Manulife

Yet another joint tenancy case!

In Swiderski v. Walsh, 2015 ONSC 3443 (CanLII) a mother put her two bank accounts into joint ownership with her daughter. It is no surprise that at the time of her death the joint account arrangement caused litigation.

Stella Swiderski had two children, Carol and Richard. In 1984 she provided instructions to a lawyer to draft her will which named Carol as executrix and left the residue of her estate equally to her children alive at the time of her death with a reference to a "per stirpes" distribution.

At Stella's death, the account funds held jointly with Carol became Carol's property by virtue of right of survivorship. Richard contested arguing that his mother's intention was to treat both siblings equally and therefore she could not have intended for the account funds to pass outside of the estate.

The Supreme Court of Canada decision in Pecore, which we discussed in a previous AAMOL, Joint Account Arrangements – Do we have a clearer direction from the Supreme, was reviewed again by the Ontario Superior Court. Where there is a gratuitous transfer, the common law presumptions of advancement and resulting trusts play a role in such disputes. Here the presumption of advancement did not apply because the children were adults. Therefore the obligation was with Carol to rebut the presumption of resulting trust.

The Ontario Superior Court noted the types of evidence that can be considered in establishing a transferor's intent. These include:

- the wording used in bank accounts,
- the control and use of funds in the account,
- the granting of a power of attorney, and
- evidence relating to the transfer to the extent it is relevant to the transferor's intention.

In this case the following facts supported that Stella had intended to deviate from the equal division of assets planned in her will:

- Prior to her death, Stella did not make changes to the joint bank account arrangement which had been in place for 25 years.
- Stella's power of attorney document of property appointed Carol as attorney. This provided evidence to the court that she did treat her children differently.
- In 1997, Stella opened a Retirement Income Fund and named Carol as the beneficiary with any remaining funds at the time of Stella's death directed to her.
- In 2008 Stella granted a power of attorney to Richard for one bank account with a limited amount of funds. She chose not to grant her son a power of attorney over her other bank accounts.
- Stella appeared by all accounts to have full capacity when she drafted her will and thereafter in managing her financial affairs.

The court was satisfied that Carol had rebutted the presumption of a resulting trust successfully and the joint accounts transferred to Carol by right of survivorship.

This is yet another case to add to the mounting pile of litigation that involves joint ownership. There are plenty of sample cases to show your clients that joint account arrangements must be created with evidence that supports the transferor's intention.

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