

March 2022



## Joint Bank Accounts in Estate Planning

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*The meaning of life is to find your gift. The purpose of life is to give it away.*

Pablo Picasso

”

Making money is a gift. Giving it away to loved ones becomes a purpose.

In fulfilling this purpose, a giftor opens a joint bank account with a loved one and funds it completely or mostly. Thinking that the account, being a “joint” one, is sufficient expression of an intention for the money to belong to the loved one upon the giftor’s death, the giftor does nothing more.

But the surviving joint account holder (“**the survivor**”) is not automatically entitled to the whole of the benefit of the account upon the giftor’s death. If a person challenges the right of the survivor to the money in the account, and proves that the giftor did not intend that the survivor should have the proceeds, the survivor would not be entitled to the monies. Typically, these suits are initiated by the estate or the beneficiaries of the giftor. This article highlights two cases, including a recent Court of Appeal decision, ***Chye Seng Kait v Chye Seng Fong (executor and trustee of the estate of Chye You, deceased)***,<sup>1</sup> which considered how the giftor’s intention may be assessed from his will.

### Joint ownership of bank accounts

Joint bank accounts are commonly opened by persons in a loving relationship. It comes with a position of trust, convenience or a sense of responsibility.

Joint accounts are usually operated on an “and/or” basis. Either holder can freely fund and withdraw from the account. Often, account holders see this as being a clear indication that the survivor will, upon the other account holder’s death, be entitled to all of the monies in the joint account. In legal terms, this is referred to as “the right of survivorship”.

As a joint bank account is essentially a contractual relationship between the bank and the account holders, the right of survivorship is usually set out in the terms and conditions of the joint bank account.

However, the operation of the right of survivorship under a joint bank account can be rebutted by evidence showing that the giftor did not intend for the survivor to have the proceeds in the account.

### What was the giftor’s intention?

The easiest way of ascertaining the giftor’s intention is to simply ask the account holders what they are. Direct evidence is, however, rarely available from the giftor who has passed away. As it is in the interest of the survivor to testify that the right of survivorship was intended, the survivor’s evidence by itself is not enough.

The court will then turn to documentary evidence, which may be supported by the testimony of witnesses.

<sup>1</sup> [2021] 2 SLR 1131.

## Documentary evidence

### *The giftor's will*

In **Chye Seng Kait**, a beneficiary of the estate (“**the Beneficiary**”) sued the executor of the estate (“**the Executor**”). Both parties were brothers. Their late father (“**the Testator**”) had opened two joint bank accounts (with OCBC and DBS banks) with one of his daughters. The Beneficiary argued that the monies in the two joint bank accounts belonged to the estate and should be distributed between the beneficiaries of the Testator’s will (“**the Will**”), which included himself.

It was not disputed that the Testator had contributed all of the money in both accounts and that during his lifetime, he exercised full and complete control over the accounts without consulting his daughter (the other joint account holder).

However, the relevant part of Clause 2 of the Will provided as follows:-

*“... I further **declare** that any account held by me with any other person(s) jointly in any financial institution **shall** also belong to such joint account holder(s) absolutely by virtue of **the right of survivorship.**”*

The Executor submitted that Clause 2 of the Will evidenced the Testator’s intention to make an absolute gift of the two joint bank accounts to his daughter. The Beneficiary, on the other hand, argued that if a gift was intended, the phrase “the right of survivorship” should have been excluded from Clause 2.

The Court of Appeal rejected the Beneficiary’s argument simply because Clause 2 was intended to fully recognize the right of survivorship. It found that the Testator had expressed a clear intention that the right of survivorship should apply to all bank accounts held in joint names, and that the surviving joint account holder should have absolute ownership of those accounts.

### **Bank documents**

Terms and conditions in bank documents may enhance evidence of a strong intention by the giftor to make a gift of monies in a joint bank account to the survivor, although they are not conclusive of the operation of the right of survivorship.

In the 2019 case of **Estate of Yang Chun (Mrs) nee Sun Hui Min, Deceased v Yang Chia-Yin**,<sup>2</sup> Mr Yang and Madam Sun, a childless couple, had been married for over 50 years. They emigrated to Singapore from Taiwan and garnered several assets in Singapore jointly, including joint bank accounts with UOB and DBS banks. Mr Yang’s contributions to these joint accounts were more than Madam Sun’s. Mr Yang passed away first followed by Madam Sun. It was the estate of Madam Sun who claimed the balance money in the joint accounts as belonging to her upon Mr Yang’s death based on the right of survivorship. The estate sued Mr Yang’s executor for the return of the balance money. Mr Yang’s executor, however, argued that the money had belonged to Mr Yang upon his death, as Mr Yang had primarily been in control of the couple’s finances during his lifetime.

As both spouses had passed away, no direct evidence of Mr Yang’s intention was available. Madam Sun’s estate argued that the right of survivorship operated for several reasons, including the fact that Mr Yang’s will had not referred to the joint accounts at all. This suggested that he did not consider that the joint accounts would form part of his estate. The High Court inferred that Mr Yang’s intention was to make a gift of the money in the joint accounts to Madam Sun based on a witness’s testimony that Mdm Sun had been involved in the management of her finances. Moreover, by virtue of the couple’s strong and long-lasting marriage, a legal presumption arose that Mr Yang had intended for Mdm Sun to have ownership of the money in the joint accounts.

These factors were further strengthened by the terms and conditions of the UOB and DBS bank accounts, which read as follows:

<sup>2</sup> [2019] 5 SLR 593.

## UOB

*“For joint account(s), the Bank will release monies in the joint account to all surviving joint account holder(s), in the absence of any notice of severance of joint ownership of the deposit and adverse claims on the deposits by any third party.”*

## DBS

*“Please note that for joint account(s), the surviving operator(s) is/are entitled to claim the available funds in the account(s).”*

The High Court noted that these clauses made it more difficult to prove that Mr Yang had a different intention.

Even though Mr Yang appeared to exercise a high degree of control over the couple’s assets, the High Court did not find this factor to be sufficient to prove that the money in the joint accounts was part of Mr Yang’s estate. The operation of the right of survivorship was not rebutted as there was a lack of any other objective evidence. In addition, the provision made for Madam Sun in Mr Yang’s will was not exhaustive and did not reflect an intention to exclude her from owning the money in the joint accounts. Hence, Madam Sun was entitled to the money in the joint accounts based on the right of survivorship.

*“Life is simple. It’s just people who make it complicated.”*  
Kush and Wisdom

- Ensure that all documents are corroborative of intention.
- If it is possible to have credible persons who can testify in future to your intention for making the gift, communicate your intention to them. And if you can, offer your reasons too.

*“Nothing that is worthwhile is ever easy.”*  
DandelionQuotes.Com

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<sup>3</sup>As noted by the High Court in *Chye Seng Kait v Chye Seng Fong (executor and trustee of the estate of Chye You, deceased)* [2021] SGHC 83.

### Takeaways

- Ensure that the bank’s terms and conditions for opening the joint account address the implications of the right of survivorship. It will be more effective to have both account holders acknowledge having read and understood the terms and conditions.
- Make a will and ensure that it addresses specifically the distribution of the money in each jointly held account. The drafting should be clear about the Testator’s intention. The use of the words “shall” and “declare” in Clause 2 of the Will in *Chye Seng Kait* showed that the Testator’s intent was actively to make a gift.<sup>3</sup>

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