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WHATS MINE IS MINE AND WHATS YOURS IS YOURS WHEN IT COMES TO PROPERTY PURCHASED FROM A JOINT ACCOUNT

Marc Soss' practice focuses on estate planning; probate and trust administration and litigation; guardianship law; and elder law in Southwest Florida. Marc is a frequent contributor to **LISI** and has published articles and been quoted in the Florida Bar, Rhode Island Bar, North Carolina Bar, Association of the United States Navy, Lawyers USA, Military.Com, Forbes.Com, and CNN Business.

EXECUTIVE SUMMARY:

In *Connell v. Connell*, the 2nd DCA addressed the question of the ownership of tangible personal property (a men's Rolex watch and diamond ring valued in excess of \$77,600) acquired with joint marital assets, after the death of one of the spouses. The dispute arose when the Personal Representative for the decedent's estate included the tangible personal property on the estate inventory. The surviving spouse refused to return the assets and the Personal Representative filed a petition for aid in marshaling the assets. The trial court initially ruled in favor of the Personal Representative and then reversed itself, after a motion for rehearing was filed, because the property had been purchased with funds from the couple's joint bank account. The 2nd DCA reversed the trial court's order and found the property to be estate assets in holding they lost their joint character once they were withdrawn from the joint bank account.

FACTS:

While shopping in August 2009, the decedent utilized funds from his joint bank account and borrowed funds from family and friends to purchase a Rolex watch. The borrowed funds were later reimbursed with funds from the couple's joint account. Subsequently, in February 2010, the decedent traded in a gift and purchased a three-carat diamond ring. After the decedent's death, the personal representative commenced probate proceedings and filed an inventory that listed the decedent's Rolex watch and diamond ring as assets of the estate. After the surviving spouse refused to return the property to the estate, the personal representative filed a petition for aid in marshaling the property.

At the initial hearing the trial court determined the property to be estate assets on the basis that they were "masculine in nature and not an item that would be used by the spouse on a daily basis." The trial court also found that the decedent did not have "donative intent" when he asked his spouse to hold the property prior to his hospitalization.

The surviving spouse then filed for and was granted a motion for rehearing. At the rehearing, the surviving spouse's counsel argued that the property was jointly-owned because it was purchased with funds from the couple's joint bank account and based on the language in the parties antenuptial agreement (Paragraph 5.2 provided, "[u]pon the death of one party during the continuation of the marriage and prior to any divorce, dissolution or separation of the parties, the survivor shall succeed to the entire interest of the deceased party in all other jointly-owned property." While trial court believed that the property was personal to the decedent, it was persuaded that if appealed the District Court would find that the property was acquired during the marriage as jointly-held property based upon the source of the funds. The Personal Representative then appealed the order to the 2nd DCA.

On appeal the 2nd DCA addressed the issue of whether the decedent individually owned the property at his death or whether the couple jointly owned the property and it passed to the surviving spouse by right of survivorship. The personal representative argued that the trial court committed an error of law in determining that the couple jointly owned the property because it was purchased with joint funds and were "jointly acquired." In reliance on *Wexler v. Rich*, the personal representative further argued that "[w]hen a joint account holder withdraws funds from a bank account that is held as a joint tenancy with the right of survivorship, it terminates the 'joint tenancy nature of the [funds] and severs the right of survivorship as to the funds withdrawn."

In reaching its ruling the court cited to *Beal Bank, SSB v. Almand & Assocs.* and examined the four unities of joint tenancy: possession, interest, title, and time. The 2nd DCA found the unity of possession (joint ownership and control) was not present in either the watch or the ring and were the separate property of the decedent.

CONCLUSION:

Regardless of the original source of funds held in a joint bank account, there withdrawal will terminate the "joint tenancy" and create ownership solely in the individual who withdrew the funds. This is an important distinction for couples who rely upon a pre-nuptial and post-nuptial agreement to determine ownership of their assets during and after marriage. If you want assets purchased with joint funds to retain their joint tenancy it is important to declare that intention (a written document may be utilized for highly valuable assets to avoid future estate litigation).

CITATIONS:

Connell v. Connell, No. 2D11-4139

Wexler v. Rich, 80 So. 3d 1097, 1100 (Fla. 4th DCA 2012)

Beal Bank, SSB v. Almand & Assocs., 780 So. 2d 45, 53 (Fla. 2001)