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IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC2024-1256

LINDA LOUMPOUS,
Petitioner,

v.

DOVE INVESTMENT CORP, ET AL
Respondent(s).

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA
Lower Tribunal Case Nos. 2D2022-3908; 522003SC002144XXSCSC

RESPONDENT DOVE INVESTMENT CORP'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND THE FACTS

Appellant generally correctly recited the pertinent facts. Essentially, the subject account, referred to as the "Freedom Account" in Petitioner's Initial Brief (hereinafter "Subject Account"), was originally opened in February 2017 as an individual account owned by Peter E. Maragoudakis. Petitioner was added to the Subject Account in October 2017, when Petitioner, and her husband, jointly executed a new signature card for the already existing Subject Account. Respondent, as the judgment creditor of Petitioner, sought a garnishment of the Subject Account, which Petitioner objected to and contested, arguing that the account was owned as tenants by the entireties. The Trial Court ruled that the Subject Account was not owned as tenants by the entireties for want of the unities of time and title, and ultimately entered Final Judgment in Garnishment in favor of Respondent.

Petitioner sought review of the Trial Court's ruling that the subject account was not owned as tenants by the entireties. The Second District affirmed the Trial Court's ruling, and certified conflict with the Fourth District's holding in *Versace v. Uruven*, 348

So.3d 610 (Fla 4th DCA 2022). This petition for discretionary review followed.

Although the instant petition was styled as Linda Loumpos, Appellant, v. Bank One; NCO Financial Systems Inc.; et al Appellees, Petitioner failed to include Dove Investment Corp as a party. NCO Financial Systems, Inc., was the original plaintiff that recovered Judgment. However, the underlying Judgment was assigned in 2012 to mesne assignee, Merriman Investments, LLC, and assigned again in 2017 to Dove Investment Corp. Copies of the Assignments are a matter of record with the trial Court, and were included in the Record to the Second District. The assignments of judgment are not disputed nor are they an issue in the instant matter. Dove Investment Corp., as Judgment Assignee, was the judgment creditor of record during the garnishment action which gave rise to the appeal to the Second District, and the instant petition for review, and should be the named respondent herein.

<u>SUMMARY OF ARGUMENTS</u>

Petitioner raises the following positions in the instant appeal. She argues: 1) That property owned as tenants by the entireties is not subject to the claims by creditors of only one of the owners; 2) That a signature card for a bank account indicating ownership as tenants by the entireties must end all further review; 3) That the Subject Account was owned as tenants by the entireties solely based on the designation on the signature card; 4) That the language of §655.79(1) Fla. Stat. favors her position that the Subject Account was owned as tenants by the entireties; 5) That the Second District's opinion would lead to impractical or unfair situations to banks or their customers, and 6) This Court should follow the decision by the Fourth District.

Respondent readily concedes that a bank account <u>properly</u> created and owned as tenants by the entireties is not subject to the claims by creditors of one of the owners. However, Respondent will show that contrary to Petitioner's assertions, 1) §655.79(1) Fla. Stat. did not abrogate the common law unities of time and title for creation of entireties property; 2) A designation on a signature card is not and cannot be the only requirement for an account to be

owned as tenants by the entireties; 3) The Fourth District's opinion should not be approved; 4) The Second District's opinion is sound, would not lead to illogical results, and should be affirmed; and 5) The subject account could not be owned as tenants by the entireties.

ARGUMENT

I. §655.79(1) DID NOT ELIMINATE THE NEED TO SATISFY THE UNITIES OF TIME AND TITLE TO CREATE AN ENTIRETIES BANK ACCOUNT

It is well established that "Property held as a tenancy by the entireties possesses six characteristics: (1) unity of possession (joint ownership and control); (2) unity of interest (the interests in the account must be identical); (3) unity of title (the interests must have or initiated in the same instrument); (4) unity of time (the interests must have commenced simultaneously); (5) survivorship; and (6) unity of marriage (the parties must be married at the time the property became titled in their joint names)." *Beal Bank, SSB v. Almand and Assoc.* 780 So.2d 45, 52 (Fla. 2001). One of the key issues presented to this Court in *Beal Bank* stemmed from bank signature cards which did not list options for the various methods in which an account could be titled. In its opinion, this Court recognized potential issues regarding how bank accounts were to be owned by married couples, stemming from bank signature cards which did not provide explicit options for the various types of ownership.

> "Although we recognize that we cannot mandate that financial institutions provide affirmative choices to select each form of ownership on the signature cards, with an explanation of each type of ownership, we strongly encourage this practice. Such a practice of affirmative selection would minimize the likelihood of litigation and would put third persons on notice of the manner in which the account is held."

Id. at 62-63. This Court included a suggestion that the Legislature act to create a requirement that signature cards provide a list of ownership options. *Id.* at n24. However, in *Beal Bank*, this Court also expressed that even with a presumption that an account is owned as tenants by the entireties, that when opened, the account must still have adhered to the required unities.

> "Accordingly, we hold that as between the debtor and a third-party creditor (other than the financial institution into which the deposits have been made), if the signature card of the account does not expressly disclaim the tenancy by the entireties form of ownership, a presumption arises that a bank account titled in the names of both spouses is held as a tenancy by the entireties **as long as the account is established by husband and wife in accordance with the unities of possession, interest, title, and time and with right of survivorship**."

Id. at 58. (emphasis added)

In 2008, the Florida Legislature amended §655.79(1) Fla. Stat. to include the last line, "[a]ny deposit or account made in the name of two persons who are husband and wife shall be considered a

tenancy by the entirety unless otherwise specified in writing." In her Initial Brief, Petitioner argues that §655.79(1) Fla. Stat. somehow abrogated the required unities of time and title in the creation of an entireties bank account.

In her Initial Brief, Petitioner incorrectly claims there is no meaningful legislative history behind the amendment to §655.79(1) Fla. Stat. Contrary to Petitioner's argument, a Bill Analysis and Fiscal Impact Statement, was prepared in connection with the 2008 Senate Bill 818, which stated, "[i]n *Beal Bank v. Almand and Associates*, the Florida Supreme Court was confronted with the question of what type of ownership applies to the bank account of a married couple that does not specify the type of ownership by which the property is held." Fla. S. Comm. on Commerce, CS/SB 818, Bill Analysis and Fiscal Impact Statement. (https://www.flsenate.gov/Session/Bill/2008/818/Analyses/2008 0818SCM_2008s0818.cm.pdf March 11, 2008) at p. 5 **(A-3)**. There the Florida Senate clearly acknowledged the reasoning behind the amendment in the Statute; to eliminate ambiguity where a signature card does not provide different type of ownership options for a bank account. Nothing is stated to abrogate the required

unities. “CS/SB 818 will likely limit the ability of creditors to reach the property of a married couple, in a situation where a bank account does not specifically state the type of ownership under which the property is being held.” *Id.* at p. 10. It is clear that the purpose behind the legislation was to eliminate uncertainty where a signature card doesn’t expressly indicate the type of ownership for a bank account.

In analyzing the updated language in the Statute, Courts have ruled that the presumption created in the amended Statute did not alter the need to comply with the common law unities. “[T]he 2008 addition to Fla. Stat. § 655.79(1) codified the presumption judicially established in *Beal Bank*, and, consistent with *Beal Bank*’s holding, the presumption does not change the required six unities.” *In re Benzaquen* 555 B.R. 63, 67 (Bankr. S.D. Fla. 2016); See also, *In re Migell*, No. 6:15-BK-10569-KSJ, 2018 WL 4786643, at *4 (Bankr. M.D. Fla. Sept. 27, 2018)(“Florida legislature codified the judicially established Beal Bank presumption, and the statute is consistent with Beal Bank.”); *Southern Account Services, Inc. v. Elias Fernandes* 32 Fla. L. Weekly Supp. 305a (Miami-Dade Cty. Ct. August 27,

2024).This was the viewpoint adopted by the Second District in its Opinion on review.

During its review, and as was inquired during oral arguments, the Second District raised a question regarding the language in the Statute. In particular, the Second District focused on the statutory language of an “account made.”

This Court has explained that, “when the legislature has not defined a word used in a statute, such word should be given its plain and ordinary meaning.” *Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings*, 686 So. 2d 1349, 1354 (Fla. 1997); see also, *Debaun v. State* 213 So.3d 747, 751 (Fla. 2017). “When considering the meaning of terms used in a statute, this Court looks first to the terms' ordinary definitions[, which] ... may be derived from dictionaries.” *Dudley v. State*, 139 So. 3d 273, 279 (Fla. 2014)(internal citations omitted). See also, *Ripple v. CBS Corp.*, 385 So. 3d 1021, 1027 (Fla. 2024)(“We typically turn to dictionaries to determine ordinary meaning.)

Black’s Law Dictionary defines the term “make” as, “to cause to exist.” (6th ed. 1990)(referring to *United States v. Giles*, 300 U.S. 41, 57 (1937)). Merriam-Webster defines “make” as “to bring into

being…" Merriam-Webster's Online Dictionary, *make,* https://www.merriam-webster.com/dictionary/make (January 24, 2025). The term used by the Legislature is the past-tense use of the word "make."[1] By using this word in §655.79(1) Fla. Stat., with its plain an unambiguous meaning, the Court must adhere to the normal and customary definition. Additionally, in *Benzequin*, the Bankruptcy Court for the Southern District of Florida agreed with the argument "that the language as to when an account is "made" did not mean an "account existing whenever created" (at 67) but rather referred to the point in time when such account was brought into existence.

Thus, the presumption created by §655.79(1) Fla. Stat., would only apply to an account brought into or caused to exist, by a married couple, which clearly means the point in time when the account was initially established. This meaning would still adhere to the required unities of time and title, as the spouses would have both been named as owners of such bank account, when such account was initially created and through the same titling instrument.

[1] Thus, the past-tense definitions would be, "caused to exist," and "brought into being."

In her Initial Brief, Petitioner attempts to argue that §655.79(1) Fla. Stat. changes the common law requirement. However, she glosses over the statutory use of the term "made" and its common definition. Petitioner ignores the customary definition above that such term refers to the point in time when such account(s) are created or brought into existence.

This Court has previously stated, "Unless a statute unequivocally states that it changes the common law, or is so repugnant to the common law that the two cannot coexist, the statute will not be held to have changed the common law." *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914, 918 (Fla. 1990). "Under our rules of statutory construction, a statute will not displace the common law unless the legislature expressly indicates an intention to do so." *Kitchen v. K-Mart Corp.*, 697 So. 2d 1200, 1207 (Fla. 1997)(referring to *Carlile v. Game & Fresh Water Fish Commission*, 354 So.2d 362 (Fla. 1977).

This Court's opinion in *Beal Bank* (supra), provided a concise rendition of the common law requirements to create an entireties bank account. With regards to §655.79(1) Fla. Stat., there is nothing contained in the language used by the Legislature to

express a change to the common law required unities to create an entireties bank account.

In its opinion below, the Second District found examples of how the Legislature could have explicitly abrogated the common law unities of time and title in connection with entireties bank accounts. The Second District drew from the enactment of §689.11 which eliminated the long standing need to employ a straw man to create an entireties interest in real property. See, *Loumpos v. Bank One* 392 So.3d 841, 847-8 (Fla. 2d DCA 2024)(relying on *Clampitt v. Wick*, 320 So. 3d 826, 831-32 (Fla. 2d DCA 2021) (quoting Jeffrey A. Baskies, et al., *Joint Ownership, in Basic Estate Planning in Florida*, § 7.3(A) (Fla. Bar. CLE 10th ed. 2020)). The Second District also reviewed Senate Bill 1154, 2019 Leg. 121st Reg. Sess. (Fla. 2019) which proposed to create §689.151 Fla. Stat. (prop), using the language, "[w]ith respect to joint tenancies with right of survivorship and tenancies by the entirety in personal property, the common law requirements of unity of time and title are abolished." *Id.* at n.3. (citing Fla. SB 1154 § 1(2) p. 3 (2019))[2,3]. In its Opinion,

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[2] A copy of the proposed legislation is provided at (A-1).
[3] Instructively, the legislative report filed in connection with the proposed legislation, contained an analysis of the current state of the law regarding the addition of spouses to existing

the language used in §655.79(1) did not expressly abrogate the common law unities. Rather the Second District agreed with *In re Benzaquen* which stated, the Statutory language of the amended §655.79(1) Fla. Stat. is consistent with *Beal Bank* and did not alter the need to adhere to the six unities for entireties ownership.

Additionally, as provided above, the language used in the Statute does not exclude the possibility of creating an entireties bank account. As argued above, the Statute created a presumption that an entireties account is created when a married couple opens and creates a joint bank account together, at the same time, but the signature card did not specify the manner of ownership. This means the language of the Statute can coexist with the established common law requirements to create an entireties bank account.

It is clear, the two prongs outlined by this Court, in determining whether a Statute does not abrogate a common law principle have been met. This Court should adhere to the well-established principles of statutory construction and rule that

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accounts, which it stated, "Due to the unities of time and title, a person may not create either of these forms of co-ownership by directly granting an interest in an item of property to another person. For example, a husband who is the sole owner of a brokerage account may not create a tenancy by the entirety in it with his wife by adding her name to the account—their interests in the account would have originated at different times and through different instruments." Fla. S. Comm. on Jud., SB 1154, at p.3 (2019) Staff Analysis. (A-2)

§655.79(1) Fla. Stat. did not eliminate the unities of time and title to create an entireties bank account.

II. A DESIGNATION CONTAINED ON A SIGNATURE CARD IS NOT AND CANNOT BE THE ONLY REQUIREMENT FOR AN ACCOUNT TO BE OWNED AS TENANTS BY THE ENTIRETIES

In her Initial Brief, Petitioner posits that all inquiries as to the type of ownership of the subject account is determined solely by the designation on the signature card, and no further inquiry is authorized. Petitioner's position is in error, and would lead to absurd results. Petitioner refers to §655.79(1) Fla. Stat., and other language in *Beal Bank* and *Versace* indicating that all inquiries beyond a signature card must end.

As provided above, the presumption created by the language of §655.79(1) Fla. Stat. is not mutually exclusive to the long established required unities to create an entireties bank account. It is well known that to create entireties property, there must exist, the unities of time and title. Courts have held that §655.79(1) did not eliminate these common law requirements. See, *Loumpos v. Bank One* 392 So.3d 841 (Fla. 2d DCA 2024); *In re Benzaquen*, 555

B.R. 63 (Bankr. S.D. Fla. 2016); *In re Migell*, No. 6:15-BK-10569-KSJ, 2018 WL 4786643, (Bankr. M.D. Fla. Sept. 27, 2018); *Southern Account Services, Inc. v. Elias Fernandes* 32 Fla. L. Weekly Supp. 305a (Miami-Dade Cty. Ct. August 27, 2024). Further, as presented herein, the presumption of entireties ownership, announced in this Court's Opinion in *Beal Bank,* was based on the existence of the all six required unities.

Contrary to Petitioner's argument, the last sentence of §655.79(1), which contains the statutory presumption creating entireties accounts, doesn't actually specify the required method in which such account is opened. Instead of focusing on the time at which such account was opened, as required by the statutory language, Petitioner attempts to deflect this Court's attention to an after-the-fact signature card executed long after the Subject Account was brought into existence.

Petitioner's argument, that any inquiry as to the creation of an entireties account should stop at the signature card, cannot and should not be accepted at face value. Much more than notations on a signature card must be reviewed to determine whether a bank

account was properly created to establish a tenancy by the entireties.

It is well established that Courts should not interpret the law in a manner which will result in absurd results. See, *Sec. Bank, N.A. v. BellSouth Advert. & Pub. Corp.*, 679 So. 2d 795, 801 (Fla. 3d DCA 1996), approved, 698 So. 2d 254 (Fla. 1997)("Furthermore, construction of a statute which would lead to an absurd or unreasonable result ... should be avoided.")(citing *State v. Webb*, 398 So.2d 820, 824 (Fla.1981)); *Charlotte 650, LLC v. Phillip Rucks Citrus Nursery, Inc.*, 320 So. 3d 863, 865 (Fla. 2d DCA 2021)("Courts should not employ an interpretation of a contractual provision that would lead to an absurd result.")(citing, *Famiglio v. Famiglio*, 279 So. 3d 736, 740 (Fla. 2d DCA 2019)); *O'Hara v. Sch. Bd. of Sarasota County.*, 432 So. 2d 1356, 1359 (Fla. 2d DCA 1983)("We think that when the rule is reduced to such absurd application its fallacies and weaknesses become obvious.")

Petitioner's argument ignores the very high probability of factual impossibilities in the designation of an account as tenants by the entireties on a signature card. These potential discrepancies would be fatal to entireties ownership. For instance, based on

Petitioner's argument, people who are not married could jointly own an account as tenants by the entireties, or a single-owner account could be classified as an entireties account. These situations would arise if any inquiry must end at the signature cards. Such outcomes would clearly violate the very definition of, and be anathema to the concept of, entireties property.

It has long been established that, "[a] tenancy by the entirety is essentially a joint tenancy, modified by the common law theory that husband and wife are one person." *United States v. Jacobs*, 306 U.S. 363, 370 (1939)(internal citation omitted). "In tenancy by the entirety all of these 'unities' of joint tenancy are present and also that additional 'unity' of person, springing from the relationship of husband and wife," *Andrews v. Andrews*, 21 So. 2d 205, 206 (Fla. 1945)(internal citations omitted).

Petitioner argues that simply because a signature card designates an account as tenants by the entireties, no further inquiry may be performed or permitted. Petitioner asks this Court to give credence to such position, despite the possibility that the designation on a signature card could be incorrect. For instance, Petitioner's argument would restrict such inquiry, even in a

situation where the joint owners of an account are not married, or that it is not even a jointly owned account. It is Petitioner's argument, because the account owner happens to check a box stating the account is an entireties account, that the account must be considered an entireties account. To abrogate the required six unities, and supplant the need for the six unities with a potentially erroneous mark on a signature card, would very well likely lead to highly illogical and bizarre results, which this Court should not permit.

There is simply no authority to support Petitioner's notion that the sole determining factor that an account is owned by the entireties is a check-box on a signature card. Quite to the contrary, there is plenary authority supporting the continued requirement of the basic six unities. Further, the reliance solely on a designation on the signature card, despite the clear definitional contradiction with the concept of ownership by the entireties, would lead to absurd results. As such, Petitioner's position that the signature card is the only material factor as to whether an account is owned by the entireties, is clearly incorrect.

III. THE OPINION IN *VERSACE* IS IN ERROR

As pointed out by the Second District, the opinion in *Versace* takes this Court's ruling from *Beal Bank* out of context. That the rephrased questions raised by this Court in *Beal Bank* were all based on the premise that, "the unities required to establish ownership as a tenancy by the entireties exist." *Beal Bank,* at 48-9. The issues raised before this Court in *Beal Bank* had to do with the notations on a signature card or the intent of the account owners, but there was no issue as to whether all of the required unities were present.

The fact pattern of *Versace* appears to be substantially similar to the instant matter; where a spouse was added to an already existing bank account, and a new signature card, indicating entireties ownership, was executed for that already existing account. *Versace v. Uruven*, 348 So.3d 610 (Fla. 4th DCA 2022). The Fourth District relied on the language from this Court's opinion in *Beal Bank* that inquiry ends with the signature card, but expressed that this Court's ruling lacked qualification concerning the issue. *Id.* at 613. The Second District, below, saw this flaw and expressed

that the *Versace* analysis lacked the proper context. That in *Beal Bank*, this Court's opinion was based on the fact that the required unities existed in the bank accounts being reviewed.

Further, a review of the briefs filed in *Versace,* indicates that much of the authority presented herein and to the Second District was not provided to the Fourth District. This includes numerous rulings from the Federal Courts cited herein, which analyzed similar fact patterns in relation to this Court's *Beal Bank* opinion and the amendment to §655.79(1) Fla. Stat. Additionally, a review of the briefs submitted to the Fourth District also indicates a lack of depth in reviewing the pertinent legislative analyses. These omitted materials were very much on point, and deprived the Fourth District of all available authority in which to base its opinion.

Respondent would argue that the inquiry to determine whether a bank account, or any property for that matter, is owned as tenants by the entireties, must start with the required unities. If all six unities are present, then further inquiry may be performed. In connection with bank accounts, there is no requirement that married couples own such accounts as tenants by the entireties, but rather are permitted to own such account(s) in other ways. See

Beal Bank at 60; *Wexler v. Rich*, 80 So.3d 1097 (Fla. 4th DCA 2012); *Regions Bank v. G3 Tampa, LLC*, 766 Fed.Appx. 772 (11th Cir. 2019). Thus, presuming all of the required unities are present, then the express notations on a bank signature card would be controlling. If the required unities exist, and a bank signature card does not provide options for the various types of joint ownership, then the presumption provided in §655.79(1) would apply. This position appears to have been adopted by the Second District, below. Further, when recently presented with both the *Versace* and *Loumpos* opinions, the County Court in and for Miami-Dade County concluded the Second District's opinion was correct. See, *Southern Account Services, Inc. v. Elias Fernandes,* 32 Fla. L. Weekly Supp. 305a (Miami-Dade Cty. Ct. August 27, 2024).

As the Fourth District wasn't presented with all applicable authority, and misconstrued the context of this Court's opinion in *Beal Bank*, the opinion in *Versace* should not be followed.

IV. THE SECOND DISTRICT'S OPINION WOULD NOT LEAD TO UNFAIR OR IMPRACTICAL RESULTS

In her Initial Brief, Petitioner argues that the Second District's opinion below would somehow lead to unfair or impractical results. To support her position, she offers mere speculation that if required to open a new bank account, to ensure compliance with the required unities of time of title, customers would choose to go to another financial institution. Petitioner offers no support for such a notion. Further, Petitioner's argument would dismiss any long standing relationships a customer would have with his/her financial institution. Contrary to Petitioner's theory, Respondent would posit that anytime a banking customer has a need to open a new account, he/she would do so at the same bank to preserve any relationships they have with that financial institution. Regardless, speculative arguments should not be the basis for altering long standing common law principles.

To support her argument as to potential impractical or unfair results, Petitioner repeats the erroneous position that §655.79(1) Fla. Stat. was amended to simplify the law as to tenancies by the entireties, and refers again to *Beal Bank*. This is incorrect. As

provided above, this Court's opinion in *Beal Bank* was based on the premise that all six of the required unities were present in the formation of the questioned bank accounts. In interpreting the amended language of §655.79(1) Fla. Stat., the opinion of the Bankruptcy Court for the Southern District of Florida is quite persuasive when it stated that the presumption contained in the amended Statute did not change the need to comply with the six unities. *In re Benzaquen*, 555 B.R. 63, 67 (Bankr. S.D. Fla. 2016). Other Courts have also held that adding a spouse to an existing bank account cannot create an entireties account. See, *In re McCuan*, 569 BR 511 (Bankr. M.D. Fla. 2017); *Smart v. City of Miami Beach, Fla.*, 51F.Supp 3d 1299, 1303 (S.D. Fla. 2014); *In re Caliri*, 347 B.R. 788 (Bankr. M.D. Fla. 2006); *In re Aranda*, No. 08-26059-BKC-PGH, 2011 WL 87237, (Bankr. S.D. Fla. Jan. 10, 2011); *In re Migell*, No. 6:15-BK-10569-KSJ, 2018 WL 4786643, (Bankr. M.D. Fla. Sept. 27, 2018); *In re Yerian*, No. 6:15-AP-00064-KSJ, 2018 WL 4836776 (Bankr. M.D. Fla. Sept. 28, 2018); *Southern Account Services, Inc. v. Elias Fernandes* 32 Fla. L. Weekly Supp. 305a (Miami-Dade Cty. Ct. August 27, 2024).

Contrary to Petitioner's argument, and as is clear from the authority provided above, the purpose of the amendment to §655.79(1) Fla. Stat. was to eliminate any ambiguity in situations where a signature card did not provide options as to how an account would be titled. So that if a bank signature card wasn't clear as to how a married couple was to own a bank account, when they opened the account together, there would now be a presumption that such account would be owned as tenants by the entireties. However, nothing in the statutory language should be interpreted as abrogating the long standing common law unities as outlined by this Court in *Beal Bank.*

Additionally, as provided herein, if the Legislature wanted to change the common law requirements for entireties accounts, it certainly knows how to do so. The amended language of §655.79(1) did not create conflict with the established common law requirements, and there was no express language eliminating the needed unities of time and title. The Legislative history indicated that the amendment to §655.79(1) Fla. Stat., was to mitigate against ambiguous situations where a bank signature card was silent as to the type of ownership selected. As referenced by

Petitioner, and Respondent, over a decade after amending §655.79(1), the Legislature contemplated legislation in 2019 which would have expressly abrogated the required unities, and expressed the Legislature's understanding of the current state of the Law. Another example is when the Legislature eliminated the need for strawmen to create entireties interests in real property. Thus, the Legislature has demonstrated its knowledge and understanding of the concept of entireties ownership, and how it can be connected to property ownership, including bank accounts.

It is clear that the required unities of time and title are still necessary to create an entireties bank account. The authorities cited herein vastly support this settled requirement. As the abrogation of common law should be and is the province of the Legislature, and it has demonstrated its ability to do so in the past, it should be left to the Legislature to determine whether to eliminate the required unities of time and title to create an entireties bank account. Petitioner suggests the need to upend the settled state of the law. However doing so, by definition, would create unfair and impractical results.

V. THE SUBJECT ACCOUNT CANNOT BE OWNED AS TENANTS BY THE ENTIRETIES

In the instant matter, it is uncontroverted that the Subject Account was opened by Petitioner's husband as a solely owned account. Petitioner was added as a joint owner of the Subject Account about eight months after it had been created. Thus, it clear that the interests of Petitioner and her husband in the Subject Account, could not have arose at the same time or through the same instrument.

The authority presented herein is abundantly clear that regardless of how a subsequent signature card is filled out, the six unities must be present for an account to be owned as tenants by the entireties. Although the subsequent signature card contains notations indicating that the Subject Account is owned as tenants by the entireties, such notation cannot overcome the flaw caused by the lack of the unities of time and title, nor should any review end at the signature card.

As explained by this Court in *Beal Bank*, the unity of title requires the interest must have originated in the same instrument, and the unity of time requires the interests must have commenced

simultaneously. *Beal Bank* at 52. "To create TBE ownership of a bank account, the six unities must exist when a married couple opens the account." *In re Aranda*, No. 08-26059-BKC-PGH, 2011 WL 87237, at *2 (Bankr. S.D. Fla. Jan. 10, 2011)(Relying on *In re Caliri*, 347 B.R. 788, 798 (Bankr. M.D. Fla. 2006) ("The operative date for establishing ownership of a financial account is the date on which the account is opened or established." (citing *Beal Bank*, 780 So.2d at 58)).

As provided above, the language of §655.79(1) Fla. Stat. could not and did not abrogate the required unities to create an entireties account. As it is clear Petitioner's interest in the Subject Account did not arise at the same time as her husband, nor did it arise through the same instrument, the Subject Account cannot be considered as an entireties account for want of the unities of time and title.

CONCLUSION

The language of §655.79(1) Fla. Stat. refers to creation of a bank account, which is not incongruent with, or abrogate, the established common law unities for entireties ownership. The Statutory presumption arises when a signature card is silent as to how an account is owned. The Legislature has demonstrated its understanding of the current state of the law, and if it chooses to do so, its ability to eliminate the common law unities. Contrary to Respondent's argument, inquiry beyond the signature cards may be necessary to determine entireties ownership of a bank account. Adherence to Respondent's position would very likely lead to absurd results. The very learned Opinion from the Second District below correctly and properly points out the flaws in Respondent's argument as well as with the Fourth District's opinion in *Versace*.

It is undisputed that Respondent was joined as an owner some time after the subject bank account was opened. Thus the Subject Account lacks the unities of time and title, and cannot be considered owned by the entireties.

This Court should affirm the Second District's opinion below, and reject the Fourth District's opinion in *Versace*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 6, 2025, copies of the foregoing was electronically filed with the Clerk of the District Court through the Florida Courts' E-Filing Portal. I also certify that the foregoing document is being served this day via US Mail on all parties of record as follows:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is written in 14 point "Bookman Old Style" font, contains 6,056 words, and is otherwise in compliance with 9.210 Fla. R. App. P.

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