No. 24-647

IN THE

Supreme Court of the United States

ERIC MANUELIAN,

Petitioner,

v.

JENNIFER 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, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the Second District Court of Appeal, the State of Florida

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Does Petitioner allege a genuine conflict or compelling reason for certiorari review?

2. Did the Florida trial court give full faith and credit to the South Carolina trial court's 1997 Divorce Decree?

3. Was the Florida trial court correct in holding that sections 736.1014, 733.702, and 733.710, Florida Statutes, barred Petitioner's claims?

CORPORATE DISCLOSURE STATEMENT

Respondent is an individual with no parent corporation and no stock.

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INTRODUCTION

Petitioner does not present a genuine conflict between any United States Courts of Appeal or between or among the States in his petition. Petitioner also does not raise a compelling reason for this Court to grant certiorari review. For these reasons alone, the petition for writ of certiorari should be denied.

Further, Petitioner bases his entire argument on the mistaken premise that the Florida trial court judge, the Honorable Kemba Lewis, did not give full faith and credit to a South Carolina family court judge's May 29, 1997 Final Order and Divorce Decree (the "Divorce Decree"). Petitioner is wrong. Judge Lewis expressly gave full faith and credit to the Divorce Decree. Petitioner simply disagrees with the result in the lower court.

The Florida state court action involved Florida resident Laura Kirkland's death on September 16, 2009, and Ms. Kirkland's decision on how to bequeath her assets after her death – in particular, 200 shares of Kirkland Ranch, Inc. stock (the "KRI Shares"). On March 25, 2010, Respondent here, Jennifer Starr, as personal representative of Ms. Kirkland's estate, filed a Petition for Formal Administration for Ms. Kirkland's estate (the "Probate Action"). Ultimately, in June of 2018, after conclusion of the probate proceedings, the Florida probate judge closed the Probate Action and discharged Ms. Starr as personal representative of Ms. Kirkland's estate.

Over twelve years after Ms. Kirkland's death, and over three years after the Florida probate judge closed the Probate Action, Petitioner initiated this action and filed his complaint against Ms. Starr in the Sixth Judicial Circuit in and for Pasco County, Florida. As Judge Lewis correctly held below, Petitioner failed to

file his claims in the Probate Action as required by section 736.1014, Florida Statutes, and his claims were therefore barred. Judge Lewis also correctly held that Petitioner's claims below were absolutely barred by the time limitations contained in sections 733.702 and 733.710, Florida Statutes. Finally, as Judge Lewis also correctly found, Petitioner's claims were further barred by section 733.710(1) because the statute provides Ms. Kirkland's estate, the estate's personal representative ("PR"), and its beneficiaries absolute immunity from claims filed more than two years after Ms. Kirkland's death.

Recognizing that Chapters 733 and 736 barred his untimely claims, Petitioner tried a different approach. He attempted to persuade the Florida state court judges that the South Carolina Divorce Decree somehow automatically "vested" Petitioner and his brother (who is not a party to this action) with some interest in the 200 KRI Shares as of May 29, 1997. Judge Lewis did not agree with Petitioner's strained construction of the Divorce Decree and entered final judgment for Ms. Starr.

Federal courts take a dim view of exercising jurisdiction over divorce, alimony, and custody decrees pursuant to the "domestic relations exception" to the federal courts subject matter jurisdiction. Similarly, federal courts generally do not hear matters that involve probate cases, estate administration, or property in the custody of a state probate court; even when the parties reside in different states. Petitioner does not present an issue of any great significance here to compel this Court to wade into construction of the South Carolina family judge's Divorce Decree, or to wade into Ms. Kirkland's estate and the Probate Action.

STATEMENT OF THE CASE

A. The 1997 Divorce Decree.

In 1977, Laura Kirkland owned 200 shares of Kirkland Ranch, Inc. ("KRI") stock.[1] *Pet. App.* 7a. In 1979, Ms. Kirkland married Charles Manuelian. *Id.* During the marriage, the couple had two children: Robert Kirkland (formerly Manuelian)[2] and Petitioner, Eric Manuelian. *Id.*

Ms. Kirkland and Charles Manuelian divorced on May 29, 1997 pursuant to the Divorce Decree. *Id.* The Divorce Decree incorporated a marital settlement agreement in which the parties agreed, among other things, as follows:

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

(the "KRI Stock Provision"). *Pet. App.* 8a. Following the divorce, Ms. Kirkland received an additional 78 shares of KRI that are not subject to Petitioner's claims. *Id.*

At the time the South Carolina court entered the Divorce Decree, Ms. Kirkland held her 200 KRI shares pursuant to a February 15, 1961, Kirkland Ranch, Inc. Stockholders' Agreement Restricting Transfer of Stock (the "KRI Stockholders' Agreement"). *Resp. App.* at 7a.

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[1] Respondent's Statement of the Case is taken from the petition's appendix A ("*Pet. App.* __a") or the attached appendix B ("*Resp. App.* at __a").

[2] Robert Kirkland is not a party to this action.

This agreement restricted the transfer of KRI stock and required, among other things, that KRI shares be offered to the corporation or other shareholders before any sale or transfer of the shares except in the case of testamentary disposition. *Resp. App.* at 8a.

Additionally, KRI stock certificates contained a restrictive legend stating that "[t]he shares evidenced by this certificate may not be sold, pledged, or otherwise transferred except as provided by the Kirkland Ranch, Inc. Stockholder's Agreement Restricting Transfer of Stock and Article VI of the corporation's bylaws." *Id.*

At the time the South Carolina family court entered the Divorce Decree, and at all times thereafter, Ms. Kirkland, a Florida resident from 1995 until the time of her death, did not comply or attempt to comply with the procedural requirements of the Florida Uniform Transfer-on-Death Security Registration Act, section 711.50, *et. seq.* (1995) (the "Transfer on Death Act") to create a non-testamentary disbursal of her KRI stock. She did not request a "transfer on death," "TOD," "pay on death," or "POD" designation for the securities with the issuing corporation, here KRI, as required under sections 711.503 and 711.509(1). And KRI did not accept any type of "transfer on death" registration from Ms. Kirkland as required under sections 711.508(1) and 711.509(1), Fla. Stat.[3] No share certificates held by Ms. Kirkland, and later by her trust, were marked with "transfer on death" or "TOD," following the

[3] KRI, a Florida corporation, was not a party to Ms. Kirkland's South Carolina divorce proceeding, not a party to Ms. Kirkland's marital settlement agreement, and the South Carolina family court did not exercise jurisdiction over it.

owner's name and preceding a beneficiary's name as required by section 711.505. [4] *Resp. App.* at 8a.

In addition to not complying with Florida's Transfer on Death Act, Ms. Kirkland did not leave the KRI Shares to her surviving children in her will or trust. *Pet. App.* 8a.

B. Laura Kirkland's Will and Trust.

Eight years after the Divorce Decree, on March 10, 2005, Laura Kirkland established the Kirkland Trust dated 3/10/05, a revocable, inter vivos trust that she owned during her lifetime (the "Laura Kirkland Trust"). *Resp. App.* at 9a. Ms. Kirkland served as the initial trustee of the Laura Kirkland Trust, and Respondent, Jennifer Starr, was designated as the trust's successor trustee. *Id.*

Ms. Kirkland amended the Laura Kirkland Trust on December 12, 2005, and designated Ms. Starr as the trust's sole beneficiary. Ms. Kirkland's children were designated contingent beneficiaries. *Pet. App.* 8a.

On December 12, 2005, Ms. Kirkland also executed her Last Will and Testament in which she devised all of her property to the Laura Kirkland Trust. *Pet. App.* 8a. Among other provisions, Ms. Kirkland designated Ms. Starr the Initial Personal Representative ("PR") of her Estate. *Id.* At the time she established her trust and will, the KRI Stockholders' Agreement still restricted the transfer of KRI stock and prevented the trust from holding her KRI shares. *Resp. App.* at 9a.

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[4] Though Florida law governed Ms. Kirkland's estate and her Probate Action, South Carolina's Transfer on Death Security Registration Act substantively mirrors Florida's mandatory requirements. *Compare* S.C. Code Ann. § 35-6-50 (2023), and § 711.505, Fla. Stat. (1995).

In or around November of 2008, the KRI stockholders, including Ms. Kirkland, approved an amendment to the KRI Stockholders Agreement to allow its stockholders to transfer their shares to Trusts the stockholders owned and created during their lifetimes. *Resp. App.* at 9a. The following year, on July 26, 2009, Ms. Kirkland assigned her 278 KRI shares to Laura Kirkland, Trustee, Kirkland Trust dated March 10, 2005. *Id*. Ms. Kirkland, as trustee, received a single certificate for all of her 278 KRI shares following their reregistration. *Id*. A few months later, on September 16, 2009, Laura Kirkland passed away. *Id*. Under its terms, the Laura Kirkland Trust became irrevocable from and after her death. *Id*.

C. Probate of Laura Kirkland's Estate.

On March 25, 2010, Ms. Starr filed the Probate Action in Orange County, Florida, the location of Ms. Kirkland's death, Case No. 2010-CP-0006333-O. *Pet. App.* 9a. On March 25, 2010, Ms. Starr filed a Notice of Trust in the Probate Estate (the "Notice of Trust"). *Id.* The Notice of Trust stated, among other things, that the Laura Kirkland Trust was liable for the expenses of administration of the Probate Action and liable for enforceable claims of the Decedent's creditors, as required by section 733.607(2) and 736.05055(1), Florida Statutes. *Id.*

On March 31, 2010, the trial court in the Probate Action issued its order appointing Ms. Starr PR of the Estate. *Pet. App.* 9a. Petitioner, Mr. Manuelian, signed a Waiver of Priority, Consent to Appointment of Personal Representative, and Wavier of Notice and Bond, pursuant to which he waived any right to act as PR of the Estate, and consented to the trial court's appointment of Respondent as PR of the Estate. *Id.*

Because Ms. Kirkland's 278 KRI shares were titled in and held by the Laura Kirkland Trust, the 278 shares were not assets in the Probate Estate. *Resp. App.* at 10a.

On June 13, 2018, Ms. Starr filed a Petition for Discharge in the Estate. *Pet. App.* 10a. In her petition, Respondent stated, among other things, that she had fully administered the estate and requested that she be discharged as PR of the estate. On June 26, 2018, the court entered its order discharging Ms. Starr as PR of the estate, and Ms. Kirkland's Probate Action was closed. *Id.*

D. 2011 Reorganization of Kirkland Ranch, Inc. and creation of RLE Ranch.

On July 19, 2011, the shareholders of KRI, including Mr. Manuelian and Ms. Starr, as successor trustee of the Laura Kirkland Trust, executed an Agreement and Plan of Corporate Reorganization dividing KRI and its assets. *Pet. App.* 10a. Pursuant to the reorganization, all KRI shareholders surrendered their certificates in exchange for new certificates in either KRI, or a new entity, R.L.E. Ranch, Inc. ("RLE"). As minority shareholders, Mr. Manuelian and the Laura Kirkland Trust received RLE stock on a 1 for 1 basis. *Id.* Among other things, the Agreement and Plan of Corporate Reorganization provides:

> Each Minority Shareholder hereby separately and individually and not jointly represents and warrants . . .
>
> 7.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the transaction contemplated hereby, will (a) conflict with or violate (i) any order, arbitration award, judgment, decree or

> other similar restriction to which such Minority Shareholder is a party . . .
>
> 7.4 Title to Shares. . . . As of the Effective Time, there shall be no outstanding . . . rights, agreements, understandings, or commitments of any kind relating to the . . . issuance . . . of such Minority Shares, except as set forth in the Stockholders' Agreement.

Resp. App. at 11a-12a.

Also on July 19, 2011, Mr. Manuelian and Ms. Starr, as successor trustee of the Laura Kirkland Trust, signed the R.L.E. Ranch, Inc. Shareholder Agreement ("RLE Shareholder Agreement"). *Pet. App.* 10a. The RLE Shareholder Agreement provides, among other things, as follows: "This Agreement records the final, complete, and exclusive understanding among the parties regarding the subjects addressed in it and supersedes any prior or contemporaneous agreement, understanding, or representation, oral or written." *Resp. App.* at 12a.

Pursuant to the reorganization related agreements, Mr. Manuelian (1) consented to the KRI reorganization; and (2) consented to the issuance of the newly created RLE shares to Ms. Starr as Trustee of the Laura Kirkland Trust. Following reorganization, Mr. Manuelian and all other RLE shareholders expressly consented to the transfer of the Laura Kirkland Trust's shares to Jennifer L. Starr, Trustee of the Starr Trust, by signing a written Consent to Transfer of Stock in accordance with the RLE Shareholder Agreement. *Resp. App.* at 12a. Ms. Starr, as transferee, joined in the consent for purposes of acknowledging the terms and conditions of the RLE

Shareholder agreement and thereby joined the transfer to the Agreement. *Id.*

E. Petitioner initiates the Florida action.

On November 8, 2021, over 3 years after Ms. Starr was discharged as PR of the Probate Action, and over 12 years after Ms. Kirkland passed away, Mr. Manuelian initiated this action in the Sixth Judicial Circuit in and for Pasco County. *Pet. App.* 11a. Mr. Manuelian filed a one count complaint seeking a declaration from the trial court that he was entitled to a portion of all KRI shares (now RLE shares) that Ms. Kirkland conveyed to the Laura Kirkland Trust before her death. Mr. Manuelian amended his complaint on January 11, 2022, to, among other things, add causes of action for Constructive Fraud, Fraud, Conversion, and Replevin. *Resp. App.* at 13a.

F. Course of the State Court Proceedings.

On January 18, 2022, Mr. Manuelian filed a Motion for Summary Judgment. *Pet. App.* 11a. On February 13, 2022, he amended his Motion for Summary Judgment. *Id.* On March 29, 2022, Judge Lewis heard argument on Plaintiff's Amended Motion for Summary Judgment. *Resp. App.* at 13a. On April 28, 2022, the trial court entered its Order Denying Plaintiff's Amended Motion for Summary Judgment. *Id.* On May 3, 2022, Mr. Manuelian sought reconsideration and clarification of the Order denying his Amended Motion for Summary Judgment. *Id*. On May 25, 2022, the trial court denied his Motion for Reconsideration and Clarification. *Id*.

On January 11, 2023, Mr. Manuelian filed Plaintiff's Renewed and Amended Motion for Partial Summary Judgment on Counts One (Declaratory Relief) Count Two (Constructive Fraud) Count Four (Conversion)

and Count Five (Replevin) ("Renewed Motion for Summary Judgment"). *Pet. App.* 11a. In his Renewed Motion for Summary Judgment, Mr. Manuelian sought summary judgment as to Counts One, Two, Four and Five of his First Amended Complaint for Declaratory Relief and Other Counts with Jury Demand ("First Amended Complaint"). *Resp. App.* at 13a.

On February 16, 2023, Ms. Starr filed Defendant Starr's Motion for Summary Judgment, seeking summary final judgment as to all counts in Plaintiffs' First Amended Complaint. *Pet. App.* 12a.

On April 3, 2023, and April 19, 2023, the trial court heard argument from counsel on the parties' respective dispositive motions. *Id.*

G. Disposition in the Trial Court and The Second District Court of Appeal's PCA.

On September 7, 2023, the trial court entered its 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 ("Order Granting Starr's Motion for Summary Judgment"). *Pet. App.* 6a-18a.

Among other things, Judge Lewis held as follows:

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

. . .

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 Plaintiff to file a timely claim in Laura Kirkland's Estate to assert purported entitlement to said shares. Fla. Stat. § 736.1014(1) (2010) provides that after 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 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), "[t]wo 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[.] [ ] The Court finds the Plaintiff[']s claims are well past these statutory deadlines.

Pet. App. 12a-16a.

On May 1, 2024, Florida's Second District Court of Appeal ("Second DCA") issued its order *per curiam* affirming the trial court's Order Granting Starr's Motion for Summary Judgment. The Second DCA identified its order as an "Unpublished Disposition." *See Manuelian v. Starr*, 392 So. 3d 517 2024 WL 1929300 (Fla. 2d DCA 2024). *Pet. App.* 3a.

REASONS TO DENY CERTIORARI

I. Petitioner fails to allege a genuine conflict or compelling reason for certiorari review.

Rule 10 of the Rules of the Supreme Court provides three guidelines for when the Court may grant a petition for writ of certiorari. Petitioner contends two of the guidelines, Rules 10(b) and 10(c), apply to his action. Petitioner is mistaken. Rule 10 has no application here.

Rule 10(b) contemplates a state court of last resort deciding an important federal question that conflicts with another state court of last resort or a United States Court of Appeals. This has no application here. Judge Lewis correctly recognized the applicability of the Full Faith and Credit Clause to this action and expressly held as follows: "[t]he Court gives full faith and credit to the 1997 Divorce Decree dissolving the marriage between Laura Kirkland and Charles Manuelian." *Pet. App.* 12a. Florida's Second District Court of Appeal, in its May 1, 2025 Unpublished Disposition, *per curiam* affirmed Judge Lewis's decision. There is no dispute or conflict whatsoever about the applicability of the Full Faith and Credit Clause to this action.

Second, Rule 10(c) contemplates a state court decision on an important federal question that conflicts with a relevant decision of this Court. Rule 10(c) has no application here as well. As noted above, Judge Lewis properly gave full faith and credit to the South Carolina Divorce Decree. That finding conflicts with no decision of this Court.

Petitioner also argues that the Second DCA's Unpublished Disposition affirming the trial court's

order, *per curiam*, conflicts with a Florida Supreme Court decision in *Ledoux-Nottinghham v. Downs*, 210 So. 3d 1217 (Fla. 2017). Petition, p. 29. Such a conflict, though imaginary, is not contemplated by Rule 10. This Court does not wade into disagreements between state supreme courts and their lower courts. And, even if Rule 10 did contemplate such matters, Petitioner is again mistaken. Like the Florida Supreme Court in *Ledoux*, Judge Lewis properly gave full faith and credit to an out-of-state decision. There simply is no conflict here in this matter.

Judge Lewis's decision, though correct in every regard, is not a published opinion. Right or wrong, it has no precedential value within or outside the state of Florida. Similarly, the Second DCA's May 1, 2024 Unpublished Disposition, in which it affirmed the trial court's Order Granting Starr's Motion for Summary Judgment, has no precedential value as well. *See Dep't of Legal Affairs v. Dist Ct. of Appeal, 5th Dist.*, 434 So. 2d 310, 311 (Fla. 1983) (finding that "a per curiam appellate decision with no written opinion" lacks "any precedential value."). *See also Mobile Chem Co. v. Hawkins*, 440 So. 2d 378, 383 (Fla. 1st DCA 1983) (holding that a per curiam affirmance without written opinion has no precedential value, even in the deciding court). Because the orders on review are unpublished and have no precedential value, Petitioner has failed to present this Court with a compelling reason to weigh in on these matters.

II. The Florida trial court gave full faith and credit to the Divorce Decree.

A. Judge Lewis properly recognized and construed the Divorce Decree.

Petitioner bases his entire argument on the false premise that Judge Lewis failed to give the Divorce Decree full faith and credit. Petitioner is wrong. The trial court expressly held as follows: "The Court gives full faith and credit to the 1997 Divorce Decree dissolving the marriage between Laura Kirkland and Charles Manuelian." *Pet. App.* 12a. Petitioner simply disagrees with how the Florida courts gave the Divorce Decree full faith and credit.

Judge Lewis correctly observed that, pursuant to the plain language of the Divorce Decree, Ms. Kirkland retained ownership of her KRI shares pursuant to her marital settlement agreement and the Divorce Decree. *Pet. App.* 13a. Indeed, the first 6 words of the Divorce Decree's KRI Stock Provision are "Defendant [Laura Kirkland] retains the Kirkland Ranch Stock. . ." The trial court also correctly observed that pursuant to Ms. Kirkland and Charles Manuelian's dissolution agreement, which the South Carolina court adopted in the Divorce Decree, Ms. Kirkland agreed to leave her KRI shares to her children upon her death (i.e., "the [shares] are to be divided upon her death between her surviving children"). *Id.*

The use of the future tense "to be divided" is important. It demonstrates the shares were not divided and allocated on May 29, 1997. Nor could they have been. Ms. Kirkland could have borne or adopted additional children after the 1997 Divorce Decree; or one of her children could have passed away and thus not been a "surviving" child at the time of her death, as required

by the Divorce Decree. The apparent future class of beneficiaries of this "to be divided" provision was therefore not closed until Ms. Kirkland's death on September 16, 2009.

The language of the Divorce Decree is clear. Judge Lewis correctly found that the Divorce Decree, by its plain language, "did not transfer any interest in Laura Kirkland's KRI (RLE) shares to the Plaintiff [Mr. Manuelian]." *Pet. App.* 13a. By its own terms, the Divorce Decree merely created obligations on both parties to it. Indeed, the decree concludes with the following language: "and it is hereby made the Order of this Court, and each of the parties is ordered to comply with said [dissolution] agreement." *Resp. App.* at 28a-29a. (Emphasis added). Which, of course, the parties agree Ms. Kirkland did not do. She did not leave her KRI Shares to her children.

Despite the clear and plain language of the Divorce Decree, Petitioner claims that it "is a contradiction in terms" for Judge Lewis to give the Divorce Decree's full faith and credit while not accepting his argument and recognizing his claim to Ms. Kirkland's KRI Shares. Petitioner argues: "The Florida trial court . . . 'extinguished' Manuelian's rights under the South Carolina judgment." Petition, p. 22. Petitioner further argues: "There is no authority supporting the Florida court's holding that a divorce litigant can extinguish, limit, or avoid the final adjudication of Manuelian's rights to the shares of stock . . ." Petition, pp. 28-29. Petitioner, again, is mistaken.

Petitioner misstates Judge Lewis's ruling. She did not extinguish anything. The trial court's full statement, as set forth in her order, is as follows:

> 42. Plaintiff contends that the 1997 Divorce Decree created for the Plaintiff an interest in 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.

Pet. App. 12a. (Emphasis added). Judge Lewis merely addressed a hypothetical – i.e., "even if" the Divorce Decree did create some automatic vested right for Petitioner, such a right "would have been" extinguished by Ms. Kirkland actions with her trust.

Judge Lewis's findings upon which her decision was actually based are set forth in the paragraphs following paragraph 42, in which she held:

> 51. Florida's Trust Code also required Plaintiff to file a timely claim in Laura Kirkland's Estate to assert purported entitlement to said shares. Fla. Stat. § 736.1014(1) (2010) provides that after 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 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), "[t]wo 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[.] [ ] The Court finds the Plaintiff[']s claims are well past these statutory deadlines.

Pet. App. 15a-16a. Thus, the trial court's decision did not turn on the question presented by Petitioner in his brief.

Finally, Petitioner, along with Kirkland Ranch, Inc., were not parties to the Divorce Decree. The Divorce Decree therefore did not and could not adjudicate Petitioner's rights, and could not amend, alter, or modify the KRI Stockholders' Agreement, which restricted transfer of the company's stock. Section 20-7-472, South Carolina Code, in effect at the time of the Divorce Decree, directs the court to "make a final equitable apportionment between the parties of the parties' marital property…". (Emphasis added). S.C. Code § 20-

7-472 (2008).The statute does not contemplate the family court trial judge awarding marital property to a nonparty, such as Petitioner, or modifying the contractual rights of a nonparty, such as Kirkland Ranch, Inc.

B. The Divorce Decree did not automatically vest Petitioner with any claim to the KRI Shares.

Contrary to Petitioner's argument, the Divorce Decree did not magically "vest" Petitioner in anything. In addition to the plain words contained in the Divorce Decree contradicting Petitioner's argument, South Carolina law, which governs the Divorce Decree, is equally clear on this point. A divorce decree in and of itself does not accomplish the transfer of marital property. *See Simpson v. Simpson*, 746 S.E.2d 54 (S.C. Ct. App. 2013) (court retained jurisdiction to enforce divorce decree when husband did not transfer marital property as agreed and ordered); *Poston v. Poston*, 502 S.E.2d 86, 90 (S.C. Ct. App. 1998) (noting that spouse who does not receive marital property awarded to them in a divorce decree may seek to hold the non-complying spouse in contempt).

Further, Florida and South Carolina's legislatures each enacted the Uniform Transfer on Death Security Registration Act, and in it established a mechanism for a non-testamentary disbursal of registered securities by using the terms "transfer on death," or "TOD." *Compare* § 711.505, Fla. Stat. (1995) and § 35-6-50, South Carolina Code (2023). The statutes each provide as follows:

> Registration in beneficiary form may be shown by the words, "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the

> name of the registered owner and before the name of the beneficiary.

The record below confirms Ms. Kirkland did not comply (or attempt to comply) with either section 711.505, Florida Statutes, or section 35-6-50, South Carolina Code.

Recognizing that Ms. Kirkland chose not to utilize this legislatively recognized method in her domiciled state (and recognized in South Carolina as well) to convey her stock upon her death, Petitioner tried to create a new and unprecedented method of stock transfer. He has no basis to do that. The Florida courts properly rejected Petitioner's meritless efforts to avoid the consequences of section 711.505.

III. Judge Lewis was correct in holding that sections 736.1014, 733.702, and 733.710, Florida Statutes, barred Petitioner's claims.

A. Even if Petitioner did have some colorable claim to the KRI Shares, he failed to properly raise the claim in the Florida Probate Action.

Judge Lewis concluded Petitioner's claims below were barred for several reasons. Among others, Judge Lewis, citing to section 736.1014(1), Florida Statutes, noted that "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. *App* 15a. Section 736.1014(1) provides, in part, as follows:

> After the death of a settlor, no creditor of the settlor may bring, maintain, or continue any direct action against a trust described in s. 733.707(3), the trustee of the trust, or any

> beneficiary of the trust that is dependent on the individual liability of the settlor. Such claims and causes of action against the settlor shall be presented and enforced against the settlor's estate as provided in part VII of Chapter 733, . .

§ 736.1014(1), Fla. Stat. (2007). As Judge Lewis correctly observed, Petitioner did not comply with section 736.1014, Florida Statutes, because he failed to file his claim in the Probate Action. *Id*. [5]

Petitioner may argue that the Divorce Decree, and his purported claim to some portion of the KRI Shares, does not constitute a "claim" for purposes of Chapter 733, Florida Statutes. He would be mistaken. Under Florida's Probate Code, which governed Ms. Kirkland's Orange County, Florida Probate Action,[6] decrees and judgments are "claims" that must be made in the decedent's estate proceeding. §733.707(1)(h), Fla. Stat. (2012) ("*Class 8*. – "All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime . . ."). *See also Hogan v. Howard*, 716 So. 2d 286, 288 (Fla. 2d DCA 1998) (holding that a judgment holder must file a claim in the probate proceeding, just like any other claimant); *Tensfeldt v. Tensfeldt*, 839 So. 2d 720, 725

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[5] Like section 736.1014, sections 733.702 and 733.710, Florida Statutes also required Petitioner to raise in the Probate Action any purported claim against Ms. Kirkland, her estate, Ms. Starr as PR, or any estate beneficiary arising out of Ms. Kirkland's failure to comply with the Divorce Decree.

[6] Because Ms. Kirkland was domiciled in Orange County, Florida at the time of her death, both South Carolina and Florida recognize that Ms. Kirkland's probate proceeding would take place in Orange County, Florida, and be governed by Florida's laws. *See* S.C. Code Ann. § 62-3-201 (2014); § 733.101, Fla. Stat. (2002).

(Fla. 2d DCA 2003) (Children of deceased former husband filed probate claim to enforce judgment of dissolution incorporating marital settlement agreement that required former husband to provide for three children in his will. The court dismissed the attempt to enforce the foreign judgment because it was not domesticated, and therefore barred by the relevant statute of limitations.); *Paulucci v. Gen. Dynamics Corp.*, 842 So. 2d 797, 803 (Fla. 2003).

Decrees and judgments do not create any type of automatic vesting, and are not self-executing under Florida's Probate Code.[7] The Divorce Decree's property settlement provision, including the KRI Stock Provision, could give rise to nothing more than a claim Petitioner was required to timely raise in Ms. Kirkland's Probate Estate, which he failed to do.

B. Petitioner's purported claims were time barred.

In addition to failing to file his claims in the Probate Action as required by sections 736.1014, 733.702, and 733.710, Judge Lewis correctly found that Petitioner's claims against Ms. Starr were absolutely barred by the time limitations contained in Chapter 733, Florida Statutes.

Section 733.702 provides, in pertinent part, as follows:

> If not barred by s. 733.710, no claim or demand against the decedent's estate that arose before the death of the decedent, . . . even if the claims are unmatured, contingent, or unliquidated; . . . no claim for personal property in possession of the personal repre-

[7] As set forth in *Simpson* and *Poston*, *supra*, there would have been no automatic vesting under South Carolina law as well.

> sentative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless filed in the probate proceeding on or before . . . 3 months after the time of first publication of the notice to creditors.

§ 733.702(1), Fla. Stat. (2010) (Emphasis added). Thus, no matter the nature of Petitioner's purported claim, section 733.702 mandated that he raise his claim to the KRI Shares no later than three months after first publication of the notice to creditors in the Probate Action. And he did not.

The Florida Supreme Court carefully examined section 733.702 in *May v. Illinois National Insurance Co.*, 771 So. 2d 1143, 1152-54 (Fla. 2000), which provided guidance here. Because the time limitations in section 733.702 may be extended based on fraud, estoppel, or insufficient notice, the *May* Court found that the statute constitutes a statute of limitations, though not an ordinary one. *May*, 771 So. 2d at 1153, *citing to Comerica Bank & Trust, F.S.B. v. SDI Operating Partners, L.P.*, 673 So. 2d 163 (Fla. 3d DCA 1996) ("It is apparent that section 733.702(3) is unlike an ordinary statute of limitations in that it contains express language barring untimely claims without any necessity for the [personal representative] to object to the tardiness in filing"). § 733.702(3), Fla. Stat. (2010).

Importantly, in section 733.702(5), the Legislature added the following: "Nothing in this section shall extend the limitations period set forth in s. 733.710." § 733.702(5), Fla. Stat. (2010). Section 733.710 in turn provides, in relevant part, as follows:

> Notwithstanding any other provision of the code, 2 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, whether or not letters of administration have been issued, except as provided in this section.

§ 733.710(1), Fla. Stat. (2002) (Emphasis supplied).

The Florida Supreme Court also carefully examined section 733.710 in *May*. Because the Florida Legislature created an absolute bar to claims filed more than 2 years after the death of the person whose estate is undergoing probate, the *May* Court found that section 733.710 is a jurisdictional statute of nonclaim that automatically bars untimely claims and is not subject to waiver or extension. *May*, 771 So. 2d at 1157. [8]

Florida's Third DCA's decision in *Comerica Bank & Trust, F.S.B. v. SDI Operating Partners, L.P.*, 673 So. 2d at 163 was also instructive below. Plaintiff, SDI, sued the PR for decedent's estate over environmental contamination on real property previously owned by decedent. SDI sought to file its claim more than 2 years after decedent's death. The PR objected based on the 2-year nonclaim period prescribed in section

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[8] South Carolina's nonclaim statute barring claims against an estate, PR, and the heirs and devisees of the decedent is more restrictive than Florida's nonclaim statute. In South Carolina, such claims must be presented within the earlier of: "(1) one year after the decedent's death; or (2) within the time provided in Section 62-3-801(b) for creditors who are given actual notice . . . [i.e., within one year of decedent's death, or within sixty days from the mailing or other delivery of such notice, whichever is earlier]". *See* S.C. Code Ann. § 62-3-803(a) (2014). *See also Phillips v. Quick*, 731 S.E. 2d 327, 328-29 (Ct. App. 2012).

733.710. The Third DCA agreed with the PR. Comparing statutes of limitations versus statutes of repose generally, the *Comerica* court noted as follows: "ordinary statutes of limitations are mere affirmative defenses for the opponent of the claim to plead and prove, while jurisdictional statutes of nonclaim operate to bar untimely claims without any action by the opponent and deprive the court of the power to adjudicate them." *Comerica*, 673 So. 2d at 166. Regarding section 733.710 in particular, the Third DCA concluded as follows:

> [I]t seems inescapable that the legislative intent for section 733.710 was to create a self-executing period of repose—without significant action by the state itself, it must be noted—for all claims after the lapse of the 2–year period. In its own terms, it takes precedence over all other provisions in the probate code. At the same time, the text is formulated to extinguish any liability that the estate, the beneficiaries or the PR might have had for any claim or cause of action against the decedent. Hence, rather than merely fixing a period of time in which to file claims, as section 733.702 does, in reality it creates an immunity from liability arising from the lapse of the period stated.

Comerica, 673 So. 2d at 165. (Emphasis added).

Consistent with the Third DCA's immunity finding in *Comerica*, the Second DCA found in *Lutheran Brotherhood Legal Reserve Fraternal Benefit Society v. Estate of Petz*, 744 So. 2d 596, 598 (Fla. 2d DCA 2000) as follows: "We conclude that section 733.710 is a statute of repose that bars [Plaintiff's] untimely filed

claim." *Id.* at 597. The Court in *May* adopted the reasoning of *Comerica* and *Lutheran Brotherhood*.

The Florida Supreme Court recently revisited sections 733.702 and 733.710 in *Tsuji v. Fleet*, 366 So. 3d 1020 (Fla. 2023). There, the court makes even more clear that Petitioner's claims were absolutely barred and Ms. Starr is immune from his claims. In *Tsuji*, plaintiff filed a negligence action against a decedent's estate and the decedent's former employer for vicarious liability, three years after the decedent died. The trial court, the First DCA, and the Florida Supreme all agreed – section 733.710 barred plaintiff's claim because he filed the action one year too late.

Regarding section 733.702, the court held that "[w]e have described this as a statute of limitations, . . . and it bars untimely claims even if 'no objection to the claim is filed.'" *Tsuji*, 366 So. 3d at 1026. Regarding the exceptions to section 733.702's 3 month filing restriction, none of which apply here, the Court cited to section 733.702(3) and noted: "[t]he statute of limitations can only be extended in three circumstances: 'fraud, estoppel, and insufficient notice of the claims period.'" *Id.*

Turning to section 733.710, the Court made clear the statute does <u>not</u> contain "fraud, estoppel, and insufficient notice of the claims period" exceptions. Instead, the only exceptions under section 733.710 noted by the court, none of which apply here, are: (1) the creditor filed its claim within 2 years of the person's death, and whose claim has not been paid; and (2) there is a lien from a duly recorded mortgage or security interest. *Id.*

Confirming its holding in *May*, the Court again held as follows: "When no exception applies, an untimely

claim is 'automatically barred.' . . . Section 733.710(1) is in that sense 'a self-executing, absolute immunity to claims filed for the first time . . . more than two years after the death of the person whose estate is undergoing probate.'" *Id.* at 1026-27. (Emphasis added). The court thus affirmed the trial court and First DCA's application of section 733.710's absolute bar to petitioner's claims against decedent's estate and his employer.

Public policy requires the prompt and final resolution of disputes involving trusts and estates. *See, e.g.,* S.C. Code. Ann. § 62-3-101 (2009) ("The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this Code to facilitate the prompt settlement of estates, including the exercise of the powers of the [PR]." *See also Estate of Livingston v. Livingston*, 744 S.E.2d 203, 206-07 (S.C. Ct. App. 2013) (quoting S.C. Code Ann. 62-3-101 (2009)). *See also, In re Brown's Est.*, 117 So. 2d 478, 480 (Fla. 1960).

The time limitations in Chapter 733 support this important and universal public policy. *See, e.g., All Children's Hosp., Inc. v. Owens*, 754 So. 2d 802, 808 (Fla. 2d DCA 2000) ("Although the short period for objections under section 733.212(5) undoubtedly results in the failure of parties to pursue some valid objections, it also places all interested parties on notice that factual circumstances allowing for will contests must be rapidly and thoroughly investigated. If a collateral action could be maintained [in a will contest] . . ., devised property would effectively have a cloud upon its title for years after it was transferred."). Regarding the short time for objections to and claims in estates, the Florida Supreme Court similarly observed:

> Public policy requires that estates of decedents be speedily and finally determined. It is pursuant to this policy that statutes of non-claim have been enacted by the Legislature. It is not the purpose of the probate act to unreasonably restrict the rights of creditors, but the object of the act is to expedite and facilitate the settlement of estates in the interest of the public welfare and for the benefit of those interested in decedents' estates.

In re Brown's Est., 117 So. 2d 478, 480 (Fla. 1960).

Here, Ms. Kirkland passed away on September 16, 2009, and Petitioner did not file his claims until November 8, 2021. Based on the plain language of sections 733.702 and 733.710, the trial court correctly found Petitioner's claims, whatever they may have been, were time barred, and Ms. Starr was immune from Mr. Manuelian's claims.

C. Petitioner failed to distinguish Chapters 733 and 736, Florida Statutes, and failed to understand the decedent's responsibility.

Petitioner recognized that sections 733.702, 733.710, and 736.1014, Florida Statutes, barred his claims against Ms. Starr. He therefore tried below to find some path that would excuse him and his claims from the filing requirements and time limitations of Florida's Probate and Trust Codes.

Petitioner argued below, and in his Petition, that the time limitations of Chapter 733, and the filing requirement of Chapter 736, do not apply to this action because he did not assert any claim against the decedent, Ms. Kirkland. Petition, p. 18-20. Instead, according to Petitioner, his claims were solely against

Ms. Starr because title to the 100 KRI Shares somehow automatically vested in Petitioner's name on May 29, 1997, and Ms. Starr has wrongfully maintained possession of all of the KRI shares. Petitioner ignores his own claims, allegations, and argument.

Section 733.702 provides that "[i]f not barred by s. 733.710, no claim or demand against the decedent's estate that arose before the death of the decedent" is binding on the estate unless filed 3 months after first publication of notice to the creditors. § 733.702(1), Fla. Stat. (2010) (Emphasis added). As stated above, sections 733.710 and 736.1014 also similarly provide that the decedent's estate, the personal representative, and the estate beneficiaries are not liable for any claim or cause of action against the decedent unless the claim was timely filed in the decedent's probate action. § 733.710(1), Fla. Stat. (2002); § 736.1014(1), Fla. Stat. (2007). Petitioner argues that because his claims are not "against the decedent" or "against the decedent's estate," and they did not arise before Ms. Kirkland's death, the filing requirements of section 736.1014, and the limitations provisions in Chapter 733, do not apply. Petition, 18-20. Petitioner is mistaken.

It was Ms. Kirkland who entered into the marital settlement agreement that was memorialized in the Divorce Decree. It was Ms. Kirkland who retained the KRI Shares during her lifetime pursuant to the Divorce Decree. It was Ms. Kirkland who chose to establish the Laura Kirkland Trust on March 10, 2005. It was Ms. Kirkland who chose to amend her trust on December 12, 2005 to designate Ms. Starr the Laura Kirkland Trust's primary beneficiary, and not her then-surviving children. It was Ms. Kirkland who chose to execute her Last Will and Testament on December 12, 2005, in which she devised all of her

property to the Laura Kirkland Trust, and nothing to her then-surviving children. It was Ms. Kirkland who chose to designate Ms. Starr her Initial Personal Representative. It was Ms. Kirkland who chose to direct the transfer of her 278 KRI shares to the Laura Kirkland Trust and chose to direct KRI to issue a new stock certificate to her as Trustee of the Laura Kirkland Trust.

Judge Lewis recognized Petitioner's arguments for what they were – a simple and meritless attempt to argue around the conclusive application of Chapters 733 and 736 to this action. In *Scott v. Reyes*, 913 So. 2d 13, 17 (Fla. 2d DCA 2005), the Second DCA held that decedent's wife "could not evade the requirement that she file her claim within the time limit imposed by section 733.702 by recasting her creditor's claim as a request to have the probate court determine the ownership of the accounts." As the *Scott* court directed, Judge Lewis did not allow Petitioner to avoid Chapter 733, and Chapter 736 as well, by recasting his claim as a request to have the trial court determine ownership of the KRI Shares.

Petitioner's argument is creative, but it properly failed. Allowing Petitioner to pretend his claims do not involve Ms. Kirkland would encourage every creditor of every estate in Florida, taxed by a Chapter 733 time limitation and Chapter 736 filing requirement, to try what Petitioner did here. The argument is obvious and simple – a petitioner's purported claim doesn't involve the decedent and her acts (or omissions). The claim is against the PR or beneficiary because she "wrongfully" maintained possession of the trust or estate property (even though the PR or beneficiary followed the decedent's trust and will). Petitioner's attempt to avoid the time limitations imposed by Florida's

Legislature was meritless, inconsistent with Chapter 733, and was properly rejected by Judge Lewis below.

IV. Petitioner relies on inapposite case law in an attempt to create a conflict where none exists.

In his brief, Petitioner cites to inapposite case law in an attempt to show a conflict between Judge Lewis's order and other courts' decisions. Petitioner again is mistaken in every regard.

First, Petitioner cites to *Ledoux-Nottinghham v. Downs*, 210 So. 3d 1217 (Fla. 2017) for the proposition that Florida's courts must abide by the Full Faith and Credit Clause, and that Judge Lewis's order somehow conflicts with the decision. Petition, pp. 28-30. Judge Lewis, the Second DCA, and Ms. Starr all agree that Florida courts must comply with the Full Faith and Credit Clause. There is no conflict here.

Ledoux provides no practical guidance in this matter. Even if Judge Lewis and the Second DCA had some trouble complying with *Ledoux*, such a conflict would not give rise to certiorari jurisdiction under Rule 10. Rules 10(a), (b), and (c) do not contemplate a conflict between a state supreme court and one of the same state's appellate courts. Judge Lewis, like all of the courts in *Ledoux*, complied with the Full Faith and Credit Clause. Judge Lewis applied the plain and unambiguous language in the Divorce Decree, properly concluded that Laura Kirkland retained ownership of the KRI Shares pursuant to the Divorce Decree, and properly concluded that Petitioner failed to timely raise his purported claims to the KRI Shares.

Second, Petitioner relies on *Paris v. Ballantine*, 330 So. 3d 444 (Ala. 2020) in support of his argument that the Florida courts must give full faith and credit to the

Divorce Decree. Like *Ledoux*, *Paris* provides no guidance here. The majority in *Paris* made no mention of the Full Faith and Credit Clause, and it played no role in the court's analysis. The majority in *Paris* simply applied the plain and unambiguous terms of a trust and held that an adult adoptee did not qualify as a "lineal descendant" under the trust, which defined "lineal descendent" as "those hereafter born . .". *Id* at 446. *Paris* has not been questioned or reversed by any court.

It is a stretch at best for Petitioner to argue that Judge Lewis's decision somehow conflicts with *Paris*.

Finally, Petitioner relies on *V.L. v. E.L.*, 577 U.S. 404, 136 S. Ct. 1017, 194 L.Ed.2d 92 (2016), in which this Court held that states must abide by the Full Faith and Credit Clause. Again, Judge Lewis, the Second DCA, and Ms. Starr all agree that states must abide by the Full Faith and Credit Clause. *V.L.* does not help Petitioner's case in any regard.

In *V.L.*, the Alabama Supreme Court refused to give full faith and credit to a Georgia court's adoption judgment because, according to the Alabama court, the Georgia court did not have subject matter jurisdiction to enter the adoption judgment, and that judgment was therefore not entitled to full faith and credit.[9] The Alabama Supreme Court based its jurisdictional finding on a misunderstanding of Georgia's adoption statute. When it reversed, this Court noted: "[t]he Georgia statute on which the Alabama Supreme Court

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[9] This Court had previously held that "[a] State is not required, however, to afford full faith and credit to a judgment rendered by a court that 'did not have jurisdiction over the subject matter or the relevant parties.'" *V.L.*, 577 U.S. at 407, *citing Underwriters Nat. Assurance Co. v. North Carolina Life and Accident & Health Ins. & Guaranty Assn.*, 455 U.S. 691, 705, 102 S. Ct. 1357, 71 L.Ed.2d 558 (1982).

relied, Ga. Code. Ann. § 19-8-5(a) does not speak in jurisdictional terms . . ." *V.L.*, pp. 408-09.

Here, Judge Lewis never questioned the jurisdiction of the South Carolina family court to enter the Divorce Decree. Indeed, Judge Lewis acknowledged and complied with her obligations to give full faith and credit to the South Carolina order. This Court's subject matter jurisdiction exception to the Full Faith and Credit Clause did not come up in any way in this matter.

CONCLUSION

The petition presents no question warranting this Court's review. It should therefore be denied.

Respectfully submitted,

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February 26, 2025

APPENDIX

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APPENDIX

IN THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT, STATE OF FLORIDA

Case No.: 2D23-1544

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

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.

Appeal from the Circuit Court for the
Sixth Judicial Circuit in and for Pasco County

APPELLEE'S ANSWER BRIEF

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TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

In this brief, Appellee, Jennifer Starr, individually and in her Capacity as Trustee of the Laura Kirkland Trust dated 3/10/05 and in her Capacity as Trustee of the Starr Trust, will be referred to as "Ms. Starr" or "Appellee." Appellant, Eric Manuelian, will be referred to as "Mr. Manuelian" or "Appellant."

Citations to Appellants' Appendix will be made by "R. ___" followed by the appropriate page or paragraph number. Citations to the Transcripts of the April 3, 2023 and April 19, 2023 hearings are made by date of the hearing, and "T. ___" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS[1]

[1] Appellant's Statement of the Case and Facts does not comply with Rule 9.210, Florida Rules of Civil Procedure. Initial Brief, pp. 1-21. The purpose of a statement of the case and facts in an appellate brief is not to color the facts in one's favor, but to inform the court of the pertinent facts underlying the parties' dispute. *Sabawi v. Carpentier*, 767 So. 2d 585, 586 (Fla. 5th DCA 2000). Appellant did not do that. Appellant's Statement of the Case and Facts contains case cites, is unduly argumentative, and attempts to impermissibly color fact in his favor. Further, Appellant's citations to the record are inadequate. Appellee thus requests that this court strike Appellant's entire Statement of the Case and Facts, or at the very least disregard it, and consider Appellee's Statement of the Case and Facts set forth in this Answer Brief. *See Greenfield v. Westmoreland*, 156 So. 3d 1, 2 (Fla. 3d DCA 2007) (holding that Appellant's violations of rule governing form and content of appellate briefs warranted granting motion to strike); *Williams v. Winn-Dixie Stores, Inc.*, 548 So. 2d 829, 830 (Fla. 1st DCA 1989) (granting motion to strike appellant's brief where appellant's statement of the case and facts was unduly argumentative and the citations to the record were inadequate).

A. Nature of the Case

1. The 1997 Divorce Decree

In 1977, Laura Kirkland ("Ms. Kirkland") owned 200 shares of Kirkland Ranch, Inc. ("KRI") stock. R. 2891. In 1979, Ms. Kirkland married Charles Manuelian. R. 3. During the marriage, the couple had two children: Robert Kirkland (formerly Manuelian)[2] and Appellant, Eric Manuelian. R. 216.

Ms. Kirkland and Charles Manuelian divorced on May 29, 1997 pursuant to a Final Order and Decree of Divorce entered in the Family Court of the Ninth Judicial Circuit in Berkeley County, South Carolina (the "Divorce Decree"). R. 264.

The Divorce Decree incorporated a marital settlement agreement in which the parties agreed, among other things, as follows:

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

(the "KRI Stock Provision"). R. 259. Following the divorce, Ms. Kirkland received an additional 78 shares of KRI that are not subject to Appellant's claims. R. 437.

At the time the South Carolina court entered the Divorce Decree, Ms. Kirkland held her 200 KRI shares pursuant to a February 15, 1961, Kirkland Ranch, Inc. Stockholders' Agreement Restricting Transfer of Stock (the "KRI Stockholders' Agreement"). R. 2301. This

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[2] Robert Kirkland is not a party to this action

agreement restricted the transfer of KRI stock and required, among other things, that KRI shares be offered to the corporation or other shareholders before any sale or transfer of the shares except in the case of testamentary disposition. R. 2301. Additionally, KRI stock certificates contained a restrictive legend stating that "[t]he shares evidenced by this certificate may not be sold, pledged, or otherwise transferred except as provided by the Kirkland Ranch, Inc. Stockholder's Agreement Restricting Transfer of Stock and Article VI of the corporation's bylaws." R. 141.

At the time the South Carolina court entered the Divorce Decree, and at all times thereafter, Ms. Kirkland did not comply or attempt to comply with the procedural requirements of the Florida Uniform Transfer-on-Death Security Registration Act, section 711.50, *et. seq.* (1995) (the "Transfer on Death Act") to create a non-testamentary disbursal of her KRI stock. She did not request a "transfer on death," "TOD," "pay on death," or "POD" designation for the securities with the issuing corporation, here KRI, as required under sections 711.503 and 711.509(1). And KRI did not accept any type of "transfer on death" registration from Ms. Kirkland as required under sections 711.508(1) and 711.509(1), Fla. Stat [3] . No share certificates held by Ms. Kirkland, and later by her trust, were marked with "transfer on death" or "TOD," following the owner's name and preceding a beneficiary's name as required by section 711.505.

In addition to not complying with Florida's Transfer on Death Act, Ms. Kirkland did not leave the 200

[3] KRI, a Florida corporation, was not a party to Ms. Kirkland's divorce proceeding, and the South Carolina court did not exercise jurisdiction over it.

shares of KRI Stock to her surviving children in her will. R. 502.

2. Laura Kirkland's Will and Trust

Eight years after the Divorce Decree, on March 10, 2005, Laura Kirkland established the Kirkland Trust dated 3/10/05, a revocable, inter vivos trust that she owned during her lifetime (the "Laura Kirkland Trust"). R. 291. Ms. Kirkland served as the initial trustee of the Laura Kirkland Trust, and Appellee, Jennifer Starr, was designated as the trust's successor trustee. Ms. Starr was Ms. Kirkland's long-time and loving partner.

Ms. Kirkland amended the Laura Kirkland Trust on December 12, 2005, and designated Ms. Starr as the trust's sole beneficiary. Ms. Kirkland's children were designated contingent beneficiaries. R. 306.

On December 12, 2005, Ms. Kirkland also executed her Last Will and Testament in which she devised all of her property to the Laura Kirkland Trust. R. 502. Among other provisions, Ms. Kirkland designated Ms. Starr the Initial Personal Representative ("PR") of her Estate. R. 502. At the time she established her trust and will, the KRI Stockholders' Agreement still restricted the transfer of KRI stock and prevented the trust from holding her KRI shares. R. 2301.

In or around November of 2008, the KRI stockholders, including Ms. Kirkland, approved an amendment to the KRI Stockholders Agreement to allow its stockholders to transfer their shares to Trusts the stockholders owned and created during their lifetimes. R. 2307. The following year, on July 26, 2009, Ms. Kirkland assigned her 278 KRI shares to Laura Kirkland, Trustee, Kirkland Trust dated March 10, 2005. R. 2314. Ms. Kirkland, as trustee, received a

single certificate for all of her 278 KRI shares following their reregistration. R. 2314. A few months later, on September 16, 2009, Laura Kirkland passed away. R. 28. Under its terms, the Laura Kirkland Trust became irrevocable from and after her death. R. 302.

3. Probate of Laura Kirkland's Estate

After Ms. Kirkland's passing, Ms. Starr filed a Petition for Formal Administration for the Estate of Laura Kirkland in the Ninth Judicial Circuit Court in and for Orange County, Florida, Case No. 2010-CP-0006333-O (the "Probate Estate"). R. 28. On March 25, 2010, Ms. Starr filed a Notice of Trust in the Probate Estate (the "Notice of Trust"). R. 213. The Notice of Trust stated, among other things, that the Laura Kirkland Trust was liable for the expenses of administration of the Probate Estate and liable for enforceable claims of the Decedent's creditors, as required by section 733.607(2) and 736.05055(1), Florida Statutes.

On March 31, 2010, the trial court in the Probate Estate issued its order appointing Ms. Starr PR of the Estate. R. 502. Appellant, Mr. Manuelian, signed a Waiver of Priority, Consent to Appointment of Personal Representative, and Wavier of Notice and Bond, pursuant to which he waived any right to act as PR of the Estate, and consented to the trial court's appointment of Ms. Starr as PR of the Estate. R. 502.

Because Ms. Kirkland's 278 KRI shares were titled in and held by the Laura Kirkland Trust, the 278 shares were not assets in the Probate Estate. April 3, 2023 T. p. 41-42.

On June 13, 2018, Ms. Starr filed a Petition for Discharge in the Estate. R. 30. In her petition, Ms.

Starr stated, among other things, that she had fully administered the Estate and requested that she be discharged as PR of the Estate. On June 26, 2018, the trial court entered its order discharging Ms. Starr as PR of the Estate, and Ms. Kirkland's Probate Estate was closed. R. 32

4. 2011 Reorganization of Kirkland and RLE Ranches

On July 19, 2011, the shareholders of KRI, including Mr. Manuelian and Ms. Starr, as successor trustee of the Laura Kirkland Trust, executed an Agreement and Plan of Corporate Reorganization dividing the corporation and its assets. R. 2336. Pursuant to the reorganization, all KRI shareholders surrendered their certificates in exchange for new certificates in either KRI, or a new entity, R.L.E. Ranch, Inc. ("RLE"). As minority shareholders, Mr. Manuelian and the Laura Kirkland Trust received RLE stock on a 1 for 1 basis. Among other things, the Agreement and Plan of Corporate Reorganization provides:

> Each Minority Shareholder hereby separately and individually and not jointly represents and warrants . . .
>
> 7.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the transaction contemplated hereby, will (a) conflict with or violate (i) any order, arbitration award, judgment, decree or other similar restriction to which such Minority Shareholder is a party . . .
>
> 7.4 Title to Shares. . . . As of the Effective Time, there shall be no outstanding . . . rights, agreements, understandings, or commitments of any kind relating to the . . . issuance

> . . . of such Minority Shares, except as set forth in the Stockholders' Agreement.

R. 2352.

Also on July 19, 2011, Mr. Manuelian and Ms. Starr, as successor trustee of the Laura Kirkland Trust, signed the R.L.E. Ranch, Inc. Shareholder Agreement ("RLE Shareholder Agreement"). R. 2410. The RLE Shareholder Agreement provides, among other thing, as follows: "This Agreement records the final, complete, and exclusive understanding among the parties regarding the subjects addressed in it and supersedes any prior or contemporaneous agreement, understanding, or representation, oral or written." R. 2412.

Pursuant to the reorganization related agreements, Mr. Manuelian (1) consented to the KRI reorganization; and (2) consented to the issuance of the newly created RLE shares to Ms. Starr as Trustee of the Laura Kirkland Trust. Following reorganization, Mr. Manuelian and all other RLE shareholders expressly consented to the transfer of the Laura Kirkland Trust's shares to Jennifer L. Starr, Trustee of the Starr Trust, by signing a written Consent to Transfer of Stock in accordance with the RLE Shareholder Agreement. R. 2434. Ms. Starr, as transferee, joined in the consent for purposes of acknowledging the terms and conditions of the RLE Shareholder agreement and thereby joined the transfer to the Agreement. R. 2436.

5. Appellant initiates this action

On November 8, 2021, over 3 years after Ms. Starr was discharged as PR of the Estate, and over 12 years after Ms. Kirkland passed away, Mr. Manuelian initiated this action in the Sixth Judicial Circuit in and for Pasco County. R. 1. Mr. Manuelian filed a one count complaint seeking a declaration from the trial

court that he was entitled to a portion of all KRI shares (now RLE shares) that Ms. Kirkland conveyed to the Laura Kirkland Trust before her death. Mr. Manuelian amended his complaint on January 11, 2022, to, among other things, add causes of action for Constructive Fraud, Fraud, Conversion, and Replevin. R. 45. Mr. Manuelian did not specifically state the number of shares he sought until his February 13, 2022 Amended Motion for Summary Judgment. R. 214.

B. Course of Proceedings

On January 18, 2022, Mr. Manuelian filed a Motion for Summary Judgment. R. 89. On February 13, 2022, he amended his Motion for Summary Judgment. R. 214. On March 29, 2022, the trial court heard argument on Plaintiff's Amended Motion for Summary Judgment. R. 1172. On April 28, 2022, the trial court entered its Order Denying Plaintiff's Amended Motion for Summary Judgment. R. 1647. On May 3, 2022, Mr. Manuelian sought reconsideration and clarification of the Order denying his Amended Motion for Summary Judgment. R. 1673. On May 25, 2022, the trial court denied his Motion for Reconsideration and Clarification. R. 1921.

On January 11, 2023, Mr. Manuelian filed Plaintiff's Renewed and Amended Motion for Partial Summary Judgment on Counts One (Declaratory Relief) Count Two (Constructive Fraud) Count Four (Conversion) and County Five (Replevin) ("Renewed Motion for Summary Judgment"). R. 2009. In his Renewed Motion for Summary Judgment, Mr. Manuelian sought summary judgment as to Counts One, Two, Four and Five of his First Amended Complaint for Declaratory Relief and Other Counts with Jury Demand ("First Amended Complaint"). R. 45. On

February 16, 2023, Ms. Starr filed Defendant Starr's Motion for Summary Judgment, seeking summary final judgment as to all counts in Plaintiffs' First Amended Complaint. R. 2138.

On April 3, 2023, and April 19, 2024, the trial court heard argument from counsel on the parties' respective dispositive motions[4].

C. Disposition in the Lower Tribunal

On September 7, 2023, the trial court entered its 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 ("Order Granting Starr's Motion for Summary Judgment"). R. 2878.

SUMMARY OF THE ARGUMENT

Appellant's claims are barred by the time limitations set forth in sections 733.702 and 733.710, Florida Statutes. The Florida Supreme Court's decisions in *Tsuji v. Fleet*, 366 So. 3d 1020 (Fla. 2023) and *May v. Illinois National Insurance Co.*, 771 So. 2d 1143 (Fla. 2000) provide guidance here. In each opinion, the Court applied the clear and plain language Florida's Legislature enacted in Chapter 733, Florida Statutes, and held that claims filed after the 2-year prescribed period are automatically barred. The Court further held that defendants, like Appellee, are granted absolute immunity from claims filed more than 2 years after the decedent's death. Here, Appellant did not file his claims until 12 years after Laura Kirkland's death.

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[4] The transcripts from the April 3 and April 19, 2023, hearings are the subject of Appellee's Motion to Supplement Record on Appeal, filed contemporaneously herewith.

Section 733.702's statute of limitation, and section 733.710's jurisdictional statute of nonclaim each bar Appellant's untimely claims.

Appellant knows Chapter 733 bars his claims against Appellee. He therefore tries to find some path around Appellee's absolute immunity. He presents this court with 10 separate arguments, all in which he tries, but fails, to distinguish Chapter 733. In fact, a careful reading of Appellant's 10 arguments and Chapters 733 and 736 reveal that the trial court had several reasons to enter its Order Granting Starr's Motion for Summary Judgment.

Appellant attempts to complicate this action with his 10 separate arguments, but this appeal is a simple one. The trial court recognized this, and Appellee respectfully urges this court to do the same. The time limitations set forth in Chapter 733 absolutely bar each of Appellant's counts in his First Amended Complaint. And none of the few exceptions the Legislature expressly listed in the statute apply to Appellant's claims.

ARGUMENT

I. Scope of Review[5]

Appellee recognizes this court is well-versed in the applicable summary judgment standard under Rule 1.510, Florida Rules of Civil Procedure, and the scope of its *de novo* review. Ms. Starr thus will not restate them here.

The parties mutually agreed before the trial court that there are no genuine issues as to any material

[5] Appellee's response to Appellant's Argument track the numbered arguments in his initial brief.

facts, and summary judgment is therefore proper in this matter.

II. The trial court's ruling that Laura Kirkland's transfer while living to Laura Kirkland as trustee of Laura Kirkland's revocable trust extinguished the SC Divorce Decree as to the KRI shares is not "patently erroneous"

Appellant presents 10 separate arguments as to why he believes the trial court erred in entering its Order Granting Starr's Motion for Summary Judgment. Initial Brief, argument nos. 2 through 11. All of Appellant's claims are time barred under Chapter 733, Florida Statutes. None of Appellant's 10 arguments change this. Appellee will discuss why the trial court properly held Appellant's claims are time barred below, and then will address Appellant's 10 arguments.

A. Appellant's claims are time barred.

The trial court held Appellant's claims are statutorily barred by sections 733.702 and 733.710, Florida Statutes. R. 2886, ¶¶ 52 and 53. Thus, the trial court's ruling regarding Ms. Kirkland's transfer of her KRI shares to the Laura Kirkland Trust, while correct in every regard, is irrelevant to the trial court's ultimate decision in this matter. R. 2884, ¶42.

> Section 733.702 provides, in pertinent part, as follows:
>
> If not barred by s. 733.710, no claim or demand against the decedent's estate that arose before the death of the decedent, . . . even if the claims are unmatured, contingent, or unliquidated; . . . no claim for personal property in possession of the personal rep-

> resentative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless filed in the probate proceeding on or before . . . 3 months after the time of first publication of the notice to creditors.

§ 733.702(1), Fla. Stat. (Emphasis supplied). The Florida Supreme Court carefully examined section 733.702 in *May v. Illinois National Insurance Co.*, 771 So. 2d 1143, 1152-54 (Fla. 2000). Because the time limitations in section 733.702 may be extended based on fraud, estoppel, or insufficient notice, the *May* Court found that the statute constitutes a statute of limitations, though not an ordinary one. *May*, 771 So. 2d at 1153, *citing to Comerica Bank & Trust, F.S.B. v. SDI Operating Partners, L.P.*, 673 So. 2d 163 (Fla. 3d DCA 1996) ("It is apparent that section 733.702(3) is unlike an ordinary statute of limitations in that it contains express language barring untimely claims without any necessity for the [personal representative] to object to the tardiness in filing"); § 733.702(3), Fla. Stat.

Importantly, in section 733.702(5), the Legislature added the following: "Nothing in this section shall extend the limitations period set forth in s. 733.710." § 733.702(5), Fla. Stat. Section 733.710 in turn provides, in relevant part, as follows:

> Notwithstanding any other provision of the code, 2 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, whether or not letters of administration have been issued, except as provided in this section.

§ 733.710(1), Fla. Stat. (Emphasis supplied). The Florida Supreme Court also carefully examined section 733.710 in *May*. Because the Legislature created an absolute bar to claims filed more than 2 years after the death of the person whose estate is undergoing probate, the *May* Court found that section 733.710 is a jurisdictional statute of nonclaim that automatically bars untimely claims and is not subject to waiver or extension. *May*, 771 So. 2d at 1157.

The Third DCA's decision in *Comerica Bank & Trust, F.S.B. v. SDI Operating Partners, L.P.*, 673 So. 2d at 163 is instructive. Plaintiff, SDI, sued the PR for decedent's estate over environmental contamination on real property previously owned by decedent. SDI sought to file its claim more than 2 years after decedent's death. The PR objected based on the 2-year nonclaim period prescribed in section 733.710. The Third DCA agreed with the PR. Regarding statutes of limitations vs. statutes of repose generally, the *Comerica* court noted as follows: "ordinary statutes of limitations are mere affirmative defenses for the opponent of the claim to plead and prove, while jurisdictional statutes of nonclaim operate to bar untimely claims without any action by the opponent and deprive the court of the power to adjudicate them." *Comerica*, 673 So. 2d at 166. Regarding section 733.710 in particular, the Third DCA concluded as follows:

> [I]t seems inescapable that the legislative intent for section 733.710 was to create a self-executing period of repose without significant action by the state itself, it must be noted—for all claims after the lapse of the 2–year

> period. In its own terms, it takes precedence over all other provisions in the probate code. At the same time, the text is formulated to extinguish any liability that the estate, the beneficiaries or the PR might have had for any claim or cause of action against the decedent. Hence, rather than merely fixing a period of time in which to file claims, as section 733.702 does, in reality it creates an immunity from liability arising from the lapse of the period stated.

Comerica, 673 So. 2d at 165. (Emphasis supplied).

Consistent with the Third DCA's immunity finding in *Comerica*, the Second DCA found in *Lutheran Brotherhood Legal Reserve Fraternal Benefit Society v. Estate of Petz*, 744 So. 2d 596, 598 (Fla. 2d DCA 2000) as follows: "We conclude that section 733.710 is a statute of repose that bars [Plaintiff's] untimely filed claim." *Id.* at 597. The Court in *May* adopted the reasoning of *Comerica* and *Lutheran Brotherhood*.

The Florida Supreme Court recently revisited sections 733.702 and 733.710 in *Tsuji v. Fleet*, 366 So. 3d 1020 (Fla. 2023). There, the Court makes even more clear that Appellant's claims are absolutely barred here and Appellee is immune from his claims. In *Tsuji*, plaintiff filed a negligence action against a decedent's estate and the decedent's former employer for vicarious liability, three years after the decedent died. The trial court, the First DCA, and the Florida Supreme all agreed – section 733.710 barred plaintiff's claim because he filed the action one year too late.

Regarding section 733.702, the Court held that "[w]e have described this as a statute of limitations, . . . and it bars untimely claims even if 'no objection to the

claim is filed.'" *Tsuji*, 366 So. 3d at 1026. Regarding the exceptions to section 733.702's 3 month filing restriction, the Court cited to section 733.702(3) and noted: "[t]he statute of limitations can only be extended in three circumstances: 'fraud, estoppel, and insufficient notice of the claims period.'" *Id.*

Turning to section 733.710, the Court made clear the statute does not contain a "fraud, estoppel, and insufficient notice of the claims period" exceptions. Instead, the only exceptions under section 733.710 noted by the Court, none of which apply here, are: (1) the creditor filed its claim within 2 years of the person's death, and whose claim has not been paid; and (2) there is a lien from a duly recorded mortgage or security interest. *Id.*[6]

Divorce Decree until after the Probate Estate was closed and after Ms. Starr was discharged as PR (like Ms. Starr) is not an exception to section 733.710. If Florida's Legislature had intended such a claim to be an exception, it would have included it in the statute. It did not. Appellant should not be allowed to rewrite section 733.710 here.

Confirming its holding in *May*, the Court again held as follows: "When no exception applies, an untimely claim is 'automatically barred.' . . . Section 733.710(1) is in that sense 'a self-executing, absolute immunity to claims filed for the first time . . . more than two years after the death of the person whose estate is under-

[6] Thus, any claim by Appellant that he had no notice of the Divorce Decree until after the Probate Estate was closed and after Ms. Starr was discharged as PR (like Ms. Starr) is not an exception to section 733.710. If Florida's Legislature had intended such a claim to be an exception, it would have included it in the statute. It did not. Appellant should not be allowed to rewrite section 733.710 here.

going probate.'" *Id.* at 1026-27. The Court thus affirmed the trial court and First DCA's application of section 733.710's absolute bar to petitioner's claims against decedent's estate and his employer.

Public policy requires the prompt and final resolution of disputes involving trusts and estates. *In re Brown's Est.*, 117 So. 2d 478, 480 (Fla. 1960). The time limitations in Chapter 733 support this important public policy. *See, e.g., All Children's Hosp., Inc. v. Owens*, 754 So. 2d 802, 808 (Fla. 2d DCA 2000) ("Although the short period for objections under section 733.212(5) undoubtedly results in the failure of parties to pursue some valid objections, it also places all interested parties on notice that factual circumstances allowing for will contests must be rapidly and thoroughly investigated. If a collateral action could be maintained [in a will contest] . . ., devised property would effectively have a cloud upon its title for years after it was transferred."). Regarding the short time for objections to and claims in estates, the Florida Supreme Court similarly observed:

> Public policy requires that estates of decedents be speedily and finally determined. It is pursuant to this policy that statutes of nonclaim have been enacted by the Legislature. It is not the purpose of the probate act to unreasonably restrict the rights of creditors, but the object of the act is to expedite and facilitate the settlement of estates in the interest of the public welfare and for the benefit of those interested in decedents' estates.

In re Brown's Est., 117 So. 2d 478, 480 (Fla. 1960).

Here, Ms. Kirkland passed away on September 16, 2009, and Appellant did not file his claims until November 8, 2021. Based on the plain language of sections 733.702 and 733.710, Appellant's claims are time barred, and Ms. Starr is immune from Mr. Manuelian's claims.

B. Appellant fails to distinguish Chapters 733 and 736, Florida Statutes, and fails to understand the decedent's responsibility.

Appellant recognizes that sections 733.702, and 733.710 in particular, constitute an absolute bar to his claims against Appellee. He therefore tries to find some path that would excuse him and his claims from the time limitations of Florida's Probate Code. The trial court correctly saw through Appellant's efforts and rejected them. Appellee respectfully urges this court to do the same.

Appellant argues the time limitations of Chapter 733 do not apply to this action because he has not asserted any claim against the decedent, Ms. Kirkland. Initial Brief, p. 10. Instead, according to Appellant, his claims are solely against Appellee. Appellant ignores his own claims, allegations, and argument.

Section 733.702 provides that "[i]f not barred by s. 733.710, no claim or demand <u>against the decedent's estate that arose before the death of the decedent</u>" is binding on the estate unless filed 3 months after first publication of notice to the creditors. § 733.702(1), Fla. Stat. (Emphasis supplied). Section 733.710 similarly provides that the decedent's estate, the personal representative, and the estate beneficiaries "are not liable for any claim or cause of action <u>against the decedent</u>" if filed more than two years after the death

of the decedent. § 733.710(1), Fla. Stat. (Emphasis supplied). Appellant suggests that his claims are not "against the decedent" or "against the decedent's estate," and they did not arise before Ms. Kirkland's death; thus, the limitations provision in Chapter 733 do not apply. Initial Brief, p. 10, 36, 37. Appellant is mistaken.

It was Ms. Kirkland who entered into the marital settlement agreement that was memorialized in the Divorce Decree. It was Ms. Kirkland who retained the KRI shares during her lifetime pursuant to the Divorce Decree. It was Ms. Kirkland who chose to establish the Laura Kirkland Trust on March 10, 2005. It was Ms. Kirkland who chose to amend her trust on December 12, 2005 to designate Ms. Starr the Laura Kirkland Trust's primary beneficiary, and not Appellant. It was Ms. Kirkland who chose to execute her Last Will and Testament on December 12, 2005, in which she devised all of her property to the Laura Kirkland Trust, and nothing to Appellant. It was Ms. Kirkland who chose to designate Ms. Starr her Initial Personal Representative. It was Ms. Kirkland who chose to direct the transfer of her 278 KRI shares to the Laura Kirkland Trust and chose to direct KRI to issue a new stock certificate to her as Trustee of the Laura Kirkland Trust.

Appellant may suggest to this court that his claim does not involve Ms. Kirkland, but this is a fiction. It was Ms. Kirkland who chose to take the above acts, all in apparent direct contravention of Appellant's alleged claim to a portion of the KRI shares. Appellee urges this court to recognize Appellant's argument for what it is – a simple and meritless attempt to argue around the conclusive application of Chapter 733 to this action.

Appellant's argument is creative, but it must fail. Allowing Appellant to pretend his claims do not involve Ms. Kirkland would encourage every creditor of every estate, taxed by a Chapter 733 time limitation, to try what Appellant is doing here. The argument is obvious and simple – my claim doesn't involve the decedent and her acts (or omissions). My claim is against the PR or beneficiary because she is "wrongfully" maintaining possession of the trust or estate property (even though the PR or beneficiary followed the decedent's trust and will). Appellant's attempt to avoid the time limitations imposed by Florida's Legislature is meritless, inconsistent with Chapter 733, and must be rejected.

To the extent Appellant suggests his claims involving the Laura Kirkland Trust have no place in the Probate Estate, section 736.1014 provides guidance:

> After the death of a settlor, no creditor of the settlor may bring, maintain, or continue any direct action against a trust described in s. 733.707(3), the trustee of the trust, or any beneficiary of the trust that is dependent on the individual liability of the settlor. Such claims and causes of action against settlor shall be presented and enforced against the settlor's estate as provided in part VII of Chapter 733 . . .

§ 736.1014(1), Fla. Stat. (Emphasis supplied). Section 736.1014(1) expressly prohibits any claim against a trustee or beneficiary outside of the probate proceeding involving the settlor's estate that is dependent on the individual liability of the settlor. Sections 736.1014 and 733.710(1) make clear that Appellant here was required to file any claim or cause of action

arising from Ms. Kirkland's acts or omissions in the Probate Estate, and he had to do so 2 years from her death. He did not. The trial court thus correctly granted Appellee's motion for summary judgment as to all of Appellant's claims.

C. The trial court properly rejected Appellant's Uniform Commercial Code and bona fide purchaser arguments.

In this first substantive argument (No. "2" in the Initial Brief), Appellant contends the trial court's ruling in paragraph 42 of the Order Granting Starr's Motion for Summary Judgment is "patently erroneous" because the Laura Kirkland Trust is not a "protected purchaser" under Florida's Uniform Commercial Code ("UCC"), in particular, sections 678.3021 and 678.3031, Florida Statutes. Initial Brief, pp. 22-26. Appellant also argues the Laura Kirkland Trust is not a "bona fide purchaser" because it did not pay value for the KRI shares when Ms. Kirkland transferred them to the trust on July 26, 2009. Appellant is mistaken on both counts.

Regarding his bona fide purchaser argument, Appellant argues that "Laura Kirkland and [Appellee] were not bona fide purchasers for value" of the 278 of KRI stock when Ms. Kirkland transferred her KRI shares to the Laura Kirkland Trust on July 26, 2009. Initial Brief, p. 10. According to Appellant, Ms. Kirkland, her trust, and Ms. Starr, the Laura Kirkland Trust's primary beneficiary, are not entitled to "bona fide purchaser protections" because "the trust did not pay value for the [Kirkland Ranch] shares." *Id.*

A bona fide purchaser analysis has never been applied to a settlor's conveyance to a trust under Chapter 736. Appellant is asking this court to do

something that neither Florida's Legislature, nor any court in the state, has ever done – impose a bona fide purchaser obligation on Florida trusts, trustees, and trust beneficiaries; and impose an obligation on Florida trusts and trust beneficiaries to pay consideration when a settlor conveys property to the trust. This court should reject Appellant's invitation.

The right to devise property is a property right protected by the Florida Constitution. *Shriners Hosps. for Crippled Children v. Zrillic*, 563 So. 2d 64, 67 (Fla. 1990). Florida's Legislature enacted a thorough statute addressing Florida trusts and detailing the creation and validity of trusts. It did not impose an obligation on the trust or trustee to pay value for any property. § 736.0101, *et seq*. ("Florida Trust Code"). Indeed, section 736.0401 provides as follows:

> A trust may be created by:
>
> (1) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect on the settlor's death;
>
> (2) Declaration by the owner of property that the owner holds identifiable property as trustee; or
>
> (3) Exercise of a power of appointment in favor of a trustee.

§ 736.0401, Fla. Stat. Again, nothing in the Florida Trust Code requires any trust, trustee, or beneficiary to "pay value" for property conveyed to the trust by the settlor, and this court should impose no such obligation here.[7] And, even if Appellant had some type

[7] Appellant's bona fide purchaser argument as to Ms. Starr is further belied by his acknowledgement that Ms. Starr, like him,

of bona fide purchaser claim, and he does not, it is nothing more than that – a claim against Ms. Kirkland and the Laura Kirkland Trust, one that he had to bring within 2 years of Ms. Kirkland's death. § 733.710, Fla. Stat. He did not.

Appellant's reliance on the UCC in this matter is equally misplaced. Appellant argued to the trial court, and argues to this court, that he has some type of claim against Ms. Kirkland and the Laura Kirkland Trust under Florida's UCC. He argues that "Manuelian contended [before the trial court] that his mother [Ms. Kirkland], as trustee, and Starr, were not 'protected purchasers' defined by § 678.3031 . . ." and, thus, they could not take title to all of the KRI shares. Initial Brief, p. 13. He further contends the Laura Kirkland Trust failed to "give[ ] value without notice" for the KRI shares at the time Ms. Kirkland transferred the shares, and therefore the Laura Kirkland Trust did not take ownership of the KRI shares "free of any adverse claim." Initial Brief, p. 24. Like his bona fide purchaser argument, Appellant asks this court to do something no other court in the state of Florida has done, i.e., impose on a Chapter 736 trust, at the time it receives property from the settlor, an obligation to comply with Florida's UCC and, among other things, pay value for the settlor's property. Appellee urges this court to reject Appellant's baseless invitation.

Appellant's UCC claim, albeit meritless, is again nothing more than that – a claim against Ms. Kirkland and the Laura Kirkland Trust for somehow allegedly violating Florida's Uniform Commercial Code. And

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had no notice of the KRI Stock Provision in the Divorce Decree until after Ms. Starr was discharged as PR of Ms. Kirkland's Probate Estate. Initial Brief, pp. 3, 22.

like all of Appellant's claims, it is one barred by the jurisdictional time limitations in Chapter 733.

D. The Divorce Decree did not automatically convey any interest in the KRI shared to Appellant.

Appellant repeatedly refers to the KRI Stock Provision in the Divorce Decree as a "Divide on Death" provision. Initial Brief, pp. 14, 15, 44, 48, 49. Florida law does not recognize anything called a "Divide on Death" provision or clause. Florida's Legislature did enact the Uniform Transfer on Death Security Registration Act, and in it established a mechanism for a non-testamentary disbursal of registered securities by using the terms "transfer on death," "TOD," or possibly "pay on death," or "POD." §711.50, Fla. Stat., *et. seq.* (1995).

Recognizing that Ms. Kirkland chose not to utilize this legislatively recognized method to convey her stock upon her death, Appellant tries to create a new and unprecedented one. Appellant does not get to do that. Appellant does not legislate. Appellant does not create law. As the trial court did below, Appellee urges this court to reject Appellant's unprecedented attempt to undo Ms. Kirkland's trust and will.

The language of the Divorce Decree is clear. The trial court found that the Divorce Decree, by its plain language, "did not transfer any interest in Laura Kirkland's KRI (RLE) shares to the Plaintiff [Mr. Manuelian]." R. 2884, ¶ 41. By its own terms, the Divorce Decree merely created obligations on both parties to it. The decree concludes with the following language: "and it is hereby made the Order of this Court, and each of the parties is ordered to comply with said [dissolution] agreement." R. 264. (Emphasis

supplied). Which, of course, Ms. Kirkland did not. She did not leave any of her KRI shares to her children.

Contrary to Appellant's argument, the Divorce Decree did not magically "vest" Appellant in anything. South Carolina law, which governs the Divorce Decree, is clear on this point. A divorce decree in and of itself does not accomplish the transfer of marital property. *See Simpson v. Simpson*, 746 S.E.2d 54 (S.C. Ct. App. 2013) (court retained jurisdiction to enforce divorce decree when husband did not transfer marital property as agreed and ordered); *Poston v. Poston*, 502 S.E.2d 86, 90 (S.C. Ct. App. 1998) (noting that spouse who does not receive marital property awarded to them in a divorce decree may seek to hold the non-complying spouse in contempt). *See also*, 29 U.S.C § 1056(d)(3)(G) (A court order to divide retirement benefits does not become a Qualified Domestic Relations Order until it is qualified or approved by the plan administrator).

Under Florida's Probate Code, decrees and judgments are "claims" that must be made in the decedent's estate proceeding. §733.707(1)(h), Fla. Stat. ("*Class 8*. – "All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime . . ."). *See also Hogan v. Howard*, 716 So. 2d 286, 288 (Fla. 2d DCA 1998) (holding that a judgment holder must file a claim in the probate proceeding, just like any other claimant); *Tensfeldt v. Tensfeldt*, 839 So. 2d 720, 725 (Fla. 2d DCA 2003) (Children of deceased former husband filed probate claim to enforce judgment of dissolution incorporating marital settlement agreement that provided for former husband to provide for three children in his will. This court dismissed the attempt to enforce foreign judgment because it was

foreign, and not domesticated, and therefore barred by the relevant statute of limitations.); *Paulucci v. Gen. Dynamics Corp.*, 842 So. 2d 797, 803 (Fla. 2003).

Decrees and judgments thus do not create any type of automatic vesting, and are not self-executing under Florida's Probate Code. The Divorce Decree's property settlement provision, including the KRI Stock Provision, could give rise to nothing more than claims Appellant was required to timely raise in Ms. Kirkland's Probate Estate.[8]

III. The trial court gave full faith and credit to the Divorce Decree.

In his second substantive argument (No. "3" in the Initial Brief) Appellant argues the trial court failed to give the Divorce Decree full faith and credit. Initial Brief, pp. 26-28. Appellant is wrong. The trial court expressly held as follows: "The Court gives full faith and credit to the 1997 Divorce Decree dissolving the marriage between Laura Kirkland and Charles Manuelian." R. 2883, ¶ 37. Appellant just disagrees with how the trial court gave full faith and credit.

The trial court correctly observed that Ms. Kirkland retained ownership of her KRI shares pursuant to the Divorce Decree. R. 2884 ¶ 40. Indeed, the first 6 words of the Divorce Decree's KRI Stock Provision are "Defendant [Ms. Kirkland] retains the Kirkland Ranch Stock. . ." The trial court also correctly observed that pursuant to Ms. Kirkland and Charles Manuelian's dissolution agreement, which the South Carolina court adopted in the Divorce Decree, Ms.

[8] And because the Divorce Decree did not vest Appellant with any interest to the KRI shares at the time it entered, his claims, if any, could only have accrued at the time of Ms. Kirkland's death.

Kirkland agreed to leave her KRI shares to her children upon her death (i.e., "the [shares] are to be divided upon her death between her surviving children"). R. 259.

The use of the future tense "to be divided" is important. It demonstrates the shares were not divided and allocated on May 29, 1997. Nor could they have been. Ms. Kirkland could have borne or adopted additional children after the 1997 Divorce Decree. The apparent future class of beneficiaries of this "to be divided" provision was not closed until Ms. Kirkland's death on September 16, 2009.

And finally, the trial court correctly observed that even if Appellant did have some "transfer on death" or "TOD" claim to the shares as a result of the Divorce Decree and Ms. Kirkland's death, and he did not, Ms. Kirkland eliminated, or "extinguished" that claim by failing to comply with her dissolution agreement with Charles Manuelian, and failing to leave the shares to her children at her death. R. 2884, ¶ 42.

IV. The trial court made no *sua sponte* declaration of summary judgment on unpled theories, and made no bona fide purchaser finding.

In his third argument (No. "4" in the Initial Brief), Appellant argues that "[e]ffectively, the [trial] Court *sua sponte* declared Laura Kirkland as Trustee to be a *bona fide* purchaser from Laura Kirkland." Initial Brief, p. 30. The trial court made no ruling regarding whether Ms. Kirkland's trust was a bona fide purchaser of anything. Indeed, the words "bona fide" don't appear anywhere in the order on review. Appellant's

argument on this point is, respectfully, confusing and Appellee urges this court to disregard it entirely.[9]

As discussed above, Appellant did try to persuade the trial court to engage in a bona fide purchaser analysis. The trial court correctly disregarded Appellant's baseless attempt. Appellee respectfully hopes this court will do the same.

V. The SC Divorce Decree is not a perpetual injunction, and Appellant failed to present this argument to the trial court on Appellant's and Appellee's dispositive motions.

In his fourth argument (No. "5" in the Initial Brief), Appellant argues for the first time on appeal that the Divorce Decree is a "perpetual injunction determining *in rem* title." Initial Brief, p. 31. Appellant presented no argument in the trial court regarding the elements of injunctive relief under Florida law. "Clear legal right," "irreparable harm," "adequate remedy at law," and "public interest" do not appear anywhere in Appellant's briefing or oral argument. *See Shaw v. Tampa Electric Co.*, 949 So. 2d 1066, 1068 (Fla. 2d DCA 2007) (elements of mandatory injunction). Indeed, the words "perpetual injunction" together appear nowhere in the transcripts from the April 3 and April 19, 2023 hearings, and do not appear together in Appellant's Renewed Motion for Summary Judgment.

"For an issue to be preserved for appeal, . . . it must be presented to the lower court and the specific legal argument or ground to be argued on appeal must be part of that presentation if it is to be considered preserved." *Archer v. State*, 613 So. 2d 446, 448 (Fla.

[9] The trial court's Order Granting Starr's Motion for Summary Judgment is based entirely on matters argued to it on the parties' mutual dispositive motions on April 3 and 19, 2023.

1993). (Emphasis supplied). The policy behind preservation of issues for appeal is well-established. As the Florida Supreme Court held in *Citizens of State v. Clark*, 2023 WL 7400723 (Fla. Nov. 9, 2023):

> It is well established that issues not properly preserved are waived. *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005) (holding that it is "not appropriate for a party to raise an issue for the first time on appeal"); *Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985); *see also DeLisle v. Crane Co.*, 258 So. 3d 1219, 1237 (Fla. 2018) (Canady, C.J., dissenting) ("Parties every day make choices in litigating cases that limit their options for review. And parties ordinarily must live with the choices they make."); *Carducci v. Regan*, 714 F.2d 171, 177 (D.C. Cir. 1983) (The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them.").
>
> Parties are required to preserve arguments because it allows the lower tribunal to consider and resolve errors when they arise, rather than wait for the process of an appeal and expend the judicial resources that come with that procedure. *Harrell v. State*, 894 So. 2d 935, 940 (Fla. 2005) (stating that the purpose of the preservation rule is to notify the trial judge of possible error and offer a chance to correct it at an early stage); *Castor v. State*, 365 So. 2d 701, 703 (Fla. 1978). The preservation requirement also serves the

> purpose of treating the parties, the court, and the judicial system fairly. *City of Orlando v. Birmingham*, 539 So. 2d 1133, 1134 (Fla. 1989); *Eaton v. Eaton*, 293 So. 3d 567, 568 (Fla. 1st DCA 2020)

Id. at * 2.

Appellant made no injunction argument to the trial court and presented no argument regarding the elements of injunctive relief below. Florida law prohibits him from doing so for the first time here.

VI. The trial court did not err in finding that Appellee, as the Laura Kirkland Trust beneficiary, was entitled to all of the trust's assets.

For the reasons state above, the 278 KRI shares properly passed to Ms. Starr as beneficiary of the Laura Kirkland Trust.

Appellant asserts in his fifth argument (No "6" in the Initial Brief) that "the [trial] Court, in apparent recognition of the invalidity of Starr's motion, crated [sic] a *sua sponte* patently erroneous workaround that Laura Kirkland "extinguished" the SC Court Order by transferring the shares to herself, as trustee, for no value, and then naming Starr as successor trustee and beneficiary of the trust." Initial Brief, p. 34. This "extinguished" argument is the same one Appellant presented in his first argument (No. "2" in the Initial Brief), and the reason it fails have been fully discussed above. *Supra*, at pp. 26-33. Appellant's claim concerning title to 100 of Laura Kirkland's 200 KRI shares is simply wrong but, more importantly, it does not survive the time and nonclaim jurisdictional bars in sections 733.702 and 733.710.

VII. Whether or not the RLE Shares were a probate asset in Laura Kirkland's Estate is irrelevant.

In his sixth argument (No. "7" in the Initial Brief), Appellant appears to suggest, on several occasions, that Appellee engaged in some type of wrongful conduct by not including the KRI shares as an asset in Ms. Kirkland's Probate Estate. Initial Brief, pp. 3, 5, 34-35, 39. It is axiomatic under Florida law that assets included in an *inter vivos* trust are not subject to probate administration. *Estate of Solnik*, 401 So. 2d 896, 897 (Fla. 4th DCA 1981); *Friedberg v. Sunbank/Miami, N.A.*, 648 So. 2d 204, 205 (Fla. 3d DCA 1994); *Martin v. Martin*, 687 So. 2d 903, 907 (Fla. 4th DCA 1997) ("The assets contained in an inter vivos trust, into which the will pours over, are not part of the probate estate and are not subject to administration."). That's largely the point of establishing a trust. And to the extent some creditor has a claim against the settlor, section 736.1014 directs the claimant to file the claim "against the settlor's estate as provided in part VII of chapter 733, . . ." §736.1014(1), Fla. Stat.

Appellant did nothing wrong by not including the assets of the Laura Kirkland Trust in Ms. Kirkland's Probate Estate in this matter. She filed a Notice of Trust in the Probate Estate as required by sections 733.607(2) and 736.05055(1), Florida Statutes. Appellee's conduct comported with Florida law in every regard.

VIII. Appellant failed to timely bring his claims to the KRI shares.

In his seventh argument (No. "8" in the Initial Brief), Appellant again argues that his claims do not involve any act or omission by decedent, Ms. Kirkland. Initial Brief, pp. 37-38. As discussed above, Ms.

Kirkland: (a) chose to establish the Laura Kirkland Trust; (b) chose to designate Ms. Starr the trust's primary beneficiary (and not Appellant); (c) chose to establish her will devising all of her property to her trust (and leave nothing to Appellant) [R. 502]; (d) and chose to direct transfer of her 278 KRI shares to her trust (and not to Appellant).

Appellant fails to recognize or accept that Ms. Kirkland took no actions to satisfy the KRI Stock Provision and that her actions would have been required. Neither does Appellant recognize or accept the definite actions Ms. Kirkland did take to direct her KRI shares away from Appellant. Despite Appellant arguing to this court, again and again, that his claims do not involve Ms. Kirkland, what Ms. Kirkland chose to do, and chose not to do, is at the very heart of this action.

Why Ms. Kirkland did or did not do these things is not known. She may have believed, rightly or wrongly, that the Divorce Decree no longer involved her affairs or property. Or chosen for unknown reasons to ignore the KRI Stock Provision. Or she may have simply forgotten it after her children were no longer minors and years had passed. April 19, 2023, T. pp. 32-34. Whatever the reasons, if Appellant felt he was due a portion of Ms. Kirkland's KRI shares, the time for him to make a claim against the Laura Kirkland Trust under section 736.1014 was during the probate proceeding. Appellant made no objection during that time and in the succeeding years: memories have faded, records have been lost, and witnesses to events passed away. It is no longer appropriate to engage in an evaluation of Ms. Kirkland's actions, and the trial court correctly held Appellant's claims are now time barred. R. 2886, ¶¶ 52 and 53.

IX. The trial court correctly found Appellant's claim is barred by Florida's Trust Code.

As discussed above, and contrary to Appellant's eighth argument (No. "9" in the Initial Brief), section 736.1014 bars independent claims against a trustee and trust beneficiary that are dependent on the individual liability of the settlor. Such claims must be timely made in the settlor's probate proceeding. *Id.* Recognizing this additional bar to his claims, Appellant asserts section 736.1014 does not apply in this action because his claims are not dependent on the individual liability of the settlor, Ms. Kirkland. Initial Brief, p. 40. Indeed, according to Appellant, his claim is against Appellee for "obstructing Manuelian's ownership of the stock." *Id.*

For the reasons stated above, Appellant's claims are based on the actions and inaction of Ms. Kirkland and are dependent on Ms. Kirkland's individual liability. The trial court thus correctly held that the bar set forth in section 736.1014 applies to Appellant's claims and prohibits him from maintaining this action. R. 2885, ¶51.

X. Appellant is not entitled to file a second amended complaint.

On February 13, 2022, Appellant filed an Amended Motion for Summary Judgment. R. 214. In this motion, Appellant asked for entry of summary judgment in his favor "because there are no factual issues and Manuelian is entitled to summary judgment as a matter of law." R. 214. Appellant further argued to the trial court in his amended motion: "Because there or

no factual issues . . . Manuelian is entitled to summary judgment . . .” R. 216.[10]

During the March 29, 2022, oral argument on his initial motion for summary judgment [R. 1172], Appellant argued to the trial court as follows: “Your Honor, this is a case where there are not [sic] factual disputes and my client is entitled to judgment as a matter of law . . . Judge, there’s no factual disputes at all.” R. 1177, ln. 9-10, 16.

On January 11, 2023, Appellant filed his Renewed Motion for Summary Judgment. There, Appellant informed the trial court he was entitled to entry of summary judgement in his favor “as a matter of law.” R. 2009, 2045.

On April 3 and April 19, 2023, the parties argued their respective dispositive motions to the trial court (Appellant argued his Renewed Motion for Summary Judgment [R. 2009]). At no point during either hearing did Appellant ask the trial court for leave to amend his First Amended Complaint. On the contrary, Appellant argued on several occasions to the trial court below that there were no material factual disputes and summary judgment was appropriate as a matter of law.

On June 20, 2023, the trial court entered its initial Order Granting Jennifer L. Starr’s Motion for Summary Judgment and Denying Eric Manuelian’s Renewed and Amended Motion for Partial Summary Judgment. R. 2542. After arguing repeatedly to the trial court that there were no disputed issues of fact, after the trial court denied his dispositive motion, and after the trial court granted Appellee’s dispositive

[10] The trial court denied this motion on April 28, 2022. R. 1647.

motion, Appellant saw fit to file a motion to amend his First Amended Complaint on June 21, 2023. Appellant's motion to amend is a transparent attempt to take a second bite at the apple. He lost and he wants a do-over. He chose not to ask the trial court for leave to amend during oral argument on the parties' dispositive motions. He also did not set his motion to amend for hearing.

Appellant chose to keep his powder dry on his amendment argument, with the obvious hope that his dispositive motion would be granted. He was wrong. As Justice Canady noted in *DeLisle v. Crane Co.*, 258 So. 3d 1219 (Fla. 2018):

> Parties every day make choices in litigating cases that limit their options for review. And parties ordinarily must live with the choices they make.

Id. at 1237. Similarly, Justice Grosshans notes in *Citizens of State*, 2023 WL 7400723:

> Parties are required to preserve arguments because it allows the lower tribunal to consider and resolve errors when they arise, rather than wait for the process of an appeal and expend the judicial resources that come with that procedure.

Id. * 2.

Appellant did not present and argue his motion to amend to the trial court. He waited over two months after oral argument, and tellingly one day after the trial court entered its initial order denying his motion for summary judgment, and granting Ms. Starr's, to seek leave to amend. And again he did not set his

motion to amend for hearing. Appellant made his choice. He must now live with the choice he made.

XI. Section 733.901 bars Appellant's claims.

In his tenth and final argument (No. "11" in the Initial Brief), Appellant maintains that section 733.901 does not bar his claim against Appellee. Appellant's section 733.901 argument, respectfully, makes no sense. Section 733.901 was not mentioned by either party or the trial court during the April 3 and April 19, 2023 hearings. The trial court made no reference to section 733.901 in its Order Granting Starr's Motion for Summary Judgment. It does not appear the trial court relied on section 733.901 at all in entering the order on review. Because the trial court did not cite to or rely on section 733.901 in its order, Appellant's final argument has no place in this appeal.

Appellee did reference section 733.901 in her dispositive motion papers. She referenced the statute in her Summary of Undisputed Facts and Memorandum of Law Regarding Plaintiff's Amended Motion for Summary Judgment, and in Defendant Starr's Motion for Summary Judgment. R. 635, 2159. If the trial court had granted Appellee's dispositive motion based on section 733.901, and it did not, it would have been entirely proper to do so.

Section 733.901 provides as follows: "After administration [of the estate] has been completed, the personal representative shall be discharged." § 733.901(1), Fla. Stat. The statute further states: "The discharge of the personal representative shall release the personal representative and shall bar any actions against the personal representative, as such or individually." § 733.901(1), Fla. Stat. (Emphasis supplied). Absent an exception to this bright-line rule, Appellant is

barred from maintaining any action against Appellee as a discharged personal representative under section 733.901.

In an effort to find some exception, Appellant cites to *Sims v. Barnard*, 257 So. 3d 630 (Fla. 1st DCA 2018). Initial Brief, p 41. There, the First DCA held that the statutory bar of section 733.901 will not apply where the claim against the PR is a fraud claim based on concealment, "where its application would permit a fiduciary to benefit from its alleged wrongful acts if it could conceal them for the statutory period." *Id.* at 631-32. The *Sims* court concluded the requisite concealment did not exist in the case, and applied the section 733.901 bar to the plaintiff's claims. *Id.* at 633.

Here, Appellant has no concealment claim. Appellant does not and cannot dispute that Appellee filed a Notice of Trust in Ms. Kirkland's Probate Estate, as required by sections 733.607(2) and 736.05055(1), Florida Statutes. Appellant repeatedly states in his brief that Appellee had no knowledge of the KRI Stock Provision in the Divorce Decree until after she was discharged as PR of Ms. Kirkland's Probate Estate. *See, e.g.*, Initial Brief, pp. 3, 21, 22; R. 2010; April 3, 2023 T. p. 25. Appellee concealed nothing. Section 733.901's statutory bar does in fact bar Appellant's claims in this matter.

XIII. Appellant is not entitled to Summary Judgment.

For the reasons set forth above, at no time did Appellant own any of the KRI shares. He therefore has no basis whatsoever to make a claim against Ms. Starr for constructive fraud, conversion, or replevin, or for imposition of a constructive trust. Also, for the reasons stated above, even if Appellant had claims for con-

structive fraud, etc., and he does not, such claims are barred by Florida's Probate Code. He is not now, and has never been, entitled to summary judgment in this matter.

CONCLUSION

Appellee respectfully requests that this court affirm the trial court's Order Granting Starr's Motion for Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been furnished via the E-Filing Portal, and pursuant to Fla. R. Jud. Adm. 2.516, to Counsel for Appellant, Donald J. Schutz, 535 Central Ave., St. Petersburg, FL 33701 at don@lawus.com and donschutz@netscape.net this 8th day of January, 2024.

/s/ John A. Schifino
Attorney

CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rules of Appellate Procedure 9.045 and 9.210, Appellee certifies that the type size and style of the Initial Brief of Appellant is Bookman Old Style 14pt and the word count is 10,183.

/s/ John A. Schifino
Attorney