Loumpos v. Bank One

Supreme Court of Florida

423 So.3d 856 (Fla. 2025)

Facts

- Certified Conflict by 2nd DCA
  - Spouse was added to existing bank account with a new signature card declaring the account to be TBE
  - Versace v. Uruven, LLC, 348 So.3d 610 (Fla. 4th DCA 2022)
    - Beal Bank provided the unqualified statement that an account declared TBE on the signature card ends the inquiry
    - Fla. Stat. §655.79(1) went beyond Beal Bank by providing that "all spousal bank accounts are considered as held by tenancies by the entireties unless otherwise specified in writing."
    - Held account where was a TBE account
  - Loumpos v. Bank One, 392 So.3d 841 (Fla. 2d DCA 2024)
    - Beal Bank's "ends the inquiry" statement referred only to the "intent" of the form of the ownership (i.e. the 6th unity)
    - Fla. Stat. §655.79(1) merely codified Beal Bank and did not abrogate common law
      - Found 1st Sentence for JTROS abrogated common law
      - Found 2nd Sentence TBE language differed so common law as not abrogated
    - Held account where was not a TBE account
      - Neither Beal Bank nor Fla. Stat. §655.79(1) eliminated the requirement of the common law unities
  - Arguments
    - Petitioner argues Fla. Stat. §655.79 "clearly and unequivocally removed" all common law unity requirements for TBE except marriage
    - Respondent argues Fla. Stat. §655.79 codified Beal Bank (intent to create TBE) and "did not alter the need to comply with the common law unities"

Issue

- "The narrow issue [the Court] resolve[s] is whether either Beal Bank or section 655.79(1) authorizes a joint spousal account to be owned as a tenancy by the entireties even if the account was originally established by one spouse"
- Stated differently: Whether the time and title unities required under common law were eliminated by the Beal Bank decision or by the 2008 amendment to Fl. Stat. 655.79(1)

Analysis

- TBE Unities under Common Law
  - (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);
  - (5) survivorship; and
  - (6) unity of marriage (the parties must be married at the time the property became titled in their joint names)
- Application of Beal Bank, SSB v. Almand & Associates, 780 So. 2d 45 (Fla. 2001)
  - Court's Summary of Beal Bank

        - Beal Bank addressed 3 questions, all of which assume the unities are present:
            - If the unities required to establish ownership as a TBE exist, should a presumption arise that shifts the burden to the creditor to prove that the subject account was not held as a TBE?
                - YES (if not expressly disclaimed in the signature card)
            - If the unities required to establish ownership as a TBE exist, but the signature card expressly states that the account is owned as a JTORS, does that statement alone constitute an express disclaimer that the account is not held as a TBE?
                - NO
            - If the unities required to establish ownership as a TBE exist, but the signature card expressly disclaims the TBE form of ownership, may the debtor resort to extrinsic evidence to prove that a TBE was intended if the debtor establishes that the financial institution did not offer a TBE form of account ownership?
                - YES
        - Beal Bank, in footnote 6, notes that issue of the unity of time was not raised so the decision was not addressing it
        - Beal Bank noted JTROS & TBE share all the same unities (but marriage)
        - Real and personal property can be owned as TBE, but different standards had applied to determination
        - Beal Bank found it was time to create presumption in favor of TBE for bank accounts
        - Beal Bank agreed with Hector Supply Co. that an express designation on the signature card as TBE ended the inquiry as to ownership
    - Beal Bank did not address the certified question
        - Beal Bank only addressed situations when all unities were present
            - Stated it was not addressing the absence of unities
        - Versace misread the "ends the inquiry" language reference in Beal Bank
            - "That language was plainly penned in the same context as the rest of the opinion, which focused on determining the intent of the spouses"
        - Loumpos correctly interpreted Beal Bank's application of "ends the inquiry" to mean an express designation of TBE was proof of the "intent" of spouses to have ownership as TBE (satisfying the 6th Unity requirement)
- Fla. Stat. §655.79 Analysis
    - §655.79(1) - "Deposits and accounts in two or more names; presumption as to vesting on death."
        - "(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)

- Interpretation and Effect on the Common Law
  - Common law modification analysis
    - Presumption against changing common law does not permit rejecting a fair reading of a statute
    - Legislature says what it means and means what it says
    - Courts should not ignore words in statute
  - Plain language of §655.79(1)
    - "any deposit or account" looks beyond inception of account
    - Loumpos's statutory interpretation only contemplates creation of the account which is clearly ignores "any deposit…made" and therefore undermines its interpretation
    - "Account made" looks beyond account opening and includes a change where an individual account is "made" into a joint account
  - Statutory Interpretation
    - 2nd sentence of §655.79 viewed in isolation is supportive of TBE treatment, but statutory interpretation requires consideration of the full context §655.79
    - Full statutory context of §655.79 further confirms elimination of title & time unities for TBE
      - 1st sentence of §655.79(1) and §655.79(2), taken together create a JTROS presumption without mention of unities
      - Loumpos interpretation of the impact of the different language style in the 2nd sentence of §655.79(1) would equate to treating TBE and JTROS as "wholly distinct concepts, governed by distinct legal analyses."
      - Court found TBE & JTROS share identical characteristics and unities except for marriage
        - TBE therefore satisfies the definition of JTROS
        - If the 1st sentence eliminates the need for the unities of time & title for JTROS, it would stand to reason to do the same for TBE
  - Loumpos incorrectly interpreted statute

Holding

- "[S]ection 655.79, Florida Statutes, authorizes a joint spousal bank account to be held as a tenancy by the entireties even if the account was originally established by one spouse"
- Quashed Loumpos and approve Versace to extent consistent with opinion

TBE Treatment by Property Type

- **Bank Accounts**
  - Creation
    - Common law unities (provided not disclaim in writing); or
    - TBE designation on account
      - Fla. Stat. §655.79
        - A "deposit account" in the name of a married couple "shall be considered a tenancy by the entirety unless otherwise specified in writing."
          - Loumpos v. Bank One, 423 So.3d 856 (Fla. 2025)
            - Statutorily eliminated need for Unity of Time or Title
        - Fla. Stat. §655.005(2); Fla. Stat. §679.1021(ff) defines a "Deposit account" as "a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument." (emphasis added)
        - Note - Fla. Stat. §655.55(3)(b) – definition of despoit account but limited to that section (not §655.79)
      - Chapter 655 does not apply to investment or brokerage accounts
        - See Chapter 517, Fla. Stat. (Security Laws); Fla. Stat. §678.5011(1), 679.1021(cc) & (ww), and 711.501(10)
  - Presumptions
    - If TBE is expressly stated and:
      - Unities are present, then TBE is conclusively presumed
        - Beal Bank
      - Unities of time & title are not present, then a presumption of TBE arises which is rebuttable only by fraud, undue influence, or clear & convincing evidence
        - Loumpos v. Bank One; Fla. Stat. §655.79(1) & (2)
    - If TBE is not expressly disclaimed and the form of ownership is silent or as JTWROS, then if unities are present there is a rebuttable presumption of TBE
      - Beal Bank
    - If unities are present but TBE is disclaimed or another form of ownership is selected, then:
      - If the financial institution does not offer TBE, a rebuttable presumption arises that the account is not TBE
        - Beal Bank; Wexler v. Rich, 80 So.3d 1097 (Fla. 4th DCA 2012)
      - If the financial institution offers TBE, then a conclusive presumption arises that account is not TBE
        - Beal Bank; Storey Mountain, LLC v. George, 357 So.3d 709 (Fla. 4th DCA 2023)

- **Other Tangible & Intangible Personal Property**
  - Creation
    - Common Law Unities
    - No statutory method
      - Fla. Stat. §689.151 was proposed by RPPTL to create a new statute to address TBE & JTROS of personal property. Never Enacted.
  - Presumption
    - If unities of possession, interest, title, time, survivorship, & marriage are present, then there is a rebuttable presumption of TBE
      - "Although we understand the considerations that originally led to this Court's decision not to adopt a presumption of a tenancy by the entireties in personal property similar to that in real property, we conclude that stronger policy considerations favor allowing the *presumption in favor of a tenancy by the entireties when a married couple jointly owns personal property*". (emphasis added)
        - Beal Bank
        - See also Gibson v. Wells Fargo Bank, N.A. 255 So 3d 944 (Fla. 2d DCA 2018); In Cacciatore v. Fisherman's Wharf Realty Limited Partnership, 821 So. 2d 1251 (Fla. 4th DCA 2002); In re Uttermohlen, 506 B.R. 142, 146 (M.D. Fla. 2012), aff'd, 525 F. App'x 916 (11th Cir. 2013); In re Daniels, 309 B.R. 54, 59 (Bankr. M.D. Fla. 2004)
    - Presumption shifts the burden of proof to the creditor to prove by a preponderance of evidence that TBE was not created.
  - Applicable Assets
    - Tangible personal property
      - Vehicles, Artwork, Furnishings, household items, jewelry
    - Intangible personal property
      - Investment & Brokerage Accounts
      - Entity Certificates/Ownership
      - Promissory notes, checks, income tax refunds

- **Real Property**
  - Creation
    - Common law unities; or
    - Conveyance by one or both spouses to both spouses
      - Fla. Stat. §689.11
        - Statutorily eliminated need for Unity of Time or Title
          - Clampit v. Wick, 320 So.3d 826, (Fla. 2d DCA 2021)
  - Presumption
    - Real property acquired in the name of spouses creates a conclusive presumption of TBE ownership unless expressly stated otherwise
      - Beal Bank, SSB v. Almand and Assocs., 780 So.2d 45, 54 (Fla.2001); Ramos v. Estate of Ramos, 329 So.3d 172, 173 (Fla. 3rd DCA 2021)
    - TBE presumption is not rebuttable absent fraud
      - Bridgeview Bank Group v. Callaghan, 84 So.3d 1154 (Fla. 4th DCA 2012)

JMP General Thoughts:

- Loumpos decision
  - Narrow decision that held
    - Beal Bank did not address adding a spouse to a bank account
    - Beal Bank created a presumption of the 6th Unity (marriage) when the other 5 unities were present with the opening of a bank account
    - Beal Bank did not eliminate common law unities to create TBE
    - §655.79(1), as amended in 2008, eliminated required unity of time & title
      - Court did not state other unities were eliminated
  - Was favorable in allowing the creation of a TBE account when a married individual adds his or her spouse to a preexisting bank account and expressly declares it to be TBE

- Be Aware
  - Loumpos DOES NOT apply to investment and brokerage accounts
    - Only applies to Fla. Stat. §655.79 "deposit accounts"
  - TBE presumption under Fla. Stat. §655.79 is rebuttable by proof of fraud, undue influence, or clear and convincing evidence of a contrary intent
  - "unless otherwise specified in writing" exception to Fla. Stat. §655.79
    - Storey Mountain, LLC held that provision on signature card incorporating bank's general terms which included language that stated "such an account is NOT owned as tenants by the entireties unless otherwise expressly designated on the account records" was sufficient to prevent TBE treatment of account opened by married couple
  - Fraudulent Transfer rules still apply (Chapter 726)

- Best Practice
  - Open a new TBE account with all common law unities present at a financial institution that expressly permits TBE accounts
    - Benefit of conclusive TBE presumption
  - Document intent (consider using a TBE affidavit)