BEFORE THE SUPREME COURT OF MISSISSIPPI

CAROLYN EPPERSON	APPELLANT
VS.	CAUSE NO. 2010-CA-56
SOUTHBank	APPELLEE

APPEAL FROM THE CIRCUIT COURT
OF ALCORN COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

B. SEAN AKINS MSB NO[redacted]
ATTORNEY FOR APPELLANT
CAROLYN EPPERSON

AKINS & ADAMS, P.A.
ATTORNEYS AT LAW
108 JEFFERSON STREET
RIPLEY, MISSISSIPPI 38663
(662) 837-9976

ORAL ARGUMENT REQUESTED

BEFORE THE SUPREME COURT OF MISSISSIPPI

CAROLYN EPPERSON **APPELLANT**

VS. **CAUSE NO. 2010-CA-56**

SOUTHBank **APPELLEE**

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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Carolyn Epperson, Appellant
2. B. Sean Akins, Attorney for Carolyn Epperson
3. Rachel Pierce of Phelps Dunbar, attorney for SouthBank, Appellee
4. William Beasley of Phelps Dunbar, attorney for SouthBank, Appellee
5. SOUTHBank, Appellee
6. Hon. Jim Pounds, Alcorn County Circuit Court Judge

This the 8th day of July, 2010.

B. SEAN AKINS, MSB NO[redacted]
ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases: **Page**

Statutes:

Other Sources:

STATEMENT OF ISSUES

DOES A BANK'S CONSUMER ACCOUNT AGREEMENT THAT ALLOWS ANY DEPOSITOR WHO SIGNS THE ACCOUNT AGREEMENT TO WITHDRAW FUNDS "ON FORMS APPROVED BY US" MEAN THAT THE BANK MAY ADDITIONALLY REQUIRE THE DEPOSITOR TO PRODUCE THE ORIGINAL CERTIFICATE OF DEPOSIT?

STATEMENT OF THE CASE

A. Nature of the Case

Following her father's death, Carolyn Epperson became the co-owner of several certificates of deposit with her half-brother and step-mother. The certificates of deposit were held as "Juanita Rickman or Carolyn Epperson or Randy Thompson". When Ms. Epperson went to the Bank to withdraw the certificates of deposit, the Bank refused because she did not have possession of the certificates of deposit. Neither the Bank's certificate of deposit nor signature card required the depositor to surrender the certificate of deposit in order to withdraw the funds. The Bank later allowed Juanita Rickman to withdraw all of the funds and Ms. Epperson received none of the money.

B. Course of Proceedings and Disposition of the Court Below

On October 16, 2008, Carolyn Epperson filed her Complaint in the Circuit Court of Alcorn County, Mississippi against SOUTHBank, an Alabama banking corporation. SOUTHBank answered on December 1, 2008. Following discovery, each of the parties filed competing Motions for Summary Judgment. On November 19, 2009, the Circuit Court denied the Ms. Epperson's Motion for Summary Judgment and granted SOUTHBank's Motion for Summary Judgment. Ms. Epperson filed a Motion to Amend Judgment or, in the alternative, Motion to Reconsider on November 25, 2009. The Court denied the Motion on December 21, 2009. Ms. Epperson timely filed a Notice of Appeal on January 8, 2010.

C. Statement of the Facts

The parties took the depositions of the Plaintiff, Ms. Epperson and Margie Franks, a former SOUTHBank employee, who was responsible for handling the Certificates of Deposit. They essentially told the same story which is outlined below. These facts were incorporated into the Trial Court's findings, as well:

A. Who are the parties?

Carolyn Epperson (hereinafter "Ms. Epperson") is the biological daughter of C. K. Rickman and the step-daughter of Juanita Rickman. Her half-brother is Randy Thompson who is the biological child of C. K. Rickman and Juanita Rickman.

B. How were the certificates of deposit originally purchased?

In 1993, C.K. Rickman and wife, Juanita Rickman bought four certificates of deposit at SOUTHBank. Certificate of Deposit #9019789 was in the name of "C. K. Rickman, Trustee for Carolyn Rickman Epperson." Certificate of Deposit #9019797 was in the name of "C. K. Rickman or Juanita Rickman, Trustee for Randy Thompson." Certificates of Deposit #9019810 was in the name of "C. K. Rickman and Juanita Rickman, Trustees for Carolyn Epperson and Randy Thompson." Certificate of Deposit #9021984 was in the name of "C. K. Rickman and Juanita Rickman, POD to Carolyn Epperson and Randy Thompson." Each of these Certificates of Deposit contained language that in order to liquidate the Certificate, the depositor must "properly endorse the certificate and present it to us."

C. After Mr. Rickman died, the ownership changed.

C. K. Rickman died in 1999 and on January 6, 2000, Juanita Rickman, Carolyn Epperson and Randy Thompson signed a new signature card for the new Certificates of Deposit that changed the names on each of the Certificates of Deposit to "Juanita Rickman or Carolyn Epperson or Randy Thompson." The trial court's findings stated that the parties went to the bank to sign the signature card. However, Ms. Franks specifically testified that Ms. Epperson never came to the bank to sign the signature card. The card was simply returned to the bank. (Ms. Franks' depo, P. 25. L. 14 - 21)

D. What were the terms of the new certificates of deposit?

The new Certificates of Deposit purchased in 2000 did not require that the Certificate of

Deposit be presented in order to be cashed. Specifically, each of the Consumer Account Agreements (signature cards) for the accounts stated:

> WITHDRAWALS – Unless otherwise clearly indicated on page 1, any one of you who signs this form including authorized signers, any withdraw or transfer all or any part of the account balance at any time on forms approved by us.
>
> We reserve the right to refuse any withdrawal or transfer request which is attempted by any method no specifically permitted. . .
>
> Withdrawals from a time deposit prior to maturity or prior to expiration of any notice period may be restricted and may be subject to penalty.

This language was not contained in the Certificate of Deposit. This language was part of the Consumer Account Agreement that the Bank used for any account whether it be checking, savings or time deposits such as a certificate of deposit.

E. Ms. Epperson checked on the money and discovered a withdrawal without her knowledge.

On February 15, 2005, Carolyn Epperson went to SOUTHBank to inquire about her money. She obtained a printout of the balances of the four Certificates of Deposit that were on deposit at the Bank. She later returned to SOUTHBank on October 21, 2005, to inquire about her money and she obtained another printout. The Bank's records showed that CD#s 9019789 and 9019797 had a balance of $84,078.91 each. CD# 9019810 had a balance of $65,025.63. However, the printout revealed that CD# 9021984 had been cashed without Ms. Epperson's knowledge. According to Ms. Franks' handwritten note, CD# 9021984 had been cashed on March 8, 2005 for $51,866.45. Based on the ownership of the certificates of deposit, Ms. Epperson knew that her step-mother or half-brother could withdraw all of the remaining certificates of deposit without sharing any of the money with her.

F. Ms. Franks refused to let Ms. Epperson have her money.

Ms. Epperson was concerned and asked Ms. Franks to get her money out of the Bank.

However, according to Ms. Franks, the Bank did not let her have her money because Ms. Epperson did not have the Certificates of Deposit. The following are her responses taken from her deposition testimony:

Transcript of Margie Franks Page 9, Line 20 – Page 10, Line 1:

Mr. Akins : Do you remember anything about Carolyn Epperson coming into the bank and asking you any questions about any the CD's?

Ms. Franks : She never came to the bank until after Mr. Rickman died. And she came in and questioned withdrawing some money, but she never had the CD's, so we couldn't let her have any money.

Transcript of Margie Franks Page 19, Line 20 – Page 21, Line 3:

Mr. Akins : If [Carolyn Epperson] says that she asked for the ability to withdraw some money on that day [October 21, 2005], would you disagree with that?

Ms. Franks : She did want to withdraw some money.

Mr. Akins : Okay. And y'all would'nt let her do that because she didn't have the CD's?

Ms. Franks : Correct.

Mr. Akins : Was that the bank's policy?

Ms. Franks : Yes.

Transcript of Margie Franks, Page 37, Lines 2 – 6.

Mr. Akins : The bank's policy that says that you have to have the CD's in order to cash the CD in, was that policy in writing anywhere?

Ms. Franks : I really don't know. It could have been on the back of the CD – I mean, on the signature card.

G. Did Ms. Franks misunderstand the significance of the ownership structure of the certificates of deposit?

Ms. Franks was aware of the significance of the account being jointly owned as "or" instead of "and".

Transcript of Margie Franks, Page 26, Line 23 - Page 27, Line 1

Mr. Akins : Okay. When these CD's are set up with the word "or" versus the word "and", how do y'all treat that?

Ms. Franks : If it's "or", either person can get it. If it's "and", it takes both of them to come in the bank.

H. The real reason Ms. Franks refused to allow Ms. Epperson to get her money.

Interestingly enough, Ms. Franks went on the say that the Bank would not have let Ms. Epperson have the money from the accounts under any circumstances:

Transcript of Margie Franks, Page 37 Line 24 – 19.

Mr. Akins : Okay, What would have happened if Carolyn Epperson or Randy Thompson or Juanita Rickman had said we've lost those CD's?

Ms. Franks : Well, we do have a form for lost CD's.

Mr. Akins : Okay.

Ms. Franks : But we do have to know that it's Ms. Rickman or whoever owed the CD is signing it.

Mr. Akins : Okay.

Ms. Franks : I mean, Carolyn couldn't have come in here and said we've lost these CD's.

Mr. Akins : Okay.

Ms. Franks : The real owner of it would have to come in and say they are lost.

Mr. Akins : Okay. And in the case of the CD's that Mrs. Epperson was asking about on October 21st of 2005, I mean, in that case Juanita Rickman was the real owner of those CD's?

Ms. Franks : Right.

Mr. Akins : Okay. And then based on that she would have been the only person who could have gotten that money.

Ms. Franks : Right.

As far as Ms. Franks was concerned, the money did not belong to Ms. Epperson and Ms. Franks was not going to let anyone except Ms. Juanita Rickman withdraw the money. Ms. Franks testified that she was following the Bank's policy by refusing to allow Ms. Epperson to get access to her money despite Ms. Epperson's clear the right to withdraw the funds. Regardless, Ms. Franks did not allow Ms. Epperson to withdraw her money.

I. Why would Ms. Franks be motivated to prevent Ms. Epperson from withdrawing the money even though her name was on the certificates of deposit?

Ms. Franks testified that she had known Ms. Juanita Rickman for a long time and was aware that the family had problems following Mr. Rickman's death. (Franks' deposition. P. 27, L. 23 - P. 28. L. 4). Note that prior to Mr. Rickman death, he had set up the 1993 certificates of deposit in the names of the children: Randy Thompson and Carolyn Epperson. The parents were simply the trustees. However, Ms. Franks believed that following Mr. Rickman's death, the money solely belonged to Ms. Juanita Epperson. In the course of explaining the problems that existed within the family after Mr. Rickman died, Ms. Franks acknowledged:

Ms. Franks depo. P. 28. L. 6-9.

Ms. Franks : And then, of course, like I say, it was Mrs. Rickman's money, but she was willing to leave Carolyn and Randy on it as "or", where either of them could get it. But she had the CD's.

By her own admission, Ms. Franks believed that the money was solely Ms. Rickman's and she never had any intention of allowing Ms. Epperson to withdraw the money without Ms. Rickman's consent which was clearly not legally necessary.

J. Ms. Epperson loses her money forever.

Five months after Ms. Epperson was denied her money, on February 17, 2006, Ms. Juanita Rickman, Randy Thompson and his wife went to SOUTHBank and consolidated all of the Certificates of Deposit into one $234,000.00 CD and removed Ms. Epperson's name from the

account. The Certificate of Deposit was in the name of "Juanita Rickman or Randy Thompson or Doris Thompson." Thus, Ms. Epperson never got any of her money.

APPELLATE STANDARD OF REVIEW

The Supreme Court reviews the granting of summary judgment based on a *de novo* standard. *Byrne v. Walmart Stores, Inc.*. 877 So.2d 462, 464 (¶3) (Miss. Ct.App. 2003). "Summary judgment is proper when 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled toa judgment as a matter of law." *Id.* at 464-65 (¶3) (quoting *Piggly Wiggly of Greenwoods, Inc. v. Fipps*, 809 So.2d 722, 725 (¶9) (Miss. Ct. App. 2001) and M.R.C.P. 56(c). Mississippi appellate courts review the evidence in the light most favorable to the non-movant. *Byrne*, 877 So.2d at 465 (¶3) (citing *Young*, 840 So.2d at 784 (¶7)).

Likewise, this is a case concerning the interpretation of the plain language of a contract. "Questions concerning the construction of contracts are questions of law that are committed to the court rather than questions of fact committed to the fact finder.' "*Parkerson v. Smith*, 817 So.2d 529, 532(Miss.2002) (quoting *Miss. State Highway Comm'n v. Patterson Enters., Ltd.*,627 So.2d 261, 263 (Miss. 1993)). The Supreme Court employs the *de novo* standard of review for questions of law. *Starcher v. Byrne*, 687 So.2d 737, 739 (Miss. 1997)

SUMMARY OF THE ARGUMENT

The deposit of money into a bank pursuant to a Consumer Account Agreement is a contract between a depositor and a bank. *Union Planters Nat'l Bank, N.A. v. Jetton*, 856 So.2d 674 (Miss. Ct. App. 2003). As a contract, the Consumer Account Agreement along with the Certificate of Deposit should be interpreted according to contract construction principles that have long been recognized by our courts in an effort to determine the intent of the contracting parties.

The Consumer Account Agreement is a single signature card. The front of the card indicates the account owner and address, the type of account, the number of signatures required for withdrawal and requires the sample signatures of all of the account owners. The back of the card, in fine print, contains approximately 12 headings that apply to all types of accounts. This fact is significant because the agreement must be read to apply to checking and savings accounts where no certificate of deposit would even exist.

The relevant portions of the Agreement says, ". . .any one of you who signs this form including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us."

The Bank and the Trial Court found that this language somehow includes a requirement that the when a CD is jointly owned, only the possessor of the actual CD has authority to withdraw money. Specifically, the Trial Court found that the language above that says, "on forms approved by us." makes it clear to the consumer that the 'form' means the actual certificate of deposit must be surrendered in order to withdraw the funds and that the funds may only be withdrawn by the joint owner who has physical possession of the CD.

It defies logic to believe that Ms. Epperson, her step-mother and her half-brother signed the Consumer Account Agreement that contained the aforementioned language and interpreted it

to believe that only Ms. Juanita Rickman could withdraw the funds because only one of the three could retain possession of the actual CD. The Agreement must be read as a whole to determine the intent of the parties. The front side of the Consumer Account Agreement contains a box where the parties must state "NUMBER OF SIGNATURES REQUIRED FOR WITHDRAWAL" and the number "1" is placed in the block. If possession of the CD was important, then that provision is meaningless. The Agreement says, "any one of you who signs this form. . . may withdraw all or any part of the account balance at any time. . ." If that provision is to be given meaning, then possession of the CD is irrelevant. There is no provision of the agreement that suggests or implies that the physical possession of the certificate of deposit is necessary to cash in the certificate.

When the Bank refused to allow Ms. Epperson to withdraw her money, she lost any ability to ever get access to it. Under Mississippi law, when an account is held in the name of one depositor *or* the other, then "each depositor is allowed to treat joint property as if it were entirely his own." *Drummond v. Drummond*, 248 Miss. 25, 31, 156 So.2d 819, 821 (1963). In other words, because of the language of the Certificate of Deposit, Ms. Epperson had no right to sue her co-depositors for any part of the money.

ARGUMENT

A. The Trial Court confused the language of the Certificate of Deposit with the language of the Consumer Account Agreement (signature card).

In its opinion, the Trial Court continued to confuse the language of the subject Certificates of deposit and the Consumer Account Agreements. There are three forms of the CD's: the 1993 version, the 2000 version and the 2006 version. None of the CD's contain any language that requires possession of the certificate of deposit in order to liquidate the accounts. It is critical to note that each of the CD's was signed only by a bank employee when it is issued. There is no place on the CD for anyone else to sign, endorse or otherwise.

The document that was actually signed by the depositors when the CD's were issued was the Consumer Account Agreement commonly referred to in the banking industry as a "signature card." This is the same agreement that every bank requires when any account is opened whether it is a checking, savings or time deposit. As the trial court noted, the 1993 version signed by C.K. and Juanita Rickman required that the depositor must "properly endorse the certificate and present it to us." However, when the 2000 CD's were issued, the language of the Consumer Account Agreement had changed and there was no longer a requirement to endorse or present the CD in order to obtain funds from the account.

B. The Consumer Account Agreement is a contract.

The deposit of money into a bank followed by the execution of a Consumer Account Agreement is nothing more than a contract between a depositor and a bank. *Union Planters Nat'l Bank, N.A. v. Jetton*, 856 So.2d 674 (Miss. Ct. App. 2003). As a contract, the Consumer Account Agreement along with the Certificate of Deposit should be interpreted according to contract construction principles that have long been recognized by our courts in an effort to determine the intent of the contracting parties.

This Court has set out a three-tiered approach to contract interpretation. *Pursue Energy Corp. v. Perkins*,558 So.2d 349, 351-53 (Miss. 1990). Legal purpose or intent should first be sought in an objective reading of the words employed in the contract to the exclusion of parol or extrinsic evidence. [*Cooper v. Crabb*,587 So.2d 236, 241 (Miss. 1991). . . .] First, the "four corners" test is applied, wherein the reviewing court looks to the language that the parties used in expressing their agreement. *Pursue Energy Corp.*,558 So.2d at 352 (citing *Pfisterer v. Noble*,320 So.2d 383, 384 (Miss. 1975)). We must look to the "four corners" of the contract whenever possible to determine how to interpret it. *McKee v. McKee*,568 So.2d 262, 266 (Miss. 1990). When construing a contract, we will read the contract as a whole, so as to give effect to all of its clauses. *Brown v. Hartford Ins. Co.*,606 So.2d 122, 126 (Miss. 1992). Our concern is not nearly so much with what the parties may have intended, but with what they said, since the words employed are by far the best resource for ascertaining the intent and assigning meaning with fairness and accuracy. *Simmons v. Bank of Miss.*,593 So.2d 40, 42-43 (Miss. 1992). Thus, the courts are not at liberty to infer intent contrary to that emanating from the text at issue. Id.(citing *Cooper*,587 So.2d at 241). On the other hand, if the contract is unclear or ambiguous, the court should attempt to "harmonize the provisions in accord with the parties' apparent intent. "*Pursue Energy Corp.*,558 So.2d at 352. Only if the contract is unclear or ambiguous can a court go beyond the text to determine the parties' true intent. Id. "[T]he mere fact that the parties disagree about the meaning of a contract does not make the contract ambiguous as a matter of law." *Turner*,799 So.2d at 32; *Cherry v. Anthony*, 501 So.2d 416, 419 (Miss. 1987).

Secondly, if the court is unable to translate a clear understanding of the parties' intent, the court should apply the discretionary "canons" of contract construction. *Pursue Energy Corp.*,558 So.2d at 352. Where the language of an otherwise enforceable contract is subject to more than one fair reading, the reading applied will be the one most favorable to the non-drafting party. *Leach v. Tingle*, 586 So.2d 799, 801-02 (Miss. 1991) (citing *Stampley v. Gilbert*, 332 So.2d 61, 63 (Miss. 1976)). Finally, if the contract continues to evade clarity as to the parties' intent, the court should consider extrinsic or parol evidence. [*Pursue Energy Corp.*,558 So.2d at 353]. It is only when the review of a contract reaches this point that prior negotiation, agreements and conversations might be considered in determining the parties' intentions in the construction of the contract.

C. What did the Consumer Account Agreement literally say?

The Consumer Account Agreement is a single signature card. The front of the card indicates the account owner and address, the type of account, the number of signatures required for withdrawal and requires the sample signatures of all of the account owners. The back of the card, in fine print, contains approximately 12 headings that apply to all types of accounts. This

fact is significant because the agreement must be read to apply to checking and savings accounts where no certificate of deposit would even exist.

The relevant portions of the contract are as follows:

> AGREEMENT - These terms govern the operation of this account unless varied or supplemented in writing. . .
>
> WITHDRAWALS - Unless otherwise clearly indicated on page 1 any one of you who signs this form including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. . .We reserve the right to refuse any withdrawal or transfer request which is attempted by any other method not specifically permitted. . .Withdrawals from a time deposit prior to maturity or prior to the expiration of any notice period may be restricted and may be subject to penalty.
>
> AMENDMENTS AND TERMINATION - We may change any term of this agreement. . .For other changes we will give you reasonable notice in writing. . .

The Bank and the Trial Court found that this language somehow includes a requirement that the when a CD is jointly owned, only the possessor of the actual CD has authority to withdraw money. Specifically, the Trial Court found that the language above that says, "on forms approved by us." makes it clear to the consumer that the 'form' means the actual certificate of deposit.

D. How did the Trial Court interpret this language?

While the appellate court must apply a *de novo* standard, the Trial Court's order is part of the record but should not be given any weight because the Trial Court did not review the correct language. The Trial Court found that the Bank's Consumer Account Agreement was clear and unambiguous. The verbatim language from the Trial Court's order said (emphasis added):

> The Agreement clearly states that the party seeking the withdrawals of funds prior to maturity must ***present*** 'forms approved by us' prior to withdrawing the funds.

when, in fact, the contract language is entirely different and does not include any requirement to ***present*** anything. The Agreement actually says:

> any one of you who signs this form. . .may withdraw or transfer all or any part of the account balance at any time on forms approved by us.

The contract language that the Trial Court's order references does not exist in the contract. The language that the Court interpreted ("must *present* forms approved by us") does not exist in the contract and has a totally different meaning from the actual words of the contract which are ("at any time ***on*** forms approved by us."). There is nothing in the contract that the requires the depositor to "present" anything.

E. What does the Consumer Account Agreement require the Depositor to do in order to withdraw money from an account?

The literal language of the Consumer Account Agreement allows the customer to withdraw funds at any time on forms approved by the Bank. The Trial Court found that Bank was justified in refusing to give Ms. Epperson her money because the "form" that is referred to in the Agreement was the actual Certificate of Deposit. The Trial Court found that the plain language of the Agreement means that when the Agreement says *"on form approved by us"*, the Bank can force the depositor to produce the actual Certificate because it's a "form" within the meaning of the agreement.

F. What does the phrase "on forms approved by us" actually mean?

The Consumer Account Agreement requires depositors to use "forms approved by us" to make a withdrawal. This means that if someone has a checking account, he must use checks approved by the Bank. It means that when someone has a saving account, the depositor may be required to sign a slip to make a withdrawal. A certificate of deposit is nothing more than a time deposit and the Bank may create or approve forms that a depositor is required to execute before receiving the funds. The preposition "on" means that the depositor must perform some act "on" a form. The surrender of a certificate of deposit does not equal the withdrawal of funds "on forms approved by us."

Black's Law Dictionary says the word "on" means "upon" or "at or in contact with the upper surface of a thing." Clearly, in the context of the Consumer Account Agreement, the term "on forms approved by us." makes clear that the depositor must execute forms approved by the Bank. The word "forms" is defined as "a printed or typed document with blank spaces for insertion of required or requested information." The Certificates of Deposit show no blank spaces for the insertion of information. In other words, there is nothing on the Certificate of Deposit for the depositor to sign.

It makes no sense that one must bring the CD when the language says that withdrawal must be on forms that the bank does not possess. If the bank does not provide these forms, then from where do they come? Ms. Epperson appeared at the bank and was ready to execute any withdrawal her funds "on forms approved" by the bank according to the language of the contract.

G. When Ms. Epperson signed the Consumer Account Agreement in 2000 along with her step-mother and half-brother, was there any language in the contract to suggest that whichever of the three actually possessed the CD, would have total control of the deposit?

It defies logic to believe that Ms. Epperson, her step-mother and her half-brother signed the Consumer Account Agreement that contained the aforementioned language and interpreted it to believe that only Ms. Juanita Rickman could withdraw the funds because only one of the three could retain possession of the actual CD. The law cited above requires the contract to be read as a whole to determine the intent of the parties. The front side of the Consumer Account Agreement contains a box where the parties must state "NUMBER OF SIGNATURES REQUIRED FOR WITHDRAWAL" and the number "1" is placed in the block. If possession of the CD was important, then that provision is meaningless. The Agreement says, "any one of you who signs this form. . . may withdraw all or any part of the account balance at any time. . ." If that provision is to be given meaning, then possession of the CD is irrelevant. There is no

provision of the agreement that suggests or implies that the physical possession of the certificate of deposit is necessary to cash in the certificate.

"Where the language of an otherwise enforceable contract is subject to more than one fair reading, the reading applied will be the one most favorable to the non-drafting party." *Leach v. Tingle*, 586 So.2d 799, 801-02 (Miss. 1991). "When construing a contract, we will read the contract as a whole, so as to give effect to all of its clauses." *Brown v. Hartford Ins. Co.*,606 So.2d 122, 126 (Miss. 1992) Applying the principles of contract construction, the Bank chose the language of its Consumer Account Agreement and is now straining to suggest that the "forms approved by us" could somehow mean the production of the original certificate of deposit. This interpretation is inconsistent with the plain language of the remaining provisions of the Agreement.

H. The law authorizes the Bank to give the money to any of the joint depositors.

The Certificate of Deposit that was issued to Ms. Epperson was a non-negotiable, non-transferable instrument so that possession of the certificate of deposit was irrelevant to the Bank. Unlike a car title or a stock certificate, the Certificate of Deposits for SOUTHBank cannot be transferred. The CD is not payable to the bearer so it is not a negotiable instrument. See MS Code §75-3-104(a). Therefore, possession of the CD was meaningless. Additionally, Mississippi law grants immunity to the bank that releases money held in a joint account to a single depositor:

> **§ 81-5-63. Deposit in name of two or more persons; payments to successors of deceased depositors without administration.**
>
> 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, . . . or payable to the persons as joint tenants, 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 and discharge to the bank for any payment so made.

I. Couldn't the Bank impose restrictions on the early withdrawal?

The plain language of the Consumer Account Agreement allows the Bank to impose restrictions on the withdrawal of funds. The Agreement says, "Withdrawals from a time deposit prior to maturity or prior to the expiration of any notice period may be restricted. . ." This provision allows the Bank to impose restrictions on the withdrawal of time deposits, but these restrictions must be in writing and had to be part of the original contract. The first paragraph of the Agreement says, "These terms govern the operation of this account unless varied or supplemented in writing." There is no writing in the record that created any restriction on the withdrawal of the funds from the certificate of deposit.

J. Why didn't Ms. Epperson sue her step-mother and half-brother for her share of the CD's?

When the Bank refused to allow Ms. Epperson to withdraw her money, she lost any ability to ever get access to it. Under Mississippi law, when an account is held in the name of one depositor *or* the other, then "each depositor is allowed to treat joint property as if it were entirely his own." *Drummond v. Drummond*, 248 Miss. 25, 31, 156 So.2d 819, 821 (1963). In other words, because of the language of the Certificate of Deposit, Ms. Epperson had no right to sue her co-depositors for any part of the money.

This issue was recently addressed by the Mississippi Supreme Court in the case of *Dejean v. Dejean*, 982 So.2d 443 (Miss. Ct. App. 2007). Julia DeJean and her brother, Patrick DeJean jointly owned a certificate of deposit with rights of survivorship. Julia instructed Hancock Bank to redeem the CD and to reissue it in the name of "Julia Mae Dejean or Christine DeJean or Heyward DeJean." Julia died three days before the Bank actually completed the redemption and

Patrick sued claiming to be the rightful owner by virtue of his rights of survivorship. Patrick also claimed that Julia did not surrender the CD as the contract required. The Chancellor found that the actual endorsement and surrender of the certificate of deposit was not necessary for the Bank to allow the transfer since the CD was not transferrable. The Supreme Court affirmed the Chancellor's decision and noted that when interpreting a contract, the Court should first look at the four corners of the document to determine whether there is an ambiguity. *Id* at 448. If the document is not ambiguous, then the Court may not conduct any further analysis.

Notwithstanding his claim against the Bank, Patrick sought his half of the money from DeJean's estate. The Supreme Court also rejected that claim and stated the law regarding equitable division of the certificate of deposit assets. In *DeJean*, Patrick argued that even though the Bank redeemed the certificate of deposit, since the source of the money could be established, he was still entitled to half of the money. The Court cited *Drummonds*, *id*, for the proposition that when a bank account is set up in the name of one depositor *or* the other, then either party may treat the property as his own. The Court said, "The chancellor refused to redistribute the proceeds from the CD, finding that Julia could at any time, unilaterally order the redemption of the original CD without consulting Patrick." *Id*. Thus, by virtue of the language of the Certificate of Deposit, the parties agreed that either of the depositors could withdraw and own all of the funds. The Supreme Court also quoted *Triplett v. Brunt-Ward Chevrolet*, 812 So.2d 1061 (Miss. Ct App. 2001) stating, "Because account holders have given each other absolute authority over the account and the unconditional power to withdraw all or any part of the account, the bank must likewise pay any part or all of the account to either account holder upon demand."

The same principle was applied in *Est. of Beckley v. Beckley*, 961 So.2d 707 (Miss. 2007) where the Supreme Court affirmed that when a depositor elects to place his money in a joint

account styled, "A or B" then either party may withdraw the money without any claim of the other. In *Beckley*, Ladell Beckley bought CDs styled, "Ladell Beckley or John Beckley". Ladell gave a power of attorney to Satterfield who withdrew the money and placed it into another account. Ladell sued Satterfield to get the money back but died before the case went to trial. Ladell's estate won the suit but the Chancellor ordered that the money be restored to the CD and that by virtue of Ladell's death, John would get the money by virtue of the joint ownership. The Supreme Court disagreed and said that the money belonged to Ladell's estate and the money passed through his will because Ladell owned the money after Satterfield withdrew it from the CD owned with John.

K. So what really happened here?

SOUTHBank's employee, Ms. Margie Franks, had been with the Bank for more than 46 years when she retired in 2008. Throughout her entire banking career, it had always been the policy of the Bank to require the parties to surrender a certificate of deposit when the funds were withdrawn. This policy was consistent with the contractual language that existed up until the Consumer Account Agreements were changed before 2000. She didn't know that the Bank had changed its agreement.

Additionally, she had known Juanita Rickman for many years and was aware of the family trouble that existed between Ms. Rickman and her step-daughter, Carolyn Epperson. As Ms. Franks noted in her deposition, following Mr. Rickman's death, Ms. Epperson was questioning Ms. Rickman's competency. Carolyn Epperson believed that her half-brother, Randy Thompson, was manipulating Ms. Rickman so that Carolyn Epperson would lose her inheritance. Whether Ms. Epperson was correct or not, less than five months after she discovered the first withdrawal of funds from the CD's and sought to withdraw them, Juanita

Rickman went to the Bank and removed Carolyn Epperson's name from the CD's entirely. This meant that Carolyn Epperson received nothing from the funds that her father had originally placed in trust for her.

Finally, Ms. Franks' deposition makes it clear that Ms. Franks believed that since the original money came from C. W. and Juanita Rickman, then it continued to belong solely to Juanita Rickman despite the clear language of the CD. As far as Ms. Franks was concerned, the money belonged to Ms. Rickman and not to Carolyn Epperson. Without the Certificate of Deposit, Ms. Franks was not going to give any money to Carolyn Epperson despite what the contract said.

CONCLUSION

The plain language of the Certificate of Deposit required the Bank to allow Ms. Epperson to withdraw the funds in the CD without any requirement to produce the CD. By adding a requirement to with withdrawal process that was not present in agreement, the Bank caused Ms. Epperson to lose her money which was then withdrawn by her step-mother. Ms. Epperson is entitled to a judgment in the amount of $234,000.00 representing the amount taken from the account by her step-mother on February 17, 2006 with interest from that date.

The Supreme Court should reverse the judgment of the Circuit Court of Alcorn County, Mississippi and render a judgment against SOUTHBank in the amount of $234,000.00 with interest from February 17, 2006. Alternatively, the Supreme Court should reverse and remand the case for trial on the merits.

THIS, the 8th day of July, 2010.

Respectfully submitted,

AKINS & ADAMS, P. A.

by: B. Sean Akins

B. Sean Akins
Attorney for Carolyn Epperson

AKINS & ADAMS, P. A.
108 E. JEFFERSON STREET
RIPLEY, MISSISSIPPI 38663
sean@akinsadams.com
(662) 837-9976

CERTIFICATE OF SERVICE

I, B. Sean Akins, attorney of record for the Appellant, do hereby certify that I have this day mailed, through United States Mail, proper postage prepaid, a true and correct copy of the foregoing document to the following:

William M. Beasley, Esq.
Rachel M. Pierce, Esq.
Phelps Dunbar
P. O. Box 1220
Tupelo, MS 38802-1220

Judge Jim S. Pounds
P.O. Drawer 1100
Tupelo, MS 38802

SO, CERTIFIED, this, the 8th of July, 2010.

B. Sean Akins

B. Sean Akins
Attorney for Appellant