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DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT
ERIC MANUELIAN,
Appellant,

v.

JENNIFER L. STARR, individually and in the
Capacity as Trustee of the
Laura Kirkland Trust dated 3/10/05 and in the
Capacity as Trustee of
the Starr Trust,
Appellee.

No. 2D2023-1544

May 1, 2024

Appeal from the Circuit Court for Pasco County;
Kemba Lewis, Judge.

Donald J. Schutz, Saint Petersburg, for Appellant.

John A. Schifino of Gunster, Yoakley &
Stewart, P.A., Tampa, for Appellee.

PER CURIAM.

Affirmed. VILLANTI, BLACK, and ATKINSON, JJ.,
Concur.

Opinion subject to revision prior to official
publication.

**DISTRICT COURT OF APPEAL OF THE STATE
OF FLORIDA
SECOND DISTRICT**

1700 N. Tampa Street, Suite 300, Tampa FL 33602

August 16, 2024

CASE NO.: 2D2023-1544

L.T. No.: 2021-CA-2622

ERIC MANUELIAN,
APPELLANT(S)

V.
JENNIFER L. STARR, ET AL.,
APPELLEE(S).

BY ORDER OF THE COURT:

Appellant's motion for clarification, rehearing en banc, and certification of conflict and issue of exceptional importance of attorney fee order rendered May 1, 2024, is denied.

Appellant's motion for written opinion and rehearing en banc of per curiam affirmance ("pca") rendered May 1, 2024, and, if granted and appropriate, certification of conflict and issue of exceptional importance is denied.

Appellant's motion to strike appellee Starr's two untimely documents titled "response in opposition" filed July 19, 2024, is denied as moot.

Appellee's motion to file responses in opposition to appellant's post pca motions out of time is denied as moot.

/s/ Mary Elizabeth Kenzel, Clerk

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:
PASCO CLERK

BENJAMIN FRANK DIAMOND JOSEPH W.
FLEECE
AUDREY ANNE GANGLOFF JONATHAN G. LEE
LINDSAY PATRICK LOPEZ RACHEL
ALBRITTON LUNSFORD JOHN ALLEN
SCHIFINO DONALD JOSEPH SCHUTZ ALLISON
KIRKWOOD SIMPSON JEORGE ERIC TAYLOR

IN THE CIRCUIT COURT OF SIXTH JUDICIAL
CIRCUIT

IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

ERIC MANUELIAN,
Plaintiff,

v. 2021CA002622CAAXES
JENNIFER L. STARR, individually and in
the Capacity
as Trustee of the Kirkland Trust dated
3/10/05 and in
the Capacity as Trustee of the Starr Trust,
Defendants,
-and-
KIRKLAND RANCH, INC., A Florida
Corporation and R.L.E. RANCH, INC., A
Florida Corporation
Nominal Defendants.

**AMENDED ORDER GRANTING DEFENDANT
JENNIFER L. STARR'S MOTION FOR
SUMMARY JUDGMENT AND DENYING
PLAINTIFF ERIC MANUELIAN'S RENEWED
AND AMENDED MOTION FOR PARTIAL
SUMMARY JUDGMENT**

THIS CAUSE having come before the Court on
the Plaintiff Eric Manuelian's Renewed and Amended
Motion for Summary Judgment on Counts One, Two,
Four, and Five, and the Defendant Jennifer L. Starr's
Motion for Summary Judgment, and the Court having
reviewed the pleadings and legal authority cited
therein, the supporting documents and record
evidence, and having heard argument of counsel in
two hearings on April 3, 2023, and on April 19, 2023,

and otherwise being fully advised of the premises herein, it is **ORDERED AND ADJUDGED** that the Plaintiffs Renewed and Amended Motion for Summary Judgment filed on January 11, 2023, is hereby **DENIED**. It is further **ORDERED AND ADJUDGED** that Defendant Jennifer L. Starr's Motion for Summary Judgment filed on February 16, 2023, is hereby **GRANTED ON ALL COUNTS**.

In support of this Order, the Court hereby makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

FINDINGS OF FACT:

1. The Court finds there is no genuine dispute as to any material fact and Defendant Jennifer L. Starr has established that she is entitled to judgment as a matter of law.
2. In 1977, Laura Kirkland owned 200 shares of Kirkland Ranch Inc. ("KRI").
3. In 1979, Laura Kirkland married Charles Manuelian.
4. Laura Kirkland and Charles Manuelian had two children: Eric Manuelian, who is the Plaintiff in this action, and Robert Kirkland.
5. On May 29, 1997, a divorce decree was entered by the Family Court of the Ninth Judicial Circuit, Berkeley County, South Carolina, Case No. 95-DR-08-1256 ("1997 Divorce Decree"), which dissolved the marriage between Laura Kirkland and Charles Manuelian.
6. Neither Charles Manuelian nor Laura Kirkland appealed or sought a court order modifying the 1997 Divorce Decree.

7. The 1997 Divorce Decree incorporated and recited an agreement between Laura Kirkland and Charles Manuelian (the "Marital Settlement Agreement"). In the provisions of the Marital Settlement Agreement addressing "Checking or Savings Accounts, Stocks and Bonds", Paragraph 20(b) provides as follows: "Defendant [Laura Kirkland] retains the Kirkland Ranch Stock and same is to be divided upon her death between her surviving children. Further, if stock is otherwise liquidated, the proceeds will go to her surviving children."

8. From 1999 through 2002, Laura Kirkland received an additional 78 shares of KRI.

9. On December 12, 2005, Laura Kirkland executed a Last Will and Testament which devised all of her property to the Kirkland Trust dated March 10, 2005 (the "Laura Kirkland Trust"), a revocable trust. Among other provisions, Jennifer Starr was designated the Initial Personal Representative.

10. Also on December 12, 2005, Laura Kirkland executed the "First Amendment of Trust Declaration by Laura Kirkland Dated December 12, 2005," designating Jennifer Starr as the Trust's sole beneficiary. Robert Kirkland and Eric Manuelian were designated as contingent beneficiaries.

11. On July 26, 2009, Laura Kirkland directed KRI to transfer all of her 278 shares of KRI to the Laura Kirkland Trust, and further directed KRI to issue a new certificate to her as Trustee of the Laura Kirkland Trust.

12. On September 16, 2009, Laura Kirkland died.

13. The Laura Kirkland Trust became irrevocable upon Laura Kirkland's death.

14. On December 31, 2009, the Plaintiff received a distribution of KRI shares from his grandmother's Trust and following which he participated in corporate affairs as a shareholder.

15. On March 25, 2010, Defendant Jennifer Starr filed a Petition for Formal Administration for the *Estate of Laura Kirkland* ("Estate") in the Circuit Court of Orange County, Florida, case number 2010-CP-0006333-O.

16. Also on March 25, 2010, Jennifer Starr filed a Notice of Trust in the Estate that stated the Laura Kirkland Trust was liable for the expenses of administration of the Decedent's estate and enforceable claims of the Decedent's creditors as required in Fla. Stat. §§ 733.607(2) and 736.05055(1) (2010).

17. On March 31, 2010, Jennifer Starr was appointed Personal Representative of the Estate. The Plaintiff signed a Waiver of Priority, Consent to Appointment of Personal Representative, and Waiver of Notice and Bond, in which he waived any right to act as Personal Representative of the Estate and consented to the appointment of Jennifer Starr as Personal Representative of the Estate.

18. The Plaintiff never filed a claim as a creditor in the Estate.

19. The Plaintiff never commenced any proceedings against the Estate related to the KRI shares and never objected to any aspect of Jennifer L. Starr's administration of the Estate.

20. Neither Plaintiff nor the Defendant was aware of the 1997 Divorce Decree during the pendency of the Estate.

21. On July 19, 2011, all the shareholders of KRI, including the Plaintiff and the Defendant Jennifer Starr as successor trustee of the Laura Kirkland Trust, executed a reorganization and division of KRI. All KRI shareholders surrendered their certificates to the agents presiding over the transaction and were afterwards issued new certificates for either KRI or a new corporation, R.L.E. Ranch, Inc. ("RLE"), in proportion to their original KRI shares. Both the Plaintiff and the Laura Kirkland Trust received shares of RLE.

22. On July 19, 2011, both Plaintiff and Defendant Jennifer Starr as successor trustee of the Laura Kirkland Trust accepted and signed the R.L.E. Shareholder Agreement, which outlined transfer restrictions for RLE shares in Section 2.

23. All RLE shareholders, including the Plaintiff, approved the distribution of the Laura Kirkland Trust's RLE shares to Jennifer Starr by signing a written Consent to Transfer of Stock in accordance with Section 2.1(a) of the R.L.E. Shareholder Agreement. RLE then cancelled the Laura Kirkland Trust's share certificate and issued a new certificate to the Starr Trust dated March 26, 2010 ("Starr Trust").

24. On June 13, 2018, Jennifer Starr filed a Petition for Discharge in the Estate, stating that she had fully administered the Estate and requesting that she be discharged as Personal Representative of the Estate.

25. On June 26, 2018, Defendant Jennifer Starr was discharged as Personal Representative of the Estate.

26. In September of 2020, the Plaintiff reunited with his estranged father.

27. On November 8, 2021, the Plaintiff filed his Complaint in this action seeking 50% of all shares of RLE (as successor to KRI) received by the Defendant from the Laura Kirkland Trust. On January 11, 2022, the Plaintiff filed a First Amended Complaint.

28. On January 18, 2022, the Plaintiff filed a Motion for Summary Judgment.

29. On January 28, 2022, Defendant moved to dismiss the Complaint, and then filed a Motion to Dismiss Amended Complaint, which included as grounds the Plaintiffs failure to join his brother, Robert Kirkland, as an indispensable party. This Court heard the Motion to Dismiss Amended Complaint on May 3, 2022 and entered its Order denying such Motion on June 1, 2022. Robert Kirkland has attended several hearings in this case and has not intervened.

30. On February 13, 2022, the Plaintiff filed an Amended Motion for Summary Judgment, revised to demand 50% of the 200 shares of RLE (as successor to KRI) Laura Kirkland owned at the time of her divorce in 1997. On March 29, 2022, the Court heard argument on the Plaintiffs Amended Motion for Summary Judgment. An Order denying such Motion was issued on April 28, 2022. Plaintiff filed a Motion for Reconsideration and Clarification of April 28, 2022 Order Denying Plaintiffs Motion for Partial Summary Judgment, which the Court denied on May 25, 2022.

31. On January 11, 2023, the Plaintiff filed a Renewed and Amended Motion for Partial Summary Judgment on Counts One, Two, Four, and Five of the

First Amended Complaint, making many of the same arguments previously raised in Plaintiffs first Amended Motion for Summary Judgment, and Motion for Reconsideration.

32. On February 16, 2023, the Defendant also moved for summary judgment on all counts of the First Amended Complaint.

33. On April 3, 2023, and April 19, 2023, the Court heard argument from counsel for the Plaintiff and counsel for the Defendant for their respective motions.

34. Both Plaintiff and Defendant have asserted there is no genuine issue as to any material fact in this case.

CONCLUSIONS OF LAW:

35. The Court concludes there is no genuine dispute as to any material fact and Defendant Jennifer L. Starr has established that she is entitled to judgment as a matter of law.

36. The Court affirms that as the result of the 2011 KRI reorganization, the 100 RLE shares sought by the Plaintiff represent one-half of the KRI shares referenced in the 1997 Divorce Decree.

37. The Court gives full faith and credit to the 1997 Divorce Decree dissolving the marriage between Laura Kirkland and Charles Manuelian.

38. Plaintiff contends that, by giving full faith and credit to the 1997 Divorce Decree, the Court must conclude that:

- (a) 100 shares of Laura Kirkland's KRI stock automatically transferred to the Plaintiff at the instant of Laura Kirkland's death, without any action by Laura Kirkland, KRI, the Plaintiff, or any other party;

(b) the actions taken by Laura Kirkland and KRI between the date of the 1997 Divorce Decree and her death had no effect on 100 shares of her KRI stock;

39. The Court rejects the Plaintiffs argument for the following reasons:

40. As stated in the 1997 Divorce Decree and the Marital Settlement Agreement recited therein, Laura Kirkland retained ownership of the KRI (RLE) shares.

41. Although Laura Kirkland agreed to leave her KRI shares or liquidation proceeds to her children upon her death, the 1997 Divorce Decree did not transfer any interest in Laura Kirkland's KRI (RLE) shares to the Plaintiff.

42. Plaintiff contends that the 1997 Divorce Decree created for the Plaintiff an interest in Laura Kirkland's KRI (RLE) shares that took effect automatically upon Laura Kirkland's death, regardless of Laura Kirkland's actions and intentions during her remaining lifetime. The Court concludes that even if such an interest had been created, any such interest would have been extinguished by Laura Kirkland's actions in naming Jennifer Starr as the sole beneficiary of the Laura Kirkland Trust and by transferring the KRI (RLE) shares to the Laura Kirkland Trust.

43. Laura Kirkland made a clear and intentional decision to leave her property to Jennifer Starr when she amended the Laura Kirkland Trust in 2005 to make Jennifer Starr the sole beneficiary, as shown in the trust amendment.

44. In 2009, Laura Kirkland reaffirmed her decision to leave her KRI shares to Jennifer Starr, by

taking the steps necessary to transfer her KRI shares to the Laura Kirkland Trust.

45. Laura Kirkland's reasons for directing her shares away from her children in favor of Starr are not known and not subject to the Court's review. Laura Kirkland's actions demonstrated her clear intent to leave her shares of KRI to Starr.

46. When Laura Kirkland died on September 16, 2009, the Laura Kirkland Trust became irrevocable. All assets titled in the Laura Kirkland Trust at the time of Laura Kirkland's death were subject to administration in accordance with the provisions of the Laura Kirkland Trust and the Florida Trust Code, including Fla. Stat. §§ 736.1014(1) (2009) and 736.05055(1) (2009).

47. A probate claim is "a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense." Fla. Stat. § 731.201(4) (2010). Any claim against a decedent based on a wrongful action or inaction of the decedent is subject to probate jurisdiction, and the statutory bars for claims filed in the decedent's probate proceeding apply. Fla. Stat. §§ 733.702(2), 733.710(1), and 736.1014(1) (2010).

48. The Plaintiff was aware of and participated in the Estate's probate proceedings.

49. The Plaintiff never brought an independent action or declaratory action against Laura Kirkland during her lifetime or against the Estate, and the Plaintiff never filed a claim in the Estate as a creditor.

50. Nonetheless, the Plaintiff contends that his demand for 100 shares of Laura Kirkland's KRI stock is exempt from the claims procedure and

absolute claims bar under Fla. Stat. §§ 733.702(2), 733.707(3), and 733.710 (2010) because said shares were not identified as an asset of the Estate and were not included in the Inventory of the Estate, and because Laura Kirkland's death was a condition for the transfer of said shares pursuant to the 1997 Divorce Decree.

51. Florida's Trust Code also required the Plaintiff to file a timely claim in Laura Kirkland's Estate to assert his purported entitlement to said shares. Fla. Stat. § 736.1014(1) (2010) provides that after the death of the settlor of a revocable trust, no creditor may bring an action against the trust, the trustee of the trust, or any beneficiary of the trust dependent upon the individual liability of the settlor, and such claims and causes of action against the settlor must be presented and enforced against the settlor's estate as provided in the Probate Code, Chapter 733.

52. The Court finds that if the Plaintiff believed such shares became his automatically when his mother died or that his mother had conveyed such shares in error by way of her trust, the Plaintiff was required to file a timely creditor's claim in the Estate to assert any grounds for entitlement to such shares based on the 1997 Divorce Decree. The Plaintiff is now barred from asserting any such grounds for entitlement to such shares, pursuant to Fla. Stat. §§ 733.702 and 733.710 (2010).

53. Furthermore, the Court also finds the Plaintiff is time barred from bringing a claim. Fla. Stat. § 733.710 (2010) establishes a two-year jurisdictional statute of non-claim, providing that if a claim is not filed under the procedures of Fla. Stat. §

733.702 (2010), "[two] years after the death of a person, neither the decedent's estate, the personal representative, if any, nor the beneficiaries shall be liable for any claim or cause of action against the decedent[.]"¹ The Court finds the Plaintiffs claims are well past these statutory deadlines.

54. Jennifer Starr, as the Laura Kirkland Trust beneficiary, was entitled to all of the trust's assets including the shares referenced in the 1997 Divorce Decree. Jennifer Starr, as successor trustee of the Kirkland Trust, has no authority or obligation to divide or distribute the shares per the terms of the 1997 Divorce Decree.

55. The Court finds that the Defendant has not committed fraud or constructive fraud, and that there are no circumstances here that give the Court any authority to circumvent the clear requirements in the Florida Probate Code that required the

1 Fla. Stat. §§ 733.710 and 733.702 (2010) have not changed since 2010.

Plaintiff to file a claim within the time periods provided for in Fla. Stat. §§ 733.702 and 733.710 (2010).

56. As to the Plaintiff's claim that this lawsuit is timely under the twelve year statute of repose for both fraud and constructive fraud provided by Fla. Stat. §§ 95.11 and 95.031, the Plaintiff has no claim against the Defendant in any capacity because the Plaintiffs only claim was against his mother, Laura Kirkland, premised on the individual liability of Laura Kirkland, as a creditor of the probate estate of Laura Kirkland.

57. KRI and RLE were identified as nominal defendants in the Amended Complaint. The final judgment rendered herein disposes of all claims asserted in the Amended Complaint, including any claims directed to or relief requested from KRI and RLE.

Therefore, it is **ORDERED AND ADJUDGED** that the Plaintiffs Renewed and Amended Motion for Summary Judgment is hereby **DENIED WITH PREJUDICE ON COUNTS ONE, TWO, FOUR, AND FIVE**. It is further **ORDERED AND ADJUDGED** that Defendant's Motion for Summary Judgement is hereby **GRANTED ON ALL COUNTS**.

It is further **ORDERED AND ADJUDGED** that the lis pendens, as amended, filed by the Plaintiff at the Pasco County Clerk and Comptroller, as amended on August 3, 2022, is immediately dissolved.

It is further **ORDERED AND ADJUDGED** that the Plaintiffs claims against the nominal defendants, KIRKLAND RANCH, INC. and R.L.E. RANCH, INC. are disposed of. **FINAL JUDGMENT** is entered for Defendant Jennifer Starr JENNIFER L. STARR, individually and in the Capacity as Trustee of the Kirkland Trust dated 3/10/05 and in the Capacity as Trustee of the Starr Trust, and against Plaintiff Eric Manuelian. The Court reserves jurisdiction to consider a timely motion to tax costs and attorney's fees. Plaintiff shall take nothing by this action and Defendant shall go hence without day.

DONE AND ORDERED in Chambers in Dade City,
Pasco County, Florida on this 7th day of September,
2023

/s/Kemba Lewis
The Honorable Kemba Lewis

Circuit Court Judge
Sixth Judicial Circuit
Pasco County, Florida

20b. Defendant retains the Kirkland Ranch Stock and same is to be divided upon her death between her surviving children. Further, if stock is otherwise liquidated, the proceeds will go to her surviving children.

12. The Deceased's Dissolution Case Final Order was rendered on May 29, 1997. Laura Kirkland did not appeal and said order is final and binding.

13. Pursuant to Florida law, this Court must give full faith and credit to the Deceased's Dissolution Case Final Order and to the Divide on Death Clause therein.¹

14. The Divide on Death Clause is self-executing and did not require Laura Kirkland, deceased, to take any action.

15. Since Manuelian's ownership pursuant to the Divide on Death Clause did not come into existence until the instant that his mother, Laura Kirkland, died, Laura Kirkland could not take, or could not omit to take, any action to execute the Divide on Death Clause because she would not be living when the Divide on Death Clause came into effect. Accordingly, the Divide on Death Clause did not, and could not, give rise to any claim that Manuelian had against his mother Laura Kirkland before the death of Laura Kirkland. Instead, under

¹*Ledoux-Nottingham v. Downs*, 210 So.3d 1217 (Fla. 2017)

both South Carolina law and Florida law, the instant Laura Kirkland, deceased, died, the Kirkland Ranch Stock subject to the Divide on Death Clause immediately divided with 50% vesting in Manuelian and 50% vesting in Manuelian's brother, Robert Kirkland. At the instant Laura Kirkland, deceased, died, Manuelian owned 50% of the Kirkland Ranch Stock referenced in the Deceased's Dissolution Case Final Order (hereinafter, Manuelian's Stock) and subject to the Divide on Death Clause. Whether Manuelian or Starr, in any capacity, knew or did not know about the operation of law of the Divide on Death Clause is immaterial to, and does not defeat the vesting of Manuelian's Stock in Manuelian.

**4. MANUELIAN IS ENTITLED TO SUMMARY
JUDGMENT ON COUNT ONE-
DECLARATORY JUDGMENT AND COUNT FIVE-
REPLEVIN**

**A. The SC Dissolution Order and the Divide on
Death Clause must be applied by this Court as
written.**

Florida courts are constitutionally obligated to give full faith and credit to foreign judgments as written, *Ledoux-Nottingham v. Downs*, 210 So. 3d 1217 (Fla. 2017) (Colorado order requiring grandparent's visitation rights enforceable in Florida regardless of conflicting Florida law). The Florida Supreme Court stated:

- "The Full Faith and Credit Clause of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State," *Id.*, at 1220;
- With respect to judgments, "the full faith and credit obligation is exacting." *Baker v. General Motors Corp.*, 522 U.S. 222, 233, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998). "A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Ibid.* A State may not disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or

deems it to be wrong on the merits. On the contrary, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Milliken v. Meyer*, 311 U.S. 457, 462, 61 S. Ct. 339, 85 L. Ed. 278 (1940), Id., at 1223.

The SC Dissolution order is unambiguous. Upon the death of the mother, the stock is divided between the two surviving children. As stated earlier, there is obviously nothing that Laura Kirkland could do, or that she was required to do, to effectuate the order, because she would no longer be living when the division occurred. Therefore, there was no claim against Laura Kirkland. To the contrary, under South Carolina law a pay on death clause is a nontestamentary transfer that occurs at the instant of death,

This interpretation is consistent with the law relating to payable on death (POD) accounts. These accounts are nontestamentary as described in S.C. Code Ann. section 62-6-106 (1987). IRAs and POD accounts are similar in nature and operation. See S.C. Code Ann. § 62-6-101(10) (1987) (defining POD account as "an account payable on request to one person during his lifetime and on his death to one or more payees"). *Mcinnis v. Estate of McInnis*, 348 S.C. 585, 592, 560 S.E.2d 632, 636 (Ct. App. 2002).

**4. MANUELIAN IS ENTITLED TO SUMMARY
JUDGMENT ON COUNT ONE-
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"The Full Faith and Credit Clause of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State," *Id.*, at 1220;

In interpreting the Full Faith and Credit Clause, the [United States] Supreme Court stated in *Baker*, [*Baker v. General Motors Corp.*, 522 U.S. 222, 233, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998)] "Regarding judgments . . . the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." 522 U.S. at 233. There is "no roving 'public policy exception'

to the full faith and credit due judgments." *Id.* (citing *Estin*, 334 U.S. at 546 (stating that the Full Faith and Credit Clause "ordered submission by one State even to hostile policies reflected in the judgment of another State, because the practical operation of the federal system, which the Constitution designed, demanded it"), and *Fauntleroy v. Lum*, 210 U.S. 230, 237, 28 S. Ct. 641, 52 L. Ed. 1039 (1908) (**holding that judgment of Missouri court was entitled to full faith and credit in Mississippi even if Missouri judgment rested on a misapprehension of Mississippi law**)). (Emphasis added).

Last year, the [United States Supreme] Court reiterated these principles, stating:

With respect to judgments, "the full faith and credit obligation is exacting." *Baker v. General Motors Corp.*, 522 U.S. 222, 233, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998). "A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Ibid.* A State may not disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the

merits. On the contrary, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Milliken v. Meyer*, 311 U.S. 457, 462, 61 S. Ct. 339, 85 L. Ed. 278 (1940).

V.L., 136 S. Ct. at 1020. The [United States] Supreme Court thus continues to reject any notion that a state may elevate its own public policy over the policy behind a sister state's judgment and thereby disregard the command of the Full Faith and Credit Clause. *Ledoux-Nottingham v. Downs*, 210 So. 3d 1217, 1222-23 (Fla. 2017).

The SC Dissolution order is unambiguous. Upon the death of the mother, the stock is divided between the two surviving children. As stated earlier, there is obviously nothing that Laura Kirkland could do, or that she was required to do, to effectuate the order, because she would no longer be living when the division of the stock arose—the stock is divided, by operation of law, the instant Laura Kirkland died. Therefore, Manuelian had no claim against Laura Kirkland. To the contrary, under South Carolina law a pay on death clause is a nontestamentary transfer that occurs at the instant of death,

This interpretation is consistent with the law relating to payable on death (POD) accounts.

These accounts are nontestamentary as described in S.C. Code Ann. section 62-6-106 (1987). IRAs and POD accounts are similar in nature and operation. See S.C. Code Ann. § 62-6-101(10) (1987) (defining POD account as "an account payable on request to one person during his lifetime and on his death to one or more payees"). *Mcinnis v. Estate of McInnis*, 348 S.C. 585, 592, 560 S.E.2d 632, 636 (Ct. App. 2002).

**4. THE MOTION TO DISMISS SHOULD BE
DENIED.**

**A. The SC Dissolution Order and the Divide on
Death Clause must be applied by this Court
as written.**

Florida courts are constitutionally obligated to give full faith and credit to foreign judgments as written, *Ledoux-Nottingham v. Downs*, 210 So. 3d 1217 (Fla. 2017) (Colorado order requiring grandparent's visitation rights enforceable in Florida regardless of conflicting Florida law). The Florida Supreme Court, citing the United States Supreme Court, stated:

"The Full Faith and Credit Clause of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State," *Id.*, at 1220;

In interpreting the Full Faith and Credit Clause, the [United States] Supreme Court stated in *Baker*, [*Baker v. General Motors Corp.*, 522 U.S. 222, 233,

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With respect to judgments, "the full faith and credit obligation is exacting." *Baker v. General Motors Corp.*, 522 U.S. 222, 233, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998). "A final judgment in one State, if rendered by a court with

adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." Ibid. A State may not disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits. On the contrary, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Milliken v. Meyer*, 311 U.S. 457, 462, 61 S. Ct. 339, 85 L. Ed. 278 (1940).

V.L., 136 S. Ct. at 1020. The [United States] Supreme Court thus continues to reject any notion that a state may elevate its own public policy over the policy behind a sister state's judgment and thereby disregard the command of the Full Faith and Credit Clause.

Ledoux-Nottingham v. Downs, 210 So. 3d 1217, 1222-23 (Fla. 2017)

The SC Dissolution order is unambiguous. Upon the death of the mother, the stock is divided between the two surviving children. As stated earlier, there is obviously nothing that Laura Kirkland could do, or that she was required to do, to

effectuate the order, because she would no longer be living when the division of the stock arose—the stock is divided, by operation of law, the instant Laura Kirkland died.

IN THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

ERIC MANUELIAN

Plaintiffs,

v. CASE NO.: 2021-CA-002622

JENNIFER L. STARR,

Individually and in the Capacity as

Trustee of the Kirkland Trust date 3/10/05

and

In the Capacity as Trustee of the Starr

Trust, Et al., Etc.

Defendants,

-and-

KIRKLAND RANCH, INC., A Florida

Corporation and

R.L.E. RANCH, Inc., A Florida Corporation

Nominal Defendants.

PLAINTIFF'S REPLY TO
AFFIRMATIVE DEFENSES OF

JENNIFER L. STARR The Plaintiff, by
and through undersigned counsel, now
replies to the Affirmative Defenses
contained within the "Defendant Jennifer
L. Starr's Answer and Affirmative
Defenses to the January 11, 2022, First
Amended Complaint," filed June 13,
2022, and states:

1. As to the First Affirmative Defense,
"Statutes of Limitations and Repose":

The Affirmative Defense is barred by the United States Constitution, specifically, Article VI, Paragraph 2 of the U.S. Constitution is commonly referred to as the Supremacy Clause and Article IV, Section 1, commonly referred to as the Full Faith and Credit Clause. Florida is obligated to give full faith and credit to the South Carolina order as written.

5. MANUELIAN IS ENTITLED TO SUMMARY JUDGMENT ON COUNTS ONE (DECLARATORY JUDGMENT) COUNT TWO (CONSTRUCTIVE FRAUD) COUNT FOUR (CONVERSION) AND COUNT FIVE (REPLEVIN).

A. The SC Dissolution Order and the Divide on Death Clause must be applied by this Court as written.

Florida courts are constitutionally obligated to give full faith and credit to foreign judgments as written, *Ledoux-Nottingham v. Downs*, 210 So. 3d 1217 (Fla. 2017) (Colorado order requiring grandparent's visitation rights enforceable in Florida regardless of conflicting Florida law). The Florida Supreme Court stated:

- "The Full Faith and Credit Clause of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State," *Id.*, at 1220;
- With respect to judgments, "the full faith and credit obligation is exacting." *Baker v. General Motors Corp.*, 522 U.S. 222, 233, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998). "A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Ibid.* A State may not disregard the judgment of a sister State because it disagrees with the reasoning

underlying the judgment or deems it to be wrong on the merits. On the contrary, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Milliken v. Meyer*, 311 U.S. 457, 462, 61 S. Ct. 339, 85 L. Ed. 278 (1940), Id., at 1223.

The SC Dissolution order is unambiguous. Upon the death of the mother, the stock is divided between the two surviving children. As stated earlier, there is obviously nothing that Laura Kirkland could do, or that she was required to do, to effectuate the order, because she would no longer be living when the division occurred. Therefore, there was no claim against Laura Kirkland. To the contrary, under South Carolina law a pay on death clause is a nontestamentary transfer that occurs at the instant of death,

This interpretation is consistent with the law relating to payable on death (POD) accounts. These accounts are nontestamentary as described in S.C. Code Ann. section 62-6-106 (1987). IRAs and POD accounts are similar in nature and operation. See S.C. Code Ann. § 62-6-101(10) (1987) (defining POD account as "an account payable on request to one person during his lifetime and on his death to one or more payees"). *McInnis v. Estate of McInnis*, 348 S.C. 585, 592, 560 S.E.2d 632, 636 (Ct. App. 2002).

2. After stating in Paragraph 37 that the Order gives full faith and credit to the 1997 Divorce Decree, the Order outlines the following as the claims of the Plaintiff:

38 Plaintiff contends that, by giving full faith and credit to the 1997 Divorce Decree, the Court must conclude that:

- (a) 100 shares of Laura Kirkland's KRI stock automatically transferred to the Plaintiff at the instant of Laura Kirkland's death, without any action by Laura Kirkland, KRI, the Plaintiff, or any other party;
- (b) the actions taken by Laura Kirkland and KRI between the date of the 1997 Divorce Decree and her death had no effect on 100 shares of her KRI stock;
- (c) the 1997 Divorce Decree and Plaintiffs claims based on paragraph 20(b) of the 1997 Divorce Decree are exempt from the requirements for enforcement of a judgment and the requirements for domestication of a foreign judgment;
- (d) the 1997 Divorce Decree is exempt from the statute of limitations for enforcement of a judgment; and
- (e) The Plaintiff is exempt from the requirements under Florida law to assert a claim in probate based on the action or inaction of a deceased person.

The Order overlooks the primary contention of the Plaintiff on the issue of full faith and credit that the Order may not interpret, modify, alter, or otherwise refuse to apply the South Carolina Order

as written, see Pages 1-4 of Plaintiffs Opposition, citing *Holland v. Holland*, 881 S.E. 2nd 766 (S.C. Ct. App. 2021) holding that there is no statute of limitations under South Carolina section 15-39-30 that applies to a family law order, and the Florida Supreme Court's admonition that a Florida Court must honor the explicit language of foreign judgments even if the judgment is wrong, *Ledoux-Nottingham v. Downs*, 210 So.3d 1217 (Fla. 2017) ("A State may not disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits." Also, Plaintiff cites South Carolina authority that, as to an agreement "[w]ith the court's approval, the terms become a part of the decree and are binding on the parties and the court." *Emery v. Smith*, 603 S.E.2nd 598, 601 (Ct. App. 2004).

3. The Order on Appeal grants full faith and credit to the SC Divorce Decree, but then refuses to apply the SC Divorce Decree as written thereby violating full faith and credit.

The SC Divorce Decree states that the shares are to be divided upon the death of Laura Kirkland. The Order on Appeal cannot defeat the terms of the South Carolina Order by interpreting the South Carolina Order to mean that Manuelian had no “interest.” The Order gives full faith and credit to the South Carolina Order, as it must, and the Court therefore must enforce the provision of the South Carolina Order requiring the shares to be divided. *Ledoux-Nottingham v. Downs*, 210 So.3d 1217 (Fla. 2017). The SC Divorce Decree and the Divided Upon Her Death Clause must be applied as written, *Ledoux-Nottingham v. Downs*, 210 So. 3d 1217 (Fla. 2017) (Colorado order requiring grandparent’s visitation rights enforceable in Florida regardless of conflicting Florida law). The Florida Supreme Court stated:

On the contrary, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Milliken v. Meyer*, 311 U.S. 457, 462, 61 S. Ct. 339, 85 L. Ed. 278 (1940).
V.L.⁸, 136 S. Ct. at 1020.

⁸V.L. v. E.L., 577 U.S. 404, 136 S. Ct. 1017 (2016).

The SC Dissolution order is unambiguous. Upon the death of the mother, the stock is divided between the two surviving children. As stated earlier, there is obviously nothing that Laura Kirkland could do, or that she was required to do, to effectuate the order, because she would no longer be living when the division occurred. Manuelian had no pre-death claim against Laura Kirkland that was required to be filed in probate court. To the contrary, under South Carolina law a pay on death clause is a nontestamentary transfer that occurs at the instant of death,

This interpretation is consistent with the law relating to payable on death (POD) accounts. These accounts are nontestamentary as described in S.C. Code Ann. section 62-6-106 (1987). IRAs and POD accounts are similar in nature and operation. See S.C. Code Ann. § 62-6-101(10) (1987) (defining POD account as "an account payable on request to one person during his lifetime and on his death to one or more payees"). *McInnis v. Estate of McInnis*, 348 S.C. 585, 592, 560 S.E.2d 632, 636 (Ct. App. 2002).

Defendant Starr's assertion has been that the South Carolina Order is a "pledge to make a Will," Motion, P. 8, citing *Tensfeldt v. Tensfeldt*, 839 So.2d 720 (Fla. 2d DCA 2003), in which there was an explicit contract to make a will, *Id.*, at 722. This is Starr's attempt to place some burden on Laura Kirkland before her death that Laura Kirkland could then be characterized as breaching, thus giving rise to a probate claim. Under the Divided Upon Her

Death Clause, there was no burden on Laura Kirkland to do anything regarding the shares. The language of the SC Divorce Decree takes effect only upon the death of Laura Kirkland, so there is nothing Laura Kirkland could do to effectuate the splitting of the shares. The shares “shall be divided,” which automatically vested per the explicit terms of the Order.

In Paragraphs 43 – 46 of the Order on Appeal, the Court held that Laura Kirkland made a clear and intentional decision to leave her property to Jennifer Starr. However, there is no legal theory that Laura Kirkland could extinguish the effect of the Divided Upon Her Death Clause based on Laura Kirkland’s “intent.”

The Order on Appeal, in finding of fact 6, found that no modification of the SC Divorce Decree was sought. Laura Kirkland’s intent or desires are immaterial and are not dispositive of whether Laura Kirkland, individually, could extinguish the SC Divorce Decree by transferring the shares to Laura Kirkland, as trustee. No such theory was pled, and no such theory exists. Laura Kirkland could not, and did not, eliminate the South Carolina Court Order through her self-settled transfer to her self as trustee of a grantor trust, and there is no law to the contrary.

4. Court erred in by the *sua sponte* declaration of summary judgment on unpled theories.

The claim that a transferee is a bona fide purchaser is an affirmative defense that must be pled or it is waived, *Schlossberg v. Estate of*

Manuelian’s Amended Motion for Summary Judgment relied on *Ledoux-Nottingham v. Downs*, 210 So. 3d 1217 (Fla. 2017), citing the United States Supreme Court in *Baker v. General Motors Corp.*, 533 U.S. 222 (1998), and other cases of the U.S. Supreme Court, that the Full Faith and Credit Clause is “exacting,” “[a] final judgment in one State . . . qualifies for recognition” throughout the United States, and orders are entitled to full faith and credit even if the judgment rested on a misapprehension of law,” *Id.*, at 1222-1223 (internal citations omitted).