IN THE SUPREME COURT OF MISSISSIPPI

PARTICK DEJEAN — APPELLANT

VERSUS — CAUSE NO: 2005-TS-00409

HAYWOOD DEJEAN, CHRISTINE DEJEAN AND HANCOCK BANK — APPELLEES

APPEAL FROM CHANCERY COURT
(ORAL ARGUMENT REQUESTED)

BRIEF FOR THE APPELLANT

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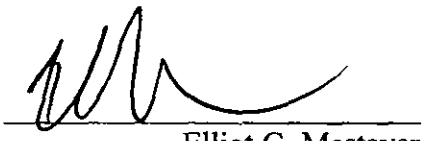
CERTIFICATE OF INTERESTED PERSONS AND SERVICE OF APPEAL

I, ELLIOT G. MESTAYER, as counsel for the Appellant, do certify that the only known interested persons to this action are the parties and Appellant also certifies that he has mailed a true and correct copy of the foregoing Brief and Record Excerpts to: Lee Watt and Thomas Roberts at their usual mailing address of P.O. Drawer 119, Jackson MS 39205 and P.O. Box 8622, Moss Point, MS 39562 and Chancellor Jaye Bradley P.O. Box 998, Pascagoula, Ms 39568-0998.

Elliot Mestayer

MAILING CERTIFICATE

I, ELLIOT G. MESTAYER, do certify that I have mailed on this day by U.S. mail, first class, postage prepaid Brief for the Appellant (4) and Appellant's Record Excerpts (4) this the 14th day of November, 2006 unto the Mississippi Supreme Court at P.O. Box 117, Jackson, MS 39205.



Elliot G. Mestayer

STATEMENT OF THE ISSUES

1. Whether the Chancellor committed manifest error in finding that CD #16314 was redeemed prior to Julia Mae DeJean's death.
2. Whether the Chancellor applied an erroneous legal standard in holding that, in effect, a certificate of deposit could be partially redeemed.
3. Whether the Chancellor neglected to apply the "four corners" doctrine to certificate of deposit # 16314.
4. Whether the Chancellor failed to apply MCA 81-5-63.
5. Whether the Chancellor properly failed to grant an equitable division of the certificate of deposit based upon the source of funding of the certificate of deposit.
6. Whether there was a sufficient "endorsement" of CD # 16134.

STATEMENT OF THE CASE

A Declaratory judgment suit was filed by Patrick K. DeJean on September 10, 2001 and initially named only Christine DeJean and Heywood DeJean as Defendants. An Answer was duly filed on April 12, 2001.

Patrick DeJean requested that the court declare him to be the sole owner of CD #16314 issued by Hancock Bank that was in his name or Julia Mae DeJean. Julia Mae DeJean died January 20th, 2001 and Hancock Bank did not pay Patrick DeJean but rather issued a new certificate of deposit to Julia Mae DeJean or Christine DeJean, Heywood DeJean with an issue date of January 23rd, 2001. The certificate of deposit appeared to have been redeemed under a power of attorney purportedly executed by Julia Mae DeJean just prior to her death.

On the eve of the first trial setting, Hancock Bank's response to a subpoena duce tecum was opened. Thereafter the Plaintiff moved for a continuance seeking to add an indispensable party, Hancock Bank. Additional time was granted and upon motion properly made and granted, Patrick DeJean filed amended pleadings naming Hancock Bank as an additional Defendant. Essentially Patrick DeJean sued Hancock Bank for breach of contract. Also Patrick DeJean requested return of the proceeds under the theory of unjust enrichment, incapacity of the Decedent to execute a power of attorney and under general equitable principals.

Hancock Bank filed an Answer on March 5, 2003 and the case was tried on October 18th, 2004. All parties were present and represented by counsel. Patrick DeJean, Heywood DeJean and Hancock Bank employee, Peggy Walker, testified at trial.

On December 30th, 2004, Chancellor Bradley entered her Findings of Fact and Conclusions of Law and a Final Judgment was issued on February 7th, 2005. The Chancellor denied the Plaintiff's various requests for relief.

SUMMARY OF THE ARGUMENT

The Chancellor erred in finding that Julia Mae had redeemed CD # 16314 prior to her death. The CD speaks for its self and is clear and unambiguous especially when compared to the issue date of the subsequent CD issued three days after her death.

If the Court is entitled to consider the testimony of Hancock Bank employee, Peggy Walker, in violation of the parole evidence rule, the Chancellor misconstrued or misinterpreted her clear testimony which indicated that Julia Mae DeJean told her days before her death that she wanted to wait until January 23rd, 2001 to avoid an loss of interest which turned out to be three days after Julia Mae DeJean's unexpected death.

The Chancellor tried to carry out Julie Mae DeJean's intention of transferring CD # 16314 to her self and others by rewriting CD #17178. Julia Mae DeJean took the risk that she would die before the effective date of the new CD (January 23rd, 2001) and the Court cannot relieve her or her intended beneficiaries of the consequences of Julia Mae's decision. The Court does not have the power to rewrite CD # 171278 to have an effective date of January 19th, 2001.

The Chancellor findings create a fiction that a CD can be redeemed for purposes of changing ownership but at the same time would not be redeemed for interest purposes until a later date.

CD# 16134, in Patrick and Julia Mae DeJean's name, does indicate what date it was redeemed. When this CD and its successor are considered together, it is apparent the Court did not apply the four corners doctrine or MCA 81-5-63 because the clear language of this contract creates a joint tenancy payable to Patrick DeJean upon Julia Mae DeJean's death.

The Chancellor failed to recognize that the lack of an endorsement on CD #16134 demonstrates that CD# 16134 was not redeemed prior to Julia Mae DeJean's death as further supported by the issuance date of the subsequent CD dated three days after her death. Instead the Court focused on what constitutes an oral endorsement and if same is adequate.

The Appellant also requests that the principals set forth in Delta Fertilizer Inc v. Weaver, 547 So.2d 800 (Miss. 1989) be applied to these particular circumstances. Specifically The Appellant requests that the Court recognize Patrick DeJean's ownership of one-half of the principal and interest because it was part of his inheritance from his sister.

ARGUMENT

PATRICK DEJEAN is the adopted son of V.P. and Mary DeJean. His birth mother was Julia May DeJean. Through adoption he had three brothers and two sisters namely, Valsin P. DeJean, Louis M. DeJean, Morris M. DeJean, Vernon P. DeJean, Margueritte Elizabeth DeJean and Julie May DeJean (his birth mother). (Pg. 20, Ln. 1, 15-18)

The property in dispute originally came from Patrick and Julia Mae DeJean's parents. (Pg. 20, Ln. 25, 27-29 and Pg 21, Ln. 1-3, 5-6) The family inheritance was passed down to the remaining family members as joint tenants. (Pg. 24, Ln. 22). As family members died, the remaining property would be placed in the surviving living siblings names. (Pg. 21, Ln. 15-17, Ln. 20).

The only disputed portion of the family inheritance is a certificate of deposit held at Hancock Bank # 16314 in the face amount of $100,000.00 bearing interest at the rate of 4.65 %. This certificate of deposit was purchased with funds solely generated from the sale of bank stock inherited from Margueritte Elizabeth DeJean's estate. Margueritte Elizabeth DeJean, Deceased, died in 1982 and left all of her Pascagoula-Moss Point Bank stock to Patrick and Julia May DeJean *equally.* (Trans. Pg.21. Ln. 10-29, Pg 22, Ln. 4-6, Pg. 24, Ln. 4-28; Pg 25. Ln 3.) They sold the stock and purchased a certificate of deposit (hereinafter referred to as a C.D) at Hancock Bank in the amount of $141,313.42 as joint tenants with rights of survivorship on December 27, 1991. (Appellant's Exhibit 1, pg.3) Thereafter the original certificate of deposit matured and was replaced by subsequent C.D.s namely, C.D. # 14085, 15275, 15989 and 16314 respectively. (Appellant's Exhibit

1, pg 3, 4, 7, 8, and 9) C.D. #12720 was eventually endorsed by Julia Mae DeJean and C.D. #14085 was purchased. (Appellant's Exhibit 1, pg 3).

C.D. # 14085 was issued in the amount of $149,396.16 maturing in one year and bearing interest at 3.25 % on June 24th, 1993 payable to "Julia Mae DeJean and Patrick. K. DeJean As Joint Tenants With Rights of Survivorship" (Appellant's Exhibit #1, pg 4). The C.D. directs that all interest is to be deposited to Julia Mae and Patrick K. DeJean's joint checking account #07-0041837. (Appellant's Exhibit 1, pg 4 and 6.) On the back of the C.D.#14085 where the C.D. is be endorsed, there is the following typed notation: "CD#15375 issued for 134,396.16 and 15,000.00 credited to 07-0041837 [unreadable] per Miss Julia Mae DeJean by phone 07-01-96". Neither Julia Mae DeJean nor Patrick DeJean endorsed this C.D. Appellant's Exhibit 1, pg 6 provided by Hancock Bank also contains a deposit slip dated July 2nd, 1996 which reflects the deposit of $15,000.00 into a joint account of Julia Mae H. DeJean or Patrick K. DeJean and the issuance of C.D. #15275 in the amount of $134,396.16.

C.D. # 15275 was actually rolled over into a new C.D # 15989 on July 2, 1996 in the amount of $134,369.16 bearing interest at 5.05 % maturing on June 24th, 1997 with interest payable to account # 07-0041837. (Appellant's Exhibit 1, pg7) Again the C.D. was in the name of "Julia Mae DeJean or Patrick K. DeJean as tenants with rights of survivorship". This C.D. was also never endorsed by Patrick or Julia Mae; instead the back of the C.D. notes the following: "Reissued cd#15989 for $109,283.15 Credited account #07-0041837 for $25,000.00. per Mrs. DeJean by ...[unreadable]" and has a date of 1-21-98 handwritten on the back.

On January 23rd, 1998, C.D. # 15989 was issued in the amount of $109,263.15 bearing interest in the amount of 5.50 %, maturing June 23, 1998 payable to "Julia Mae DeJean or Patrick K. DeJean as tenants with [unreadable] of survivorship". (Appellant's Exhibit 1, pg 8) This C.D. was issued two days after the surrender of the previous one and it directed that all interest was to be payable to Patrick and Julia Mae's joint checking account. When the C.D. was surrendered, no endorsement can be found. On the back of the C.D. was the handwritten notation "Reissue New CD #16314 for 100,000.00 Dep 9283.15 into CK A/C # 070041837".

C.D. # 16314 was issued June 23rd, 1999 in the amount of $100,000.00 payable to "Julia Mae DeJean or Patrick K. DeJean" in one year at the rate of 4.85 % with interest to be deposited into Julia Mae and Patrick's joint checking account. (Appellant's Exhibit1, pg 9) On the face it was stamped "PAID JAN 19 2000".

Retired Hancock Bank employee Peggy Walker testified that during a telephone conversation with Julia Mae DeJean on or about January 18th or 19th, 2001, it was decided that this CD would be cashed in on January 23rd, 2001(Transcript 84-85) and a new CD would be issued in the name of Julia Mae DeJean or Christine W. DeJean or Heywood V. DeJean. Julia May DeJean died on January 20th, 2001 and Hancock Bank did in fact issue a new CD # 17178 consistent with those alleged instructions. (Appellant's Exhibit 1, Pg 10) Hancock Bank admitted that this CD was issue on January 23rd, 2001. (Trans. 92. Pg 18)

Christine DeJean and Heywood DeJean were the joint holders of a power of attorney issued by Julia Mae DeJean. (Exhibit 3) signed by Julia Mae DeJean on January 16th, 2001. During the trial, Peggy Walker, employee of Hancock Bank who handled the

transaction, stated that the power of attorney was not used as the basis for the transfer but rather the transfer was based upon the verbal instructions of Julia Mae received over the phone on or about January 18th or 19th, 2001. (Transcript Pg 83 Ln. 10) However the CD was not cashed or "proceeds been taken" until January 23rd, 2001, three days after Julia Mae's death. (Transcript Pg 84, Ln 19-21)

Patrick DeJean did not raise the issue of the validity of the power of attorney at trial.

1. Did the Court commit manifest error in failing to enforce contract according to its terms.

It is undisputed CD #16314 created a joint tenancy with rights of survivorship Section 81-5-63 creates such a presumption. It is also undisputed that Julia Mae could have cashed in this CD prior to her death and the Appellant does not dispute that she wanted to cash it in. Nevertheless the issue remains or whether she did in fact cash it in prior to her death. Julia Mae began the process of cashing in the old CD for a new one prior to her death. In an effort to avoid an interest penalty, the cashing in of CD #16314 and the issuance of CD 17178 was postponed until January 23rd, 2001. (Trans. Pg 84, Ln19-25) Therefore at the time of Julia Mae's death on January 20th, 2001, Julia Mae and Patrick were still the co-owners of CD #16314 and therefore Patrick became the sole owner at her death. If we accept the Chancellor's conclusion that CD # 16314 was cashed in prior to Julia Mae's death, then some written record or testimony would exist clearly establishing what happened to $100,000.00 between the dates of January 18th or 19th until January 23rd, 2001. Appellant subpoenaed all records relevant to the CD's and apparently there is no record showing any cash payment or deposit during this telling

period of time. Appellees' only witness confirmed that Julia Mae decided not to cash in the CD on the 18th or 19th of January to avoid an interest penalty. (Trans 84, Ln 19-29 and Pg 85 Ln1-2.) A CD cannot be cashed in to the extent it severs a joint ownership but not to the extent it causes a loss in interest. Such patent inconsistencies can not be adopted by this Court. The testimony and the documents point to only one conclusion. Julia Mae wanted to cash in CD #16314 for a new CD in her and Appellees' names *effective* January 23rd, 2001.

There is no doubt that Julia Mae had the right to cash in the CD without Patrick's consent while she was living. It is apparent from Peggy Walker's testimony that cashing in the CD on the 18th or 19th of January was in fact discussed with Julia Mae. The direct examination of Peggy Walker, Hancock Bank's only witness, clearly establishes that Julia Mae choose not to cash or surrender the CD until January 23rd, 2001. (Trans. 84, Ln.12-29)

Q. Now on the day, whatever that day is, the 18th or the 19th of January, 2001, whatever that day is, on that day, which is the day you've already testified you called Julia Mae, if the proceeds had physically been taken that day, what affect, if any, would there have been on the interest?
A. She would have lost that interest. And she was such a good customer of ours, they said "why don't we wait and date it on the 23rd."
Q. Okay. All right, Which was—
A. Twenty –
Q. Several days later?
A. Uh-huh (indicating yes).
Q. All right
A. So she would receive the full amount of interest.
Q Okay. And had that not been done, would there been interest lost?
A. Yes. There would have been.

(Trans. Pg 82-83):

"Q. And so she [Julia Mae] was available by telephone that very day?
A. She certainly was.

Q. And where did you reach her when you called her. Where was she?
A. The number that I have—
Q. Yes, ma'am
A. Was at her home
Q. All right. And that is the number you called?
A. Uh-huh (indicating yes). I don't think it was the 19th, I'll be honest dates don't really mean anything to me now. It has been so long ago, but I want to say they came in before the 19th—
Q. Okay
A. --on this.
Q. All right
A. And then they [Christine and Heywood] on the 19th.
Q. Okay. And did you receive instructions from Julia Mae DeJean as to what to do with her CD that was current at that time?
A. I certainly did.
Q. And what were those instructions?
A. To issue it in her name, "Christine" or "Heywood". Is that his—Heywood.
Q. Okay. So the existing CD, was it cashed in?
A. Yes
Q. And the proceeds from cashing it in, what where done with those proceeds?
A. A CD was reissued.
Q. Okay. A new CD was purchased?
A. A new CD.
Q. Okay. And were those acts, the cashing in of the old CD, taking the proceeds and acquiring a new CD, were those acts in accordance to the instructions given to you by Julia Mae DeJean?
A. Yes, they were.

What is missing from the testimony is a statement of *what* date this "cashing in" was to be effective. Fortunately we don't have to guess what day she meant for this to be effective. The unambiguous date of the subsequent CD cannot be ignored and is easily reconciled with the testimony. CD #17178 is dated January 23rd, 2001 and above that is the notation of "Re Issue of 16314". On the back of CD #16314 in the space provided for customer endorsement is the handwritten note "Reissue new CD # 17178 per Mrs. DeJean POA". Not one single document reflects any cashing in. Rather both CD's consistently state that CD # 16314 was converted to CD # 17174, three days after Julia

Mae's death. The lack of any other additional documentation reflecting the temporary placement of any cashed in funds between the January 19th and January 23rd, 2001 speaks volumes. The unambiguous language of CD #16314 and CD # 17178 is the best way to determine Julia Mae DeJean's true intentions and the Chancellor did not need any testimony to determine her intentions. Even if Peggy Walker's testimony is needed, she did not say anything that cannot be reconciled with the CDs.

2. Partial cashing in:

The Chancellor held in effect that CD # 16314 was cashed in for purposes of terminating the joint ownership but not to the extent interest was lost. As previously mentioned, Peggy Walker established that for interest purposes, the transfer to the new CD would be effective January 23rd, 2001. Both relevant CDs contain supporting typed and handwritten notations that CD # 16314 would be rolled over into new CD # 17178 dated January 23rd, 2001. However the Chancellor found, in effect, that CD # 16314 was cashed in on or about January 18th or 19th, 2001. Therefore the date CD # 16314 was redeemed is not also the date new CD # 17178 was issued and there are no documents reflecting what happened to the principal between the dates of January 18th/19th and January 23rd, 2001 containing 3-4 business days. Since interest on CD # 16314 was calculated up to January 23rd, 2006, Appellant asks the question how can interest accrue on a CD that has already been cashed in? (Trans. 84, Ln 19 -26). The only logical answer is the transfer was not to take place until January 23rd, 2001. This is the only conclusion that is consistent with Julia Mae' intentions and the language on both CDs.

3. Four Corners Doctrine.

All of the evidence points to the fact that Julia Mae decided not to cash the CD until January 23rd, 2001. Perhaps had she known of her imminent death, she would have decided otherwise. But the fact remains that CD # 16314 was still in full force and effect at the time of her death by Julia Mae's choice. A "court is obligated to enforce a contract executed by legally competent parties where the terms of the contract are clear and unambiguous". *Merchants & Farmers Bank v State* ex rel *Moore* 651 So 2d 1060 (Miss. 1995). The Court looks to the four corners of the document to determine how to interpret it. *McKee v McKee,* 568 So 2d 262, 266 (Miss. 1990). The words employed are by far the best resource for ascertaining the intent and assigning meaning with fairness and accuracy. *Simmons v Bank of Mississippi,* 593 So 2d 40 (Miss. 1992) It is only when an ambiguity appears between competing terms or where the language in the contract is less than clear should the Court delve further. *Indep. Health Care Mgmt v City of Bruce,* 746 So 2d 881 (Miss Ct App, 1998) When a written contract is clear, definite. Explicit, harmonious in all its provisions and free from ambiguity, a court should look *solely* to language used in the instrument itself and will give effect to all parts of it as written. Construction of the contracts becomes a matter of law and not of fact. It must be construed as written. See Pfisterer v. Noble, 320 So. 2d 383, 384 (Miss. 1975) and Griffin v. Tall Timbers Development Inc., 681 So. 2d 546, 551 (Miss. 1996).

No theory of ambiguity was offered by any party nor was any finding made that the contract was unclear or ambiguous. All of the testimony offered supported the idea that CD in dispute was, by express choice, still in full force and effect at the time of Julia Mae's death and the Court is compelled to look at the clear and unambiguous language of CD # 16314 and CD #17178 to determine her intentions. These contracts represent the

best and most reliable evidence available. Matter of Estate of Anderson, 541 So.2d 423, 428 (Miss 1989) In both Bodman v Bodman, 674 So.2d 1245 and Cooper v. Crabb, 587 So 2d 236, the Supreme Court rejected the use of parole evidence to infer an intent contrary to that stated in certificates of deposit.

"We search for intent, but when we search for intent we accept that the l;aw directs our search and points first and foremost to the text the parties created. Matter of Estate of Anderson, 541 So.2d 423, 428 (Miss.1989). Common sense suggests the parties' writing the most reliable evidence of the intent. Common law directs the, where we find survivorship clauses in the name of the account itself, Weaver v. Mason, 228 So2d 591, 593 (Miss. 1969) in the signature cards, Estate of Isaacson v. Isaacson, 508 So. 2d 1131, 1134 (Miss. 1987) or in a joint account agreement, Stewart v. Barksdale, 63 So. 2d 108, 109 (1953, we enforce them according to their tenor. The language to which Bethay and Cooper bound themselves, together with the bank, is without ambiguity. It declares the funds represented by the CDs held by them as joint tenants with rights of survivorship...

And if there were any doubt, which there is not, the Legislature in 1988 has enacted a presumption in the case of deposits in the name of two or more persons payable, as here, to the any one of such persons or the survivor.

Cooper, 587, So.2d at 540.

4. MCA 81-5-63 Deposit in name of two or more persons—of deceased persons

> "When a deposit has been made or shall hereafter be made in the name of two(2) of more persons, payable to any one (1) of such persons... or payable to the persons as joint tenants, such deposit or any part thereof or interest or dividends thereon may be paid to any one (1) such persons, without liability, whether one or more of said persons be living or not... The making of a deposit in such form ... shall create the presumption of ... of the intention of all persons named on the deposit to vest title to the deposit and the additions thereto and all interest or dividends thereon in the survivor or survivors..."

By assuming Julia Mae DeJean directed the cash in of CD # 16134 prior to her death, the Chancellor has defeated the statutory mandate.

5. Ownership of funds:

Appellant requests that he be at least be recognized as half owner of the principal and interest from CD #16134 because of the source of money used to purchase the CD #16134. It was acquired from an inheritance from his sister (Trans. Pg.21. Ln. 10-29, Pg 22, Ln. 4-6, Pg. 24, Ln. 4-28; Pg 25. Ln 3). No evidence was offered to contradict the source and no objection was made to the introduction of this evidence. As previously stated MCA 81-5-63 creates a *presumption* to vest title in the survivor. Such language can only mean the Legislature recognizes a co-owner's the ability to challenge the joint tenancy. In Delta Fertilizer Inc v. Weaver, 547 So.2d 800, (Miss. 1989), the Supreme Court allowed, after the enactment of MCA 81-5-63, a party to establish his ownership of funds in a cd. See Also Regan v. Regan, 507 So.2d 54, 56 (Miss. 1987) Drummonds v. Drummonds, 156 So2d. 819 (1963). Therefore if parole evidence can be used to ascertain when CD # 16314, then logically parole evidence is admissible to show Patrick's one-half ownership of the funds.

6. Endorsement:

The Chancellor found that CD # 16314 did not have to be endorsed under the auspices of MCA 75-3-201 and MCA 75-3-101. While it is true that the CD in issue is non-negotiable on its face and endorsement is required for negotiable instruments, the plain language of the contract should not be so quickly disregarded. The endorsement requirement is stated very clearly on the CD. Appellant does not argue that the CD is negotiable or that the CD is subject to Article 3 of the Uniform Commercial Code. The Court is obligated to enforce the contract as written and absent some compelling reason, the Court cannot pick and chose what provisions to enforce or re-write the contract. The endorsement is for the benefit of both the bank and the co-owners.

The West Virginia case relied by the Chancellor is not relevant to our facts and was misquoted. Peters v. Peters, 191 W.VA. 56, 443 S.E. 2d 213 (1994). The quote of this West Virginia case starts "We do not follow the Bladders, however, because, in our judgment, *passbook* presentation clauses are for the purposes of preventing payment to one who is not a depositor and may be waived by the bank..." (Emphasis added.) The word "passbook" was never mentioned in the quotation found in the Chancellor's findings of fact. The West Virginia Court also noted that the endorsement requirement would be too much of a "hassle" and that " Indeed, this judge has never had a personal bank account in the City of Charleston because he refuses to do business with a bank where he is not personally known be every employee of the institution." Peters at 58. Surely these are not valid reasons for waiving the endorsement requirement. The West Virginia Court was discussing a statute which the Appellee, Hancock Bank, and the Chancellor found to be similar to our own MCA 81-5-63 but is in fact quite different. W. VA. Code 31A-4-33 states in pertinent part:

(c) Payment to any joint depositor and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge for all payments made on account of such deposit, prior to the receipt by the banking institution of notice in writing, signed by any one of such joint tenants not to pay such deposit in accordance with the terms thereof. Prior to the receipt of such notice no banking institution shall be liable for the payment of such sums.

This statute grants a bank immunity upon payment and receipt if no notice of a problem has been received. Neither receipt nor lack of notice is mentioned in MCA 81-5-63.

CONCULSION

The Chancellor erred as a matter of law in failing to enforce CD #16314. Assuming for the sake of argument that parole evidence was admissible and appropriate, the four corners of documents and the testimony leave no doubt that Julia Mae wanted the effective date of the January 23rd, 2001 and therefore CD # 16314 was still in effect at her death.

If parole evidence is admissible then, the Patrick is entitled to show ownership of the funds which he did without objection. Above all else endorsement was required for the transfer and was simply not present. Thank you for your consideration.