

# Show Me the Money!

## *The Intricacies of Joint Bank Account Litigation in Michigan*

by: Laura E. Morris & David L.J.M. Skidmore\*

### I. ACCOUNT TYPE

Initially, it is necessary to identify the type of account at issue because different Michigan statutes apply to different account types. This article explores joint bank accounts (MCL 487.703) and statutory joint bank accounts (MCL 487.711 *et seq.*)<sup>1</sup>

#### A. Joint Bank Accounts

The first type of joint account is the joint bank account, governed by MCL 487.703. This statute applies to a “deposit” made in any “bank” and “in form to be paid to either or the survivor of them.” MCL 487.703. When a deposit is made in that form, the bank is permitted to pay the funds to either co-owner during their lifetimes, and the survivor at the death of the co-owner. “[U]pon the making thereof, [the funds] shall become the property of such persons as joint tenants, and the same together with all interest thereon, shall be held for the exclusive use of the persons so named and may be paid to either during the lifetime of both, or to the survivor after the death of 1 of them[.]” *Id.*

Even if there are no survivorship rights because the account documentation does not address survivorship rights, an account can be still treated as joint during the lifetime of both co-owners (allowing access by both co-owners or creditors). “An account may be joint during the lifetime of the parties without *ipso facto* carrying the right of survivorship.” *Danielson v Lazoski*, 209 Mich App 623, 625-626; 531 NW2d 799 (1994), citing *Leib v Genesee Merchants Bank & Trust Co*, 371 Mich 89, 95; 123 NW2d 140 (1963).

#### B. Statutory Joint Accounts

The second type of joint account is the statutory joint account, governed by MCL 487.711 *et seq.* A “statutory joint account” means “a joint account

as to which a statutory joint account contract, as provided in this act, has been signed by a person having a right of withdrawal on the account.” MCL 487.713(c). These accounts apply to “financial institutions” as defined by the statute. MCL 487.714(a).

A statutory joint account is created by “one or more persons” upon “signing a statutory joint account contract with a financial institution” that is in a form “substantially” similar to the example provided within the statute itself. MCL 487.715. The statute’s sample contract is in question-and-answer format, which when answered, become the contract’s terms. *Id.* These questions include who may withdraw funds during the co-owners’ lifetimes, who can revoke the contract by written notice to the financial institution, who owns the funds during the lifetimes of both owners, and who is entitled to the funds when a co-owner dies. *Id.* If a contractual question listed in the statute is not answered, the contract will still be enforceable as to the questions answered, and common law applies to unanswered questions or ambiguities. MCL 487.716. The financial institution must give a copy of the contract to each signatory co-owner. *Id.*

Because the vast majority of cases involve joint bank accounts (and not statutory joint accounts), the balance of this article will address joint bank accounts unless otherwise noted.

### II. WITHDRAWAL DURING LIFETIME OF CO-OWNERS

A common litigation issue is the withdrawal rights of the co-owners while both are alive. Typically in these cases, one co-owner has contributed all of the funds (“funding co-owner”) and a family member, friend, or close neighbor is initially listed or later added as a co-owner (“non-funding co-owner”).

For a statutory joint account, the contract's terms should address withdrawal rights during the joint owners' lifetimes. MCL 487.716 (listing as one contractual question "who may withdraw funds during the lifetimes of the joint tenants"). If the contract is silent on withdrawal rights during the lifetime of both co-owners (meaning the question was not answered), then common-law principles govern. *Id.* Under Michigan common-law, any co-owner of a joint account may withdraw the entire account balance. *Treasury Dep't v Comerica Bank*, 201 Mich App 318, 325; 506 NW2d 283 (1993).

For joint bank accounts, even if all of the deposits were made by one co-owner, the bank is expressly permitted to pay all of the funds to either of the co-owners, unless the bank receives prior written notice not to pay out the funds:

*When a deposit shall be made, in any bank by any person in the name of such depositor or any other person, and in form to be paid to either or the survivor of them, such deposits thereupon . . . made by either of such persons . . . shall become the property of such persons as joint tenants . . . and may be paid to either during the lifetime of both . . . and such payment . . . shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.*

MCL 487.703 (emphasis added).

#### **A. Withdraw vs. Retain**

As we have seen, a co-owner has the right to *withdraw* the funds; however, that does not necessarily mean the joint owner can *retain* the funds. Rather, the funding co-owner's intent governs. "[P]roperty rights to funds in [a joint] account are determined by the intent of the depositor at the time of the deposit." *In re Pitre*, 202 Mich App 241, 244; 508 NW2d 140 (1993). For example, where the non-funding co-owner knows that the funding co-owner did not want any withdrawals made

during the funder's lifetime, withdrawals could result in conversion liability for the non-funding co-owner. *See Sasanis v Manuf Nat'l Bank of Detroit*, 130 Mich App 812; 345 NW2d 621 (1983) (father sued son when son emptied joint account, and son was held liable for conversion because court concluded son was aware his father did not want him to access the funds until his death). In the divorce context, a spouse cannot withdraw all assets from a joint account to avoid their characterization and division as marital assets. *See also Woodington v Shokoohi*, 288 Mich App 352, 367; 792 NW2d 63 (2010) (holding lower court erred when dividing marital assets by failing to account for funds withdrawn by husband from joint account).

#### **B. Not Intended as a Joint Account**

Sometimes disputes arise over whether the account was intended to be an individual or joint account from the outset. In *First National Bank & Trust Co v Huntley*, 251 Mich 483, 486; 232 NW 192 (1930), the Michigan Supreme Court held that the decedent had not intended to create a joint account with his sons, despite wording on the signature card that stated "in case of death or sickness money to go to [sons]." *Id.* at 484. The court concluded that the "provision for the sons was future and conditional" and thus "not within [MCL 487.703]." *Id.* at 486. In other words, the court concluded that MCL 487.703 does not apply to an account where it was the creator's intention that the other joint owner only have survivorship rights, and no right to withdrawal during the creator's lifetime. Further, the evidence did not support the surviving son's contention that his father made an *inter vivos* gift of the funds, where the actions of father and son were consistent with the father being the sole owner of the account (e.g., father wrote or directed all the checks written from the account). Because the court concluded it was not a joint account, but rather at all times an account in the father's name alone, the account funds became assets of the father's estate. *Id.* at 487.

#### **C. Intended for Testamentary Purposes Only**

Litigation can arise over whether the account was only intended to be testamentary in nature,

meaning, that the non-funding co-owner's interest in the account was not intended to take effect until the funding co-owner died. MCL 487.703 does not apply to "deposits to take joint effect only upon a future condition." *Sanas v Manuf Nat'l Bank of Detroit*, 130 Mich App 812, 819; 345 NW2d 621 (1984), citing *Huntley*, 251 Mich at 486. This issue was litigated in *Sanas*. There, a father purchased a "money market time deposit" at a bank. The assistant manager filled out the application for him, which listed him and his son as owners of the deposit "to either or the survivor of them." *Id.* The father signed the application and was given a receipt listing both him and his son as "deposit owners." *Id.* The son thereafter emptied the account and bought a car, much to his father's displeasure. The father sued both the bank and his son. *Id.* The father argued the joint account statute did not apply or protect the bank because the bank knew he only wanted his son to get the funds at his death. The bank denied knowledge of the father's testamentary intentions with respect to the account. The father pointed to a letter a bank employee drafted at his request, informing his son that the money in question would be his in case of his father's death. In response, the bank explained the letter was simply to inform the son where the money was if his father died and that the letter did not say anything about the son being unable to withdraw the money.

Ultimately, the *Sanas* court concluded the joint account statute applied, and as a result, the bank was relieved of liability. The court adopted the bank's explanation of the letter to the son (that the letter did not say anything about withdrawal rights), and noted the father had signed an application and received the receipt which both referenced the son's joint owner status. But the son was held liable for conversion because the court determined he knew his father did not want him to access the funds until his death. *Id.* at 817.

Even if a non-funding co-owner improperly withdraws funds during the lifetime of the funding co-owner, the court may still allow the withdrawer to keep the funds after the funding co-owner's death. For example, in *In re Cullmann*, 169 Mich App 788, 785; 426 NW2d 811 (1988), the court

allowed the non-funding surviving co-owner to keep the funds, despite concluding the funds were wrongly withdrawn during the other co-owner's lifetime, because it was "unequivocal" that the funding depositor wanted the joint owner to get the funds at her death.

In summary, the analysis does not stop when the funds are withdrawn from the account. Whether the withdrawing co-owner can retain the funds depends on the funding co-owner's intentions.

### III. SURVIVORSHIP RIGHTS

Another commonly-litigated issue is whether the surviving joint owner is entitled to keep the account balance after the co-owner's death. For a statutory joint account, the contract's terms should specifically address survivorship rights. See MCL 487.715 (one contractual question specifically addresses survivorship rights). If the contract's terms are silent, the below principles would apply. MCL 487.716.

For a joint bank account, there is a presumption of survivorship rights:

The making of the deposit in such form shall, *in the absence of fraud or undue influence*, be *prima facie evidence*, in any action or proceeding, to which either such banking institution or surviving depositor or depositors is a party, of the *intention* of such depositors to vest *title* to such deposit and the additions thereto in such *survivor or survivors*.

MCL 487.703 (emphasis added).

#### ***B. Rebutting the Presumption of Survivorship***

The presumption of survivorship rights is rebuttable. "[R]easonably clear and persuasive proof" is required to rebut the presumption of survivorship. *In re Wright*, 430 Mich 463, 467-368; 424 NW2d 268 (1988) quoting *Lau v Lau*, 304 Mich 218, 224, 7 NW2d 278 (1943). The evidentiary focus should be on the survivorship intentions, which are not necessarily the same as the intent behind *creating* the joint account. See *In re Estate of*

*Goodin*, Docket No. 305673, 2012 WL 4512567, at \*2 (Mich App Oct. 2, 2012). In *Goodin*, the Court of Appeals held that the whether the presumption of survivorship was rebutted was not before the probate court because the parties' evidentiary focus was on the decedent's intent with respect to adding the co-owner to the account (and not on survivorship intentions).

Statements made by the deceased co-owner are perhaps the best evidence of intent, but this evidence implicates the hearsay rules. Only statements made by the deceased co-owner *prior* to creation of the joint account regarding intent are admissible. *In re Cullmann*, 169 Mich App 778, 787-788; 426 NW2d 811 (1988) (explaining that the hearsay exception found at MRE 803(3) only applies to statements of "then existing state of mind"). Family, friends, and bank employees are often key witnesses to the extent their testimony is admissible and can shed light on the decedent's intent. The surviving joint owner's actions and statements, either consistent or inconsistent with survivorship rights, are also relevant.

The presumption of survivorship can be rebutted by establishing that the decedent intended the funds to be evenly distributed to the decedent's heirs at death (rather than transferred solely to the joint owner). *In re Skulina*, 187 Mich App 649, 656; 468 NW2d 322 (1991) ("The statute [MCL 487.703] does not preclude petitioners from establishing that decedent intended the funds in the accounts and bonds to be evenly distributed upon his death [to persons beyond the co-owner].").

The presumption can also be rebutted by establishing the joint owner was just added to carry out a purpose as trustee (sometimes referred to as an "oral trust"). For example, in *Thompson v Stehle*, 367 Mich 284; 116 NW2d 900 (1962), Mr. LaLonde added Ms. Stehle as a joint bank owner to an account because he believed he might not survive an operation and wanted Ms. Stehle to pay "any balance remaining after the payment of [his] debts . . . to the St. James Church." *Id* at 294. After surviving the surgery, he transferred some of the funds into another account in his own name and

named this church as the residuary beneficiary under his will. These post-surgery actions were deemed by the court as Mr. LaLonde "terminating" the trust. *Id*. The court determined that the decedent's actions were consistent with ownership and Ms. Stehle's statement that she did not believe that she had any interest in the account after the trust's termination rebutted the presumption of survivorship. "The fact that [Mr. LaLonde] did not cause the records of the bank to be changed is not in and of itself sufficient to justify a conclusion that the character of the funds on deposit was changed in such manner as to create in defendant a right of ownership by survival in the moneys deposited by Mr. LaLonde." *Id* at 297-298. *But see In re Pitre*, 202 Mich App 241, 243-244; 508 NW2d 140 (1993) ("No later change of heart on decedent's part could have divested respondent of his right of survivorship, unless that change of heart was accompanied by withdrawal of the funds from the [bank] account.").

Also, the presumption of survivorship can be rebutted by showing the joint account was created for administrative convenience, which commonly arises with an elderly person who adds a family member or friend to an account to assist with bill paying. For example, in *Pence v Wessels*, 320 Mich 195, 207; 30 NW2d 834 (1948), the presumption of survivorship was rebutted by testimony from a disinterested person that the decedent had said (before the creation of the account): "He wanted to go to Florida and wanted somebody to cash checks and deposit them and send money when he needed it after he got there if he got out of money and he wanted somebody to draw money and take care of his bills and expenses." *See also Allsteadt v Ochs*, 302 Mich 232; 4 NW2d 530 (1942) (presumption of survivorship ownership rebutted where the father had told the bank manager when the account was opened jointly with daughter it was "for the purpose of having someone able to take care of emergencies," other disinterested witnesses testified similarly, and the daughter herself admitted that she was not allowed to withdraw the money without her father's consent).

### C. Undue Influence

A claim of undue influence in a joint account dispute has the potential to override the applicable presumptions. Undue influence is a claim that the joint account was created or the joint owner added as a result of “threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel” the person to act “against his inclination and free will.” *In re Estate of Mortimore*, 491 Mich 925, 926; 813 NW2d 288 (2012).

When there is a confidential or fiduciary relationship between the surviving joint owner and the co-owner at the time the account was created or co-owner added, there is a presumption that the surviving joint owner exercised undue influence and the burden shifts to the surviving co-owner to prove a lack of undue influence:

[MCL] 487.703, [s]upra, creates a presumption that funds placed in such accounts are intended to be the property of the survivor. However, this *presumption in defendant's favor was countered by another presumption . . . that such benefits were procured by the exercise of undue influence*. Due to this latter presumption, the burden devolved upon the defendant to show, by a preponderance of the evidence, that undue influence was not operative. In satisfying this burden, the defendant is benefited by a *permissible inference* that the joint bank account was intended to *pass to the survivor*. This permissible inference remains as a vestige of the rebutted statutory presumption.

*Habersack v Rabaut*, 93 Mich App 300, 305; 287 NW2d 213 (1979) (internal citations omitted; emphasis added).

In summary, just because a bank account is titled jointly, that does not automatically mean that the survivor is entitled to the funds. The survivor's claim may be defeated by evidence that the deceased funding co-owner did not want the funds to actually go to the non-funding surviving joint owner, or that the deceased was unduly influenced into creating the joint account or adding the surviving joint owner.

## IV. CREDITORS' RIGHTS

Another prevalent area of joint account litigation involves the scenario where a creditor has a judgment against only one of the co-owners, but wants to access the joint account funds.

### A. Joint Tenants Accounts

In Michigan, while both joint owners of the account are alive, creditors of one co-owner can reach the debtor co-owner's interest in the account. *Guilds v Monroe County Bank*, 41 Mich App 616, 619; 200 NW2d 769 (1972); *Murphy v Michigan Trust Co*, 221 Mich 243, 190 NW 698 (1922); MCL 487.703. For a statutory joint account, the contract's terms should specifically identify who “owns” the funds, and thus should govern the extent to which the creditor can collect from the account. MCL 487.715.

For joint bank accounts, there is a presumption that the co-owners equally contributed to the account. *Dep't of Treasury v Comerica Bank*, 201 Mich App 318, 328; 506 NW2d 283 (1993); *Sussex v Snyder*, 307 Mich 30, 38; 11 NW2d 314 (1943). The presumption of equal contribution can be overcome by the creditor by showing the debtor contributed more than half. *Am Nat'l Bank & Trust Co v Modderman*, 37 Mich App 639; 195 NW2d 342 (1972). The presumption can also be overcome by either co-owner by showing either the debtor co-owner contributed less than half or that the non-debtor co-owner contributed more than half. *Danielson v Lazoski*, 209 Mich App 623, 628; 531 NW2d 799 (1994). Documents helpful to rebutting the presumption of equal contribution include pay stubs and other evidence of income, deposit slips, and electronic transfer/automatic deposit receipts.

### B. Tenants by the Entireties Accounts

In contrast, property held by spouses as tenants by the entirety is shielded from creditors, unless both spouses are the debtors. MCL 600.6023a. There is a presumption that joint accounts held by spouses are held as tenants by the entireties (as opposed to joint accounts). *Zavradinos v JTRB, Inc*, 2007 WL 2404612, Docket No. 269570 at \*2-3, (Mich App Aug. 23, 2007) citing *DeYoung v Mesler*, 373 Mich 499, 504; 130 NW2d 38 (1964) (“In Michigan, the common-law rule that a conveyance to husband

and wife creates a tenancy by the entirety has persisted except in respect to conveyances explicitly indicating that some other kind of tenancy is intended.”) (citation omitted).

In *Zavradinos*, the Michigan Court of Appeals held that the presumption of tenants by the entirety was not rebutted. There, evidence was presented that another account at the same financial institute was opened and on the application the joint tenancy box was selected over the tenants by the entirety box. 2007 WL 2404612 at \*1. The Court of Appeals held this did not rebut the presumption that the account was held by the married couple as tenants by the entirety because the form was for a different account and it was unclear whether the form was actually completed by the couple or their financial advisor. *Id.*

### C. Deceased Co-Owner's Debts

The surviving joint owner inherits the account balance free of the debts of the deceased co-owner. *Guilds v Monroe County Bank*, 41 Mich App 616; 200 NW2d 761 (1972); MCL 487.718. However, the deceased co-owner's estate has the ability to access the deceased co-owner's interest if the estate has insufficient assets to pay creditors or to satisfy the statutory rights of widows and surviving dependent children. See MCL 487.718; MCL 487.719.

## V. COURT & JURY

The appropriate court for litigating these issues depends on the nature of the account, amount in dispute, and the parties. Survivorship rights cases are often litigated in probate court because a deceased joint owner's estate is arguing that survivorship rights do not apply (e.g. “the joint account status was only created to help pay the deceased co-owner's bills”) and that the funds should become part of the estate.

Because these cases involve seeking money from an account, they involve an action at law, and thus a jury trial is available. *Snow v Nat'l Bank of Ludington*, 16 Mich App 595, 597; 168 NW2d 482 (1969).

## VI. CONCLUSION

The beauty of statutory joint accounts is that the contract's terms should narrow, if not resolve, most of the commonly-litigated joint account issues. Some issues, however, cannot be resolved by contract, such as whether the funding co-owner was unduly influenced to create the account or add the co-owner. If the account at issue is a joint bank account, then who gets to keep the funds typically boils down to the unique facts uncovered through investigation and discovery.

## ENDNOTES

1. While outside the scope of this article, joint credit union accounts are governed by MCL 490.51 *et seq* and joint savings and loan association accounts are governed by MCL 491.102 *et seq*.

*\*David Skidmore is a partner, and Laura Morris is an associate, in the Grand Rapids office of Warner Norcross & Judd LLP. They practice together in the area of probate litigation and have extensive experience representing individuals and entities in disputed estate, trust, fiduciary, guardianship and conservatorship matters.*