# What's Yours Is Mine, in Joint Bank Accounts, 'Lee' Decides

By Ronald S. Granberg

Al and Bob open a joint-tenancy bank account together: Al deposits $90,000 and Bob deposits $10,000. They make no express agreement regarding ownership of the money. If either account holder dies, the other owns the entire $100,000 by right of survivorship. While both men live, Al owns 90 percent of the account balance and Bob owns 10 percent of the account balance (accrued interest is owned pro rata) under the proportionate ownership rule of the Multiple-Party Accounts Law found at Probate Code Sections 5100-5407.

However, if Bob withdraws the $100,000 (even if he does so without Al's knowledge or consent), he automatically owns it all. This surprising result is mandated by *Lee v. Yang,* 111 Cal.App.4th 481 (2003).

Before 1980, a joint-tenancy bank account was subject to Civil Code Section 683, which provided that it was "owned by two or more persons in equal shares" irrespective of the account owners' relative contributions. Under this equal ownership rule, Al and Bob each would have owned $50,000.

The equal ownership rule was criticized by those who didn't think Al intended to lose $40,000 merely by opening a joint bank account with Bob. A person might open a joint bank account for purposes of convenience, not gift.

In 1980, the state Law Revision Commission recommended that the state adopt Uniform Probate Code Article VI relating to multiple-party bank accounts. Although the recommendation wasn't adopted, some narrow legislation resulted.

In 1982, the commission renewed its recommendation. In response, the state Legislature passed the Multiple-Party Accounts Law, effective July 1, 1984. The law pertained only to accounts in industrial loan companies and credit unions, however.

In 1989, the commission recommended that the law be extended to include accounts in banks and savings and loan associations. Legislation so providing became effective July 1, 1990. The law now controls multiparty accounts in all common financial institutions. Civil Code Section 683 was amended to exempt multiparty accounts from its equal ownership rule.

Probate Code Section 5301(a) contains the proportionate ownership rule: "An account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the funds on deposit, unless there is clear and convincing evidence of a different intent." Probate Code Section 5134(a) defines net contributions as 1) a party's deposits, minus 2) withdrawals not paid to, or used for, other party, plus 3) a pro rata share of accumulated interest. Under the proportionate ownership rule, Al owns 90 percent and Bob owns 10 percent of their joint account.

In March 1999, Holden Lee proposed marriage to Janet Yang. Yang accepted his proposal and left her $500,000-per-year job in Hong Kong for a $70,000-per-year job in San Francisco, where Lee lived. The wedding was set for September 1999. In June 1999, Lee added Yang's name to his three bank accounts. Yang deposited a couple of her paychecks into one of the now-joint accounts.

When Yang discovered that Lee was bisexual, she "felt betrayed," "made several suicide attempts," and withdrew $347,000 from the accounts. Although the facts are not specific in this regard, Lee apparently had contributed the bulk of the funds Yang withdrew.

The wedding was off. Instead of marrying each other, Lee and Yang sued each other. Lee wanted his money back.

The trial court 1) found that Lee had not intended to make a gift to Yang of his funds in the accounts; 2) determined that the account ownership must be determined under Civil Code Section 683's equal ownership rule, not under the Multiple-Party Accounts Law's proportionate ownership rule; and 3) ruled that Yang was entitled to keep the entire $347,000. Both parties appealed.

The *Lee* appellate court's majority and dissenting opinions agreed that the trial court had applied the wrong law: The Multiple-Party Accounts Law, not Civil Code Section 683, controlled. The majority affirmed the trial court's decision, allowing Yang to keep the $347,000. The dissent, on the other hand, argued that the judgment should have been reversed and the case should have been remanded for the trial court to properly apply the Multiple-Party Accounts Law. The dissent presented compelling arguments why the law's proportionate ownership rule requires Yang to return funds to Lee.

The *Lee* majority acknowledged that the law applies the proportionate ownership rule to funds on deposit in a multiparty account. The majority held, however, that the moment a joint account owner ("the Withdrawing Cotenant") withdraws funds from the account, the funds withdrawn are exempt from the proportionate ownership rule unless the co-tenant who contributed the funds ("the Contributing Cotenant") can prove that the parties expressly so agreed.

In fact, under the majority view, the withdrawn funds are not even subject to the old equal ownership rule but are, instead, owned completely by the withdrawing co-tenant. Thus, *Lee* created a new sole ownership rule, which had never been applied. In our hypothetical situation, once Bob withdraws the $100,000 (even if he does so without Al's knowledge or consent), he owns it all. By his unilateral and unconsented act, Bob made the $100,000 his, the same way Yang made the $347,000 hers.

The *Lee* majority stated that the Multiple-Party Accounts Law was unclear regarding ownership of withdrawn funds and concluded that it should review the Law Revision Commission comments preceding the law's enactment in order to clarify the issue. The dissent pointed out that the commission clarified the issue by stating, "Withdrawal of funds does not ... affect the ownership rights of the parties to the funds withdrawn."

The majority found less significance in this clear statement than in the commission's oblique reference to federal gift tax regulation 26 C.F.R. Section 25.2511, finding that the commission's reference to the regulation means that funds taken by a withdrawing co-tenant must be gifts from the contributing co-tenant.

The commission had stated, "[A] person who deposits funds in a multiple-party account normally does not intend to make an irrevocable present gift of any part of the funds deposited, and many people believe that depositing funds in a joint account in a bank or savings and loan association has no effect on ownership of the funds until death.

"[The Multiple-Party Accounts Law] conforms to the common understanding of depositors by presuming that funds in a joint account belong to the parties during their lifetime in proportion to their net contributions. This rule is consistent with the federal gift tax rule that no completed gift occurs when the account is opened; instead the gift occurs when the nondepositing party withdraws funds from the account."

The dissent countered that the gift tax regulation determines when a gift occurs (if one does), not whether a gift occurs, and that the regulation "does not address ownership interests at all." The dissent stated, "The regulation's example makes this clear. It states: When A establishes a joint account for A and B, 'there is a gift to B when B draws upon the account for his own benefit, to the extent of the amount drawn without any obligation to account for a part of the proceeds to A.' (26 C.F.R. Section 25.2511-1(h)(4) (2003)). Thus, the regulation identifies when the taxable event occurs, but only assuming there was a transfer of ownership from A to B under governing principles of property law. The issue of whether there is an 'obligation to account for a part of the proceeds' is determined by state law — here, section 5301 of the CAMPAL."

The dissent went on to explain how the majority's interpretation of the law violated rules of statutory construction, because it rendered meaningless Probate Code Section 5303(c) and the clause "or withdrawn from" in Probate Code Section 5405(d).

When account holders go their separate ways, an accounting will be required if they wish to calculate their respective ownership interests in account funds. The accounting may be difficult. For example, if Al and Bob decide to divide their account after having made hundreds of account contributions (some contributions made by Al, others by Bob) and after having written thousands of account checks (some checks written for Al's benefit, others for Bob's), detailed tracing will be required in order for them to determine their respective ownership interests in the ending account balance.

A more cumbersome tracing could be necessary in order for account holders to determine their respective ownership interests in withdrawn funds. The *Lee* majority cited potential accounting difficulties as a reason to refuse to apply the proportionate ownership rule to withdrawn sums. The *Lee* dissent considered accounting difficulties the cost of fairness.

Of course, a contributing co-tenant will trace funds (still-deposited funds or withdrawn funds) only if it is worthwhile for him to do so. For example, it would be futile for Al to trace funds that Bob withdrew, if Bob has spent the funds and lacks other means to refund them to Al.

Under *Lee's* dissenting opinion, Bob would have the right, if he so chose, to trace withdrawn funds and try to recover them from Al. Under the *Lee* majority opinion, however, Bob lacks that option. Al owns whatever he withdrew.

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