1968

The Continental Bank and Trust Company, Administrator, D/B/N With Will Annexed of the Estate of Walter D. Thomas v. Clisbee Kimball, Administrator of the Estate of Fern K. Thomas; Zions Savings & Loan Association; American Savings & Loan Association; Utah Savings & Loan Association; Deseret Federal Savings & Loan Association; Prudential Federal Savings & Loan Association; and State Savings & Loan Association : Brief of Appellant

Utah Supreme Court

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.Arthur H. Nielsen; Attorney for RespondentsDale E. Anderson; Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

THE CONTINENTAL BANK AND TRUST COMPANY, Administrator, d/b/n With Will Annexed of the Estate of Walter D. Thomas,

Plaintiff and Appellant,

vs.

CLISBEE KIMBALL, Administrator of the Estate of Fern K. Thomas; ZIONS SAVINGS & LOAN ASSOCIATION; AMERICAN SAVINGS & LOAN ASSOCIATION; UTAH SAVINGS & LOAN ASSOCIATION; DESERET FEDERAL SAVINGS & LOAN ASSOCIATION; PRUDENTIAL FEDERAL SAVINGS & LOAN ASSOCIATION; and STATE SAVINGS & LOAN ASSOCIATION,

Defendants and Respondents.

Case No. 11125

BRIEF OF APPELLANT

Appeal from the District Court of Salt Lake County, State of Utah
Marcellus K. Snow, District Judge

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THE CONTINENTAL BANK AND TRUST COMPANY, Administrator, d/b/n With Will Annexed of the Estate of Walter D. Thomas,

Plaintiff and Appellant,

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STATEMENT OF KIND OF CASE

This is an action to recover and bring into the estate of Walter D. Thomas certain bank accounts in various savings and loan associations.

DISPOSITION IN LOWER COURT

Plaintiff's action was dismissed without a trial.

STATEMENT OF FACTS

Walter D. Thomas died September 27, 1965. Surviving him were his son, Ralph C. Thomas, two daughters, Evelyn T. Seward and Darlene T. Cox, and his second wife (who was not the mother of his children), Fern K. Thomas. Fern K. Thomas died April 16, 1966, and no will of Fern K. Thomas has been discovered.

Walter D. Thomas opened savings accounts on the dates and in the savings and loan associations listed below. The account cards were prepared in the joint names of Walter D. Thomas and Fern K. Thomas.

Date of Joint Account	Savings and Loan Association	Approximate Balance at the Date of Death of Walter D. Thomas
1/ 9/53	Prudential Federal Savings & & Loan Association	$3,100.00
2/23/55	Zions Savings & Loan Association	5,500.00
1/28/54	Zions Benefit Building Society	2,000.00
2/24/48	American Savings & Loan Association	5,000.00
1/25/57	Deseret Federal Savings & Loan Association	5,800.00
1/ 6/56	Utah Savings & Loan Association	9,500.00
7/ 9/56	State Savings & Loan Association	2,300.00

In addition to the foregoing, account No. 15750 was opened in Zions Savings & Loan Association on April 19, 1963, and had an approximate balance of $5,800.00 at the date of the death of Walter D. Thomas.

Because account No. 15750 was opened after January 1, 1962, this court could conclude that said account is not to be treated the same as the other accounts as will be explained under the second argument.

Plaintiff brought suit to recover and bring into the estate of Walter D. Thomas the savings and loan accounts set forth above. At the pretrial conference on December 1, 1967, counsel for defendant Clisbee Kimbal, Administrator of the estate of Fern K. Thomas, told the pretrial judge that the said counsel believed the case should be dismissed because Section 7-13-39, Utah Code Anno. 1953 (as amended) prohibits plaintiffs from introducing evidence to prove that the parties did not intend at any time before or after the opening of the accounts to vest ownership and title to the funds or any part thereof in Fern K. Thomas. The pretrial judge agreed with counsel for defendant Clisbee Kimball and dismissed the complaint.

It is plaintiff's contention on this appeal that the pre-trial judge was in error as to the meaning of the said statute and plaintiff is entitled to its day in court to prove that the parties did not intend to create a legally binding joint tenancy account by signing deposit cards which contained printing thereon stating that the accounts were held in joint tenancy.

I

IN UTAH THERE IS A REBUTTABLE PRESUMPTION THAT WRITTEN JOINT AGREEMENTS CREATE VALID OWNERSHIP RIGHTS IN THE PARTIES, BUT THIS PRESUMPTION IS REBUTTABLE AND MAY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE THAT THE PARTIES INTENDED OTHERWISE.

The following cases decided by this Court clearly establish the rule that written agreements of joint tenancy do not create an absolute presumption of validity. The presumption of validity is rebuttable by clear and convincing evidence:

Hanks v. Hales, 17 Utah 2d 344, 411 P.2d 836 (1966);

Culley v. Culley, 17 Utah 2d 62, 404 P.2d 657 (1965);

Tangren v. Ingalls, 12 Utah 2d 388, 367 P.2d 179 (1961);

Braegger v. Loveland, 12 Utah 2d 384, 367 P.2d 177 (1961).

The *Tangren* case involved joint savings and loan accounts in two of the same associations involved in this case. This court stated the rule as follows (367 P.2d 183):

> " . . . The fact cannot be ignored that in many instances such accounts are set up with no such

> intent or purpose, but for other conveniences of the parties, and they sign the bank's printed form cards without realizing or intending what their full and literal import might be. In such instances to consider the presumption conclusive simply because one of the parties dies, would defeat, rather than carry out, the intent of the creator of the account and thus work injustice. On the other hand, whatever the real purpose may have been, it can be more effectively carried out under the rebuttable presumption rule."

There is no necessity to examine in greater detail the general Utah law because the sole issue in this case is whether Section 7-13-39, Utah Code Ann. 1953 (as amended) prohibits plaintiff from introducing evidence to overcome the presumption of validity of the joint tenancy accounts.

II

SECTION 7-13-39, UTAH CODE ANNO. 1953 DOES NOT APPLY TO SAVINGS AND LOAN ACCOUNTS OPENED PRIOR TO THE EFFECTIVE DATE OF THE STATUTE.

Plaintiff has been unable to find any judicial decisions interpreting Section 7-13-39, Utah Code Ann. 1953, or any similar statute where the issue was whether the statute applies to joint tenancy accounts opened prior to the effective date of the statute. Section 7-13-39, Utah Code Anno. 1953 is the provision relied on by the pretrial judge in dismissing plaintiff's complaint.

A. *The Utah Statutes*

Section 7-13-66, Utah Code Ann. 1953, clearly provides that the provisions of the act are not applicable to contracts entered into prior to the effective date of the act, which was January 1, 1962. This statute states in pertinent part:

> " . . . [T]he obligations of any such existing association, whether between such association and it members, or any of them, or any other person or persons, or any valid contract between the members of any such association, or between such association and any other person or persons, existing at the time this act takes effect, shall not be in any way impaired by the provisions of this act . . . "

There cannot be any serious doubt that each deposit account was a contract between the association and the depositors. In fact, it is only by virtue of the account contract that the legal heirs of Fern K. Thomas have any claim whatever to the funds in the said accounts.

Ownership of those accounts opened prior to January 1, 1962, cannot be affected by the statute which was later enacted. Said ownership cannot be affected because the statute specifically says that its provisions shall not apply to contracts entered into before its effective date. In addition, if this court were to hold the said statute applicable to contracts entered into before the statute's enactment this court would be sanctioning a retrospective law which would be contrary to the principles of natural justice, would be impolitic and unjust, although

not necessarily unconstitutional. Although such a law would not fail for lack of constitutionality it should not be assumed that the legislature intended to pass a retrospective law in the absence of clear evidence of such an intention.

The statute upon which defendants rely clearly states that it is the "opening of the account" which gives rise to the conclusive evidence of intention on the part of the depositors. Since all but one of the said accounts were opened prior to the effective date of this statute, there can be no conclusive presumption of intent created by the statute which was enacted after the accounts were opened.

B. *Constitutionality of a Statute Which Imposes a Conclusive Evidence of Intention*

The legislature may not constitutionally enact a law which results in attributing a conclusive presumption of a person's intention, because of some action taken by such person where there is no connection or probability in experience to connect the act with the presumption. To do so is to deny a fair opportunity to rebut the presumption and amounts to a denial of due process of law.

In the case of *Howard Savings Institution v. Quantra*, 38 N.J. 132, 118 A.2d 121 (1955), the court said (118 A.2d P 124):

> " . . . to deny to courts the right to inquire into the factual question of intent, for no other

> or better reason than that a statutorily prescribed form has been complied with is plainly and simply to deny due process of law."

Plaintiff believes that the rule in the *Quantra* case is correct and should be followed by this court. If said rule is followed by this court, then plaintiff will be permitted to introduce evidence of the parties' intent with respect to each of the joint savings accounts. If this court should conclude that the rule of the *Quantra* case is erroneous, then plaintiff would be prohibited from introducing evidence of the intention of the parties when account No. 15750 was opened in Zions Savings & Loan Association on April 19, 1963, but would not be prohibited from introducing evidence of the intention of the parties as to each of the other accounts.

CONCLUSION

The applicable provisions of the Utah Savings and Loan Act specify that the act shall not affect contracts entered into prior to its effective date. Even if the legislature had not made this clear, any other interpretation would attribute to the legislature an intention to pass a retrospective law which is contrary to principles of justice.

A statute which makes an act (signing a deposit card) conclusive evidence of the parties' intention to create a legally binding joint tenancy account is unconstitutional as it denies interested parties due process of law because there is no logical connection between

the act of signing the card and the presumption that a transfer of legal ownership was intended to be created in the deposited funds.

The pretrial judge's determination to dismiss plaintiff's complaint should be reversed.

Respectfully submitted,

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