

IN THE SUPREME COURT OF MISSISSIPPI

PATRICK DEJEAN

APPELLANT

VS.

CAUSE NO. 2005-TS-00409

**HEYWOOD DEJEAN, CHRISTINE DEJEAN
AND HANCOCK BANK**

APPELLEES

APPEAL FROM CHANCERY COURT OF JACKSON COUNTY

**BRIEF FOR THE APPELLEES HEYWOOD DEJEAN,
CHRISTINE DEJEAN AND HANCOCK BANK**

(ORAL ARGUMENT REQUESTED)

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

Appellees

- (1) Hancock Bank
- (2) Haywood DeJean
- (3) Christine DeJean

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Appellant

- (8) Patrick DeJean

Counsel for Appellant

- (9) Elliot G. Mestayer, Esquire

Trial Court Judge

- (10) Hon. Jaye Bradley
Chancellor for Jackson County, Mississippi


Respectfully submitted,

HEYWOOD DEJEAN AND CHRISTINE DEJEAN

By: 

Their Attorney

HANCOCK BANK

By: 

One of Its Attorneys

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I. COUNTERSTATEMENT OF THE ISSUES

- (1) Whether Appellant is procedurally barred from raising issues concerning the timing of redemption of CD #16314 for the first time on appeal?
- (2) Whether the trial court correctly held that CD #16314 was properly redeemed by Julia Mae DeJean on or about January 18, 2001?
- (3) Whether the Chancellor correctly applied Mississippi Code §81-5-63 in denying Appellant relief?
- (4) Whether the trial court correctly held that no endorsement was required in redeeming CD #16314, a non-negotiable instrument?
- (5) Whether Appellant possesses an ownership interest in the proceeds of a jointly-owned certificate of deposit that was properly redeemed by one of the joint owners?

II. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

A. Statement of the Case

This Brief is submitted by Appellees Heywood DeJean (“Heywood”), Christine DeJean (“Christine”), and Hancock Bank in support of the Final Judgment issued by the Chancery Court of Jackson County (the “Chancery Court”) denying relief to the Appellant, Patrick DeJean (“Patrick”), based on the issues alleged in the Amended Petition for Declaratory Judgment and Complaint (the “Amended Complaint”). On the basis of the arguments and authorities set forth below, Chancellor Jaye Bradley’s (the “Chancellor”) decision should be affirmed.

Patrick filed a Petition for Declaratory Judgment against Heywood and Christine on September 10, 2001. (C.P. at 1). Their Answer was filed April 12, 2002. (C.P. at 4). Prior to the initial trial setting, Patrick filed a Motion to Amend Pleadings on December 17, 2002, seeking to add Hancock Bank as a co-defendant in the case. (C.P. at 9). The Motion was

granted, and Patrick filed the Amended Complaint on December 17, 2002. (C.P. at 14). In his Amended Complaint, Patrick alleged that a Power of Attorney on behalf of Julia Mae DeJean (“Julia Mae”) in favor of Christine and Heywood was obtained through undue influence; that Christine and Heywood were unjustly enriched; that Julia Mae lacked the capacity to execute the aforementioned Power of Attorney; that Hancock Bank was in breach of contract for redeeming a certain certificate of deposit without a proper endorsement; and that Hancock Bank was in breach of contract for redeeming this same certificate of deposit pursuant to the allegedly invalid Power of Attorney. (C.P. at 16-17).

Trial was held before the Chancery Court on October 18, 2004. (C.P. at 28). The Chancellor issued her Findings of Fact and Conclusions of Law on December 30, 2004. (C.P. at 27). The Chancellor denied Patrick relief on each count contained in the Amended Complaint. (C.P. at 34-35). The Final Judgment was entered on February 7, 2005. (C.P. at 36). Patrick filed his Notice of Appeal on February 17, 2005. (C.P. at 37).

Appellees now submit their Brief in response to the Appellant’s Brief, and ask this Court to affirm the Chancellor’s decision in this matter.

B. Statement of the Facts

Patrick, a resident of Memphis, Tennessee, is the adopted son of V.P. DeJean and Mary DeJean. (T. at 19-20). As such, Patrick was the adopted sibling of V.P. and Mary’s five natural born children, including Julia Mae. (T. at 20). Christine was Julia Mae’s sister-in-law, married to one of Julia Mae’s natural siblings, Vernon. (T. at 71-72). Heywood is the natural son of Christine and Vernon, making him Julia Mae’s natural nephew. (T. at 57).

As adopted siblings, Patrick and Julia Mae shared in various portions the DeJean family inheritance. (T. at 20-22). This case centers around the disposition of a disputed portion of this inheritance—namely, a certificate of deposit numbered 16314 (“CD #16314”) held at Hancock

Bank's main branch, located in Pascagoula, Mississippi.¹ (T. at 28, 46).

On January 23, 1999, Hancock Bank issued CD #16314 with a face amount of \$100,000 payable to "Julia Mae DeJean or Patrick K. DeJean." (Ex. 1 (see copy of Certificate of Deposit numbered 16314)). CD #16314 also bore the inscription, "Upon presentation of this certificate properly endorsed." (Ex. 1 (see copy of Certificate of Deposit numbered 16314)). Additionally, CD #16314 was stamped "NON-NEGOTIABLE NON-TRANSFERABLE." (Ex. 1 (see copy of Certificate of Deposit numbered 16314)). As was customary with all of the certificates of deposit it issued to Julia Mae over the preceding decade, Hancock Bank maintained physical possession of CD #16314 from its issuance until its redemption. (T. at 77-78).

On or about January 18, 2001, Christine presented Peggy Walker ("Walker"), a twenty-two year employee at the main branch of Hancock Bank², with a durable Power of Attorney executed by Julia Mae on January 16, 2001, in favor of Heywood or Christine. (Ex. 3). At Hancock Bank, Christine sought to effectuate Julia Mae's wishes regarding the disposition of CD #16314. (T. at 80). Initially, Walker conferred with Hancock Bank's legal department regarding the propriety of acting pursuant to the Power of Attorney. (T. at 81). The legal department advised Walker to take the additional step of contacting Julia Mae directly.³ (T. at 83). Having handled many of Julia Mae's banking affairs over the years, Walker had a good relationship with Julia Mae. (T. at 83). Walker placed a telephone call to Julia Mae to confirm her wishes. (T. at 82-83). During this conversation, Julia Mae reiterated that it was her desire and intent to redeem CD #16314 and use the proceeds from the redemption to acquire a new certificate payable to

¹ It is stipulated that Appellant is not challenging the validity of any of the certificates of deposit that preceded the issuance of CD #16314. (T. at 46).

² Walker handled the disposition of Hancock Bank's certificates of deposit for at least ten of these twenty-two years. (T. at 77).

³ Though challenged in his Complaint, Patrick presented no evidence at trial attacking the validity of this Power of Attorney. Furthermore, the validity of the Power of Attorney is not challenged by Appellant in this appeal.

either herself, Christine or Heywood. (T. at 82-83).

After this conversation, Walker had CD #16314 redeemed per Julia Mae's instructions. (T. at 83). During this process, Walker made the following notation on the back of CD #16314: "Reissued new; CD #17178; Per Ms. DeJean; POA."⁴ (Ex. 1 (see copy of Certificate of Deposit numbered 16314)). Walker used the proceeds to fund a new certificate of deposit numbered 17178 ("CD #17178") (T. at 83). This new instrument bore a face amount of \$100,000 and was payable to "Julia Mae DeJean or Christine W. DeJean or Heywood DeJean." (Ex. 1 (see copy of Certificate of Deposit numbered 17178)).

During the redemption process, Walker also spoke with the CD Department at Hancock Bank. (T. at 84). Walker learned that CD #16314 was due for an interest accrual within a few days, and that designating an effective date prior to this accrual would have resulted in a loss of an unspecified amount of interest. (T. at 84). Instead of seizing the opportunity to save Hancock Bank this interest, Walker had CD #17178 post-dated for the date of January 23, 2001—the date CD #16314 would realize its full interest accrual. (T. at 84).

Julia Mae died on January 20, 2001. (Ex. 2). On February 5, 2001, CD #17178 was redeemed at Hancock Bank by Christine. (Ex. 1 (see copy of Certificate of Deposit numbered 17178)). Some time later, Patrick visited the Pascagoula branch of Hancock Bank where he learned of the aforementioned disposition of CD #16314 and CD #17178. (T. at 33; 87-88).

III. SUMMARY OF THE ARGUMENT

In the Amended Complaint, Patrick alleged five (5) specific counts against the various appellees. Among these five, only the final two – Counts 4 and 5 – asserted liability against Hancock Bank. Count 4 alleged Hancock Bank was in breach of contract for redeeming CD #16314 without a proper endorsement. Count 5 alleged Hancock Bank was in breach of contract

⁴ Walker testified that she did not act pursuant to the Power of Attorney, but nevertheless marked "POA" on the endorsement panel merely to document the paperwork trail of the events of that day. (T. at 81, 87).

for redeeming CD #16314 pursuant to an invalid Power of Attorney. In her Findings of Fact and Conclusions of Law, the Chancellor ruled against Patrick on these allegations against Hancock Bank. Specifically, the Chancellor ruled that a proper endorsement was not required for the redemption of CD #16314. Additionally, the Chancellor ruled that the validity of the Power of Attorney was a moot issue, as substantial, uncontroverted evidence proved that CD #16314 was not redeemed pursuant to the Power of Attorney, but was instead redeemed based on the clear and coherent instructions of Julia Mae herself⁵.

In his brief in support of his appeal in this matter, Patrick pursues several theories. First, Patrick challenges the Chancellor's finding that CD #16314 was redeemed on or about January 18, 2001—which effectively extinguished any rights Patrick had in the proceeds from that CD. Patrick pursues this theory by raising issues of both fact and law. However, Patrick's challenges on these issues should be denied. The Chancellor's decision satisfies the requisite standard of review for factual determinations at a chancery court level. Further, Patrick's legal arguments attempt to raise new issues for appellate review in this matter – that is, Patrick seeks review of issues he did not raise or preserve at trial before the Chancellor. As such, Patrick is procedurally barred from raising these issues on appeal for the first time. With that being said, even if this Court were to consider Patrick's arguments on this point, the Chancellor's decision was legally sound. Accordingly, both portions of this challenge to the timing of the redemption of CD #16314 should be denied and the Chancellor's judgment affirmed.

Second, Patrick feebly argues for relief based on a faulty interpretation of Mississippi Code §81-5-63. A clear reading of §81-5-63 not only defeats Patrick's meager argument on this point, but also firmly supplies a statutory grant of protection to financial institutions like Hancock Bank in this type of situation. On this point, the Chancellor's decision should also be

⁵ As noted *supra*, Patrick is not challenging the validity of the Power of Attorney in his appeal on this matter.

upheld.

Third, Patrick appeals the Chancellor's decision concerning the requirement of an endorsement of CD #16314 prior to its redemption. The Chancellor correctly held that the law does not require such an endorsement with non-negotiable instruments, such as CD #16314. Even if such an endorsement were required, Julia Mae's instructions to Walker and Walker's adherence thereto demonstrated by her subsequent notation on the back of CD #16314 combined to satisfy any endorsement requirement. On this point, the Chancellor's decision should also be upheld.

Finally, Patrick alternately argues for an equitable ownership interest in the proceeds from CD #16314, based on the notion that these proceeds derived from his inheritance. This argument is ultimately moot as to Hancock Bank, as Mississippi Code §81-5-63 provides that the Bank is not liable for allowing an owner to collect his funds when held in a joint account. While it is doubtful that Patrick actually possesses the alleged ownership interest due to Julia Mae's proper redemption of CD #16314, this argument is also moot as to Heywood and Christine. Any claim Patrick possesses based on this alleged ownership interest should be directed at Julia Mae or her estate. On this point, the Chancellor's decision should also be upheld.

IV. ARGUMENT

This appeal focuses on the funds used to purchase CD #16314, the redemption of CD #16314 and the issuance of CD #17178. A certificate of deposit is a note of a bank, and is defined as "instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. MISS. CODE ANN. §75-3-104(j) (2006).⁶

Both CDs in this case were issued payable to either of a series of joint depositors.

⁶ A certificate of deposit is also defined as "a banker's certificate acknowledging the receipt of money and promising to repay the depositor." BLACK'S LAW DICTIONARY 219 (7th ed. 1999).

Specifically, CD # 16314 was issued payable to “Julia Mae DeJean or Patrick K. DeJean” and CD #17178 was issued payable to “Julia Mae DeJean or Christine W. DeJean or Heywood DeJean.” (Ex. 1). The Mississippi Code governs the disposition and payment of jointly-owned deposits, declaring that:

When a deposit has been made or is hereafter made in the name of two (2) or more persons, payable to any one (1) of those persons . . . the deposit, or any part thereof or interest or dividends thereon may be paid to any one (1) of those persons, without liability whether one or more of those persons is living or not, and the receipt of acquittance of the person so paid shall be a valid and sufficient release to discharge the bank for any payment so made.

MISS. CODE ANN. §81-5-63. This language provides financial institutions, such as Hancock Bank, with protection from the sort of internal family squabbling that exists in this case.

Stated another way, if the account in question is a type governed by the statute, and if any one of the joint holders on an applicable account rightfully redeems any or all of the funds from that jointly-owned account, then §81-5-63 provides Hancock Bank with statutory immunity from liability. In his Brief, Patrick stipulates both §81-5-63’s application to CD #16314, as well as Julia Mae’s unilateral right of redemption to CD #16314. (Appellant’s Brief at 15, 19). Therefore, Patrick concedes that Hancock Bank is immune from liability under §81-5-63 if Julia Mae properly exercised her right to redeem the principal from CD #16314. As the argument below will demonstrate, the Chancellor properly held that Julia Mae did exercise her rights regarding CD #16314, and therefore, the Chancellor’s decision should be affirmed.

A. Certificate of Deposit #16314 was redeemed prior to the death of Julia Mae DeJean.

The crux of Patrick’s appeal focuses on the date Julia Mae actually redeemed CD #16314. In the first three (3) issues outlined in the Brief of the Appellant, Patrick pursues various methods in attacking this same issue—that being the timing of the redemption of CD #16314. (Appellant’s Brief at 14-19). More specifically, Patrick now contends that CD #16314

was actually redeemed on January 23, 2001—after the death of Julia Mae. (Appellant’s Brief at 15-16). In her Findings of Fact, the Chancellor declared that, as a matter of fact, CD #16314 was redeemed on the date Heywood and Christine visited Walker at Hancock Bank’s Pascagoula branch, on or about January 18, 2001—prior to the death of Julia Mae. (C.P. at 29-30). The Chancellor held that “Walker redeemed the subject Certificate of Deposit [#16314] [on or about January 18, 2001], but delayed issuing the new Certificate of Deposit [#17178] until January 23, 2001.” (C.P. at 29-30). The Chancellor did not discuss this issue in her Conclusions of Law, as Patrick never raised any challenge—legal or factual—regarding the timing of the redemption of CD #16314. Now, for the first time, Patrick seeks to argue that the Chancellor erred in reaching her findings. For the reasons set forth below, Patrick’s attempts are insufficient.

1) Appellant is procedurally barred from raising new issues he did not advance at trial.

In his appeal of the Chancellor’s decision, Patrick argues—for the first time—that the Chancellor erred in holding that CD #16314 was redeemed on or about January 18, 2001. (Appellant’s Brief at 14-19). Before considering the merits of this argument, Patrick’s assertions in this area are fundamentally flawed because he never argued this issue at the trial court level. The Supreme Court is limited in its review of matters not presented to the underlying trial court. More precisely, a trial judge cannot be put in error on matters not presented for his or her decision. *Bender v. North Meridian Mobile Home Park*, 636 So. 2d 385, 389 (Miss. 1994); *Mills v. Nichols*, 467 So. 2d 924, 931 (Miss. 1985).

Nowhere in the Amended Complaint did Patrick assert any allegation or cause of action regarding the timing of the redemption of CD #16314. (C.P. at 14-17). As stated *supra*, in the Amended Complaint, Patrick alleged Hancock Bank was in breach of contract based on two distinct and particular grounds, i.e., that during the redemption process, Hancock Bank failed to obtain a proper endorsement and acted pursuant to an invalid Power of Attorney. (C.P. at 16-

17)⁷. Furthermore, Patrick never challenged the timing of the redemption of CD#16314 at trial. (T. at 1-94). To the contrary, the Appellant's entire case at trial consisted merely of a brief opening argument and the direct examination of Patrick himself—neither of which focused on the date of the redemption of CD #16314. (T. at 1-49). Based on Patrick's aforementioned waiver at trial of his challenge to the Power of Attorney⁸, Patrick's grounds for appeal should be limited to a challenge on the endorsement requirement.

Patrick possessed ample opportunity to raise this "timing" issue prior to now. On the eve of the first trial setting, the Chancellor allowed Patrick to amend his original Complaint to include any allegations he had against Hancock Bank. (C.P. at 20). Patrick could have included this issue as a claim in the Amended Complaint. Moreover, Patrick failed to assert this argument at the trial on October 18, 2004. As this Court has held on numerous occasions, "it is a well stated principle that issues not presented at trial cannot be raised on appeal." *Bender*, 636 So. 2d at 389 (citing *Parker v. Mississippi Game and Fish Commission*, 555 So. 2d 725, 730 (Miss. 1989)).

For this elementary appellate principle, this Court should refuse to consider any attempt by Patrick to raise the issue of timing of the redemption in this appeal.

2) The Chancellor's Finding of Fact regarding the timing of the redemption of Certificate of Deposit #16314 was supported by substantial evidence.

Assuming *arguendo* that Patrick can now raise the issue of when CD #16314 was redeemed, it is clear that this factual matter was properly decided by the finder of fact at the trial level – the Chancellor. As stated *supra*, the Chancellor declared in her Findings of Fact that Walker followed Julia Mae's directions in having CD #16314 redeemed on or about January 18,

⁷ Appellees are contemporaneously moving this Court for the inclusion of three pages of the Amended Complaint which were omitted from the Clerk's papers, and which should have been placed between the current pages 17 and 18 of the Clerk's papers.

⁸ See note 3, *supra*.

2001, but delayed issuing the new Certificate of Deposit until January 23, 2001. (C.P. at 29-30). As part of his appeal, Patrick now argues that the Chancellor committed manifest error in reaching this factual finding.

Under Mississippi law, the scope of review in an appeal of a chancellor's decision is a well-settled principle of law. When reviewing a chancellor's decision, the Supreme Court applies a limited abuse of discretion standard of review, and will not disturb findings of a chancellor "unless the chancellor was manifestly wrong, clearly erroneous, or applied the wrong legal standard." *McNeil v. Hester*, 753 So. 2d 1057, 1063 (Miss. 2000). More specifically, this Court will not disturb chancellor's factual findings unless they are manifestly wrong or clearly erroneous. *Nettleton Church of Christ v. Conwill*, 707 So. 2d 1075 (Miss. 1997) (emphasis added). Stated another way, a chancery court's factual findings should not be reversed where there is substantial evidence supporting those facts. *Cooper v. Crabb*, 587 So. 2d 236, 239 (Miss. 1991); *Mullins v. Ratcliff*, 515 So. 2d 1183, 1189 (Miss. 1987); *Norris v. Norris*, 498 So. 2d 809, 814 (Miss. 1986); *Gilchrist Machinery Co., Inc. v. Ross*, 493 So. 2d 1288, 1292 (Miss. 1986).

At trial, the Chancellor was presented with substantial evidence on which to base her factual findings. The Appellees presented the Chancellor with the testimony of Heywood, Walker, and Sharon Freeman⁹ regarding the events at Hancock Bank's main branch in Pascagoula on or about January 18, 2001. (T. at 57-93). These witnesses explained Julia Mae's intent to redeem CD #16314, her intent to purchase a new certificate of deposit with these redeemed funds, and the actions taken by Hancock Bank to effectuate the desires of Julia Mae. (T. at 61-63, 72-73, 82-84). In contrast, Patrick offered no evidence to contradict the testimony

⁹ Sharon Freeman is Christine's daughter, Heywood's brother, and Julia Mae's niece. Freeman testified about Julia Mae's attempt to remove Patrick's name from any of her remaining assets, including her accounts at Hancock Bank. (R. 71-74).

of these witnesses. Furthermore, the Chancellor reviewed both CD #16314 and CD #17178 themselves. This evidence satisfied the substantial evidence threshold on which the Chancellor based her factual findings regarding the redemption CD #16314. As such, this Court should affirm this finding of the Chancellor.

- a. Appellant is barred procedurally from arguing for the application of the parole evidence rule.

In his Brief, Patrick argues that this Court should disregard the testimony of Walker regarding the disposition of CD #16314. Patrick alleges that the introduction of Walker's testimony was in violation of the parole evidence rule. (Appellant's Brief at 9, 17, 20). However, like most of the issues raised in his appeal, Patrick did not preserve this issue by objecting to the introduction of this testimony at trial. Mississippi law is strikingly clear on the subject of appeals based on the parole evidence rule. This Court has held that "a party [cannot] 'successfully urge for the first time on appeal that the oral testimony contradicted [the parole evidence rule].'" *Estate of Parker v. Dorchak*, 673 So. 2d 1379 (Miss. 1996) (quoting *Service Fire Insurance Co. v. Craft*, 67 So. 2d 874 (Miss. 1953) (emphasis added)).¹⁰ Patrick made no such objection at the trial court level. As such, this Court is precluded from hearing the merits of such an argument in this appeal.

Based on the foregoing, the Chancellor was presented with substantial evidence on which to base her finding that, as a matter of fact, Julia Mae properly redeemed CD #16314 on or about January 18, 2001—thus extinguishing any rights Patrick had in the proceeds of certificate. This satisfies the requisite standard of review before this Court. As such, the finding of the Chancellor should be upheld.

¹⁰ This Court further held that, in order to raise the parole evidence rule on appeal, a party must at least properly object to the introduction of the evidence prior to its consideration by the trier of fact. 673 So. 2d at 1379 (emphasis added).

3) The Chancellor presumably relied on a valid legal standard in deciding that Certificate of Deposit #16314 was redeemed on or about January 18, 2001.

In his Brief, Appellant also challenges the legal sufficiency of the Chancellor's ruling regarding the redemption of CD #16314. Patrick alleges that the Chancellor's decision essentially allowed for the "partial cashing in" of CD #16314. (Appellant's Brief at 17). This characterization is based on the belief that the redemption of CD #16314 and the issuance of CD #17178 were one unified event. It is important to note that the Chancellor only addressed the timing of the redemption of CD #16314 in her Findings of Fact—not in her Conclusions of Law. This is because Patrick did not raise the legal issue of the timing of the redemption of CD #16314 at the trial of this matter. Instead, Patrick now seeks to raise this wholly new argument once his original points have failed. However, assuming *arguendo* that this Court should allow Patrick to raise this issue on appeal, the characterization of the redemption and the issuance of the CDs in question as one event proves to be the fundamental flaw in Patrick's argument. The Chancellor was not in error in ruling that CD #16314 was redeemed on or about January 18, 2001, and that CD #17178 was similarly, but separately issued and post-dated January 23, 2001.

a. Appellant failed to present authority supporting his challenge to the legal validity of the Chancellor's decision.

Before reaching the merits of Patrick's argument regarding the legal sufficiency of the Chancellor's decision, it is important to note that, in addition to raising this issue for the first time on appeal, Patrick offers no legal support for this his contention that certificates of deposit cannot be "partially cashed in." (Appellant's Brief at 17). Even if this bald statement is legally sound¹¹, the law is well established in Mississippi that this Court is not required to address any issue that is not supported by reasons and authority. *Hoops v. State*, 681 So.2d 521, 535 (Miss.1996) (citing *Pate v. State*, 419 So.2d 1324, 1325- 26 (Miss.1982)). As such, this Court is

¹¹ Appellees do not concede the legal sufficiency of this proposition.

not required to look any further into Patrick's argument in this regard, and is justified in dismissing Patrick's appeal on this point.

- b. The Chancellor's findings regarding the redemption of Certificate of Deposit #16314 are legally valid.**

As stated above, Patrick characterizes the Chancellor's decision as one allowing the "partial cashing in" of CD #16314. (Appellant's Brief at 17). The only logical way to launch this argument is to characterize the redemption of CD #16314 and the issuance of CD #17178 as a single, unitary event. However, the Chancellor never held that the redemption and the issuance in this case was one event. To the contrary, the Chancellor found the redemption of CD #16314 and issuance of CD #17178 to be two separate and distinct events. Specifically, she held that "Julia Mae Dejean had the unilateral right to redeem [CD #]16314 and [to] purchase a new certificate with the proceeds." (C.P. at 32) (emphasis added). Based on this, the Chancellor held that Julia Mae exercised her "absolute right to redeem [CD #16314] and [acquire] a new Certificate of Deposit with the proceeds." (C.P. at 32) (emphasis added). Patrick did not challenge Julia Mae's right to conduct these separate transactions, nor did he present evidence to challenge the testimony regarding the events that occurred at Hancock Bank on that day. There being no evidence to support Patrick's characterization that the redemption of one CD and the subsequent CD constituted a single unitary event, the Chancellor's finding that these were separate events should be utilized for this analysis.

As the basis for his theory that the redemption and the issuance were a single event, Patrick refers to a portion of the inscription on the back of CD #16314. Patrick refers to the endorsement panel, which bears the inscription "Reissued new CD #17178." (Ex. 1 (see copy of Certificate of Deposit numbered 16314)). Patrick contends that, since this inscription refers to

CD #17178, this must mean that CD #16314 was redeemed on this issue date of CD #17178.¹² However, this inscription merely indicates that the funds from CD #16314 were used to purchase CD #17178. This is not the same as saying that CD #16314 was redeemed the same day CD #17178 was issued. This inscription, nor anything else on the face of CD #16314 declares a redemption date of January 23, 2001.

In this case, the Chancellor heard testimony regarding Julia Mae's intent in redeeming CD #16314, as well as Walker's actions in effectuating Julia Mae's intent—both occurring on or about January 18, 2001.¹³ Patrick offers no evidence that sufficiently contradicts this testimony. Furthermore, the Chancellor reviewed the face of CD #16314 itself. Though not cited as a basis for her decision, the fact that CD #16314 was stamped "PAID" on a date prior to her death logically supports the Chancellor's decision.¹⁴ (Ex. 1 (see copy of Certificate of Deposit numbered 16314)). Based on the foregoing, it is clear that—even if Patrick would have properly raised this issue at trial—the Chancellor's decision was not based on an erroneous legal standard.

c. The Chancellor's findings regarding the issuance of Certificate of Deposit #17178 are legally valid.

At best, Patrick's argument could seek to challenge the issuance date of CD #17178, as opposed to the redemption date of CD #16314. Stated another way, Patrick could attempt to argue that CD #17178 was not effective, since it was issued after Julia Mae's death. Again, this is ultimately moot since Patrick failed to raise this legal argument at trial. *See IV.a.1. supra.*

¹² It is curious that, on one hand Patrick argues against the use of parole evidence in interpreting CD #16314 when it concerns Walker's testimony, while on the other hand arguing for the use of parole evidence in referring to the face of CD #17178.

¹³ Patrick also argues that the fact that Julia Mae received full credit for the interest paid on CD #16314 indicates a redemption date of January 23, 2001. (Appellant's Brief at 17). However, the Chancellor had the opportunity to consider this such point in reaching her decision regarding the date of redemption. Furthermore, it is doubtful if Patrick has the standing to argue this point, as the payment of extra interest only worked to the detriment of Hancock Bank—as it technically did not have to pay this amount to Julia Mae since CD #16314 was redeemed prior to the interest accrual. However, Walker understood this when she followed Julia Mae's instructions to have CD #16314 redeemed and to have CD #17178 post dated.

¹⁴ CD #16314 bears an inscription marking "PAID JAN 19 2000 (sic)."

However, again assuming that this Court were to allow Patrick to argue a new legal point for the first time on appeal, his argument is again without merit. The Chancellor's decision regarding the validity of the issuance of CD #17178 was legally sound based on Mississippi law.

- i) Post dating of non-negotiable instruments is persuasively supported by provisions of Mississippi's Article 3.

In the Chancellor's Findings of Fact, she held that Hancock Bank had merely post-dated the issuance of CD #17178 as a customer service mechanism to take care of a faithful and long-time customer. (C.P. at 30; T. at 84). There is a paucity of Mississippi law on the subject of non-negotiable certificates of deposit, especially as it concerns the effect of dating of the certificate. Though the provisions of Mississippi's Article 3 are not controlling in issues dealing with non-negotiable instruments, its passages do offer persuasive support for the Chancellor's decision regarding the issuance of CD #17178. Article 3 of Mississippi's Uniform Commercial Code allows for the post-dating of banking instruments. *See* MISS. CODE ANN. §75-3-113. Furthermore, §75-3-113 provides that, when post-dating occurs, the date stated merely determines the time of payment, if the instrument is payable at a fixed period after date. *Id.* This does not change the date the instrument was actually issued.

These statutory provisions are illustrative of the situation at hand, as CD #17178 was issued on or about January 18, 2001 but was post dated January 23, 2001 with a year repayment date from the post dated date. (Ex. 1 (see copy of Certificate of Deposit numbered 17178)). However, this post-dating does not change the fact that the instrument was issued on or about January 18th.

Based on the foregoing, it is clear that Patrick's appeal regarding the legal sufficiency of the Chancellor's decision concerning the effective date of the redemption of CD #16314 should be denied. Patrick waived his right to appeal this point as it was never mentioned at trial. Furthermore, Patrick fails to cite any legal authority for his proposition that certificates of

deposit cannot be partially redeemed. However, even if this Court reaches the merit of Patrick's argument, it is clear that the Chancellor's findings were supported by substantial evidence and were not based on an erroneous legal standard. As such, Patrick's appeal on this point should be denied.

B. The Chancellor correctly interpreted and applied Mississippi Code §81-5-63.

On appeal, Patrick also challenges the Chancellor's interpretation and application of §81-5-63. (Appellant's Brief at 19). In his Brief on this point, Patrick merely quoted the language of the statute and declared—with no further support or explanation—that allowing Julia Mae to unilaterally redeem CD #16314 prior to her death “defeated the statutory mandate.” (Appellant's Brief at 19). Stated another way, Patrick apparently argues that, pursuant to §81-5-63, Julia Mae never possessed the unilateral right to redeem CD #16314. However, this argument is in direct contradiction to a concession Patrick made earlier in his brief, when he stated that “[i]t is also undisputed that Julia Mae could have cashed in this CD [#16314] prior to her death and Appellant does not dispute that she wanted to cash it in.” (Appellant's Brief at 14). Furthermore, Patrick makes no attempt to further explain why or how the Chancellor's decision would “defeat[] the statutory mandate.”

As stated previously, §81-5-63 was drafted to cover this type of situation. In fact, the Mississippi legislature retooled §81-5-63 in 1988, specifically placing certificates of deposit within the statute's coverage. *See Cooper*, 587 So. 2d at 240. It is true that §81-5-63 creates a statutory presumption of survivorship on any deposits to which the statute applies. *Id.* However, that survivorship provision is logically inoperative if, as is the case in the instant situation, one of the parties listed on the deposit exercises her right to redeem the deposit prior to her death.

In summary, Patrick's argument regarding the Chancellor's interpretation of §81-5-63 controverts a position that he also conceded earlier in his Brief. This contradiction is further

combined with Patrick's failure to cite any authority to support his proposition. Moreover, a clear reading §81-5-63 indicates its proper application in this case. As such, Patrick's arguments in this area should be denied.

C. An endorsement was not required for Julia Mae DeJean's redemption of Certificate of Deposit #16314.

Next, Patrick challenges the Chancellor's conclusion that no endorsement was required for the redemption of CD #16314. This argument is properly reviewable by this Court, as Patrick raised the issue of the endorsement requirement at trial. However, Patrick's argument on this matter is ultimately moot.

1. The Chancellor properly relied on persuasive authority in holding that Hancock Bank could waive the endorsement requirement.

In her Conclusions of Law, the Chancellor held that CD #16314, as a non-negotiable instrument, did not require a physical endorsement by Julia Mae for the redemption to be effective.¹⁵ (C.P. at 32-34). While there is a lack of controlling case law on point, the Chancellor found the decisions of other jurisdictions persuasive. Particularly, the Chancellor relied on the principle cited in the West Virginia case of *Peters v. Peters*, 443 S.E. 2d 213 (1994). (C.P. at 33-34). In that case, the West Virginia Supreme Court of Appeals ruled that the endorsement requirement on a non-negotiable, non-transferable instrument simply served to mitigate the risk that an issuing bank may make payment to someone not entitled to payment. *Id.* According to that court:

Presentation clauses are for the purpose of preventing payment to one who is not a depositor and may be waived by the bank. The clauses are not meant to protect a depositor against withdrawals by a co-depositor. To hold otherwise would place a heavy burden on a bank to mediate between co-depositors, on of the burdens which the legislature obviously sought to remove by enacting W. Va. Code §31-

¹⁵ Furthermore, Black's Law Dictionary defines an indorsement/endorsement in terms of a negotiable instrument by stating that it is "the placing of a signature, sometimes with an additional notation on the back of a negotiable instrument to transfer or guarantee the instrument or acknowledge payment." *Black's Law Dictionary* 778 (7th ed. 1999) (emphasis added).

A-4-33 (1933).

Id. The Chancellor found this language persuasive, since as in *Peters*, an endorsement on a non-negotiable instrument such as CD #16314 could only serve to mitigate the risk to Hancock Bank. (C.P. at 34) (emphasis added).

After all, requiring an endorsement for non-negotiable commercial paper is legally nonsensical. *See Farm & Home Savings & Loan Ass'n v. Theiss*, 111 S.W. 2d 189, 190 (Mo. 1937) (emphasis added). This is because technically, an endorsement is used only on negotiable instruments. *Hughes v. Kaw*, 97 So. 465 (Miss. 1923) (“[A]ssignment is used to signify a transfer of nonnegotiable instruments, while indorsement is used to signify the transfer of a negotiable instrument.”). An endorsement makes certain guarantees regarding negotiation, which are not relevant to non-negotiable instruments. The mere presence of an endorsement on this non-negotiable instrument would not serve some magical purpose, such as transforming CD #16314 into a negotiable instrument. *Gidden Motor Co. v. Johnson*, 124 So. 367, 368 (Miss. 1929) (emphasis added). Given that requiring an endorsement would only serve to benefit Hancock Bank, the Chancellor was correct in holding that Hancock Bank possessed the right to waive this requirement.

The Chancellor’s findings noted that the West Virginia statute referred to by the court in *Peters* was strikingly similar to Mississippi’s own §81-5-63. To be sure, both statutes provide protection for a financial institution that allow one of an account’s joint depositors to withdraw all the funds in that account. W. VA. CODE §31-A-4-33; MISS. CODE ANN. §81-5-63. In his Brief, Patrick seeks to downplay the similarities between the two statutes by noting slight variations in the scope of the protection. However, these minute differences do not alter the overarching similarity in the goals of both statutes – that being recognition of a need to provide protection to banks facing situations like the one before this Court today. Moreover, the

similarities or supposed lack thereof between these statutes does nothing to alter the common law principle allowing banks to waive the endorsement requirement on a non-negotiable instrument. At the end of the day, this is the premise for which *Peters* was ultimately cited.

2. The Bank Officer's notation on the endorsement panel of Certificate of Deposit #16314 was tantamount to an endorsement by Julia Mae DeJean.

Alternately, the redemption of CD #16314 was wholly proper based on the notation Walker made on the back of the instrument. Walker made the following notation on the endorsement panel of CD #16314: "Per Ms. DeJean." (Ex. 1 (see copy of Certificate of Deposit numbered 16314)). Generally speaking, "a signature may be made for a person by the hand of another who acts in the presence of such person, at [her] direction or request, or with [her] acquiescence." 80 C.J.S. *Signatures* §13 (emphasis added). Walker made the inscription on the back of CD #16314 following her conversation with Julia Mae on or about January 18, 2001 and at Julia Mae's direction. (T. at 82-83; 87). Such an inscription was in accordance with Hancock Bank's standard procedures and practices. (T. at 87). Furthermore, the redemption process occurred while Christine—Julia Mae's agent in fact—was present at the Bank. (T. at 79-87). Thus, even though the Chancellor correctly held that Julia Mae's endorsement was not required, Walker's inscription clearly satisfied any endorsement requirement, were any requirement to have existed.

It is clear, based on the combination of both the rationale cited by the Chancellor in her Conclusions of Law and the general signatory principles cited above, that the Chancellor's holding that the endorsement requirement was properly satisfied is supported by sound legal principles and was not based on an erroneous legal standard. As such, the Chancellor's Conclusion should be affirmed.

D. Appellant does not possess an ownership interest in the proceeds of Certificate of Deposit #16314.

In his final prayer on appeal, Patrick argues that, at the very least, he should be declared the owner of at least one-half of the proceeds from CD #16314. (Appellant's Brief at 19-20). However, Patrick is again misguided in his appellate arguments.

1. Appellant's claim for an ownership interest in the proceeds of Certificate of Deposit #16314 is ultimately moot as to Hancock Bank.

Patrick's argument for a partial ownership interest in the proceeds of CD #16314 is ultimately moot in regards to Hancock Bank. The only way this Court should entertain Patrick's argument in this regard is if the Court initially—and correctly—decides that Julia Mae did in fact redeem CD #16314 prior to her death. Once the Court reaches this decision, Patrick's argument for an ownership interest in these funds becomes his only available basis for relief.

However, once this Court affirms the Chancellor's decision and declares that Julia Mae did redeem CD #16314 prior to her death, Hancock Bank is statutorily relieved of any liability to Patrick. As stated *supra*, §81-5-63 provides that, if money held in a joint deposit subject to withdrawal by any one of the joint depositors—as is the case in this situation—is in-fact withdrawn by one of the joint depositors—as is also the case in this situation—then the bank shall not be liable to the non-withdrawing joint depositor. *See* §81-5-63; *see also* 9 ENCY. MISS. L. *Wills* §75:14 (2006) (emphasis added). Similarly applied to the situation before this Court, when Julia Mae redeemed the full balance of CD #16314 on or about January 18, 2001, §81-5-63 protected Hancock Bank from any legal claims asserted by Julia Mae's joint depositor—here, Patrick.

The sufficiency of Patrick's argument against Heywood and Christine for an ownership interest in the proceeds of CD #16314 is irrelevant as to Hancock Bank. This Court only reaches this portion of Patrick's argument if it affirms the Chancellor's decision regarding Julia Mae's redemption of CD #16314. Once this Court decides that CD #16314 was properly

redeemed on or about January 18, 2001, Hancock Bank is fully relieved of any exposure on this appeal.

2. Appellant's ownership interest in the proceeds of Certificate of Deposit #16314 was extinguished when the instrument was redeemed by Julia Mae DeJean.

Patrick does not possess an ownership interest in the proceeds of CD #16314. As stated *supra*, CD #16314 was issued payable to “Julia Mae DeJean or Patrick DeJean.” (Ex. 1 (see copy of Certificate of Deposit numbered 16314)) (emphasis added). When a jointly-owned deposit is held in the name of one depositor or another depositor, either party possesses the unilateral right to withdraw the funds in that account. *See* MISS. CODE ANN. §81-5-63; *Graham v. Bank of Leakesville, Branch of First State Bank*, 556 So. 2d 1079, 1080 (Miss. 1990) (stating that the law presumes that accounts in the name of one party or another are “subject to withdrawal by either of the joint owners”); *see also Drummonds v. Drummonds*, 156 So. 2d 819, 821 (Miss. 1963) (“wherein each depositor is allowed to treat joint property as if it were entirely his own.”). Even Patrick himself recognized this fact, when he conceded that “[t]here is no doubt that Julia Mae had the right to cash in the CD [#16314] without Patrick’s consent while she was living.” (Appellant’s Brief at 15). Patrick possessed the right to make the same type of withdrawal at any time prior to Julia Mae’s redemption of the joint instrument. Patrick accepted the risk of such a withdrawal when he entered into a contract—CD #16314—which was payable to either himself or another party.

To support his claim for an equitable ownership interest in the proceeds of CD #16314¹⁶, Patrick cites this Court’s decision in the case of *Delta Fertilizer v. Weaver*, 547 So. 2d 800 (Miss. 1989). However, this Court’s ruling in that case is inapplicable to the Appellant’s claim

¹⁶ Patrick also baldly states that the language of Miss. Code §81-5-63 implies the Legislature’s recognition of a co-owner’s right to challenge a joint tenancy. (Appellant’s Brief at 20). Regardless of the veracity of this statement, Appellant—once again—fails to develop or provide any legal authority for his assertion.

for an ownership interest in the proceeds of CD #16314. In *Delta Fertilizer*, this Court held that a joint owner of a deposit account is allowed to establish his or her ownership interest when faced with a third-party garnishment claim. 547 So. 2d at 802-03 (emphasis added). Nowhere in that case did this Court allow one joint depositor to defeat the other joint depositor's right to unilaterally redeem the funds held in a joint account. In fact, none of the cases cited by Patrick defeat the basic premise that Julia Mae possessed the right to unilaterally redeem all of the funds from the jointly owned deposit account.¹⁷

- a. Even if Appellant has a claim for an ownership interest in the proceeds of Certificate of Deposit #16314, this claim is not against Heywood DeJean or Christine DeJean.

Even if this Court recognizes Patrick's claim for an ownership interest in the proceeds of CD #16314, this claim is not properly asserted against Heywood and/or Christine. Once it was redeemed, the proceeds from CD #16314 became part of Julia Mae's cash assets. Saying that Patrick possessed a claim against Julia Mae for a certain amount of money is the same as saying that Julia Mae owed a debt to Patrick. According to Black's Law Dictionary, a party to whom a debt is owed is the definition of a creditor. *Black's Law Dictionary* 375 (7th ed. 1999).¹⁸ As such, if Patrick felt that he was owed a debt by Julia Mae, Patrick should have proceeded as a creditor against either Julia Mae, or her estate.

Regardless, any claim Patrick may have had for an ownership interest in the proceeds from CD #16314 should be directed at Julia Mae, or her estate—not at Heywood and Christine. As stated *supra*, the disposition of CD #17178—including the proceeds redeemed from it—was a

¹⁷ As additional support for his argument, Appellant errantly cites the cases of *Reagan v. Reagan*, 507 So. 2d 54 (Miss. 1987) and *Drummonds v. Drummonds*, 156 So. 2d 819 (Miss. 1963). Each of these is a divorce case in which one divorcing party is seeking division of funds still held in a joint account. Nowhere in either case does the Court deny that one party could have removed all of the funds from the joint account prior to the divorce proceedings.

¹⁸ More specifically, Black's Law Dictionary defines "a creditor who has not established the debt by reducing it to judgment, or who has not otherwise secured a lien on any of the debtor's property" as a creditor at large. *Black's Law Dictionary* 375. If Patrick possessed an interest in money possessed by Julia Mae, this is an accurate description of his status.

distinct event, separate and apart from the disposition of CD #16314. The funds received by Heywood and Christine on February 5, 2001 were the proceeds of CD #17178, not CD #16314. Patrick advances no legal argument for connecting his alleged debt to the proceeds from this separate and properly redeemed certificate of deposit.

Based on the foregoing, any claim by Patrick for an ownership interest in the proceeds of CD #16314 is of no consequence to Hancock Bank, Heywood or Christine. Hancock Bank is statutorily protected from this claim under MISS. CODE ANN. §81-5-63. Furthermore, while Patrick almost certainly does not possess an ownership interest in the proceeds of CD #16314, even if he did, such a claim would make him a creditor of Julia Mae and should have been advanced against her or her estate. The resolution of this point in no way impacts the proceeds of CD #17178, which were properly redeemed by Heywood and Christine.

V. CONCLUSION

In his Amended Complaint, Patrick asserted two separate counts against Hancock Bank—both phrased as alleged breaches of contract. At trial, Patrick only pursued one of the counts, alleging that Hancock Bank was in breach of contract for redeeming CD #16314 without a proper endorsement. In her Findings of Fact and Conclusions of Law, the Chancellor denied Patrick relief on that ground. Patrick now raises a variety of issues on appeal. Patrick challenges the Chancellor's findings regarding the timing of the redemption of CD #16314, the Chancellor's application of Miss. Code §81-5-63, and the Chancellor's conclusion regarding the requirement of an endorsement on a non-negotiable instrument. Alternately, Patrick claims a partial equitable ownership interest in the proceeds of CD #16314.

Patrick is procedurally barred from advancing several of these arguments, as they are raised for the first time before this Court. Specifically, Patrick never raised the timing of the redemption of CD #16314 or the sufficiency of the application of §81-5-63 at trial. As such,

Patrick should be barred from challenging these issues for the first time on appeal.

Regardless of this procedural obstruction, each of Patrick's theories fails on its face. The Chancellor's Findings of Fact regarding the redemption of CD #16314 and the issuance of CD #17178 were supported by substantial evidence and were legally sound. Furthermore, the Chancellor did not apply an erroneous legal standard regarding the requirement of endorsement on non-negotiable instruments such as CD #16314, and her decision in that regard should be affirmed. Finally, Patrick does not possess an ownership interest in the proceeds of CD #16314. Even if he did, none of the Appellees is a party against which Patrick can obtain relief on this claim. Based on the foregoing, this Court should affirm the Chancellor's decision.

CERTIFICATE OF SERVICE

We hereby certify that we have this day caused to be mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing document to:

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THIS the 16th day of February, 2007.

**Attorney for Appellees Heywood DeJean
and Christine DeJean**



Thomas E. Robertson

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W. Lee Watt