

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 21st day of October 2021.

Present: All the Justices

Ruby Karen Helphrey, et al.,

Appellants.

Against Record No. 201148
 Circuit Court No. 18CL733

Glenn Ray Bass, Jr.,

Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Accomack County.

This appeal arises from the circuit court’s partial summary judgment finding that Glenn Ray Bass, Jr. (“Appellee”) was entitled to the funds in a joint brokerage account that he opened with his father, Glenn Ray Bass, Sr. (“Bass”). On appeal, Appellee’s siblings, Ruby Karen Helphrey, Wayne Lee Bass, and Joyce Etta Harper, in her capacity as executor of Bass’ estate (collectively “Appellants”), contend that there were genuine issues of material fact that precluded the circuit court from entering summary judgment.¹ Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no reversible error in the judgment of the circuit court.

I.

On December 12, 2013, Appellee and Bass opened a brokerage account (“Joint Account”) at PNC Investments. Both Appellee and Bass signed a Brokerage Account Application (“Application”) and designated that they were “tenants with the right of survivorship.” Attached to the Application was an Account Agreement that described the

¹ Appellee argues in his assignment of cross-error that the circuit court’s final order was in error because it failed to require Appellants to post bond suspending the execution of the circuit court’s order. Appellants posted a suspension bond with the circuit court on December 9, 2020. Because the suspension bond has now been posted and this issue is now moot, we decline to address it again on appeal.

features and policies of the Joint Account. The Agreement specifically stated that while “[e]ach owner of a Joint Account may act as if he or she were the sole owner of the Account, with no further notice or approval necessary from any other joint owner,” PNC “reserve[d] the right to require, at any time, the written consent of all Account owners before acting on an instruction from any Account owner.” The Agreement further contained a choice of law provision stating that the laws of the Commonwealth of Pennsylvania governed its enforcement.

On June 4, 2018, Bass’ attorney sent a letter to PNC, on behalf of Bass, asking that the Joint Account assets be transferred to a new account in only Bass’ name. On July 20, 2018, PNC denied Bass’ request, stating, “Because [PNC] has received conflicting instructions from the joint owners,² [PNC] will require written consent from both owners of the account prior to the transfer and/or release of the assets held therein.” When Bass died on July 24, 2018, PNC had taken no action on his request.

Following Bass’ death, Appellee claimed he was entitled to the Joint Account funds under its survivorship rights, whereas Appellants asserted the funds were part of Bass’ estate. Consequently, PNC froze the Joint Account.

Appellee filed a declaratory judgment action against Appellants and PNC, requesting that the circuit court declare Appellee the sole owner of the Joint Account funds following Bass’ death.³ Appellants filed a counterclaim, requesting that the circuit court declare that the Joint Account funds were part of Bass’ estate. Specifically, Appellants claimed that Bass made a lawful request to withdraw all the funds from the Joint Account, and PNC withheld the funds without any legitimate basis. Upon the agreement of the parties, the circuit court ordered PNC to deposit the disputed funds with the court, after which PNC was dismissed as a party without prejudice.

Appellee moved for partial summary judgment, “seeking a judicial determination of his rights to the [Joint] Account.” Appellee claimed that he became the sole owner of the Joint Account after Bass’ death, under either Pennsylvania or Virginia law. The Appellants responded that summary judgment should not be granted because material facts remained in dispute,

² The record is unclear as to what “conflicting instructions” were given to PNC concerning the Joint Account.

³ Appellee also asserted claims against Appellants for defamation, malicious prosecution, and breach of fiduciary duty. The declaratory judgment action is the only matter at issue on appeal.

including how the Joint Account was funded and whether PNC's refusal to release the funds to Bass prior to his death affected Appellee's entitlement to the funds. Appellants further contended that it was not Bass' intention for Appellee to use the Joint Account funds for his own personal use.

In support of their brief in opposition to Appellee's motion for partial summary judgment, Appellants attached excerpts from Appellee's deposition testimony. During oral argument on Appellee's motion, Appellee referenced his deposition testimony in which he testified that the Joint Account funds were to be used for Bass' care and that Bass wanted the Joint Account to have survivorship rights. Appellants objected, arguing that using deposition testimony in support of summary judgment violated Rule 3:20.

The circuit court granted Appellee's motion for partial summary judgment, finding that Appellee was the "surviving account holder" and was therefore "entitled as a matter of contract to receive the funds at issue." PNC exercised its right to require signatures from both parties to release the funds, and the Joint Account had not been altered at the time of Bass's death. The circuit court further found that there was "no genuine dispute as to the facts."

II.

On appeal, Appellants contend that the matter involved more than a mere contract claim and that material facts were still in dispute, and thus, the trial court erroneously granted summary judgment. Appellants also maintain that Appellee impermissibly referenced his deposition testimony in support of summary judgment.

"We review the trial court's grant of summary judgment de novo." *VACORP v. Young*, 298 Va. 490, 494 (2020). For a moving party to be entitled to summary judgment, it must be "demonstrate[d] that no 'material' facts are 'genuinely in dispute.'" *AlBritton v. Commonwealth*, 299 Va. 392, 403 (2021). "It follows that immaterial facts genuinely in dispute or material facts not genuinely in dispute do not preclude the entry of summary judgment." *Id.* The facts that the Appellants claim to be in dispute — how the Joint Account was funded and whether PNC's refusal to release the funds to Bass prior to his death affected Appellee's entitlement to the funds — are not material to the outcome of this case. Thus, in the legal issues presented by the case at bar, the trial court was not premature in granting partial summary judgment. *See Andrews v. Ring*, 266 Va. 311, 326 (2003); *Virginia Fuel Corp. v. Lambert Coal Co.*, 291 Va. 89, 105-10 (2016).

Appellants contend that Appellee relied on his own deposition testimony in support of summary judgment in violation of Rule 3:20 and Code § 8.01-420. Rule 3:20 states that “[n]o motion for summary judgment or motion to strike the evidence will be sustained in whole or in part upon any discovery depositions under Rule 4:5, unless all parties to the action agree that such deposition may be so used” Similarly, Code § 8.01-420(A) provides that “no motion for summary judgment . . . shall be sustained when based in whole or in part upon any discovery depositions under Rule 4:5, unless all parties to the suit or action agree that such deposition may be so used.” *See also Gay v. Norfolk & Western Ry. Co.*, 253 Va. 212, 214 (1997) (“[P]arties must agree to the use of depositions before they may serve as a basis in whole, or in part, for the entry of summary judgment.”). Here, Appellants attached excerpts from Appellee’s testimony to their opposition to Appellee’s motion for summary judgment. Even if we were to assume that both parties did not consent to the use of the deposition testimony, any such error would be harmless because the circuit court relied solely on the law of contracts in making its decision.

Appellants argue that this case involved more than a “mere contract claim.” We disagree. The rights of parties to a joint account “are to be determined by the rules of contract law.” *Thurston v. Maggard*, 220 Va. 815, 818 (1980). The Joint Account Application and Customer Account Agreement constitute a contract between Bass and Appellee as “tenants with right of survivorship” and PNC. The choice-of-law provision dictated that Pennsylvania law governed the enforcement of the contract. Section 6304 of Title 20 of the Pennsylvania Consolidated Statutes states that “[a]ny sum remaining on deposit at the death of a party to a joint account belongs to the surviving party . . . as against the estate of the decedent unless there is clear and convincing evidence of a different intent at the time the account is created.”⁴ *See* 20 Pa. Cons. Stat. § 6304(a). Therefore, under Pennsylvania law, a party challenging the survivorship rights of a joint account, such as the one at issue, must produce evidence “so clear, direct, weighty, and convincing that the fact finder could, without hesitation, come to a clear conviction that [the] [d]ecedent, in fact, had not intended that there be a right of survivorship, despite the manner in which the account was held.” *In re Novosielski*, 992 A.2d 89, 107 (Pa. 2010).

⁴ The Supreme Court of Pennsylvania has opined that joint brokerage accounts, such as the subject of this case, are within the purview of 20 Pa. Cons. Stat. § 6304(a). *See Deutsch, Larrimore & Farnish, P.C. v. Johnson*, 848 A.2d 137, 141 (Pa. 2004).

In the instant case, the evidence presented to the circuit court established that, at the time of opening the Joint Account, Bass and Appellee both signed the Application designating the two men as tenants with survivorship rights, meaning that the Joint Account would vest in the surviving owner upon the other's death. Although it appears that Bass may have changed his mind shortly before his death and requested to move the Joint Account funds to another account in only Bass' name, his reexamination of the status of the Joint Account is of no consequence as only Bass' intent at the time of the account's creation is consequential to the outcome of this case. Because PNC exercised its right to require signatures from both parties to release the funds, the Joint Account had not been altered at the time of Bass' death. As correctly determined by the circuit court, Appellee is the rightful owner of the Joint Account funds.

III.

For the reasons stated, we find no error in the circuit court's granting of partial summary judgment in favor of Appellee and affirm the judgment.

This order shall be certified to the Circuit Court of Accomack County.

A Copy,

Teste:

A handwritten signature in blue ink, appearing to read "M. M. [unclear]".

Clerk