

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2024-1256

LINDA LOUMPOS,

Petitioner,

v.

BANK ONE, et al.,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

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

John D. Goldsmith
Florida Bar No. 444278
TRENAM, KEMKER, SCHARF,
BARKIN, FRYE, O'NEILL &
MULLIS, P.A.
101 E. Kennedy Blvd., Suite 2700
Tampa, FL 33602
Tel: 813-223-7474
Fax: 813-229-6553
jgoldsmith@trenam.com
idawkins@trenam.com
svanboskerck@trenam.com
Attorneys for Petitioner

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STATEMENT OF THE ISSUES

Whether the District Court erred in holding that a bank account in the name of a husband and wife and titled “tenancy by entirety”, cannot be a tenancy by entirety account unless the five common law “unities” are present, despite Fla. Stat. 655.71(1) which provides, in relevant part: “Any deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by entirety unless otherwise specified in writing.”

STATEMENT OF THE CASE AND OF THE FACTS

A creditor of Petitioner Linda Loumpos (Ms. Loumpos) sought to garnish a bank account titled in her name and the name of her husband, Peter Maragoudakis (Mr. Maragoudakis)¹. Mr. Maragoudakis had opened the account in his name only in February 2017. In October 2017, he and Ms. Loumpos, whose married name is Maragoudakis, executed new signature cards that stated the account belonged to "Peter Maragoudakis & Linda Maragoudakis, Ten by Enty." They also checked the "Joint Tenants by Entirety" box on the signature card.

When a creditor of Ms. Loumpos sought to garnish the bank account in 2022, Ms. Loumpos claimed it was exempt because it was an entireties

¹ These facts are taken directly from the Second District’s opinion in this case, pages 2-3, which is in the Appendix to this jurisdictional brief.

account, and the debt belonged solely to Ms. Loumpos. Ms. Loumpos's creditor argued the account did not qualify as an entirety account because Loumpos's name was not on the account when her husband originally opened it. Rather, Mr. Maragoudakis added Ms. Loumpos to the account several months after he opened the account. Thus, the creditor argued, the unities of time and title are not present.

Ms. Loumpos did not dispute that the unities of time and title were not present. Instead, relying on *Beal Bank*, she argued that if a bank signature card expressly designates an account as an entirety account, that ends the inquiry as to the form of ownership of the account and the absence of one of the unities does not preclude the account from being an entirety account. She also relied on section 655.79(1), Florida Statutes (2017), arguing that it codified *Beal Bank* and extended its holding to all spousal accounts by providing that all spousal accounts shall be considered as tenancies by the entirety unless otherwise specified in writing, regardless of the presence or absence of the common.

The trial court ruled that the account was not a tenancy by entirety account, despite the language of section 655.71(1) and *Beal Bank*, because the unities of time and title are not present. Ms. Loumpos appealed. The Second District affirmed, holding that since Ms. Loumpos was added to the

account after the account was first established, the unities of time and title are not met. The Second District disagreed with the Fourth District's decision in *Versace v. Uruven, LLC*, 348 So. 3d 610, 613-14 (Fla. 4th DCA 2022), which held to the contrary on identical facts. The Second District certified the conflict. Ms. Loumpos timely requested the Supreme Court accept discretionary jurisdiction, based on the certified conflict.

SUMMARY OF ARGUMENT

The Second District certified conflict between its decision in this case and the Fourth District's decision in *Versace*, a case involving identical substantive facts. In *Versace* the Fourth District construed the plain meaning of Fla Stat. 655.79(1) which reads, in relevant part: "Any 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", to mean exactly what the statute states – if an account is in the name of a husband and wife it is a tenancy by entirety unless something in writing states otherwise. *Versace* also quoted the language of the Supreme Court in *Beal Bank* that "an express designation on the signature card that the account is held as a tenancy by the entireties ends the inquiry as to the form of ownership." The Second District in this case disagreed with *Versace's* interpretation of Fla Stat. 655.79(1) and *Beal Bank*, holding that if the

legislature intended to abolish the common law requirement for unities in order to create an entireties account, it needs to do so expressly. This Court should accept jurisdiction of this certified conflict because the issue arises frequently in state and bankruptcy courts.

ARGUMENT

I. Standard of Review

The Second District's opinion that, as a matter of statutory interpretation, a tenancy by entirety bank account requires the unity of time and title is a question of law which is subject to de novo review. See *QBE Insurance Corp. v. Chalfonte Condominium Apartment Ass'n*, 94 So. 3d 541, 550 (Fla. 2012); *Horowitz v. Plantation Gen. Hosp*, 959 So. 2d 176, 179 (Fla. 2007).

II. Based on the Second District's Certification of a Conflict with the Fourth District's Opinion in Versace, Discretionary Jurisdiction Should be Exercised

(a) The Standard for Supreme Court Discretionary Jurisdiction

Fla. R. App. P. 9.030(2) provides, in relevant part:

(2) *Discretionary Jurisdiction.* The discretionary jurisdiction of the supreme court may be sought to review: (A) decisions of district courts of appeal that . . . (vi) are certified to be in direct conflict with decisions of other district courts of appeal.

(b) The Second District Certified Conflict with the Fourth District

The Second District certified conflict between its opinion in this case and the Fourth District's opinion in *Versace v. Uruven, LLC*, 348 So. 3d 610, 613-14 (Fla. 4th DCA 2022) because each case came out with opposite results involving identical facts in determining whether a tenancy by entirety account exists if a spouse is added to a bank account after the account is first opened.

(c) Tenancy by Entirety Estates

Florida common law recognized tenancy by entirety estates. "An estate by the entireties is an estate held by husband and wife together so long as both live, and after the death of either by the survivor so long as the estate lasts." *Bailey v. Smith*, 103 So. 833, 834 (Fla. 1925), *receded from on other grounds by Beal Bank, SSB v. Almand & Associates*, 780 So. 2d 45, 59 (Fla. 2001). "It is an estate held by husband and wife by virtue of title acquired by them jointly after marriage." *Id.* The essential characteristic of the estate is that each spouse is seized of the whole or the entirety, not just a share. *See id.* Tenancy by entirety estates applies both to real and personal property. *See id.* at 834-35; *see also First Nat'l Bank of Leesburg v. Hector Supply Co.*, 254 So. 2d 777, 779-80 (Fla. 1971), *receded from on other grounds by Beal Bank*, 780 So. 2d at 59. Because each spouse owns

the whole rather than just a share, the creditor of one spouse cannot reach the entirety property to satisfy the debt of that spouse. *See Beal Bank*, 780 So. 2d at 53.

Under Florida common law, a tenancy by the entirety required that the account have a right of survivorship upon the death of one spouse and possess the following five “unities”: (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 originated in the same instrument); (4) unity of time (the interests must have commenced simultaneously); and (5) unity of marriage (the parties must be married at the time the property became titled in their joint names). *Id.* at 52.

(d) The Basis for the Certified Conflict

Both in the case below and in *Versace* a non-judgment debtor opened an account and later added a judgment debtor spouse to the account, specifically identifying the account in the title of the account, and in other places in the account documents, as a tenancy by entirety account. In *Versace* the Fourth District held the account was tenancy by entirety based on the explicit language of Fla Stat. 655.79(1) and the Supreme Court’s decision in *Beall Bank. Versace*, 348 at 613-14. In *Loumpos* the Second

District held that the account is not tenancy by entirety, also interpreting section 655.79(1) and *Beal Bank*.

Florida Statute 655.79(1) states in full:

(1) Unless otherwise expressly provided in a contract, agreement, or signature card executed in connection with the opening or maintenance of an account, including a certificate of deposit, a deposit account in the names of two or more persons shall be presumed to have been intended by such persons to provide that, upon the death of any one of them, all rights, title, interest, and claim in, to, and in respect of such deposit account, less all proper setoffs and charges in favor of the institution, vest in the surviving person or persons. **Any 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.**

(Emphasis added).

The Second District in this case and the Fourth District in *Versace* interpreted this same statutory language, as well as the Supreme Court's decision in *Beal Bank*, and came to opposite conclusions. Specifically, both courts interpreted the following statutory language in precisely opposite ways: "Any deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by entirety unless otherwise specified in writing." *Versace* interpreted the plain meaning of the statute – that if a deposit or an account is in the name of a husband and wife, the account is a tenancy by entirety account, unless otherwise specified in writing. The Second District in *Loumpos* held to the contrary, reasoning that

based on the history of tenancy by entirety estates, if the legislature intended to overturn common law precedent on what constitutes a tenancy by entirety it was required to expressly make that statement.

The Second District in this case and the Fourth District in *Versace* also considered the Supreme Court's decision in *Beal Bank*, a case decided before the legislature amended Fla. Section 655.69(1) (2017) to add the last sentence discussed above. In *Beal Bank* this Court stated that "an express designation on the signature card that the account is held as a tenancy by the entireties ends the inquiry as to the form of ownership." *Beal Bank*, 780 So. 2d at 60. *Versace* used this language in *Beal Bank*, stating that the language is "unequivocal", to further support its opinion that adding a spouse to an existing account and titling the account as "tenancy by entirety" "ends the inquiry" and the account is a tenancy by entirety account. *Versace*, 348 at 613. In interpreting the express language in both *Fla. Section 655.69(1) (2017)* and in *Beal Bank*, *Versace* reasoned that "an express designation of an account as a tenancy by the entireties would create a tenancy by the entireties as a matter of statutory law, regardless of the presence or absence of the common law requirements of unities." *Versace* 348 So. 3d at 613.

The Second District in *Loumpos*, however, rejected *Versace's* reasoning, arguing that the language in *Beal Bank* and *Fla. Section*

655.69(1) (2017) did not expressly overturn the common law requirement of unities. Recognizing that the Second District's opinion in *Loumpos* is directly contrary to the Fourth District's opinion in *Versace*, the Second District correctly certified conflict.

(e) **As a Result of the Second District's Certified Conflict, the Frequency with Which this Issue Arises, and the Importance of this Issue, Discretionary Jurisdiction Should be Accepted**

The issue of whether the common law "unities" are still required under section 655.799(1) and *Beal Bank* in order to have a tenancy by entirety bank account arises frequently in county, circuit, federal district, and bankruptcy courts in Florida, evidenced by *Versace*, *Loumpos*, and numerous federal district court and bankruptcy court decisions. See e.g., *Strutton v. Anderson*, 22-61294-CIV-ALTMAN/HUNT, at *4 (S.D. Fla. Nov. 17, 2023); *In Re Aranda*, 2011 WL 87237 (Bankr. S.D. Fla. 2011); *In re Ingole*, 2:22-bk-00395-FMD, *8 (Bankr. M.D. Fla. Mar. 31, 2023). The Supreme Court should accept jurisdiction of this certified conflict to resolve an issue which frequently arises and results in differing outcomes.

Further, if the Second District's reasoning in *Loumpos* is adopted, a spouse who wishes to add his spouse to an existing bank account would have to instead close the account and open a new account in the name of both spouses as tenancy by entirety, perhaps at another financial institution

so an argument could not be made that the new account is a mere continuation of the old account. This needless exercise is reminiscent of the former requirement of obtaining a straw buyer for real property so one spouse could convey the real property to a straw buyer who would then immediately transfer the property to the husband and wife as tenants by entirety. The requirement for a straw buyer for real estate was abolished long ago and a central point raised by this Court in *Beal Bank* is that tenancy by entirety in real property and personal property should be treated the same. This case provides the Court an opportunity to interpret 677.59(1) on this point which frequently arises.

CONCLUSION

For the reasons set forth in this brief, the Court should accept jurisdiction and resolve the certified conflict between this case decided by the Second District and the *Versace* decision by the Fourth District.

Respectfully submitted,

s/ John D. Goldsmith

JOHN D. GOLDSMITH

Florida Bar No. 444278

TRENAM, KEMKER, SCHARF, BARKIN,
FRYE, O'NEILL & MULLIS, P.A.

101 E. Kennedy Blvd., Suite 2700

Tampa, FL 33602

Tel: (813) 223-7474

Fax: (813) 229-6553

jgoldsmith@trenam.com
idawkins@trenam.com
svanboskerck@trenam.com
*Attorneys for Petitioner,,
Linda Maragoudakis f/k/a
Linda Loumpos*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Petitioner's Brief on Jurisdiction** has been furnished by email on September 13, 2024 to Hugh B. Shafritz, Esq. pleadings@collectionslawfirm.com, Shafritz & Associates, P.A., 601 N. Congress Ave., Suite 424, Delray Beach, FL 33445; India B. Ingram, Esq., india.ingram@raymondjames.com, Raymond James & Associates Inc., 880 Carillon Pkwy., St. Petersburg, FL 33716; and Bruce W. Barnes, Esq., bwbarnes@tampabay.rr.com, Bruce W. Barnes, P.A., 100 Main Street, Suite 204, Safety Harbor, FL 34695.

s/ John D. Goldsmith

Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief was prepared using Arial 14-point font and contains 2,129 words, which is in compliance with the word count requirements of Florida Rule of Appellate Procedure 9.210.

s/ John D. Goldsmith

Attorney