

Joint Bank Accounts: What's Mine is Yours and What's Yours is Mine?

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When you deposit funds into a jointly held bank account, can you still claim those funds as your own on the basis that you deposited them into the account or do they take on a new identity entirely as jointly owned funds? In this article we look at a recent ruling of the Court of Cassation which sets the record straight on this question.

The Dispute

Main action – A limited liability company (the 'Company') owned in equal shares by two partners (being the 'First Partner' and the 'Second Partner', respectively, and together the 'Partners') borrowed the sum of AED 47,067,070.51 (the 'Loan') from the First Partner to purchase a plot of land and build a villa. The Company claimed that the Second Partner, being a 50 percent partner in the Company, should be liable to pay 50 percent of the Loan and had failed to do so, and therefore sought a judgment against the Second Partner for the sum of AED 23,533,353.25 plus 12 percent interest payable from the due date until completion of the payment.

Counterclaim – The Second Partner filed a counterclaim seeking a judgment against the Company for the amount claimed in the main action plus interest from the due date until completion of the payment. This was on the basis that the Loan received by the Company from the First Partner was withdrawn from a joint bank account held in the name of the Partners and that therefore the Second Partner was entitled to repayment of 50 percent of the Loan.

Intervention – The First Partner then made a principal intervention against both the Company and the Second Partner and sought judgment against them both for the full amount of the Loan plus 12 percent interest from the due date until completion of the payment. This claim was based on the fact that (i) the Company had acknowledged receipt of the Loan from the First Partner in an affidavit; and (ii) the Second Partner who is a 50 percent partner in the Company had made no attempt to repay any amounts it had received.

Court of First Instance (Commercial Action No. 1523/2015)

The Court of First Instance dismissed both the main action and the counterclaim and ruled that the Company must repay to the First Partner the full amount of the Loan plus nine percent interest from the date of the claim until the payment. The Court confirmed that a partner in a limited liability company is not liable for the obligations of a company except to the extent of the company's capital. Following this reasoning the Second Partner could not be liable to repay any part of the Loan to the First Partner.

Court of Appeal (Appeal No. 603/2016)

The Second Partner appealed against the dismissal of the counterclaim and the judgment against the Company requiring repayment of the full amount of the Loan to the First Partner. The Court of Appeal appointed an expert to establish the source of the Loan funds. The report found that the sum of AED 39,701,425.20 had been transferred from an account in the name of the First Partner

into a joint account with the Second Partner. This sum was subsequently transferred to the Company from the joint account, and the balance of the Loan was paid to the Company from an account in the name of the First Partner. The Court of Appeal upheld the ruling of the Court of First Instance on the basis that the full amount of the Loan had been repaid with funds from the First Partner.

Court of Cassation (Cassation No. 949/2018)

The Second Partner made a further appeal to the Court of Cassation. The Company sought to dismiss this appeal and the First Partner argued that the cassation appeal should not be heard because the Second Partner lacked locus standi to file the appeal (as no judgment had been made against the Second Party) or, alternatively, it should be dismissed.

The locus standi argument was dismissed as the Court found that the Second Partner had a rightful, existing and legitimate interest in bringing the cassation appeal insofar as the Second Partner stood to gain from a successful appeal.

The Second Partner argued that the sum awarded to the First Partner had been withdrawn from a joint account of the Partners to which the Partners had equal access. The Second Partner went on to argue that the Partners were entitled to deposit and withdraw funds from the joint bank account, regardless of where the funds came from and that there was no specific ownership share held by either party to any particular funds in the account. On this basis, the Second Partner maintained it should have a valid claim for 50 percent of any part of the Loan paid from the joint account.

“Any funds deposited into a joint account belong to each of the account holders equally, regardless of their source.”

The Court of Cassation ultimately accepted the Second Partner's submissions and reversed the Court of Appeal's ruling, with the key points in its judgment being as follows:

- any funds deposited into a joint bank account belong to each of the account holders equally, unless otherwise stated in the relevant account opening forms;
- a joint account pools together assets, payments and liabilities of the account holders into one single and indivisible account;
- the expert report stated that a total amount of AED 49,929,070.78 was paid to the Company. Of this amount, AED 39,701,425.20 had been paid from the Partners' joint account, with the balance having been paid from an account in the First Partner's own name;
- it therefore follows that the Second Party is entitled to half of the amount that was paid to the Company from the joint account;
- the Court of Appeal had overlooked the fact that it was evident that part of the Loan funds belonged to the Partners jointly and should therefore be returned to them in equal shares, irrespective of the fact that the Company had acknowledged that it only received funds from the First Partner;
- the Court of Appeal was found to have misapplied the law to the factual situation at hand so its ruling must be reversed; and
- the Company was ordered to pay:
 - to the First Partner, the sum of AED 27,216,357.90 (being half of the amount that was transferred from the joint account plus the balance that was paid from an account in his own name) plus nine percent interest per annum on each amount from the date of the claim until completion of payment; and
 - to the Second Partner, the sum of AED 19,850,712.60 (being half of the amount that was transferred from the joint account) plus nine percent interest per annum on each

amount from the date of the claim until completion of payment.

Conclusion

This judgment makes it clear that any funds held in a joint account are owned equally as between each of the holders of the joint account, regardless of the source of those funds or which one of the account holders may have deposited them in the first place.

The key practical implications of this is decision are:

- parties to a joint account must bear in mind that any funds that they deposit in a joint account will be deemed to be owned by all account holders equally and, in the absence of any agreement per below, they will have no individual right to claim those funds as their own once they are deposited;
- when opening a joint account, the account holders should consider whether it is necessary to include any specific conditions or provisions in the account opening terms regarding ownership rights of any funds deposited by each account holder; and
- if a loan is to be made from a joint account, the account holders should consider whether it may be necessary to enter into a separate side agreement with the other account holder(s) where the intention is that such loan only be repaid to a particular account holder(s).

Al Tamimi & Company's [Senior Partner's Office team](#) regularly advises on commercial disputes in the Dubai Courts. For further information please contact [Ashraf Mostafa \(a.mostafa@tamimi.com\)](mailto:a.mostafa@tamimi.com).