

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

Sep 22 2022

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
CARMEN T. MULLEN, CIRCUIT COURT JUDGE

Appellate Case No. 2021-001337  
(Erroneously assigned Appellate Case Nos. 2021-000159<sup>1</sup> and 2022-000784)  
Trial Court Case Nos. 2016-CP-07-01919, 2019-CP-07-01253 and 2019-CP-07-01294  
most recently ruled on by the Court of Appeals in  
Court of Appeals Order Filed August 24, 2022 bearing Appellate Case No. 2022-000784

*In re:* IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton Barringer Luzak, .....Petitioner,

v.

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate  
of Paul Brandon Barringer II, J. Randolph Light Jr., Merrill B. Light as  
Putative Trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998,  
and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable  
Trust, ..... Defendants.

Of whom

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate  
Of Paul Brandon Barringer II, Merrill B. Light as Putative  
Trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998,  
And Merrill B. Light as Trustee of the Merrill Barringer Light Revocable  
Trust, are ..... Respondents,

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<sup>1</sup> The Court of Appeals’ order dated August 23, 2022 erroneously cited Appellate Case No. 2021-000159. That appellate case number was concluded by this Court’s order dated April 29, 2022 in Appellate Case No. 2021-001022, which denied Ms. Luzak’s Petition for Certiorari to review the Court of Appeals’ dismissal of Appellate Case No. 2021-000159. Nothing remains pending to Ms. Luzak’s knowledge in Appellate Case No. 2021-000159, identified by this Court’s assignment of Appellate Case No. 2021-001022. This Court’s Appellate Case No. 2021-001022 is included here only because of the erroneous referral to it in the Court of Appeals’ order dated August 23, 2022. The Court of Appeals issued another order the following day, August 24, 2022, bearing Appellate Case No. 2022-000784, which case number was erroneously assigned by the Court of Appeals to the Supplemental Notice of Appeal filed by Ms. Luzak in Appellate Case No. 2021-001337 on May 31, 2022. This Petition for Writ of Certiorari addresses only the Court of Appeals’ order dated August 24, 2022 which bore Appellate Case No. 2022-000784 but which was filed by Ms. Luzak as a Supplemental Notice of Appeal in Appellate Case No. 2021-001337. Appellate Case No. 2021-001337 remains pending at the Court of Appeals.

--and--

Hampton B. Luzak, ..... Petitioner,

v.

Merrill U. Barringer, ..... Respondent.

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**PETITION FOR WRIT OF CERTIORARI**  
**In re: Court of Appeals Order filed August 24, 2022**  
**Erroneously assigned Appellate Case Nos. 2021-000159 and 2022-000784**

**and**

**PETITION TO CERTIFY AND CONSOLIDATE APPELLATE CASE 2021-001337**

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**SUMMARY OF APPELLATE HISTORY**

This Petition follows three separate appeals emanating from one complex case in which Hampton Luzak (hereafter Ms. Luzak), through multiple causes of action, contends that wills, trusts, and inter vivos transfers purportedly executed by her father, Paul B. Barringer (hereafter “decedent”), are invalid for numerous reasons.

**FIRST APPEAL**  
**(Appellate Case No. 2021-000159)**

The first appeal was of a bifurcation order issued by Judge Mullen on December 30, 2020. That order of Judge Mullen ruled upon Defendant Merrill U. Barringer’s Motion to Bifurcate, which asserted that two of the numerous, previously consolidated causes of action — the two involving the validity and scope of her purported power of appointment over the decedent’s assets — could be tried separately and quickly, while the remaining causes of action

would involve a second trial lasting weeks.<sup>2</sup> The effect of Judge Mullen’s bifurcation order was that no other portion of the multiple consolidated cases could proceed until the two causes of action that were bifurcated were tried and finally determined. Judge Mullen’s order effectively required at least two (2) trials on related issues.

Ms. Luzak opposed the bifurcation, arguing that the equitable power of appointment issues (the ones which were bifurcated) were inextricably connected to the legal issues involving the validity of the wills and trusts and could not be tried separately or first. Ms. Luzak appealed Judge Mullen’s order granting the bifurcation; that appeal was assigned Appellate Case No. 2021-000159. That first stand-alone appeal eventually came before this Court which, in one of its two orders issued on April 29, 2022, agreed with the Court of Appeals that the appeal of the bifurcation order, standing alone, was interlocutory, and upheld the Court of Appeals’ dismissal of the appeal as being interlocutory.<sup>3</sup>

**SECOND APPEAL**  
**(Appellate Case No. 2021-000837)**

While the first appeal was pending, Defendant Merrill Light and the corporation she controlled sought and obtained final orders from Judge Price emanating from a hearing held on May 27, 2021. Judge Price issued some of the final orders on June 7, 2021 and a separate final order on July 6, 2021, determining that a will and trust purportedly executed on February 28, 2012 were valid. Ms. Luzak appealed those final orders in her second appeal —the “Price

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<sup>2</sup> Ms. Luzak disputed that argument, pointing out that bifurcation of the two causes of action and requiring them to be tried “first and prior to” all other causes of action would create confusion because all causes of action were related.

<sup>3</sup> Judge Mullen had designated the cases as complex and assigned them to herself. However, due to the addition of a new lawyer to Ms. Luzak’s team, Judge Mullen recused herself. Certain discrete matters in the case were later heard by Circuit Court Judge Bentley Price, which led to the second appeal, and then to Circuit Court Judge Robert Bonds, which led to the third appeal.

appeal. ” Ms. Luzak also appealed the Mullen bifurcation order, which was proper pursuant to S.C. §14-3-330(1) because of the possibility that this Court would (and eventually did) conclude that the standalone appeal in Appellate Case No. 2021-000159 was interlocutory. The second appeal was captioned as Appellate Case No. 2021-000837.

**THIRD APPEAL**  
**(Appellate Case No. 2021-001337)**

Respondent Merrill U. Barringer then sought and obtained a summary judgment from Judge Bonds on the two power of appointment causes of action. Judge Bonds issued that order on August 20, 2021 and denied Ms. Luzak’s motion for rehearing on October 8, 2021. Ms. Luzak appealed that order in her third appeal — the “Bonds appeal”. The third appeal was assigned Appellate Case No. 2021-001337.

**APPELLATE ORDERS**

In one of two orders issued on April 29, 2022, this Court certified the appellate case numbered 2021-000837—the second appeal — and vacated trial court orders, which this Court indicated rendered the second appeal moot. All parties were uncertain about the scope and meaning of that order and sought clarification through a petition for rehearing and a motion to alter or amend. That April 29, 2022 order was further explained in this Court’s order dated September 14, 2022.

Being uncertain about the impact and meaning of this Court’s April 29, 2022 order involving the second appeal,<sup>4</sup> Ms. Luzak added her appeal of the bifurcation order to the third appeal —the Bonds appeal —pursuant to S.C. Code Ann. §14-3-330(1), by the filing of a

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<sup>4</sup> If this Court’s April 29, 2022 order vacated all of the underlying summary and final judgments and dismissed the appeal, Ms. Luzak would have lost the pendant appeals of final orders that made her related appeal of the bifurcation order ripe for determination in accordance with S.C. Ann. §14-3-330(1).

supplemental notice of appeal to the only appeal then pending before the Court of Appeals, Appellate Case No. 2021-000837.<sup>5</sup> The Court of Appeals dismissed Ms. Luzak's supplemental notice of appeal as untimely and denied her petition for rehearing.<sup>6</sup> That order is the one for which this Petition for Certiorari is being brought. This Petition addresses only the Supplemental Notice of Appeal in Appellate Case No. 2021-001337 which has been dismissed by the Court of Appeals. Ms. Luzak asserts that the Court of Appeals did not recognize that the appeal from the bifurcation order had been pending on appeal since the timely filing of the first notice of appeal (Appellate Case No. 2021-000159) and continued pending after filing of the second notice of appeal (Appellate Case No. 2021-000837). The Court of Appeals erroneously treated the Supplemental Notice of Appeal in Appellate Case No. 2021-000837 as a new appeal, when the order to which the Supplemental Notice of Appeal had been before the Court of Appeals since the filing of the first appeal, Appellate Case No. 2021-000159.

After the Court of Appeals denied Ms. Luzak's petition for rehearing regarding the supplemental notice of appeal in the third appeal, Appellate Case No. 2021-001337—the Bonds appeal—this Court issued its September 14, 2022 order responding to the parties' petition for rehearing and motion to alter or amend its order of April 29, 2022. In the April 29, 2022 order, this Court stated that both the power of appointment summary judgment—the subject of the third appeal—and the will and trust summary judgment—a subject of the second appeal—were vacated.

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<sup>5</sup> She did so to ensure that she would have attached her appeal of the bifurcation order to the appeal of a final order, which the power of appointment summary judgment was.

<sup>6</sup> The Court of Appeals issued orders denying Ms. Luzak's petition for rehearing on August 23, 2022 and August 24, 2022, using different case numbers, which further complicates the history of the case.

That presents a problem because this Court's order of September 14, 2022, which stated it was certifying Appellate Case No. 2021-000837, vacated an order that was not a part of Appellate Case No. 2021-000837. The order vacated by this Court on September 14, 2022 was not pending in Appellate Case 2021-000837- the appeal certified by this Court's order – but was pending in the third appeal (Appellate Case No. 2021-001337). However, this Court has not certified the third appeal.<sup>7</sup> That case remains pending in the Court of Appeals as Appellate Case No. 2021-001337, to which the Supplemental Notice of appeal was supposed to attach.

### **DETAILED CASE HISTORY**

This Petition relates to a trial court order issued by Circuit Court Judge Carmen Mullen on December 30, 2020,<sup>8</sup> and Judge Mullen's Form 4 order denying rehearing dated January 13, 2021 (collectively referred to hereafter as "the bifurcation order"). When the first notice of appeal of the bifurcation order was filed to the Court of Appeals on February 12, 2021, the Court of Appeals assigned Appellate Case No. 2021-000159 to the appeal.<sup>9</sup> The order of bifurcation

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<sup>7</sup> Moreover, this Court's order of September 14, 2022 vacates Judge Price's order of "July 7, 2021" when his order was issued on July 6, 2021.

<sup>8</sup> The orders on appeal arose from four cases, the first two of which were filed in 2016 by Mrs. Luzak against her sister Merrill B. Light, Merrill Light's husband Randolph Light, and Merrill U. Barringer in her capacity as personal representative of the estate of Paul B. Barringer in Case Nos. 2016-CP-07-1919 and 2016-CP-07-1961 (originating in probate court until its removal to circuit court and consolidated with Case No. 2016-CP-07-1919 by consent order dated May 19, 2017), and the third and fourth cases filed in 2019 in which Mrs. Luzak and her mother Merrill U. Barringer were the only parties. All four cases were consolidated for discovery and trial by consent order among all the parties dated December 3, 2019. By order dated December 30, 2020, Judge Mullen bifurcated from the consolidated cases the second and third causes of action in trial court case numbers 2019-CP-07-01253 and 2019-CP-07-01294 (originated in probate court as Case No. 2016-ES-07-00517 until its removal to circuit court) and ordered that those two causes of action be tried in a separate trial which "shall proceed first and prior to any separate and subsequent trial(s) of the remaining causes of action" in Case Nos. 2016-CP-07-1919, 2016-CP-07-1961, 2019-CP-07-01253 and 2019-CP-07-01294.

<sup>9</sup> No appellate briefs, initial or final, were ever filed in Appellate Case No. 2021-000159. The Court of Appeals initiated inquiries regarding the appealability of the bifurcation order standing alone by letter to the parties on February 22, 2021, and all parties responded. The Court of Appeals dismissed the appeal by order dated May 4, 2021. Mrs. Luzak filed a Petition for Rehearing in Appellate Case No. 2021-000159 on May 19, 2021, and that petition for reconsideration remained pending until order dated August 19, 2021, in which the Court of Appeals denied rehearing. The Petition for Writ of Certiorari in Appellate Case 2021-000159 was assigned Appellate Case No. 2021-001022 by this Court. That Petition for Writ of Certiorari was denied on April 29, 2022, the same date

remained on appeal to the Court of Appeals in Appellate Case No. 2021-000837 (the second appeal). However, when certifying and finally concluding Appellate Case No. 2021-000837, this Court did not address the bifurcation order. As a result, the bifurcation order is now before this Court for a second time in a second Petition for Writ of Certiorari, seeking review of an erroneous order from the Court of Appeals issued on August 24, 2022.<sup>10</sup> This Petition is necessary because the Court of Appeals erroneously treated the Supplemental Notice of Appeal in Case NO. 2021-001337 as a new appeal, despite it bearing the Appellate Case Number of the already existing (and only) appeal before the Court of Appeals.

The first appeal, which was only from Judge Mullen's order of bifurcation, assigned Appellate Case No. 2021-000159, remained pending before the Court of Appeals until an order denying rehearing was issued by a panel of that Court on August 19, 2021.

In response to the Court of Appeals' order denying rehearing from the appeal of Judge Mullen's bifurcation order, Ms. Luzak filed a Petition for Writ of Certiorari to this Court, which was assigned Appellate Case No. 2021-001022 (originally Appellate Case No. 2021-000159). Respondents filed a motion to dismiss the Petition for Writ of Certiorari. By order issued April 29, 2022, this Court denied the Petition for Writ of Certiorari and also denied the motion to dismiss as moot. Thus, Judge Mullen's order of bifurcation remained in the appellate courts under Case No. 2021-000159 until the remittitur was issued by the Court of Appeals on April 29, 2022 following this Court's order denying the petition for writ of certiorari on April 29, 2022.

In the interim, in August 2021, Ms. Luzak timely filed an appeal of multiple final orders issued by Judge Price and appealed for the second time an appeal of the December 30, 2020

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this Court certified the appeal in Appellate Case No. 2021-000837 and issued its initial order which was served on the parties on May 11, 2022.

<sup>10</sup> See footnotes 5 and 6, *supra*.

order of bifurcation issued by Judge Mullen. This time, in Appellate Case No. 2021-000837, the bifurcation order was reviewable because it was appealed with other final orders. S.C. Code Ann. § 14-3-330(1). In addition to Judge Mullen’s order, the final orders appealed in the second appeal were issued by Judge Price in orders filed on June 7, 2021 and July 6, 2021. The original appeal, 2021-000159, was an appeal only of the order of bifurcation, and the proceedings in the Court of Appeals in Appellate Case 2021-000159 were challenging whether the order of bifurcation, standing alone, was immediately appealable. In order to cure the potential interlocutory nature of the bifurcation order that may have (and eventually did) prevent Appellate Case No. 2021-000159 from moving forward as a stand-alone appeal, Ms. Luzak included in the second appeal filed on August 5, 2021 a second appeal of the order of bifurcation dated December 30, 2020. The Court of Appeals assigned Appellate Case No. 2021-000837 to the second appeal.

The second appeal of the order of bifurcation in Appellate Case No. 2021-000837 cured any inability of the Court of Appeals to address the order of bifurcation standing alone — *i.e.*, in Appellate Case No. 2021-000159 — since the appeal of the bifurcation order became immediately appealable and ripe for adjudication when it was joined with appeals of final orders in the second appeal. S.C. Code Ann. §14-3-330(1) (“if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.”).

In her third appeal, Ms. Luzak appealed the issuance of a summary judgment order issued by Judge Bonds on August 20, 2021 and his denial of her motion for reconsideration filed

October 8, 2021 (the power of appointment order). The third appeal was Appellate Case No. 2021-001337 (assigned Appellate Case No. 2022-000784 in this Court).<sup>11</sup>

The second appeal, Appellate Case No. 2021-000837, was in the process of being fully briefed (all initial briefs had been filed, including arguments related to the appeal from the order of bifurcation), but the Record on Appeal had not yet been filed when this Honorable Court certified Appellate Case No. 2021-000837 and issued a ruling on the case dated April 29, 2022. . This Court's order appeared to vacate at least a grant of summary judgment to Merrill U. Barringer which had been granted while Appellate Case No. 2021-00159 was pending, concluding that the pendency of the appeal in Appellate Case No. 2021-00159 precluded entry of summary judgment by Judge Price during the appeal.

On September 14, 2022, this Court issued an order explaining its order of April 29, 2022. The September 14, 2022 Order explained that this Court, in its April 29, 2022 order, was (1) vacating Judge Price's summary judgment order finding a February 28, 2012 will and a trust to be valid and (2) vacating Judge Bonds' order granting Merrill U. Barringer summary judgment on the two power of appointment issues, because the circuit court lacked jurisdiction to issue both of those summary judgment orders while the bifurcation order was being appealed. Judge Price's will and trust summary judgment order was included among the orders appealed in Appellate Case No. 2021-000837, which this Court had certified. Judge Bonds' power of appointment summary judgment order was being appealed in Appellate Case No. 2021-001337, which was not expressly certified by this Court.<sup>12</sup>

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<sup>11</sup> The reason that several appeals were required is because the defendants sought and obtained summary judgments and other orders at different times.

<sup>12</sup> Ms. Luzak will file a petition for rehearing on the September 14, 2022, order of this Court seeking *inter alia* to have this Court certify Appellate Case No. 2021-001337, which she believes is technically required for this Court to

The orders on appeal in Appellate Case No. 2021-000837 were:

1. Judge Price's Order Granting CFRC's Motion for Intervention and Protective Relief issue on June 7, 2021;
2. Judge Price's Order on Motions issued July 13, 2021, which denied Ms. Luzak's Motion to Recuse the then-presiding Circuit Court Judge Bentley Price,<sup>13</sup> and "four motions to reconsider filed by Plaintiff [Ms. Luzak] on June 17, 2021;
3. Judge Price's Order Granting Summary Judgment to Merrill Light (not Merrill Barringer) finding that the now-deceased Paul Barringer "as a matter of law . . . had testamentary capacity, was not subject to undue influence and was not mistaken when he executed the February 2012 Testamentary Documents, and that the February 2012 Testamentary Documents are valid"<sup>14</sup> which order was dated July 6, 2021 (the will and trust Order).
4. Judge Price's Order Denying Plaintiff's Motion to Reconsider and Amend Order Granting Defendant Merrill Light's Summary Judgment as to the February 2012 will and First Amendment to the Paul B. Barringer, II Revocable trust filed August 4, 2021.
5. Judge Mullen's Order granting bifurcation issued December 30, 2022 (which was no longer interlocutory because it was joined with final orders on appeal).

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have vacated Judge Bonds' power of appointment summary judgment order, which it did in its order dated April 29, 2022.

<sup>13</sup> Mrs. Luzak did not appeal Judge Price's order denying recusal.

<sup>14</sup> Among the many problems with the order finding the February 2012 testamentary documents to be valid was that the ruling was on summary judgment, but Judge Price's order contained 15 pages of "findings of fact" which are necessarily a part of an order granting summary judgment, when there is no genuine issue of material fact.

All counsel were confused by this Court's order dated April 29, 2022 which seems to have vacated an order that was not on appeal in Appellate Case No. 2021-000837 and perhaps did not address any of the orders that were on appeal in Appellate Case No. 2021-000837.<sup>15</sup> On May 10, 2022, counsel for all parties jointly requested an extension of time to respond to the April 29, 2022 order. This Court granted the extension of time on May 11, 2022, and amended its grant of an extension on May 12, 2022.<sup>16</sup>

Until this Court issued its Order dated September 14, 2022, attempting to clarify its order of April 29, 2022, the parties were uncertain whether this Court intended in its April 29, 2022 Order to certify an appeal in which an order granting summary judgment to Merrill B. Light was on appeal as well as the bifurcation order in Appellate Case No. 2021-000837 or whether this Court meant to certify Appellate Case No. 2021-001337 (the third appeal), which appeal was filed by Ms. Luzak on November 8, 2021, appealing Judge Bonds' single order granting summary judgment to Merrill U. Barringer.

On April 29, 2022, when this Court certified the appeal in Appellate Case No. 2021-000837, the other pending appeal, Appellate Case No. 2021-000837 (which was of an order granting summary judgment to Merrill U. Barringer) also had progressed only to the initial briefing stage, with no Record on Appeal having been filed. Perhaps this Court intended to

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<sup>15</sup> Among Mrs. Luzak's concerns was that this Court's order dated April 29, 2022 disposed of the entire appeal in Appellate Case No. 2021-000837 without addressing her appeal of the December 30, 2020 order of bifurcation issued by Judge Mullen, which was properly before the Court of Appeals when this Court certified Appellate Case No. 2021-000837 for decision by this Court. This Court's order dated April 29, 2022 vacated an order which was not on appeal in that case, but this Court's order indicated that the entire appeal in Appellate Case No. 2021-000837 was fully and finally disposed of (even though not all of the orders on appeal were specifically addressed in the Court's April 29, 2022 order certifying Appellate Case No. 2021-000837).

<sup>16</sup> In response to this Court's order dated April 29, 2022 in Appellate Case No. 2021-000837, Respondents Merrill Barringer, Merrill Light and Coastal Forest Resources Company (CFRC) filed petitions for rehearing on May 26, 2022; Ms. Luzak filed a Motion to Alter or Amend on May 26, 2022, and returns and replies were thereafter filed by various parties. This Court issued an order on the various motions/petitions on September 14, 2022. This Petition for Writ of Certiorari does not address the September 14, 2022 order, but addresses only the Court of Appeals order of August 24, 2022 in Appellate Case No. 2021-001337.

certify both Appellate Case No. 2021-000837 and 2021-001337, but its Order of April 29, 2022 and its clarifying Order of September 14, 2022 clearly only certified Appellate Case No. 2021-000837. In the September 14, 2022 clarifying Order, this Court stated that it was vacating both Judge Price's will and trust Order (appealed in Appellate Case No. 2021-000837) and Judge Bonds' power of appointment order (appealed in Appellate Case No. 2021-001337). While Ms. Luzak agrees that both orders should be vacated, Judge Bonds' power of appointment order is being appealed under Appellate Case No. 2021-001337, which has not yet been certified by this Court. Thus, this Court, in its September 14, 2022 Order clarifying its April 29, 2022 Order, vacated a case being appealed in an appellate case (Appellate Case No. 2021-001337) that this Court has not yet certified.

In order to obtain appellate review of the order of bifurcation of December 30, 2020, which was briefed and should have been ruled on in Appellate Case No. 2021-000837, Ms. Luzak filed a Supplemental Notice of Appeal on June 1, 2022 in Appellate Case No. 2021-001337 (the only appeal which remained pending), seeking to add the appeal of the order of bifurcation to Appellate Case No. 2021-001337, as she was permitted to do by S.C. Code §14-3-330(1), and which she had already done in Appellate Case No. 2021-000837, where the issue had been fully briefed.

The Supplemental Notice of Appeal to the Court of Appeals clearly stated that the June 1, 2022 Notice of Appeal was a supplement to an existing appeal — *i.e.*, Appellate Case No. 2021-001337. Since this Court had not specifically addressed the order of bifurcation in its April 29, 2022 order which at that time appeared to conclude Appellate Case No. 2021-000837, Ms. Luzak's only avenue to assure appellate review of the order of bifurcation was to append her appeal of the December 30, 2020 bifurcation order to the remaining appeal in Appellate Case No

2021-001337, appealing the final order of summary judgment for two power of appointment causes of action in favor of Merrill U. Barringer. Ms. Luzak was put in this position because this Court's April 29, 2022 order, before being clarified by its September 14, 2022 Order, may have been read at that time to vacate all the orders in Appellate Case No. 2021-000837, thereby leaving Ms. Luzak's appeal of the bifurcation order with no appealed final judgment to which it could append in that appeal, pursuant to S.C. Code Ann. §14-3-330(1). To avoid being placed in a position of not having an appealed final order to append her appeal of the bifurcation order, Ms. Luzak sought to append her duly filed appeal of the bifurcation order to the appeal of Judge Bonds' power of appointment order in Appellate Case No. 2021-001337.

Instead of recognizing the Supplemental Notice of Appeal as an additional appeal in Appellate Case No. 2021-001337 (despite the Supplemental Notice of Appeal so designating) of an issue previously pending before the Court of Appeals in Appellate Case No. 2021-000837, the Court of Appeals erroneously treated the Supplemental Notice of Appeal as a new appeal, assigning it Appellate Case No. 2022-000784. Mistakenly believing this was a new appeal, the Court of Appeals issued an order on June 9, 2022, concluding that the Supplemental Notice of Appeal had not included "proof of timely service upon the respondents as required by Rule 203(b)(1) . . . ."

On June 10, 2022, Ms. Luzak filed a Petition to Reinstate the Supplemental Notice of Appeal (which had properly been labeled as Supplemental in connection with Appellate Case No. 2021-001337), properly pointing out that the trigger date for filing the Supplemental Notice of Appeal was May 11, 2022, when Ms. Luzak's counsel received this Court's order of April 29, 2022 via email from this Court. (Exhibit D to Petition to Reinstate, attached hereto and incorporated by reference). Because Ms. Luzak's counsel (and, on information and belief, any

other appellate counsel) was not served with the April 29, 2022 order certifying Appellate Case No. 2021-000837 until May 11, 2022, that date (May 11, 2022) was the trigger date for filing the Supplemental Notice of Appeal in Appellate Case No. 2021-001337 (erroneously labeled as Appellate Case 2022-000784).

The Court of Appeals erred in (1) treating the Supplemental Notice of Appeal as a new appeal; (2) finding the Supplemental Notice of Appeal was not timely served on Respondents; and (3) failing to supplement Appellate Case No. 2021-001337 with the Notice of Appeal filed on June 10, 2022.

**PETITION FOR CERTIFICATION OF APPELLATE CASE NO. 2021-1337**

Ms. Luzak respectfully requests this Supreme Court to certify Appellate Case No. 2021-001337 for several reasons, but primarily because this Court's September 14, 2022 Order attempts to vacate the order on appeal in Appellate Case No. 2021-001337 — *i.e.*, the order granting summary judgment to Merrill U. Barringer on the power of appointment issues—without certifying Appellate Case No. 2021-001337.

In addition, on September 14, 2022, this Supreme Court issued an order addressing the motions and petitions filed in response to this Supreme Court's order dated April 29, 2022 in Appellate Case No. 2021-000837. However, the September 14, 2022 order failed to address all issues raised in the motions and petitions which followed this Supreme Court's order dated April 29, 2022 in Appellate Case No. 2021-000837. Ms. Luzak will timely file a Petition for Rehearing pursuant to Rule 221, SCACR in response to this Court's order dated September 14, 2022, pointing out the unresolved issues from that appeal, including those discussed above.

It is respectfully asserted that this Court has already addressed some of the issues pending in Appellate Case No. 2021-001337, which remains pending at the Court of Appeals. It is further

respectfully asserted that this Supreme Court may have intended to certify Appellate Case No. 2021-001337 by its order dated April 29, 2022, when it certified Appellate Case No. 2021-000837 but addressed the order that was on appeal in Appellate Case No. 2021-001337.

Should this Court certify Appellate Case No. 2021-001337, it is respectfully asserted that it can address all issues on appeal at one time. If this Court certifies Appellate Case No. 2021-001337, it can validate its ruling that Judge Bonds' summary judgment order of August 20, 2021 is vacated since Appellate Case No. 2021-001337, which pertains to that circuit court order, is still before the Court of Appeals.<sup>17</sup> Consolidation of the appeals in Appellate Case Nos. 2021-000837 and -001337, after the completion and filing of the Record on appeal in Appellate Case No. 2021-000837, will provide a more complete picture for this Court to adjudicate the order of June 7, 2021 pertaining to CFRC's intervention motion and address the bifurcation order included in Appellate Case No. 2021-000837 pursuant to S.C. Code Ann. § 14-3-330(1).<sup>18</sup> It is necessary, in Ms. Luzak's opinion, that the Record on Appeal in Appellate Case No. 2021-000837 be completed and filed so this Court can have the benefit of the record below and address all issues on appeal in a single proceeding. That would necessarily require this Court to consider the merits of the issues raised in this Petition for Writ of Certiorari, which the Court of Appeals erroneously treated as a new appeal, when the issue related to the bifurcation order was already before this Court in Appellate Case No. 2021-000837.

Wherefore, Ms. Luzak moves this Court for an order:

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<sup>17</sup> While this Court's orders of April 29 and September 14, 2022 left standing other June 7, 2021 orders of Judge Price, this Court's aforesaid orders vacated Judge Price's will and trust Order of July 6, 2021 and perhaps Judge Bonds' summary judgment order of August 20, 2021. Those circuit court orders are, or should no longer be, before the appellate courts. Ms. Luzak agrees that those two orders were properly vacated.

<sup>18</sup> Respondents Merrill Barringer and Merrill Light have also asked this Court to certify all pending appeals among the parties for this Court to consolidate and decide on the merits. See Respondents' Pet. for Reh'g of May 26, 2022 at pp. 1, 6 (n.4) and 9.

- A. Certifying Appellate Case No. 2021-001337 and confirming that its April 29, 2022 and September 14 2022 Orders vacated Judge Bonds' power of appointment summary judgment order, which would conclude Appellate Case No. 2021-001337;
- B. If it does not confirm the vacation of Judge Bonds' power of appointment order, meaning that Appellate Case No. 2021-001337 remains viable, then (1) grant the Petition for Writ of Certiorari in Appellate Case Nos. 2021-000159 and 2022-000784, dispense with briefing, and issue an order consolidating the Supplemental Notice of Appeal with existing Appellate Case No. 2021-001337 (for the reasons stated in Ms. Luzak's Petition to Reinstate Appeal attached hereto as **Exhibit 1**); and (2) consolidate Appellate Case No. 2021-000837 and Appellate Case No. 2021-001337;
- C. Directing the filing of final briefs and the Records on Appeal in Appellate Case No. 2021-000837; and
- D. Such other and further relief as will assist this Honorable Court in addressing and ruling on all issues pending on appeal in Appellate Case No. 2021-000837 and Appellate Case No. 2021-001337, including the Supplemental Notice of Appeal.

Respectfully submitted,

BALLARD & WATSON

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