

**THE HIGH COURT****[2013 No. 709 S.P.]****BETWEEN****MILES GILVARRY****PLAINTIFF****AND****JEAN MAHER****DEFENDANT****AND****WILLIAM NAYLOR****NOTICE PARTY****JUDGMENT of Mr. Justice Gilligan dated the 19th day of December, 2014**

1. These proceedings arise from the last will and testament of Michael Hoare deceased as made on 9th November, 2006. The late Michael Hoare died on 7th April, 2007, and probate issued on 13th June, 2013. The deceased made a number of bequests, and the principal beneficiary was Jean Maher, a daughter of the deceased. Her brother, William Naylor, the notice party, brought proceedings to set aside the last will and testament which claimed that the deceased lacked the capacity to make a will or alternatively, the will was procured due to the duress and undue influence of Ms. Maher and/or alternatively, that the farm of lands the principal asset in the estate had been promised to Mr. Naylor and he was entitled to the farm in equity pursuant to the doctrine of promissory estoppel. Subsequently, the issue of lack of capacity was abandoned and Mr. Naylor's case came on for hearing in the High Court and lasted over 22 days with this Court (O'Keefe J.) refusing the claim that the will was procured due to the alleged duress and undue influence of Ms. Maher, but allowing the claim that the principal asset, being the farm of lands and buildings which had been bequeathed to Ms. Maher, be set aside and that Mr. Naylor was entitled to the farm in equity pursuant to the doctrine of promissory estoppel. The court also awarded the entire costs of the hearing to Mr. Naylor. The decision of the court herein is currently under appeal to the Supreme Court. The actual issue that arises before this Court is set out in an issue paper as agreed between the parties as dated 4th June, 2014, and which is:-

"Whether the defendant, Jean Maher, became solely legally and beneficially entitled to the funds formerly held in the joint names of Michael Hoare and Jean Maher in First Active, Roscrea, Co. Tipperary, Account No. 52074909, following the death of the late Michael Hoare on 7th April, 2007, on foot of a right of survivorship or whether the said defendant holds the said funds on trust and for the benefit of the estate of the late Michael Hoare."

2. In this regard the defendant, Jean Maher, represented herself and Mr. Naylor was represented by solicitors and counsel. The plaintiff took no active part in the proceedings.

3. Ms. Maher opened her case to this Court and called one witness, Ms. Marguerite Walsh, a former employee with First Active. Ms. Walsh was the bank official present on the day of the opening of the joint account and she clearly recalled that two people, the deceased, Michael Hoare, and the defendant, Jean Maher, came into the First Active Bank, as it was at the time, and the deceased, Mr. Hoare, explained to her that he wanted to open an account in order to give money to his daughter, Jean. In her presence Ms. Maher protested that she did not want the money, but the deceased, Mr. Hoare, was insistent and it was Ms. Walsh who suggested to Mr. Hoare that he and Ms. Maher open a joint account of equal standing, and it was explained that both Mr. Hoare and Ms. Maher would have access to the account, but, on the death of either, the survivor would be entitled to the monies in the account. Ms. Walsh assured Mr. Hoare that if he did indeed die, Ms. Maher would only have to come into the Head Office of the Bank with proof of his death, and she would then have full access to all of the money. Ms. Walsh gave evidence that she remembered these events, particularly because of the colourful personalities and language used by both the deceased and the defendant.

4. In cross examination by Ms. Nerney on behalf of Mr. William Naylor, Ms. Walsh was insistent that her recollection was correct and that Mr. Hoare emphasised that he wanted Ms. Maher to have access to the money in the joint account and that both Mr. Hoare and Ms. Maher signed the application form in order to open the account. Ms. Walsh explained to the court that there are three types of joint account that the deceased could have opened: a joint account of equal standing where both signatories have full and equal access to the funds at any time, a joint account where only one signatory has access to the funds, and a joint account where both people have to be physically present in order to withdraw money. Ms. Walsh said that the deceased and Ms. Maher chose the first option, a joint account of equal standing.

5. In a letter dated 17th February, 2009, Ms. Walsh wrote to Jean Maher stating that she recalled the circumstances surrounding the opening of this joint account and that she could "personally ... recall the day Michael Hoare added Jean Maher to this account." Ms. Walsh consulted Ulster Bank records while writing this particular letter. In this letter, Ms. Walsh wrote that "Michael Hoare (deceased) added Ms. Jean Maher to his 10 day notice account at our branch in Main Street, Roscrea. It was on the insistence of Michael that Jean be added to this account." Ms. Nerney submitted that at this juncture, and as the letter clearly states, the account in question was not an instant access account but that it was his 10 day notice account, contrary to what Ms. Walsh had previously stated. Ms. Nerney submitted that there is no reference to a "joint account" in this letter. Ms. Walsh conceded that she was mistaken in writing "his" (Michael Hoare's) account in the letter; she submits that she should have written "their" account. Ms. Walsh insisted that money was moved from Mr. Hoare's instant access account in the Birr branch into a new joint 10-day notice account in Roscrea.

6. Ms. Nerney referred to a handwritten letter written by Ms. Walsh to Ms. Maher on 17th March, 2014, clarifying her recollection of the day that the account was opened by herself and the deceased. This letter was written at a time when Ms. Walsh was no longer with the bank and no longer had access to bank records. Ms. Walsh writes in this letter that the funds in this particular joint account would, in the event of one signatory dying, "revert to survivor." Ms. Nerney questions why this particular phrase is missing from the

original letter of 17th February, 2009, at which point Ms. Walsh was actually still working with the Bank and would have had access to bank records that would have described the exact nature of the bank account. Ms. Walsh responded that one would assume that the sum of money in a joint account would revert to survivor.

7. Ms. Maher herself was called by Ms. Nerney on behalf of William Naylor and she was adamant that Ms. Walsh's account of what had taken place on the opening of the joint deposit account was correct.

8. In reply to a question from Ms. Nerney, Jean Maher did not agree that there were insufficient funds in the deceased's estate to meet the specific financial bequests that were made and took issue with the calculations as put to her by Ms. Nerney.

9. No other evidence in the matter was adduced before the court, and Ms. Nerney submits that the intention was that the money in the joint account was not to belong to Ms. Maher upon his death. It was contended on Mr. Naylor's behalf that when the deceased was drawing up his final will he brought into reckoning the sum total of the joint account and further, that this suggested that the deceased's true intentions were to include the joint account in his estate and that, in effect, the deceased considered that he had an additional €100,000 to play around with and that it was not intended that this money would pass to Jean Maher on his death. Ms. Nerney concluded that there were a number of indicators on behalf of the testator which suggest that it was no longer his intention that Ms. Maher be entitled to the sum of money in the joint account. She submits that this is proven by the fact that the money was clearly taken into reckoning when the deceased made up a will both in 2005 and in 2006.

### **Conclusion**

10. Ms. Walsh impressed the court with a clear and concise description as to what took place in the Bank on the day of the opening of the account, which evidence was corroborated by Jean Maher when called to give evidence by Ms. Nerney on behalf of William Naylor. No contrary evidence was adduced and in these circumstances, I accept the evidence of Ms. Walsh that on the opening of the joint account it was clearly the intention of the deceased, Michael Hoare, that the account was to be a joint account in the names of himself and Jean Maher, that both were to have access to the account during their joint lives, and that the monies were to pass to the survivor on the death of the other party.

11. This Court (Laffoy J.) in *O'Meara v. Bank of Scotland* [2011] 1IEHC 402, affirmed the decision in *Lynch v Burke* [1996] I.L.R.M. 114 that the Bank becomes contractually bound to both account holders, and as a matter of contract the surviving account holder becomes entitled to the balance in the account on the death of the deceased joint account holder.

12. I accept the evidence of Ms. Walshe and Ms. Maher. I reject the notion that in some way this was not a *bona fide* joint account or that in some way the deceased did not intend Jean Maher to benefit on his death by the monies in the joint account, and in the circumstance I answer the particular issue that arises for consideration to the effect that Jean Maher became solely legally and beneficially entitled to the funds formerly held in the joint names of Michael Hoare and Jean Maher in First Active, Roscrea, County Tipperary, Account No. 52074909 following the death of the late Michael Hoare on 7th April, 2007, on foot of a right of survivorship, and that Jean Maher does not hold the said funds on trust for the benefit of the estate of the late Michael Hoare.