

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-26-122

ERIC CLARK V. BARRY J. BROWN ET AL.

On Appeal from Cumberland County Superior Court

**BRIEF OF APPELLEES BONNIE FAHERTY; LPL FINANCIAL LLC;
AND TD WEALTH MANAGEMENT SERVICES INC.**

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Appellees Bonnie Faherty (“Faherty”), LPL Financial, and TD Wealth Management Services (“TD Wealth”) (collectively, “Financial Defendants”) submit the following brief.

INTRODUCTION

This is Eric Clark’s (“Appellant”) third appeal within the last five years on his quest to recover damages for a gift his aunt allegedly intended to leave to him upon her death as a beneficiary of her trust. This Court already ruled against Appellant twice in appeals concerning his claims against the trust’s successor trustee, and this third appeal is yet another meritless endeavor.

Appellant is the nephew of a Maine woman, Patricia Shea, who established a trust that included certain assets—including stock in a particular bank—to be gifted to her nieces and nephews when she died. In 2006, Patricia was forced to sell this stock after the bank had recalled it; therefore, at the time of Patricia’s death in 2018, the bank stock was no longer in the trust. At no point did Patricia amend her trust to give the cash proceeds from the stock sale to Appellant.

In the prior *Connary v. Shea* litigation, Appellant and certain of his siblings/cousins asserted claims against the successor trustee to their aunt’s trust alleging that they were entitled to the cash proceeds that Patricia received in exchange for the bank stock redemption. Those arguments were expressly rejected by this Court, which ruled that the “clear and plain” intent of the trust was to create a “specific” gift of the bank stock to the named beneficiaries; that the involuntary stock redemption had

adeemed the gift in 2006; and that Appellant and his siblings/cousins thus had no right to the cash proceeds from the stock sale. *See Connary v. Shea*, 2021 ME 44, ¶¶ 18, 25, 259 A.3d 118 (“*Connary I*”); *Connary v. Shea*, 2024 ME 57, ¶ 25, 320 A.2d 429 (“*Connary II*”).¹

Having litigated and lost his claims against the successor trustee, Appellant casts the same deficient net wider in desperate hope of catching a different fish. He now asserts claims against his aunt’s estate planning attorney Barry Brown and his aunt’s investment advisor Bonnie Faherty. As concerns the investment advisor, Appellant asserts that Faherty was negligent by failing to provide advice that would have somehow protected Appellant’s alleged right to the cash proceeds arising from the redemption of the bank stock in 2006—a right that this Court has already determined never existed. Appellant also asserts that TD Wealth and LPL Financial are vicariously liable for Faherty’s conduct given that each of them employed her at some time between 2006 (when Appellant’s gift adeemed) and 2018 (when Appellant’s aunt died).

The Superior Court correctly dismissed Appellant’s professional negligence claim against the Financial Defendants on statute of limitations grounds because Appellant’s “claims arose from a 2006 stock transfer” and no exception applied to the six-year statute of limitations. A.17-18. This Court should affirm that ruling. Indeed,

¹ It is noteworthy that the appeals in *Connary I* and *Connary II* were litigated by Appellant Eric Clark and his five siblings/cousins, whereas Appellant Clark now stands alone in the present appeal. James Clark was a plaintiff at the Superior Court in this proceeding but does not sign onto this third appeal.

Appellant’s feeble attempt to escape time bar—an assertion that the trust was “revocable,” and thus Appellant had no “judicially cognizable injury” until 2018 when Patricia died—is directly contrary to the express terms of the trust, which made the provision gifting the bank stock to Appellant *irrevocable* as of 2006, when Patricia’s husband died.

Moreover, even were this Court to find that Appellant’s professional negligence claim was timely filed as to one or more of the Financial Defendants, the claim would still fail as a matter of law for the additional reasons raised below, that the Superior Court did not need to reach when it dismissed on statute of limitations grounds. Those additional grounds for affirmance of the Superior Court’s dismissal include:

1. This Court’s prior rulings against Appellant in *Connary v. Shea* collaterally estop or otherwise preclude Appellant’s theories in this case.
2. The Financial Defendants did not owe Appellant a duty of care. Faherty’s client was Appellant’s aunt Patricia, not Appellant, and the Financial Defendants do not owe any third-party duty to Appellant as a beneficiary of Patricia’s trust.
3. The Financial Defendants did not cause Appellant’s alleged harm. The bank involuntarily redeemed the stock at issue and exchanged it for cash. There is nothing Faherty or her employers could have done to prevent the ademption of Appellant’s gift.

STATEMENT OF FACTS

I. Creation of the Trust and the Bank's Involuntary Redemption of Its Stock

In 2003, Patricia Shea and William Shea created the Trust and “funded it, in part, with stocks in General Electric and in Siwooganock Bank (the Bank), a private bank that was based in New Hampshire.” *Connary I*, 2021 ME 44, ¶ 4; *see also* A.25 (Compl. ¶¶ 16-18).² Under the terms of the Trust, after William and Patricia died, the trustee was to pay any outstanding debts, distribute the stocks to Appellant and the other named recipients (Patricia's other nieces and nephews), and then distribute any remaining proceeds to William's stepchildren. *Id.*

William died in 2006. *Connary I*, 2021 ME 44, ¶ 5; A.26, 43 (Compl. ¶ 26; Am. Compl. ¶ 27). Later that year, Siwooganock Bank (“Bank”) recalled its stock in preparation of its sale to another bank, forcing stockholders to involuntarily redeem their stock for cash. Patricia received approximately \$460,000 in cash proceeds from the stock redemption. *Connary I*, 2021 ME 44, ¶ 5; A.26-28, 44-45 (Compl. ¶¶ 29-30, 42; Am. Compl. ¶¶ 30-31, 43).

At the time of stock redemption, Faherty—then working for Bancnorth Investment Group—was Patricia's investment advisor. A.28, 45 (Compl. ¶¶ 38-39; Am.

² For the Court's convenience, this brief provides parallel cites to the original complaint and first amended complaint where the paragraph numbers are different. Where the paragraph numbers are the same, this brief only cites to the original complaint. The first amended complaint was filed after briefing was completed on the Financial Defendants' motion and only added three paragraphs, none of which relate to the Financial Defendants or affect the arguments presented below or herein.

Compl. ¶¶ 39-40). Appellant alleges that in 2006, Faherty “knew of the Trust and that the Siwooganock stock was a trust asset.” A.28, 45 (Compl. ¶ 45; Am. Compl. ¶ 46). Appellant further alleges that from 2006 until 2018, Faherty provided Patricia with advice related to reinvestment of the proceeds arising from the involuntary bank stock redemption. *Connary I*, 2021 ME 44, ¶ 5; A.28, 35 (Compl. ¶¶ 44, 95); A.45, 52 (Am. Compl. ¶¶ 45, 95). Over that time frame, the proceeds from the Bank stock redemption were “deposited in and moved among the Trust’s investment accounts, commingled with other funds in the Trust, and used to purchase various securities.” *Connary I*, 2021 ME 44, ¶ 5.³ Appellant alleges that Faherty worked for Bancnorth Investment Group (now TD Wealth) until 2010, and that in 2010 she changed firms and began working for LPL Financial. A.28, 45 (Compl. ¶¶ 38-41; Am. Compl. ¶¶ 39-42).

Patricia died in 2018, and Richard Shea became the successor trustee. Richard “liquidated the General Electric stock and distributed those proceeds” to Appellant and the other recipients named in the Trust. Richard “determined that the Bank stock was no longer in the Trust and, after consulting with the attorney who drafted the Trust, informed [Appellant and the other beneficiaries] that he could not distribute any funds to [them] in its place.” *Connary I*, 2021 ME 44, ¶ 6; A.27, 44 (Compl. ¶¶ 31-33; Am. Compl. ¶¶ 32-34).

³ In *Connary I*, the plaintiffs asserted that the Bank stock redemption proceeds could be “accurately traced” in the Trust. This Court disagreed, finding it undisputed “that the proceeds were commingled and not neatly segregated into a single account.” *Connary I*, ¶ 25 n.14.

II. Prior Litigation over Proceeds from Bank Stock Redemption

In February 2019, Appellant (along with other of Patricia’s nieces and nephews) sued Richard as successor trustee to the Trust seeking a declaration that the nieces and nephews named in the Trust were “entitled to the proceeds from the involuntary sale of the Bank stock” *Connary I*, 2021 ME 44, ¶ 7 (internal quotation marks and alterations omitted).

Alternatively, the plaintiffs in *Connary v. Shea* sought to “reform the Trust to conform to Patricia’s intentions that the proceeds are to be distributed in equal shares to [her nieces and nephews].” *Id.* (internal quotation marks and alterations omitted). In March 2020, the trial court granted summary judgment in favor of the trustee, ruling that the terms of the Trust were “clear and plain” that the settlors (William and Patricia) intended a “specific devise” of the Bank stock and that Patricia’s nieces and nephews had no right to the cash proceeds arising from the stock redemption. *Connary I*, 2021 ME 44, ¶¶ 7-10; A.28, 45 (Compl. ¶ 37; Am. Compl. ¶ 38).

In September 2021, this Court upheld the trial court’s ruling: “We agree with the court that the language of the Trust reflects a ‘plain and clear’ intent by William and Patricia to create a specific gift of the Bank stock in favor of [Patricia’s nieces and nephews]”. *Connary I*, 2021 ME 44, ¶ 18. This Court recognized that the chief characteristic of a “specific” gift as opposed to a “general” gift “is its liability to ademption. If the specific thing or particular fund bequeathed is not in existence or has been disposed of by the testator subsequent to the making of the will [or trust], the

legacy is extinguished or adeemed.” *Id.* ¶ 19. Applying that principle, this Court ruled that “[b]ecause no shares of the Bank stock remained in the Trust at the time of Patricia’s death, the trial court correctly concluded that the Bank stock had adeemed.” *Id.* ¶ 25. This Court did, however, remand to the trial court the question of whether the Trust instrument should be reformed to be consistent with the plaintiffs’ theory. *Id.* ¶¶ 26-30.

On remand, the trial court again granted judgment in favor of the trustee and held that the Trust instrument could not be reformed to be consistent with the plaintiffs’ theories. *Connary II*, 2024 ME 57, ¶¶ 1, 8. The *Connary* plaintiffs again appealed, and on August 6, 2024, this Court upheld the trial court’s ruling that the Trust could not be reformed in favor of the plaintiffs. *Id.* ¶¶ 10-23.

III. Appellant Re-Packages his Same Arguments in this Litigation

Three weeks after losing their second appeal, Appellant and his brother James Clark filed this action on August 28, 2024. In Count III, the Complaint alleges a “negligence by investment advisor” claim against Faherty. Appellant alleges that Faherty had a duty to review the Trust and to understand all the “essential facts” about Patricia. A.34-36 (Compl. ¶¶ 88, 91, 95). He alleges that Faherty’s duty not only applied to Patricia, but also Appellant as a Trust beneficiary. *Id.* ¶ 89. Appellant further alleges that Faherty breached her duty to him “by advising Patricia Shea to invest the proceeds of the Siwooganock Stock without any idea of the contents of the Trust or the resulting negative impact to Patricia Shea’s intent as identified in the Trust.” *Id.* ¶¶ 95-97.

Appellant alleges that Faherty was obligated “to replace the Siwooganock Shares with similar stock” and that her failure to do so “resulted in the unintended ademption of Patricia Shea’s original gift” to Appellant and the other beneficiaries. *Id.* ¶ 97. Appellant asserts that TD Wealth and LPL Financial are vicariously liable for Faherty’s conduct as their agent. *Id.* ¶¶ 99-100.

The Financial Defendants filed a Rule 12(b)(6) consolidated motion to dismiss on November 25, 2024, arguing that Appellant’s claims were barred by the statute of limitations, precluded by the doctrine of collateral estoppel (based on this Court’s rulings in *Connary I* and *II*), and that the Complaint failed to state a claim for professional negligence against the Financial Defendants because Appellant could not establish the elements of duty of care and causation. *See* A.184-200, 242-49.

On December 9, 2025, the Superior Court granted the Financial Defendants’ motion to dismiss, finding that Appellant’s and James Clark’s claims were barred by the statute of limitations. A.18. The Superior Court expressly noted that it did “not reach [Financial Defendants’] arguments for failure to state a claim or collateral estoppel.” *Id.*

STATEMENT OF ISSUES

I. Whether the Superior Court correctly dismissed Appellant’s professional negligence claims against the Financial Defendants (Count III) on statute of limitations grounds where Appellant’s claims arose from a 2006 stock transfer.

II. Whether, even if Appellant's claims against one or more of the Financial Defendants were timely filed, Count III nonetheless fails as a matter of law because:

- (a) Appellant's claims are precluded by the doctrine of collateral estoppel based on this Court's prior rulings in *Connary v Shea*;
- (b) The Financial Defendants did not owe Appellant a duty of care; or
- (c) The Financial Defendants did not cause Appellant's alleged injury.

ARGUMENT

I. The Superior Court correctly dismissed Count III on statute of limitations grounds.

The Superior Court held that Appellant's "claims against [the Financial Defendants] are barred by the statute of limitations. *See* 14 M.R.S. § 752." A.18. That statute requires civil claims to be "commenced within 6 years after the cause of action accrues and not afterwards." A.17 (quoting 14 M.R.S. § 752). The Superior Court found that "Plaintiffs' claims arose from a 2006 stock transfer" and that no exception to the statute of limitations applied to their claims. A.17-18. This Court should affirm the Superior Court's correct rulings on the statute of limitations and find no merit in Appellant's attempt to avoid time bar by construing the Trust instrument in a manner contrary to its plain terms.

A. The Superior Court correctly found that Appellant's alleged harm arose from the 2006 stock transfer.

The Superior Court correctly ruled that Appellant's claims "arose from a 2006 stock transfer." A.17. The Complaint's allegations make clear that Appellant was

harmed—if ever—in 2006 when Siwooganock Bank recalled its stock and Patricia allegedly reinvested the cash she received on Faherty's advice. *See* A.26, 44 (Compl. ¶ 29; Am. Compl. ¶ 30) (“Siwooganock Bank redeemed Patricia Shea's shares in 2006.”); A.28, 45 (Compl. ¶ 42; Am. Compl. ¶ 43) (“In 2006 when Siwooganock Bank recalled its stock, Patricia Shea was forced to transfer the shares involuntarily and received a cash payment.”); *Id.* (Compl. ¶ 44; Am. Compl. ¶ 45) (“In 2006 Patricia Shea reinvested the cash she received on the advice of Defendant Faherty.”). Appellant’s briefing at the Superior Court further confirms that his alleged harm occurred in 2006 when the Bank recalled its stock and Patricia reinvested the proceeds. A.220-21 (Pl. Br. at 1-2) (“Had Faherty advised Aunt Pat to reinvest the proceeds received from the involuntary recall of Siwooganock Bank stock into a similar stock investment, then the gift would have remained destined for Plaintiffs and their cousins.”).

The Complaint in this case was filed in 2024, 18 years after the Bank recalled the stock and Faherty allegedly provided negligent investment advice to Patricia. The statute of limitations indisputably bars such claims.⁴

B. The Superior Court correctly found that the discovery rule does not apply.

⁴ While Appellant’s claims against all Financial Defendants are barred by the statute of limitations, the two employers have additional defenses based on time. Faherty worked for Bancnorth Investment Group (predecessor to TD Wealth) in 2006 but moved to LPL Financial in 2010. A. 28, 45 (Compl. ¶¶ 40-41; Am. Compl. ¶¶ 41-42). Any conduct attributable to TD Wealth necessarily occurred before that move, and therefore Appellant would have had to assert a claim against TD Wealth by 2016 at the latest. Additionally, Faherty did not have any relationship with LPL Financial until 2010, four years *after* the conduct that allegedly harmed Appellant. *Id.* LPL Financial cannot be held liable for such conduct.

Applying this Court’s decision in *Nevin v. Union Tr. Co.*, 1999 ME 47, 726 A.2d 694, the Superior Court correctly ruled that the discovery rule does not apply to Appellant’s claims against the Financial Defendants. Specifically, the Superior Court found that Appellant and James Clark failed to satisfy the *Nevin* test because, *inter alia*, they made “no viable claim that [Financial Defendants] had a fiduciary duty to manage the Shea Trust or its assets”; did “not allege that their cause of action was ‘virtually undiscoverable’ between 2006 and 2018”; and did not “claim that an investigation ‘would be destructive of the fiduciary relationship.’” A.17-18.

Appellant does not contest the Superior Court’s ruling that the discovery rule is inapplicable to his claims against the Financial Defendants, but instead invokes an alternative argument that his claims “did not accrue until Patricia Shea’s death in 2018.” Appellant Br. at 12. That alternative argument likewise fails to save Appellant’s claims.

C. Appellant’s arguments to avoid time bar are meritless.

1. Contrary to Appellant’s claim, his specific gift of Bank stock became irrevocable in 2006.

Appellant agrees with the Superior Court’s finding (and Maine law) that a cause of action “accrues when ‘a claimant sustains a judicially cognizable injury. . . .’” A.17 (quoting *Pilot Point, LLC v. Town of Cape Elizabeth*, 2020 ME 100, ¶ 13, 237 A.3d 200); Appellant Br. at 11. But Appellant attempts to avoid the Superior Court’s time bar ruling by arguing that although Faherty’s alleged negligence occurred in 2006 when she “failed to competently advise Patricia . . . on the proper reinvestment of the proceeds of the

bank stock,” Appellant Br. at 11, Appellant did not suffer a “judicially cognizable injury” until Patricia died in 2018 and therefore his claims were filed within the six-year statute of limitations. *Id.* at 11-12.

Appellant’s sole support for this argument is an assertion that the Trust “was revocable and remained so until the death of Patricia Shea in 2018.” *Id.* at 11. Appellant’s theory is that “while Patricia Shea was alive, Plaintiffs had no enforceable interest and could sustain no judicially cognizable injury.” *Id.* But like the arguments asserted in *Connary I*, Appellant’s position is directly at odds with the express language of the Trust instrument, which makes clear that Appellant’s gift became *irrevocable* after William Shea died in 2006 – before the Bank recalled its stock.

Appellant’s gift of stock is identified in Article Two of the Trust instrument. Specifically, Article Two, subsection 3(a) states “all Siwooganock Bank . . . stocks are to be distributed in equal shares to the nieces and nephews of Patricia C. Shea.” A.62. That section then lists the nieces and nephews by name, including Appellant. A.62.

Article Three, subsection C addresses the powers of the grantors (Patricia and William) to revoke the provisions of the Trust instrument. This section provides that “[a]fter the death of the first of us, the surviving grantor may revoke the trust . . . *except as to the provisions of Article Two of this Declaration of Trust, which shall take precedence over the provisions of this sentence.*” A.64-65 (emphasis added). As alleged, William died in 2006 before Bank recalled its stock. A.26, 43-44 (Compl. ¶¶ 26-29; Am. Compl. ¶¶ 27-30). Pursuant to Article Three, when William died, Patricia had no right to revoke the

provisions related to Appellant's gift of stock, and Appellant's gift became irrevocable.

Indeed, this Court came to the same conclusion in *Connary I*:

The Trust itself might also have constrained Patricia's power to revoke or amend the provision regarding distribution of the Bank stock. As the survivor, she was authorized to *revoke* the Trust in whole or in part "except as to the provisions of Article Two"—the article that contained the distribution provision at issue here—and she could *amend* the trust in writing "except as may be limited by Article ... Two of this Declaration of Trust."

Connary I, 2021 ME 44, ¶ 24 n.13.

Because Appellant's gift became irrevocable in 2006 when William died, and not in 2018 when Patricia died, Appellant's own articulation of the accrual test compels that Appellant first suffered a "judicially cognizable injury"—and the statute of limitations began to run—when Patricia reinvested the proceeds from the stock redemption in 2006. Stated differently, whatever rights Appellant claims he gained in 2018 that made his interest in the stock gift enforceable, Appellant in fact had those same rights in 2006 at the time of the stock redemption. Appellant thus had the opportunity to bring a claim against Patricia (as trustee) or Faherty (as Patricia's investment advisor) as early as 2006 when "Patricia Shea reinvested the cash she received on the advice of Defendant Faherty" A.28, 45 (Compl. ¶ 44; Am. Compl. ¶ 45). Appellant's failure to assert his claims within the applicable six-year statute of limitations renders his claims untimely.

2. There is no "continuing negligence" theory that can save Appellant's claims.

As described above, Appellant's claim arose from the "2006 stock transfer" and Faherty's alleged negligent investment advice to Patricia in 2006 when the Bank recalled its stock and exchanged it for cash. Appellant argues in his brief that Faherty's negligence was "continual" because she failed to correct the 2006 advice or provide different investment advice before Patricia died in 2018. *See* Appellant's Br. at 11-12. Although Appellant does not specifically reference the "continuing negligence doctrine," to the extent he is attempting to invoke that doctrine, it does not apply and cannot preserve his claims against the Financial Defendants.

While this Court has recognized a continuing negligence theory in medical malpractices cases filed under the Maine Health Security Act, it has not expanded the doctrine beyond that limited area. *See Baker v. Farrand*, 2011 ME 91, ¶¶ 3-4, 29, 26 A.3d 806 (applying continuing negligence theory where physician failed to detect cancer over multi-year course of treatment despite abnormal results in annual tests). Further, the ruling in *Baker* was based "on the language and authority of the Health Security Act and not the common law," and a finding that "in cases involving a continuing course of negligent treatment, the Act allows for the possibility that two or more negligent acts or omissions might combine to proximately cause a patient's injury." *Id.* ¶¶ 25, 30.

In the later *Packgen* case, this Court declined to extend the continuing negligence theory to legal malpractice claims, stating that "[w]ithout similar authorizing language [to that discussed in *Baker*] on which to draw, we are unable to conclude that the continuing negligence doctrine is applicable to claims for legal malpractice." *Packgen*,

Inc. v. Bernstein, Shur, Sawyer & Nelson, P.A., 2019 ME 90, ¶¶ 34-35, 209 A.3d 116. Based on the Financial Defendants’ review of case law, this Court has never applied the continuing negligence doctrine to any common law cause of action.

But even if this Court were to find that a continuing negligence theory could apply to common law claims like those asserted by Appellant, the *Baker* and *Packgen* decisions instruct that the theory would not save Appellant’s claims here. In *Baker*, this Court expressly limited the reach of the continuing negligence theory, stating that where it is “reasonably probable that one act or omission in a series of acts or omissions was the *sole* proximate cause of the injury complained of, a cause of action would accrue from the date of that act or omission, and not from the dates of any subsequent acts or omissions.” *See Baker*, 2011 ME 91, ¶ 24.

This Court expanded on that holding in *Packgen*. There, the Court concluded that the act giving rise to the plaintiff client’s alleged injury occurred on May 29, 2008, when defendant law firm sent a deficient notice of claim. *See Packgen*, 2019 ME 90, ¶ 5. The Court concluded that the doctrine of continuing negligence (and the doctrine of continuing representation) did not save plaintiff’s claim from defendant’s statute of limitations defense, even though defendant made no effort in the years after 2008 to serve a valid notice of claim, to pursue the case diligently, or to inform plaintiff about the case. *Id.* ¶¶ 5, 14. The Court stated that while it understood Packgen’s argument that the law firm “committed a new negligent omission each day it failed to provide a proper notice of claim or seek another remedy after May 29, 2008 . . . it is reasonably probable

that the harm Packgen complains of occurred as a result of [defendant law firm's] alleged failure to meet the oath requirements for the notice of claim on May 29, 2008.” *Id.* ¶ 33 (citing *Baker*, 2011 ME 91, ¶ 24.) As such, the Court found that “the continuing negligence doctrine is inappropriate in this case.” *Packgen*, 2019 ME 90, ¶ 33.

Here, Faherty provided the allegedly negligent advice to Patricia in 2006 when the Bank redeemed its stock for cash. Appellant’s cause of action accrued as of that date, *i.e.*, in 2006. As with the law firm’s alleged failure to correct the deficient notice of claim in *Packgen*, Faherty’s alleged failure to correct her initial investment advice or provide different advice later did not somehow extend the statute of limitations. If Appellant’s theory was correct, then every plaintiff in every negligence case could assert that the statute of limitations resets every day that a defendant fails to correct the act that caused the plaintiff harm. Such a theory is antithetical to the purpose of statutes of limitations and must be rejected. *Packgen, Inc.*, 2019 ME 90, ¶ 20 (“In general, a statute of limitations ‘should be construed strictly in favor of the bar which it was intended to create.’”) (quoting *Harkness v. Fitzgerald*, 1997 ME 207, ¶ 5, 701 A.2d 370).

This Court should affirm the Superior Court’s ruling that Appellant’s claims against the Financial Defendants are barred by the statute of limitations.

II. Even if this Court were to find that Appellant’s claims against one or more Financial Defendants were timely filed, the Superior Court’s decision should be affirmed on alternate grounds.

The Superior Court properly dismissed Appellant’s claims against the Financial Defendants on statute of limitations grounds and did not reach the other defenses the

Financial Defendants raised below. In the event this Court finds that Appellant's claims were timely filed (they were not), the claims nonetheless fail as matter of law for additional, independent reasons. *See Bouchard v. Frost*, 2004 ME 9, ¶ 8, 840 A.2d 109 (recognizing that this Court may "affirm a judgment on rationale different than that relied upon by the [Superior] Court.").

As an initial matter, Appellant's claims rest on factual issues that this Court already resolved against him in the *Connary I* and *II* decisions.

Further, to assert a professional negligence claim against the Financial Defendants, Appellant "must prove by a preponderance of the evidence that the defendant breached a 'duty owed to the plaintiff to conform to a certain standard of conduct,' and that 'the breach of that duty proximately caused an injury or loss to the plaintiff.'" *Garland v. Roy*, 2009 ME 86, ¶ 19, 976 A.2d 940 (quoting *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 10, 742 A.2d 933). As explained below, the Financial Defendants did not owe a duty of care to non-client Appellant based on his status as beneficiary to Patricia's trust. Further, the Financial Defendants did not cause Appellant's alleged injury—it was the Bank's redemption of the at-issue stock that caused Appellant's gift to adeem; there is nothing Faherty or her employers could have done to maintain that gift.

A. Appellant's claims against the Financial Defendants are barred by collateral estoppel.

This entire litigation is premised on Appellant's assertion that he has some entitlement to the proceeds resulting from the Bank stock redemption. Moreover, the theory behind the claims against the Financial Defendants is that Faherty failed to advise Patricia "to reinvest the proceeds received from the involuntary recall of Siwooganock Bank stock into a similar stock investment," and that such failure "caused [the] specific gift to be adeemed." A.220-21.

But this Court previously made two significant rulings against Appellant in the *Connary v. Shea* litigation that foreclose Appellant's arguments in this related case. Specifically, the Court previously ruled that: (1) Appellant's gift of stock was a specific gift and Appellant had no right to the cash proceeds arising from the Bank's redemption of that stock; and (2) Siwooganock Bank's redemption of the stock is the event that caused Appellant's gift to fail. Appellant may not re-litigate these issues in this appeal.

"Collateral estoppel, or issue preclusion, 'prevents the relitigation of factual issues already decided if the identical issue was determined by a prior final judgment, and the party estopped had a fair opportunity and incentive to litigate the issue in a prior proceeding.'" *Godsoe v. Godsoe*, 2010 ME 42, ¶ 18, 995 A.2d 232 (quoting *Portland Co. v. City of Portland*, 2009 ME 98, ¶ 18, 979 A.2d 1279); see *Button v. Peoples Heritage Sav. Bank*, 666 A.2d 120, 122 (Me. 1995). "[T]he purpose of collateral estoppel is to prevent harassing and repetitious litigation, to avoid inconsistent holdings which lead to further

litigation, and to give sanctity and finality to judgments.” *Van Houten v. Harco Const., Inc.*, 655 A.2d 331, 333 (Me. 1995).

Even though the Financial Defendants were not parties to the *Connary v. Shea* litigation, they may still assert collateral estoppel as a defense. “A party to a current proceeding may assert collateral estoppel defensively to bar the opposing party from relitigating factual issues resolved against it in a prior proceeding and which were decided by a prior final judgment, even though the party asserting collateral estoppel was not a party to the prior proceeding.” *Godsoe*, 2010 ME 42, ¶ 19. “A party may be collaterally estopped from relitigating a factual issue even if the two proceedings offer substantially different remedies or the second proceeding is based on a different claim than the first.” *Id.*; *Button*, 666 A.2d at 122.

1. In *Connary I* and *II*, this Court ruled that Appellant did not have a right to the proceeds arising from the Bank’s redemption of stock.

In the prior litigation against the successor trustee, Appellant asserted that he was entitled to the proceeds from the involuntary Bank stock redemption. *Connary I*, 2021 ME 44, ¶ 8. The Superior Court granted summary judgment for the defendants, “concluding that the Trust makes ‘clear and plain’ that the settlors intended a *specific* devise of the Bank stock, which adeemed in 2006 following its recall and redemption by the Bank” *Id.* ¶ 9.

On appeal, this Court agreed and concluded that the Trust instrument “reflects a ‘plain and clear’ intent by William and Patricia to create a specific gift of the Bank

stock[.]” *Id.* ¶¶ 13-18. As a result, this Court upheld the trial court’s judgment that the Appellant had no entitlement to the proceeds from the involuntary redemption of stock. *Id.* ¶ 25. Three years later, this Court also affirmed the trial court’s determination that the Trust instrument could not be reformed to provide Appellant with an entitlement to such proceeds. *Connary II*, 2024 ME 57, ¶¶ 8, 23.

These rulings preclude Appellant’s claims here. Appellant alleges that Faherty’s actions constituted professional negligence that affected his right to the cash proceeds from the Bank stock sale. A.36 (Compl. ¶ 102) But this Court has already ruled—twice—that Appellant has no right to the proceeds resulting from the Bank’s involuntary stock redemption. Because this Court has already determined that Appellant has no entitlement to the stock sale proceeds, Faherty did not breach any alleged duty to Appellant⁵ by failing to take action to segregate or otherwise preserve those proceeds for his benefit. Collateral estoppel prevents Appellant from relitigating that issue here.

2. In *Connary I*, this Court ruled that the Bank caused the ademption of Appellant’s gift when it recalled the stock.

Similarly, this Court has already analyzed the question of whether “the stock was adeemed by the 2006 redemption.” *Connary I*, 2021 ME 44, ¶ 12; *see id.* ¶¶ 19-25 (analyzing ademption issue). On that issue, the trial court ruled that Appellant’s gift of

⁵ As further explained below, not only did the Financial Defendants not breach any duty, they did not owe non-client Appellant a duty of care in the first place.

bank stock “adeemed in 2006 following its recall and redemption by the Bank.” *Id.* ¶ 9. On appeal, this Court affirmed and ruled that “[b]ecause no shares of the Bank stock remained in the Trust at the time of Patricia’s death, the trial court correctly concluded that the Bank stock had adeemed.” *Id.* ¶ 25.

Because this Court has already determined that Appellant’s gift adeemed when the Bank redeemed its stock, Appellant cannot now argue that it was Faherty or her employers that caused his gift to fail at some point after the stock redemption. Appellant’s theory is again directly at odds with this Court’s prior rulings against him and must be rejected.

B. Financial Defendants did not owe Appellant a duty of care.

Even if this Court had not previously made rulings that preclude Appellant’s theory of the case, his claims against the Financial Defendants still fail as matter of law. To prevail on a claim of professional negligence against the Financial Defendants, Appellant has to establish that Faherty—Patricia’s financial advisor—owed Appellant a duty of care. *Garland*, 2009 ME 86, ¶ 19.

This Court has not previously analyzed the scope of duties owed by financial advisors to beneficiaries of trusts or estates. As a general matter, “a financial advisor’s duty of care arises from a contractual relationship.” *Hanna v. Williams*, No. 1684-cv-0722-BLS1, 2017 WL 2292756, at *8 (Mass. Super. Ct. Jan. 9, 2017). The Complaint does not allege any contract, representation, or even a communication between Appellant and Faherty (or any of the other Financial Defendants). Indeed, the

Complaint alleges that “Faherty was Patricia Shea’s investment advisor,” not Appellant’s. A.28, 45 (Compl. ¶ 38; Am. Compl. ¶ 39). In short, there is no client relationship between Appellant and any Financial Defendant, and thus no Financial Defendant owed Appellant a duty of care. *Hanna*, 2017 WL 2292756, at *8 (dismissing negligence claim brought by plaintiff heirs against financial advisor to testator).

In his briefing at the Superior Court, Appellant failed to cite a single case finding that a financial advisor owed a duty of care to a non-client. Instead, he pointed to *Estate of Cabatit v. Canders*, 2014 ME 133, 105 A.3d 439, involving the potential existence of an attorney’s duty of care to third parties. Appellant argued that *Canders* supports establishing a duty of care from Faherty—Patricia’s financial advisor—to Appellant based on his status as beneficiary of the Trust. A.224-25. That argument cannot save Appellant’s claims. To begin with, *Canders* does not apply to the Financial Defendants; that case is limited to attorneys and says nothing about the duties of financial advisors. But even if *Canders* applies, it does not impose any duty for Faherty or her employers to have acted in the best interest of Appellant.

1. If applicable, the *Canders* multifactor third-party beneficiary test weighs against any finding that Faherty owed a duty to Appellant.

In *Canders*, this Court “reiterate[d] that the general rule is that an attorney owes a duty of care to only his or her client.” *Canders*, 2014 ME 133, ¶ 21. The Court then observed that there may be “limited and rare situations” where an attorney’s actions “are intended to benefit a third party and where policy considerations support it,” in

which a court “may recognize a duty of care by that attorney to a limited class of nonclients.” *Id.* In order to help identify those rare situations in which an attorney may owe a duty to a third party, the Court adopted a “multifactor third-party beneficiary test.” *Id.* ¶¶ 19-22.

In analyzing the duties that an attorney owes to third-party beneficiaries, the Court balances six factors: “(1) the extent to which the transaction was intended to benefit the plaintiff; (2) the foreseeability of harm to the plaintiff; (3) the degree of certainty that the plaintiff suffered injury; (4) the closeness of the connection between the defendant's conduct and the injury; (5) the policy of preventing future harm; and (6) the extent to which the profession would be unduly burdened by a finding of liability.” *Canders*, 2014 ME 133, ¶¶ 19-20; *Jensen v. Wayne Crandall, Esq.*, No. CV-96-696, 1997 WL 34981765, at *4 (Me. Super. Ct. Mar. 4, 1997). “[T]he extent to which the transaction was intended to benefit the plaintiff is the threshold—and potentially dispositive—inquiry. Only if some minimum benefit to the plaintiff was intended will the court go on to consider the other factors in the test.” *Canders*, 2014 ME 133, ¶ 19 (internal quotation marks and citations omitted).

The Financial Defendants were unable to identify a single decision applying the limited *Canders* exception to find that an attorney or other professional owed a duty of care to a third party. In *Canders*, this Court held that this “unusual” exception to the general rule did not apply to create a duty to the non-client in that case (a successor personal representative of the estate). *Id.* ¶¶ 22-23. Likewise, in *Jensen*, the Superior

Court declined to extend an attorney's duty of care to non-clients: "an attorney hired by a personal representative must focus on the duty to assist the personal representative in carrying out his or her duties. Therefore, his professional services are intended to benefit the personal representative and are not intended for the *benefit* of the beneficiaries." *Jensen*, 1997 WL 34981765, at *4 (Saufley, J.) (internal citations omitted).

Similarly, this case is not one of those "limited and rare situations." Appellant does not allege that Patricia retained Faherty for the purpose of benefitting him. In fact, the Complaint alleges that Patricia retained Faherty to act as *her own* investment advisor.⁶ There is no allegation that Faherty ever met Appellant or that Patricia ever instructed Faherty to act on Appellant's behalf as opposed to her own. Under *Canders*, a duty cannot arise to a non-client in such circumstances. Additionally, as discussed below, the imposition of such a duty would create untenable and unnavigable conflicts of interest.

2. A professional cannot owe duties to third-party beneficiaries where such duties would conflict with obligations to their own clients.

In *Canders*, this Court specifically held that "[a]n attorney will never owe a duty of care to a nonclient . . . if that duty would conflict with the attorney's obligations to his or her clients." 2014 ME 133, ¶ 21; *see also Savell v. Duddy*, 2016 ME 139, ¶ 30, 147 A.3d 1179 (same). The *Canders* decision raised concerns about the "potential for conflict

⁶ Page 11 of Appellant's brief implies that Faherty had some role in connection with the Trust, referring to "Faherty's role as manager of the Trust assets." However, the Complaint only alleges that Faherty acted as Patricia Shea's investment advisor. The Superior Court correctly noted that "Plaintiffs make no allegation that [Faherty or her employers] had any responsibility over the Shea Trust or at any time offered to manage the Shea Trust." A.17-18.

and divided loyalty . . . as to multiple beneficiaries” 2014 ME 133, ¶ 14 n. 6 (citing *Nevin v. Union Tr. Co.*, 1999 ME 47, ¶ 41, 726 A.2d 694).

Faherty could not have reasonably owed a duty to Patricia individually as well as to Appellant and the other beneficiaries of the Trust because there could be situations where it would be impossible for Faherty’s advice to benefit all parties. *See id.*; *Nevin*, 1999 ME 47, ¶ 41 (finding no duty to beneficiaries because “what is good for one beneficiary may not be good for another beneficiary or for the estate as a whole.”). If Appellant is correct, and Faherty owed a duty to the Trust beneficiaries, it would follow that she owed that duty not only to Appellant and his siblings/cousins, but also to the remainder beneficiaries (William’s children). Such a scenario would create unresolvable conflicts of interest, as any action Faherty took in favor of Appellant would necessarily prejudice the remainder beneficiaries and vice versa.⁷

Faherty did not owe any duty to Appellant, and the imposition of any such duty would create untenable, conflicting obligations on Faherty and other professionals in similar circumstances. *See Jensen*, 1997 WL 34981765, at *4 (declining to extend duty of care to non-client and stating, “[t]he harm that may be caused by requiring counsel to focus, not on his client’s needs, but on the needs of those who may be affected by his client’s actions would certainly ‘unduly burden’ the profession.”).

⁷ The potential for conflict among the various beneficiaries in this case is not hypothetical—Appellant previously sued the remainder beneficiaries (William’s children) over the terms of the Trust and their respective entitlements to Patricia’s assets, including investment assets. *See generally Connary I*; A.28 (Compl. ¶ 37).

3. The Financial Defendants had no duty to review the terms of the Trust.

Appellant separately alleges that Faherty had a duty to review and interpret the Trust document. *See* A.34-35 (Compl. ¶¶ 91, 95-97). Appellant is wrong. In fact, the Maine Uniform Trust Code establishes the opposite. Section 1012 of the Trust Code explicitly states that third parties assisting the trustee (here, Faherty) are not required to investigate the scope of the trustee's powers over trust property (by reviewing the trust documents, for example): "A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise." 18-B M.R.S § 1012(2).

The Trust Code also protects third parties assisting a trustee from liability where the third-party lacks knowledge that the trustee is exceeding or improperly exercising the trustee's powers. *See id.* § 1012(1) ("A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised those power.").

Because the Financial Defendants owed no duty of care to Appellant, and also had no duty to investigate the terms of the Trust, Appellant's professional negligence claim (Count III) fails as a matter of law.

C. Count III also fails because the Financial Defendants did not cause Appellant's alleged harm.

Finally, Appellant's claims also fail because the Financial Defendants did not

cause Appellant's alleged harm. *Berry Huff McDonald Milligan, Inc. v. McCallum*, No. BCD-CV-12-01, 2013 WL 1845778, at *4 (Me. Bus. & Consumer Ct. Mar. 26, 2013) ("A claim for professional negligence requires the claimant to be injured by the acts of the defendant.")

Appellant suggests that it was Faherty's conduct that "resulted in the unintended ademption of Patricia Shea's original gift." A.35-36 (Compl. ¶ 97). However, it was the Bank's redemption of the stock alone that caused Appellant's alleged harm. *See Connary I*, 2021 ME 44, ¶ 25 (concluding that Appellant's gift adeemed because "no shares of the Bank stock remained in the Trust at the time of Patricia's death.").

Indeed, Appellant himself acknowledges that Patricia's sale of the bank stock in exchange for cash was "involuntary." A.26, 44 (Compl. ¶ 29; Am. Compl. ¶ 30) ("Siwooganock Bank recalled its stock in preparation for the sale of the bank. Stockholders were required to *involuntarily redeem* their shares for cash."); *see also Connary I*, 2021 ME 44, ¶ 7. It was thus Siwooganock Bank, and not any of the Financial Defendants, that caused the ademption of Appellant's gift when the Bank recalled the stock and exchanged it for cash. None of the Financial Defendants could have taken any action that would have prevented the ademption of Appellant's gift.

Appellant further alleges that Faherty "failed to replace the Siwooganock Shares with similar stock, thus maintaining the gift." A.35 (Compl. ¶ 97). This attempt to plead causation also fails. First, Faherty had no control over what assets Patricia received in exchange for the stock. As Appellant's own Complaint alleges at paragraph 42: "[W]hen

Siwooganock Bank recalled its stock, Patricia Shea was forced to transfer the shares involuntarily and received a cash payment.” A.28, 45.

Second, there is nothing Faherty could have done to “maintain[] the gift.” A.35 (Compl. ¶ 97). As this Court observed in *Connary I*, a specific devisee of stock is generally only entitled to “as much of the devised securities as is a part of the estate at the time of the testator’s death.” *Connary I*, 2021 ME 44, ¶ 25 (citing 18-A M.R.S. § 2-607(a)(1)).⁸ At the time of Patricia’s death, none of the Bank stock remained in the Trust, leading this Court to conclude that Appellant and his siblings/cousins were not entitled to anything. While acknowledging there were “certain circumstances” set forth in Maine statutes where beneficiaries may be entitled to different securities in lieu of what was specified in trust documents, this Court expressly noted that none of those circumstances applied: “[N]one of those circumstances exists here because in 2006, Patricia received cash in exchange for her stock, and paragraph 2 [of 18-A M.R.S. § 2-607(a)] applies only to stock splits, while paragraph 3 relates to mergers and paragraph 4 applies to reinvestment plans.” *Id.* In other words, the “certain circumstances” where beneficiaries might be entitled to replacement securities only apply when the stock is exchanged for other stock (and not transactions where stock is exchanged for cash, and then the cash is used to buy different stock).

Thus, even if Faherty had “replace[d] the Siwooganock Shares with similar stock”

⁸ This Court held that the now repealed Title 18-A applied to the Trust instrument because Patricia died before the current Title 18-C was enacted. *Connary I*, ¶ 24.

by using the cash proceeds from the redemption, that would not have prevented the ademption of Appellant's gift. Siwooganock Bank alone caused the ademption of Appellant's gift when it made the unilateral decision to redeem its stock and exchange it for cash.

In sum, the Financial Defendants did not cause any harm to Appellant. The Bank recalled the stock and exchanged it for cash. Once that happened, the Appellant's gift adeemed. There is nothing Faherty or her employers could have done, either in 2006 or any time thereafter, to prevent the ademption of Appellant's gift.

CONCLUSION

For the foregoing reasons, this Court should affirm.

Dated: July 31, 2026

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CERTIFICATE OF SERVICE

I, Cameron R. Goodwin, hereby certify that an electronic copy of this Brief of Appellant was served upon counsel at the address set forth below by email on the date of filing and a hard copy will be served by first class mail, postage-prepaid, once the clerk has accepted the format pursuant to M.R. App. P. 7(c)(4).

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