/F Franklyn & or Louise
Address	West Str. Pond Site, Basseterre
Business or occupation	Cleaner

Signature	Mabel Norford
Introduced by	……
Date	13. 9. 76

*Delete whichever is inapplicable"

[38] I do not interpret the Agreement, by its wording as creating a Trust Account in favour of Franklyn and Louise.

[39] On the material before me, I can find no compelling reason for the court to find that the account is a trust account which falls to be governed by the Trust Act. Clearly, there is evidence before the court to support the inference that Mabel Norford wanted the account to be opened as a savings account. There is also evidence before the court to support the inference that Mabel Norford wanted to deal with the money during her lifetime as she wished, and that after her death, she wanted her children to have access to what was left on the account to pay for her burial.

[40] Mabel could <u>not</u> have intended to put her children through the trouble and cost of appointing a new trustee as Mr Hector is suggesting. The cost of doing this may very well exceed the amount standing to the credit of the account. Meanwhile, funeral debts remain unpaid.

[41] The source of Mabel's intention is from the Bank Deposit Agreement. Also, from the Affidavit of Louise Norford and, perhaps more importantly, from Mabel Norford's conduct. The account was operated as a savings account. She deposited and withdrew freely from the account for over thirty years. She maintained full control over her passbook and her account. She could have closed the account upon her instructions alone. She was the only binding signature to the account. So she had both the legal and beneficial title to the account. She could have depleted the account. She had the ability to drain the account

prior to her death. In fact, at one instance she almost did so. She authorised the Bank to use the money for any indebtedness she may have, and for any bank charges. She never executed a Declaration of Trust. She did not know what it was to open a trust account within the meaning of the Trust Act.

[42] The Defendant Bank has not offered any evidence to say that the bank clerk gave Mabel Norford any information which would lead her to understand that she was opening a Trust Account in the context of the Trust Act. Nor has the Defendant Bank offered any evidence in answer to the affidavit of Louise Norford who deposed that she was present with her mother when the account was opened and heard the conversation between her mother and the bank clerk.

[43] It is settled law that the relationship between a bank and its customers is that of debtor and creditor. Because of that relationship, the monies deposited into a bank account constitute a debt to the customer by the Bank. The customer therefore holds the legal title to the debt. (See Foley v Hill), supra. As Administratrix of the estate of her deceased mother, Louise Norford steps into the shoes of her mother, Mable Norford, deceased, and is now entitled to the funds for the benefit of her estate.

Conclusion

[44] In the foregoing premises, I am unable to agree with Mr Hector that the account opened by Mable Norford is a trust account within the meaning of the Trust Act of 1996. Rather I am inclined to agree with Mr Butler that because the "Name of Account" is designated "Trust" does not necessarily mean that it is a trust account. Also, I agree with Mr Butler that the nature of the account is a savings account and as such it forms part of the estate of Mable Norford; deceased. As Administratrix of the estate of her mother, Mabel Norford, deceased, Louise Norford has a right to take the monies which stand to the credit of Mabel Norford, deceased, at the Defendant Bank at the time of her death.

[45] Having said that, I would go on to say that we must not lose sight of the fact that the matter has not proceeded to the disclosure and witness statements stage, so all the facts and

evidence may not have been placed before the court. In order to properly rebut the presumption that a trust was intended, evidence would have to be adduced, as to Mabel's intention at the time of opening of the account. Louise Norford has produced such evidence, the Defendant Bank has not, save for the signature card containing the Account Deposit Agreement. The court has a duty to weigh all the evidence to ascertain Mabel's intention at the time of opening the account. I have sought to do that based on the limited evidence adduced before me. Should the matter go to trial, the court would be in a position to weigh all the evidence to determine 1) Mabel's intention at the time of opening of the account; 2) the Defendant Bank's practices, polices and procedures - whether it facilitates trust accounts within the meaning of the Trust Act; 3) how the Defendant Bank usually treats balances on account holders account after their death; 4) whether Mable Norford's Account was in fact a trust account, meriting the appointment of a new trustee; and 5) if not, whether the balance forms part of her estate and ought to be passed to her personal representative.

[46] The types of evidence that the court would look at are:

(1) Statements made to the office at the time of opening the account;

(2) Evidence subsequent to the opening e.g. things said or done by the customer (but the trial judge must assess its reliability guarding against evidence that is self serving and tend to reflect a change in intention);

(3) The wording used in the account opening documents, including agreements, signature cards, and any other information relating to the account. How these documents are interpreted is a question of fact for the fact finder – the trial judge;

(4) Evidence as to who had control and use of the funds in the account'

See Michael Pecore v Paula Pecore and Shawn Pecore, 2007, SCC 17;
See also Gwenneth Webster v National Bank of Anguilla, Claim No AXAHCV 2008/0098.

[47] Pecore v Pecore concerned a joint account which an aging father opened with his daughter. The father alone deposited money in the account. One of the questions which the court considered was whether the remaining assets in the joint account were to be included in the father's estate upon his death. The court found it necessary to make reference to the "Totten Trust" recognized as valid in the United States. The court stated thus:

> "While not entirely analogous, the American notion of the "Totten Trust" (sometimes referred to as the "Bank account trust" is now recognized as valid in most states in the United States; an individual places money in a bank account with the instruction that upon his or her death, whatever is in that bank account will pass to a named beneficiary; … The Totten Trust is so named for the leading case establishing its validity; see Matter of Totten, 179 N.Y. 112 (1904). While a Totten Trust does not deal with joint accounts as such, it recognizes the practicality of the depositor having control of an account during his or her lifetime but allowing the depositor's named beneficiary of that account to claim the funds remaining in the account upon the death of the depositor without the disposition being treated as testamentary; see Matter of Bearson, 566 N.Y.. 2d 74 (App. Div 1991); Matter of Halpen, 303 N.Y. 33 1951)".

[48] I glean from that quotation that in the case of a Totten Trust, all that would be required by a beneficiary on the death of an account holder, would be for the named beneficiary to take the death certificate and proper identification documents to the bank and receive the balance of monies standing on the account. Nothing further needs to be done in order to get the monies. This brings us right back to the main issue as to what is the nature of the account opened by Mable Norford.

[49] It would seem that the proper course of action would be for the matter to go to trial for a determination on the issues as to what was Mabel Norford's intention on the opening of the account; and what precisely is the nature of the account being opened by her, on the totality of the evidence.

The order

[50] I would order that the matter be fixed for case management conference on 7th February 2012.

[51] I am grateful to counsel for their assistance and their very helpful submissions and authorities.

Pearletta Lanns

Master