TAXADVISOR

# Disjointed Rights – Part 3

## Holding joint accounts with a partner or children can be an effective way to lower the tax burden, but cost of untangling the arrangements after death can be steep

COURT REPORT
**BY JAMIE GOLOMBEK**

Earlier this month, the Supreme Court of Canada released its two seminal decisions on joint accounts, upholding what at first seem to be seemingly contradictory results in each of the lower courts' rulings.

The cases in question were *Pecore v. Pecore* and *Madsen Estate v. Saylor*. While each of these cases was discussed in detail in this column last summer (*see "Disjointed Rights – Part One," AER July 2006, and "Disjointed Rights – Part Two," AER August 2006*), a brief review of the facts of each case is in order before summarizing the Supreme Court's reasoning in dismissing both appeals.

### PECORE V. PECORE (2007 SCC 17)

Michael Pecore was injured in a car accident, which rendered him a quadriplegic. Paula was his caregiver whom he eventually married and lived with for 20 years.

Paula Pecore was the youngest daughter of the late Edwin Hughes. Edwin decided in the context of his estate planning that he would bequeath his entire estate to Paula, as her two elder sisters were financially independent.

> The court found that the onus falls on the surviving joint account holder to prove that the transferor intended to make a gift of any remaining balance in the account.

Consequently, Paula was named as the beneficiary on his RRSP account and life insurance policy. Hughes also transferred an investment account worth approximately $950,000 into joint name with her.

When Hughes became ill, he decided to move in with Paula and Michael. Within five months, Hughes's second wife died. Michael became too ill to be cared for by Paula alone and moved into a long-term care facility and, not long after that, Hughes died.

Upon his death, the joint investment account was transferred solely to Paula's name. Approximately two years later, Michael initiated divorce proceedings against Paula, moving out of the long-term care facility into a home with his new fiancée. It is as a result of the division of property under the divorce that Michael sued Paula for a share of the $950,000 from the joint account, claiming that since he was a residual beneficiary under Hughes's will, if the account were part of the estate, he might be entitled to a portion of it.

The issue, therefore, is straightforward: Did a true joint ownership exist between the late Hughes and his daughter Paula? If not, as Michael argued, the joint-account assets should have devolved to the estate and as a result, should be distributed among the beneficiaries under the will, which included Michael.

Paula maintained that her father's intention was to indeed make a gift to her, establishing her as a true owner of the account and thus, upon her father's death, the assets passed directly to her, bypassing the estate and thus any entitlement by Michael.

### MADSEN ESTATE V. SAYLOR (2007 SCC 18)

The late Michael Madsen had three children: Mary Saylor, William Madsen and Patricia Brooks. Patricia Brooks was named as the sole executor of her father's estate. Prior to Madsen's death, he transferred all of his bank and investment accounts into joint names with his daughter, Patricia.

In December 1998, Madsen died and as a result, the assets in the joint accounts were transferred directly to Patricia in her capacity as the surviving joint owner of the accounts.

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William Madsen and Mary Saylor sued their sister Patricia in her capacity as estate trustee, claiming that their father never intended the transfer of the joint accounts to be a gift to Patricia alone but rather intended to retain both full legal and beneficial ownership of the accounts.

The distinction is important because if Patricia is found to be the recipient of a gift made by her late father, then the assets in the joint accounts do not devolve to the estate and therefore belong to Patricia alone, by right of survivorship.

If, on the other hand, it's determined that no gift was made at the time of transfer and that her name was put on the account simply as a matter of convenience, the assets in the joint account would form part of the estate and thus her siblings would be entitled to inherit their representative portions of the accounts, under their late father's will.

### THE SUPREME COURT'S DECISIONS

The issue that the court had to address in both cases boils down to what is meant by JTWROS – joint tenants with right of survivorship – and what were the fathers' true intentions when they each made a daughter a joint owner on the account.

The court found that the onus falls on the surviving joint account holder to prove that the transferor intended to make a gift of any remaining balance in the account.

Factors that should be considered in order to determine the transferor's intent include: Wording in any financial document used to open the account, control and use of the funds while the transferor was alive, whether a power of attorney was granted, who paid the tax on the account and any other evidence the court finds necessary to establish intent.

Based on these factors, in *Pecore*, the court concluded that the evidence suggested Hughes fully intended that Paula alone receive the funds in the account after his death.

In the *Madsen Estate*, the court found that, based on the evidence, Madsen did not intend to make a gift to Patricia of the proceeds of the account and the amount should form part of the estate, to be divided according to the late Madsen's will.

### LESSONS LEARNED

While most investors don't think twice about making assets JTWROS with an adult child, perhaps as a means to avoid probate fees or for ease of account management and administration, it's probably a good idea to clearly document the transferor's true intentions, instead of paying costly legal bills later for the courts to sort it all out. **AER**

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