IN THE SUPREME COURT FOR THE STATE OF FLORIDA

Case No. SC2024-1256

LINDA LOUMPOS,
Petitioner / Appellant,
v.
BANK ONE; NCO FINANCIAL SYSTEMS INC.;
RAYMOND JAMES & ASSOCIATES,
Respondent / Appellees.

ON APPEAL FROM THE SECOND
DISTRICT COURT OF APPEALS
CASE NO.: 2D22-3908

RESPONDENT'S / APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases **Pages**

Statutes

Rules

Other Authorities

ARGUMENT

I. Respondent's Interpretation of § 655.79(1) Impermissibly Requires the Statute to be Re-Written by this Court

Respondent asks this Court to re-write the clear language of Florida Statute § 655.79(1), in violation of the first cannon of statutory construction – what a legislature says in a statute is what it means. *See Ham v. Portfolio Recovery Associates, LLC,* 308 So.3d 942, 946-47 (Fla. 2020) ("In interpreting the statute, we follow the "supremacy-of-text principle"—namely, the principle that '[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means'", quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012); *Harris v. Garner,* 216 F.3d 970, 972-73 (11th Cir. 2000) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others, which is that courts must presume that a legislature says in a statute what it means and means in a statute what it says there; and [w]hen the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." (quotations omitted)).

Respondent asks this Court to interpret Florida Statute § 655.79(1) in a manner which is facially inconsistent with, and would in fact require a substantial rewriting of, § 655.79(1). Respondents ask this Court to add the

words “and is established in accordance with the unities of possession, interest, title, and time” and delete the word “deposit” from the statute.

The tables below graphically demonstrate how Respondents ask this Court to completely re-write § 655.79(1):

Last Sentence of Florida Statute § 655.79(1) Actually Reads (words deleted by respondent in bold):	**What Respondents Contend the Last Sentence of Florida Statute § 655.79(1) Means (words added by Respondent in bold):**
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.	Any account made in the name of two persons who are husband and wife **and is established in accordance with the unities of possession, interest, title, and time** shall be considered a tenancy by entirety unless otherwise specified in writing

If the Florida Legislature intended to require tenancy by entirety accounts to have the unities of possession, interest, title, and time it could have written the statute that way. Further, if the legislature intended to exclude “deposits”, it would not have included the word “deposit” in § 655.79(1). *See Myore v. Nicholson*, 489 F.3d 1207, 1211 (Fed. Cir. 2007) (“Statutory interpretation begins with the language of the statute, the plain meaning of which we derive from its text and its structure. If the statutory language is clear and unambiguous, the inquiry ends with the plain meaning.” (citations omitted)). As this Court stated in *Donato v. Am. Tel. &*

Tel. Co., 767 So.2d 1146, 1150-51 (Fla. 2000) "we are precluded from construing an unambiguous statute in a way which would extend, modify or limit, its express terms or its reasonable and obvious implications."

This Court should not adopt Respondent's invitation to re-write Florida Statute § 655.79(1) by adding the unities of possession, interest, title, and time for a tenancy by entirety bank account when the plain language of the statute does not include those terms. *See Versace v. Uruven, LLC*, 348 So.3d 610, 613 (Fla. 4th DCA 2022). The Second District's opinion in this case should be reversed.

II. The Use of the Word "Deposit" in § 655.79(1) Demonstrates the Legislature's Unequivocal Intent to Not Require the Unities of Time and Title for a Tenancy by Entirety Account

The use of the phrase "[a]ny deposit" is important in determining the meaning of § 655.79(1), yet Respondent and the Second District do not discuss the legislature's use of the word "deposit" in § 655.79(1). In stating that "[a]ny deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by entirety . . .", the legislature states that **any deposit** (not just a deposit made when the account is first opened) made in the name of two persons who are husband and wife is tenancy by entirety. If the legislature intended to limit tenancy by entirety accounts to only those accounts which were first opened in the name

of the husband and wife, it would not have included "any deposit", which by its plain language is not limited to the initial deposit. The use of the phrase "[a]ny deposit" means that the unity of time and title are not required for an account to be tenancy by entirety since the account only must be in the name of a husband and wife when the deposit is made, even if that is after the account was first opened.

Respondent contends that § 655.79(1)'s use of the word "made" is evidence that the unity of time and title are still required because, Respondent argues, "made" refers to when the account was first opened (Resp. Brief at p.15-16). Although Respondent points to dictionary definitions of "make" and "made", neither definition equates the phrase an "account made in the name of two persons who are husband and wife" with when the account was first opened. An account could also be "made in the name of two persons who are husband and wife" at the time a spouse is added to the account. Respondent's, and the Second District's, analysis ignores the phrase "[a]ny deposit" which, as set forth above, refers to any deposit made to an account – not just an initial deposit. This is the strongest evidence that the legislature did not intent to limit the account when it was first created.

Last, Respondent and the Second District point to the first sentence of § 655.79(1) where the phrase "in connection with the opening or maintenance of an account" is used to discuss right of survivorship in bank accounts to argue that the legislature knew how to convey whether the statutory provision applies only in the opening of the account. First, the last sentence of § 655.79(1) was added in 2008, while the remainder of the § 655.79(1) was adopted in 1992. *See* §48 ch. 92-303 and §8 Florida Ch. 2008-75. The comparison of language in sections of a statute added 16 years apart has limited usefulness. Most importantly, the use of the phrase "[a]ny deposit, as set forth above, in the last sentence of § 655.79(1) is the clearest statement about whether that sentence only applies to how the account was initially set-up, since any deposit means the deposit can be made at any time as long as it is made in the name of a husband and wife. The Second District's opinion in this case should be reversed.

III. Canons of Statutory Construction Support Petitioner's Position

Respondent points to 1990 and 1997 Florida Supreme Court cases regarding statutes in derogation of common law as a canon of statutory construction. First, Respondent cites to *Thornber v. City of Ft. Walton Beach*, 568 So.2d 914, 918 (Fla. 1990) where the Court stated: "Unless a statute unequivocally states that it changes the common law, or it so

repugnant to the common law that the two cannot coexist, the statute will not be held to have changed the common law." Second, Respondent quotes *Kitchen v. K-Mart Corp.*, 697 So.2d 1200, 1207 (Fla. 1997) stating: "Under our rules of statutory construction, a statute will not displace the common law unless the legislature expressly indicates an intention to do so".

Section 655.79(1) in fact provides that the unity of time and title is no longer required for a tenancy by entirety account by expressly stating "[a]ny deposit or account made in the name of husband and wife shall be considered a tenancy by entirety unless otherwise specified in writing." This statutory language is repugnant to the common law requirement of unity of time and title and expressly indicates an intention to abolish the requirements of unity of time and title in accounts by only requiring the deposit or account to be made in the name of two persons who are husband and wife.

Further the assertion that statutes in derogation of the common law should be strictly construed is an example of a substantive, as opposed to a linguistic, cannon of statutory construction. *See* Nicholas P. McNamara, "What the Textualist Revolution in Florida Jurisprudence Means for Practitioners", FLA.BAR.J., Vol. 98, No. 3, May/June 2024, p. 54. Linguistic cannons "are based on grammatical rules and presumptions about usage," while substantive canons "incorporate policy-based assumptions about

legislative intent." *Id.* at fn 27, (quoting University of Akron School of Law Library, Canons of Statutory Construction also called Rules of Statutory Interpretation), http://tinyurl.com/3j8yr8mk).

Justice Scalia points out that substantive canons are "dice-loading rules" that pose "a lot of trouble" for "the honest textualist," given their reliance on extratextual considerations of public policy. Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law 28 (Amy Gutmann ed., 1997); *see generally* Benjamin Eidelson & Matthew C. Stephenson, *The Incompatibility of Substantive Canons and Textualism*, 137 Harv. L. Rev. 515 (Dec. 2023). In contrast, linguistic canons of construction, such as looking at the use of the phrase "[a]ny deposit" at the start of the last sentence of § 655.79(1), relies on a direct textual analysis of the statute, not a policy driven extratextual analysis. The use of the phrase "[a]ny deposit" demonstrates the Florida's Legislature's unequivocal intent to not require the unities of time and title for a tenancy by entirety account. The canons of statutory construction support Petitioner's position that § 655.79(1) does not require the unities of time and title for a bank account to be tenancy by entirety.

IV. Respondent's Appeal to Legislative History and Legislative Intent is Without Merit

Respondent spends much of its Answer Brief arguing about legislative intent and legislative history, rather than the plain language of § 655.79(1). Justice Lawson emphasized that the Court should not "first ask what the Legislature intended by its enactment rather than what the Legislature actually said in its statute." *Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294, 313 (Fla. 2017) (Lawson, J., concurring in part and dissenting in part); *Mattino v. City of Marathon*, 345 So.3d 939, 946 (Fla. 3d DCA 2022) (Emas, J.) ("If the plain language of the statutory text does not properly reflect the legislative intent, it falls upon that body, and not this court, to amend the statute to reflect that intent.")

Respondent asserts that since the Florida Legislature did not expressly state in § 655.79(1) that it was abolishing the common law requirements of unities of possession, interest, title, and time for tenancy by entirety accounts, that the legislature did not intend to abolish the requirement for those unities (Resp. Brief p. 17-20). The Florida Legislature, however, could not have used language more clear: "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."

Further, determining legislative intent, particularly when considering two separate legislative bodies such as the Florida House and Florida Senate, become a mission impossible given the potential differing views of 180 legislators voting on a bill. *See Enriquez v. Velazquez*, 350 So. 3d 147, 157 (Fla. 5th DCA 2022) (Sasso, J., dissenting) ("[C]ollective intent is pure fiction because dozens if not hundreds of legislators have their own subjective views on the minutiae of bills they are voting on — or perhaps no views at all because they are wholly unaware of the minutiae." (citation *Castellano v. Halpern*, 380 So. 3d 486, 491 (Fla. 2d DCA 2023) (Kelly, J.) (rejecting assertion that the court is "obligated to honor the obvious legislative intent and policy behind the statutes even where that intent requires an interpretation that exceeds the literal language of the statutes").

Similarly, Respondents citation to legislative history should not be considered because legislative history is "inconsistent with our application of the supremacy-of-text principle." *Kidwell Grp., LLC v. Olympus Ins. Co.*, 346 So.3d 658, 661 n.4 (Fla. 5th DCA 2022); *see Taylor v. Nicholson-Williams, Inc.*, 368 So. 3d 1007, 1015 n.3 (Fla. 5th DCA 2023) (declining to consider legislative history materials cited in the appellant's brief, noting that "legislative history offers little to assist our interpretive task as judges").

Further, the legislative history cited by Respondent does not address the issue in this case (Resp Brief at p.13-14). The legislative history cited are the following: "In *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, at p.5, and "CS/SB 88 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 10. These statements say nothing about whether the bill requires the unities of possession, interest, title, and time for a tenancy by entirety account.

Respondent also cites to a staff report of a bill proposed, but not passed, in the Florida Legislature in 2019, eleven years after the passage of last sentence of § 655.79(1), which would have explicitly abolished the unities of time and title for all personal property. While it is questionable whether it is appropriate to use a staff report prepared in connection with interpreting a bill which became law, there is no basis to consider a staff report of a bill which did not become law.

Further, the staff analysis supports Petitioner's position because the purpose of the bill was to align tenancy by entirety law for bank accounts and all other personal property. Specifically, this bill was proposed by the Real Property, Probate and Trust Law Section (RPPTL) of the Florida Bar due to the RPPTL's long-standing concern over the inconsistency between bank accounts, where the RPPTL viewed § 655.79(1) as abolishing the common law unities for tenancy by entirety bank accounts, and all other personal property which still required the unities. *See* Anne Buzby-Walt, "Are Florida Laws on Tenancy by the Entireties in Personalty as Clear as we Think?", FLA.BAR.J., Vol. 85, No. 8 September/October 2011, Pg 52, written on behalf of the RPPTL ("Presumably there is no longer a requirement to establish the unities in the case of bank accounts. The effect of the 2008 amendment to F.S. §655.79 does, however, create significant differences in the treatment of bank accounts, as opposed to other personalty.") In short, the staff report of a bill which did not become law does not support Respondent's position.

V. Abolishing the Unities Does Not Create Absurd Results, but Retaining the Unities Does Create Absurd Results

Respondent argues that abolishing the common law unities in accounts would create absurd results because people who are not married or one individual would be able to create a tenancy by entirety account

(Resp. Brief at p. 22-23). Respondent's argument ignores the explicit language of the last sentence of § 655.79(1) which states that "Any deposit or account in the name of two persons who are husband and wife shall be considered a tenancy by entirety . . .". As such, the explicit language of the statute precludes the two absurd results Respondent claims would occur if the plain language of the statute was followed.

Further, as pointed out in the Initial Brief, if the unity of time and title are still required for a tenancy by entirety account, it creates an absurd result. Specifically, if the Second District and Respondent's view is adopted, the only way an account in the name of one spouse can become a tenancy by entirety is to close the account and open a new account in the name of both spouses, which likely will need to be at a different financial institution in order to avoid the argument that the second account in the same bank is a mere continuation of the existing account. The Florida Legislature abolished these needless requirements in adopting the clear language in the last sentence of § 655.79(1). The Second District's opinion should be reversed.

CONCLUSION

The Second District's opinion determining that § 655.79(1), Florida Statutes, still requires the unities of possession, interest, title, and time for an account to be a tenancy by entirety requires the statute to be substantially

re-written by this Court, violating the cardinal rule of statutory construction. The Second District's opinion should be reversed and the Fourt District's opinion in *Versace* should be adopted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Appellant's Reply Brief** was electronically filed on March 10, 2025 with the Clerk of Court by using the Florida Courts E-filing Portal System, which will send a notice of electronic filing and copy to the parties and counsel of record. I also certify that the foregoing document was served this day via email on: 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.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief was prepared using Arial 14-point font and contains 2,789 words, which is in compliance with the word count requirements of Florida Rule of Appellate Procedure 9.210.

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