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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
BENTLEY PRICE, CIRCUIT COURT JUDGE

Appellate Case No. 2021-000837

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton B. Luzak, .....Appellant

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, ..... Respondents

--and--

Hampton B. Luzak, .....Appellant,

v.

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

Coastal Forest Resources Company ("CFRC").....Intervenor/Respondent.

**REPLY BRIEF OF APPELLANT TO INTERVENOR/RESPONDENT  
COASTAL FOREST RESOURCES COMPANY**

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## INTRODUCTION

The central dispute in this case has been from the beginning and throughout this litigation the wrongful transfer of the voting stock of decedent Paul Barringer in CFRC to his daughter, Merrill Light in September of 2012. Intervenor/Respondent Coastal Forest Resources Company (“CFRC”), which has never been a party to this case, has tried to falsely re-characterize this lawsuit as being about the removal of Hampton Luzak’s husband, Kevin Luzak as CEO of CFRC in order to make it appear that this action is a corporate litigation in order to bolster its assertion that Ms. Luzak’s claims are corporate derivative claims about the internal affairs of CFRC and therefore she supposedly lacks standing and subject matter jurisdiction to bring her claims. As can be seen from the records throughout this case, this litigation has been an intra-family dispute about the invalid and tortious transfer of stock to Ms. Luzak’s sister, Respondent Merrill Light, from their father Paul Barringer, that does not involve any claims of CFRC or affect its internal affairs.

CFRC seeks an unprecedented extension of the derivative claim doctrine by extending it to claims unrelated to the management of the corporation or its assets and never before recognized as derivative. CFRC asserts that the claims of Ms. Luzak as the victim of tortious conduct really belong to non-party CFRC despite the fact that the injury caused by that conspiracy and other tortious conduct was visited upon Ms. Luzak individually by defendants acting in their individual capacity. That position is untenable and its limits ill-defined. The damage was to Ms. Luzak, and any recovery for that damage belongs exclusively to her. Ms. Luzak thus properly brought her conspiracy cause of action against Merrill Light, her husband Randy Light, and their mother, Merrill Barringer and asserted proper claims for damages. In effect, a derivative claim is when a corporation refuses to assert a claim it has against someone,

so a shareholder is allowed to assert the claim derivatively. See Nathan Crystal, *The “Good Cause” Exception to Attorney Client Privilege in Derivative Litigation*, 26 Nov S.C. Law 12. CFRC has no claim in this case, so the derivative claim doctrine does not and cannot apply.

### **ARGUMENT**

In its Preliminary Statement CFRC states that no shareholder of CFRC has standing to sue its directors individually under the internal affairs theory. CFRC however fails to point out that Ms. Luzak did not sue CFRC’s directors over the loss of value in Ms. Luzak’s stock. Ms. Luzak’s lawsuit is not an action against CFRC directors in their capacity as directors at all. This can be seen from the fact that Ms. Luzak did not include as a Defendant in this lawsuit the CEO and board of director member Travis Bryant who was a member of the board of directors at the time of the stock transfer from Paul Barringer to Merrill Light on or about September 11, 2012. Moreover, Ms. Luzak did not name two other individuals, Robert Conger and Stephen Wannall, who were members of the board of directors at the time she filed her suit in August 2016. Even more significant is the fact that Ms. Luzak included as a Defendant in this case her mother, Merrill Barringer, in the conspiracy charge that CFRC claims is derivative even though Mrs. Barringer is not and has never been a shareholder, director, officer, or employee of CFRC. The conspiracy cause of action that CFRC alleges is a corporate derivative claim is the exact same conspiracy claim filed against Merrill Barringer. It is not a separate and distinct conspiracy. After Ms. Luzak filed her conspiracy claim against Ms. Barringer in 2019, Judge Mullen carefully reviewed and compared the conspiracy claims against Merrill Light and Randy Light in Ms. Luzak’s 2016 Complaint with the conspiracy claim against Ms. Barringer and stated: “I just wanted to see what was different. . . . and it’s really not. It’s the same thing.” (R. Vol. XI, p. 5001, ln. 23 – p. 5002, ln. 2).

CFRC began its mischaracterization of this suit by stating “Ms. Luzak’s derivative claims and damages stem from her husband Kevin Luzak’s removal as CFRC’s CEO.” (CFRC Br. p. 2). CFRC continues that mischaracterization theme by stating that Ms. Luzak seeks to recover damages for the reduction in the value of her stock “after CFRC’s board of directors terminated her husband, Kevin Luzak.” (CFRC Br. p. 17). This case, however, did not stem from the firing of Kevin Luzak as CFRC’s CEO by Paul Barringer at the instigation of Merrill Light. Rather, the damages in this case arise from the scheme of Merrill Light to improperly and tortiously effect the transfer of her father’s voting stock to her own revocable trust. The initial Complaint filed in August 2016 declared at the outset in paragraph 6, immediately after the identification of the parties, what this case was about by stating: “Respondent Merrill Light undertook a scheme to effect a transfer of Decedent Paul Barringer's voting stock in ...CFRC[ ] to a revocable trust under her control and for her benefit and of which she is the trustee.” (R. Vol. I, p. 145 ¶ 6).

After having presided over the case for three years, Judge Mullen made the same point about the threshold issue in the case, stating:

So I went back and reread the original complaint, the 2016 complaint, and I also now read this new complaint against Merrill Barringer. . . . I wanted to know what was going on. . . There’s two questions, and *it all comes around to the September 11, 2012, stock transfer. . . . I mean, that seems to be the entire case.* (R. Vol. XI, p. 5001, ln. 23 – p. 5002, ln. 6) (emphasis added).

Though the firing of Kevin Luzak was one of the events in the scheme of Merrill Light to obtain the voting stock of her father, the gravamen of this case is the September 11, 2012 stock transfer by gift to Merrill Light that otherwise would have flowed in part to Ms. Luzak by inheritance. CFRC references the September 11, 2012 stock transfer as “ostensibly *a* subject of this action.” (CFRC Br. p. 4) (emphasis added). The September 11, 2012 stock transfer is more than just a subplot in this case. It is the heart of this litigation as Judge Mullen recognized.

Moreover, after Kevin Luzak was fired on June 28, 2012 as CEO, Kevin Luzak never filed any legal action against CFRC for wrongful termination or anything else. Litigation among the parties did not arise until CFRC filed a declaratory judgment in the federal court for the Eastern District of Virginia (EDVA) on April 15, 2015 after Hampton Luzak requested information<sup>1</sup> about previously undisclosed stock transfers that forced CFRC in the process to release information about the purported September 11, 2012 voting stock transfer from Paul Barringer to Merrill Light. The September 11, 2012 stock transfer is the catalyst of this litigation, not the firing of Kevin Luzak by Merrill Light and the mentally weakened and unduly influenced Paul Barringer. The undue influence, incapacity, and mistake of Paul Barringer surrounding the September 2012 stock transfer are the threshold issues in this case.

This case at its core is a probate-related case, not a corporate law matter. A preliminary issue this Court needs to resolve to determine whether Ms. Luzak's claims are direct or derivative corporate matters is which jurisdiction's laws apply to the direct versus derivative claim question. CFRC asserted in its brief that the trial court applied Virginia law without objection from Ms. Luzak. (CFRC Br. p.19). Ms. Luzak has argued nothing but South Carolina law to the trial court in her Memorandum in Opposition to CFRC's Motion for Intervention and Motion to Reconsider.<sup>2</sup> Ms. Luzak's focus only on South Carolina law was proper. Unless foreign law is asserted in the pleadings, South Carolina law is presumed to apply. See S.C. Code Ann. §19-3-170. No party had asserted in their pleadings that Virginia law controlled. In addition, Ms. Luzak had already stated to the trial court on the issue of the res judicata effect of

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<sup>1</sup> CFRC criticized Ms. Luzak for "sending multiple letters challenging Mr. Luzak's ouster and the board's subsequent decisions." Ms. Luzak as CFRC's largest shareholder certainly has the right to send a letter to her company's board of directors. CFRC also claimed Ms. Luzak served nearly 100 shareholder inspection demands. (CFRC Br. p. 5). Beyond Ms. Luzak's letters to the board of July 6 and November 8, 2012, CFRC provides no evidence in the record of any of those letters or demands.

<sup>2</sup> The only reference Ms. Luzak made to any Virginia law was in response to CFRC's citing of the case of *Simmons v. Miller*, 261 Va. 561, 544 S.E.2d 666 (2001) to point out the case was inapplicable.

the EDVA rulings that “Plaintiff does not concede Defendants’ assertion that Virginia law controls the res judicata issue.” (R. Vol. II, p. 570, n.18; R. Vol. I, p. 46 ¶ 4).

In the case of *Pertuis v. Front Roe Restaurants, Inc.*, the South Carolina Supreme Court set up the framework for analyzing the choice of law involving corporate law issues, noting that “[t]he choice of law rule generally applied to corporate law issues is the internal affairs doctrine.” *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 649, 817 S.E.2d 273, 277 (2018). The Supreme Court then looked at the threshold issue before the court in that case – corporate amalgamation/veil piercing – to analyze whether it was more of “a question regarding the inner-workings of foreign corporations” or whether the application of South Carolina law was more appropriate to the issues before the court. *Id.* at 650, 817 S.E.2d at 278 (emphasis added).

The *Pertuis* court then assessed the factors impacting the relevant states and concluded “the application of South Carolina law is appropriate and that the internal affairs doctrine does not bar our review of this issue.” The court proceeded to review the threshold issue of corporate amalgamation/veil piercing under South Carolina law instead of North Carolina where two of the three subject corporations were incorporated. *Id.* at 651-55, 817 S.E.2d at 278-81.

In this case, the threshold issue is whether the individual defendants Merrill and Randy Light undertook a scheme, through fraud, breach of fiduciary duty, conversion, unjust enrichment, intentional interference with inheritance, and/or conspiracy, to effect a transfer of the voting stock of Paul Barringer, who on September 11, 2012 was suffering from incapacity, undue influence, and mistake, to Merrill Light’s revocable trust. These are quintessential state law issues. They do not involve the inner workings of foreign corporations at all.

A review of the factors that impact the relevant states points unmistakably to the application of South Carolina law. Of the five parties involved in this suit, four were South

Carolina residents or entity – Merrill Light, Randy Light, Merrill Barringer, and the estate of Paul Barringer. The fifth party involved, Ms. Luzak, owned a residence in this state during the relevant time period. Most importantly, the stock transfer took place in South Carolina. The transfer documents were drafted by a South Carolina attorney and witnessed by South Carolina residents. Most if not all the alleged improper and tortious conduct took place in South Carolina. The decedent’s estate that is at issue in this case is being probated in South Carolina.

The only factor concerning Virginia is that the corporation whose stock was transferred in South Carolina between South Carolina residents was incorporated in Virginia.

In Ms. Luzak’s brief she pointed out through case law and other legal sources that the transfer of stock between shareholders does not implicate the internal affairs doctrine. (Luzak Br. pp. 34-35). Tellingly, CFRC cited no case or other authority in its brief that contradicted that. South Carolina law applies to determine if Ms. Luzak’s claims are direct or derivative.

#### **I. Direct, Not Derivative**

The trial court erred in holding that Ms. Luzak’s conspiracy cause of action and elements 1, 2, 4, and 6 of Dr. Alford’s Damages Report were derivative claims. Applying South Carolina law to these issues requires the courts of this State to follow guidelines for making this determination as set down precisely by the Supreme Court in *Patterson v. Witter*, 425 S.C. 213, 821 S.E.2d 677 (2018). CFRC is wrong in its assertion that *Patterson* is not controlling law in this case. (CFRC Br. p.21 n.5).<sup>3</sup>

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<sup>3</sup> CFRC cited three South Carolina cases in footnote 5 in support of its derivative claim position, but all three cases are inapposite. In *Clearwater Trust v. Bunting*, the defendant shareholder/officer did not acquire for himself any of the stock at issue in the case or commit any tortious conduct to procure shares of the corporation, unlike Merrill Light. *Clearwater Tr. v. Bunting*, 367 S.C. 340, 347, 626 S.E.2d 334, 337 (2006). In *Brown v. Stewart*, this Court upheld the shareholder’s direct fraud and negligent misrepresentation claims against the defendant shareholders/officers individually but reversed a breach of fiduciary duty verdict stemming from a failure to consummate a proposed sale of the corporation to a third party that resulted in a general diminution in the value of the stock of all the shareholders. *Brown v. Stewart*, 348 S.C. 33, 50-51, 557 S.E.2d 676, 685 (Ct. App.2001). In contrast, the harm to Ms. Luzak and loss in value of her stock was unique to her. In *Ward v. Griffin*, the plaintiff

In *Patterson*, the Supreme Court reiterated the rule in this State's jurisprudence that, in an action involving losses to a shareholder, a shareholder may maintain an individual action if her losses are separate and distinct from those of the corporation. *Patterson v. Witter*, 425 S.C. at 231, 821 S.E.2d at 687.

In addition to the two-factor test articulated in the opinion (see Luzak Br. p. 22), the *Patterson* court further described the principles and process for evaluating whether claims are direct or derivative, stating:

If misconduct by the management of a corporation has caused a particular loss to an individual stockholder, the liability for the mismanagement is an asset of the individual stockholder. Of course, a suit based on the misconduct can be brought by the individual stockholder. It becomes material, therefore, to inquire whether the acts of mismanagement charged to the directors affected the plaintiffs *directly*, or [whether] their interests were submerged in the corporation whose assets were thus dissipated.

. . . When determining whether a claim is derivative or direct, some injuries affect both the corporation and the stockholders; if this dual aspect is present, a plaintiff can choose to sue individually.

*Patterson v. Witter*, 425 S.C. at 231–32, 821 S.E.2d at 687 (internal citations and quotations omitted; underline added; italics in original).

The Supreme Court then held that the lower courts erred in holding that all the various causes of action and forms of relief requested by the plaintiffs were derivative without looking at each of them separately. *Id.* at 232, 821 S.E.2d at 688. It is therefore necessary to review each claim and form of relief requested under *Patterson's* framework to determine if each claim and requested form of relief are properly before the court.

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sued the corporation's president for mismanagement of the corporation and its assets without a loss to the plaintiff that was separate and distinct from other shareholders. *Ward v. Griffin*, 295 S.C. 219, 367 S.E.2d 703 (Ct. App. 1988). Ms. Luzak on the other hand sued her individual family members for tortious conduct directed at her that did not involve any management decisions of CFRC.

## A. Conspiracy

CFRC was unable to cite to any evidence or otherwise refute the fact that Ms. Luzak's claims for conspiracy against Randy Light and Merrill Light were in their capacities as individual family members, not in their roles as CFRC directors or officers, in effecting the transfer of Paul Barringer's voting stock to Merrill Light. CFRC's position fails the first factor of whether there were even any management decisions of the corporation at issue.

CFRC attempts to bolster the trial court's ruling that the conspiracy cause of action is supposedly a derivative claim even though Ms. Luzak filed the exact same claim against Merrill Barringer in case nos. 2019-CP-07-1253 and -1294. CFRC claims that the reference in the amended complaint to portions of the business being sold by CFRC establishes the claim is derivative, citing to paragraphs 190-192. (CFRC Br. pp. 21-23). But those allegations were included prior to the Supreme Court's abolition of the requirement for special damages. *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021). The conspiracy cause of action is based on the combination of two or more persons unlawfully carrying out the September 11, 2012 transfer of voting stock through specified tortious acts as set out in the amended complaint at paragraph 78(a), as well as paragraphs 81, 85, 92(a) and others. For example, paragraph 85 describes the actions of Merrill Barringer and Merrill Light working together with John Jolley, Merrill Light's personal attorney (among his many roles), and Sharon Potts, an employee of Mr. Jolley's law firm, to transfer the voting stock of Paul Barringer on September 11, 2012. This stock transfer to Merrill Light did not dissipate any asset of CFRC since the stock was owned by Merrill Light and Paul Barringer as co-trustees of the Paul Barringer Revocable Trust, not by CFRC. Ms. Luzak is the one who suffered the harm from the loss in value of her stock caused by the transfer. And it is Ms. Luzak who will receive the benefit

of the recovery of damages. All of the criteria specified in *Patterson* mandate that Ms. Luzak's conspiracy claim is direct.

All of Ms. Luzak's allegations in the Amended Complaint are incorporated into the conspiracy cause of action. The sale of various corporate assets in 2016 is simply one of the scheme's additional results, but not a necessary one since the abolition of special damages in Paradis. The individual actions of members of the Barringer family working together to bring about the wrongful transfer of Paul Barringer's voting stock do not transform the claim into one that belongs to CFRC.

The *Patterson* opinion made clear that where misconduct causes a particular loss to an individual stockholder, the liability for the mismanagement is an asset of the individual stockholder. *Patterson v. Witter*, 425 S.C. at 231, 821 S.E.2d at 687. CFRC among their rampant mischaracterizations asserted "Ms. Luzak sought to recover damages based on the Lights' supposed conspiracy to diminish the value of CFRC itself." (CFRC Br. p. 8). Ms. Luzak, however, has never claimed that the purpose of the conspiracy among Merrill Light, Randy Light, Merrill Barringer and possibly others was to diminish the value of CFRC. Rather, the purpose of the conspiracy was to move the controlling stock away from Ms. Luzak and over to Merrill Light. Ms. Light testified as much when she stated that the purpose of the September 2012 transfer was to shift the controlling stock to her and away from Ms. Luzak. (R. Vol. VII, p. 2988, lines 3-8).<sup>4</sup> The transfer to Merrill Light did not just greatly harm Ms. Luzak by happenstance. It was designed to cause a particular loss to her and her alone.

## **B. Elements of Damages Identified by Dr. Alford**

### **1. Standard of Review**

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<sup>4</sup> Since Kevin Luzak and Victor Barringer did not own any voting stock, the transfer of Paul Barringer's voting stock to Merrill Light was not intended to affect them but to directly impact only Ms. Luzak.

CFRC claims that the trial court's decision to strike four categories of damages identified by Ms. Luzak's expert, Dr. Charles Alford, should be reviewed by this Court under an abuse of discretion standard, citing *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010). (CFRC Br. p. 14). The analysis in *Watson v. Ford Motor Co.* is inapplicable to the current proceedings. *Watson* involved the trial court's decision to admit expert witness testimony under Rule 702, SCRE, which governs the qualification of a witness to opine as an expert at trial. The standard of review applicable to evidence rulings is not relevant to this Court's review of rulings on motions to strike or summary judgment. The trial court's order granting CFRC's Motion for Intervention and Protective Relief discussed none of the three factors<sup>5</sup> required for ruling on admissibility under Rule 702 and *Watson* because the ruling was not a determination of admissibility under Rule 702. Therefore the abuse of discretion standard does not apply.

The standard of review applicable to a motion to strike follows the same principles as a motion to dismiss under Rule 12(b)(6), SCRPC. *Grazia v. S.C. State Plastering*, 390 S.C. 562, 567, 703 S.E.2d 197, 199 (2010) (stating a motion to strike cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom construed in the light most favorable to the plaintiff, with every reasonable doubt resolved in her behalf, would entitle the plaintiff to any relief on any theory of the case).<sup>6</sup>

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<sup>5</sup> The three key preliminary findings a trial court must make to assess the admissibility of expert testimony at trial are whether (1) the subject matter is beyond the ordinary knowledge of the jury; (2) the proffered expert has acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter; and (3) the substance of the testimony is reliable. *Watson v. Ford Motor Co.*, 389 S.C. at 446, 699 S.E.2d at 175.

<sup>6</sup> If the court converts the motion into a summary judgment proceeding, the standard of review for summary judgment should be applied which requires that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them. See *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 79-80, 557 S.E.2d 689, 691 (Ct. App. 2001).

2. Damage Element No. 1 – Damages from Gain of Control Related to Transfer of Voting Stock

In an effort to mischaracterize Dr. Alford's damage report, CFRC claims that Dr. Alford calculated the damages to Ms. Luzak's stock incurred "after CFRC's board of directors terminated her husband Kevin Luzak." (CFRC Br. p. 17). However Dr. Alford's report never mentioned the termination of Kevin Luzak. Dr. Alford specifically titled the damages incurred by Ms. Luzak as: "Damages from Gain of Control Related to Transfer of Voting Stock." (R. Vol. IX, p. 3693) (emphasis added). Dr. Alford summarized his finding on the first damage element by stating: "The difference, or \$61,728,933, is the measure of damage from the gain of control (by Defendant Light) related to the transfer of voting stock." (*Id.* R. Vol. IX, p. 3683) (emphasis added). It is the transfer of voting stock between two individuals that caused the damages identified by Dr. Alford, not the corporate action of CFRC's board acting through Merrill Light and Paul Barringer in firing Kevin Luzak or by any other action by CFRC's board. The events causing the damages identified by Dr. Alford in Damage Element No. 1 was from an improper and tortious father-daughter stock transfer. There was no corporate authority, permission, or action required to carry out the September 11, 2012 stock transaction. Thus, CFRC has no claim to make regarding this transaction.

CFRC attacks Damage Element No. 1 of Dr. Alford's report regarding the damages to Ms. Luzak from the Gain of Control Related to the Transfer of Voting Stock claiming that the damages are an injury to the corporation, not to Ms. Luzak. (CFRC Br. p. 24). CFRC mischaracterizes Dr. Alford's deposition testimony to make it sound like all the shareholders of CFRC shared equally in the loss of value of their stock as Ms. Luzak did. However, Dr. Alford's testimony in full refutes that. Dr. Alford does not state that Ms. Luzak's damages were in the same proportion or pro rata with other shareholders. When asked if the damages inflicted

by Merrill Light from her gaining the value of the control and marketability premiums for herself would have been imposed on all the shareholders, Dr. Alford responded:

Well, except that the Konger (*sic*) holdings were quite small relative to the Luzak and the Light holdings. The trust holdings are -- are virtually nonexistent now. Mr. Bryant's holdings are quite small. So in the big scheme of things, the person that has been hurt the most is the person that could have shared in the operation of this company and now cannot.

(R. Vol. IX, p. 3710, lns. 3-10) (emphasis added).

The person who Dr. Alford is referring to that has been hurt the most, of course, is Ms. Luzak since she is the one who prior to the September 2012 stock transfer held equal voting power with Merrill Light. In other words, the harm committed by Merrill Light disproportionately affected Ms. Luzak since she is the one who lost the ability to have a majority vote by teaming with other shareholders besides Merrill Light. No other shareholder had enough stock to be in such a position. Ms. Luzak's harm was therefore not identical or proportionate to any of the other shareholders. *Cf. Clearwater Tr. v. Bunting*, 367 S.C. at 351, 626 S.C.2d at 339 (identifying the existence of a derivative suit when the corporate malfeasance resulted in *identical* harm to all shareholders).

The principle that a shareholder who has suffered harm disproportionately to other shareholders is entitled to bring her claims directly is consistent with the purposes of the derivative claim rule described by this Court in *Brown v. Stewart*, *infra*. This Court previously noted one of the reasons underlying the general rule requiring corporate-wide claims to be brought derivatively is that a derivative suit "adequately compensates the injured shareholder by increasing the value of his shares." *Brown v. Stewart*, 348 S.C. 33, 50, 557 S.E.2d 676, 685 (Ct. App. 2001) (quoting *Thomas v. Dickson*, 250 Ga. 772, 774-75, 301 S.E.2d 49, 51 (1983)). However, where the particular loss to an individual stockholder is disproportionately higher than

the losses incurred by all the other shareholders, a derivative recovery that compensates all stockholders in proportion to their ownership percentage would fail to adequately compensate the disproportionately-damaged stockholder, and the other stockholders would receive a windfall. In such a circumstance, as here, Ms. Luzak's loss is an asset of hers individually.

Moreover, as previously noted, the stock transfer to Merrill Light did not dissipate any asset of CFRC since the stock was owned by Merrill Light and Paul Barringer as co-trustees of the Paul Barringer Revocable Trust, not by CFRC. Ms. Luzak suffered the harm from the loss in value of her stock caused by the transfer, and she will be the only one to receive the benefit of the recovery of damages. All of the criteria specified in *Patterson* mandate that the damages related to the transfer of voting stock, as identified by Dr. Alford as the first element of damages, are damages that can be brought by Ms. Luzak directly.

3. Damage Element Nos. 2, 4 and 6 – Ownership Dilution of Ms. Luzak's Stock, Compensation to Randy Light, and Forgone Returns on Sales of Timberland

CFRC attacks Dr. Alford's second category of damages attributable to the dilution of the value of Ms. Luzak's stock as a result of the stock issuance to J. Travis Bryant in 2013 following the purported September 2012 transfer of controlling stock to Merrill Light. The trial court dismissed this second category of damages because of res judicata due to a summary judgment order from the EDVA. (R. Vol. I, p. 46 ¶ 4). As CFRC described it, Ms. Luzak's claim in the EDVA related to the 2013 stock issuance to Travis Bryant was based on a claim of breach of fiduciary duty by Travis Bryant, Randy Light, and Merrill Light as CFRC directors in negotiating the grant of the stock to Travis Bryant. (CFRC Br. pp. 5-6). In contrast the claims in this case are based on different causes of action – namely, the 13 “Stock Transfer Causes of Action” described in Ms. Luzak's initial brief pertaining to the September 2012 stock transfer to

Merrill Light. (Luzak Br. p. 37, n.30). None of those causes of action include a claim for breach of fiduciary duties as a director or officer of CFRC. Ms. Luzak's breach of fiduciary duty claim against the Lights is for Merrill Light's delicts as trustee of the Paul Barringer Revocable Trust and Randy Light's aiding and abetting her tortious conduct as trustee which resulted in the transfer of voting stock to Merrill Light.

In *Griggs v. Griggs*, the Supreme Court held that in order to effect a bar of res judicata, the claim, demand, and causes of action must be the same in both cases. The court explained: "If, however, the two suits do not involve the same claim, demand, and cause of action, such effect will not be ordinarily given to the prior judgment...although each action relates to the same subject matter." *Griggs v. Griggs*, 214 S.C. 177, 185, 51 S.E.2d 622, 626 (1949) (holding res judicata did not bar party from seeking possession of land by claim of adverse possession in second suit after failing to obtain possession of same land from same opposing party in first suit based on superior title even though party could have brought adverse possession claim in first suit and the requested relief, possession of the subject land, was the same in both suits).

CFRC further attacks Dr. Alford's Damage Element No. 2 as a derivative claim. Damages incurred by Ms. Luzak from the dilution of her stock are a result of the control Ms. Light obtained by wrongfully procuring Paul Barringer's voting stock. The tortious act complained of is the wrongful transfer of voting stock from Paul Barringer that allowed Ms. Light to dilute Mr. Luzak's stock by the issuance of shares to Travis Bryant. The delicts causing this category of damages are not alleged to be the result of an improper board decision-making process. Instead, the damages stem from the ability of Merrill Light to now control and effect such decisions by herself through the improperly gained voting stock from the September 2012 transfer. The tortious acts are not the October 2013 board actions complained of in the EDVA.

Thus, since no other shareholder's inheritance was affected by the September 2012 transfer, no other shareholder can make this claim. Therefore, it is not a claim belonging to the corporation or one that can be asserted by the corporation on behalf of all shareholders.

For the same reasons, Damage Elements No. 4, covering compensation paid to Randy Light, and No. 6, pertaining to the forgone returns that did not flow to Ms. Luzak as a result of the failure to complete Kevin Luzak's orderly reinvestment of timberlands, also do not belong to CFRC but are exclusively claims of Ms. Luzak.

Likewise, Ms. Luzak's Stock Transfer Causes of Action related to the September 2012 transfer of Paul Barringer's voting stock flowing from Paul Barringer's affliction of incapacity, undue influence, and mistake are different from the breach of corporate fiduciary duty at issue in the EDVA. Thus *res judicata* does not bar the second damage claim.

**C. Separate and distinct derivative matters raised in EDVA about Travis Bryant's stock do not make Ms. Luzak's individual claims about Paul Barringer's stock derivative.**

CFRC goes to considerable length in its brief describing the derivative claim filed by Ms. Luzak in the EDVA litigation. That analysis however is a diversion from the real issues in this case which are the claims and damages flowing from the purported September 11, 2012 stock transfer to Merrill Light. The derivative action filed by Ms. Luzak in the EDVA did not address the September 11, 2012 stock transfer at all. Instead, it only dealt with the October 2013 stock grant and options offered to CFRC's CEO Travis Bryant. See, *Luzak* 2016 WL 3854118.

In the EDVA litigation, Ms. Luzak filed two distinct and separate counterclaims. One involved a derivative action regarding the stock options and grants of Travis Bryant and the other regarding a breach of contract action pertaining to a family Shareholders' Agreement. The EDVA court recognized that these actions were distinct and separated the claims in the litigation.

The extensive history recited by CFRC of the derivative claim over the Travis Bryant stock grant and options is unrelated to the transfer of voting stock from Paul Barringer to Merrill Light more than a year earlier. Simply because the EDVA court noted that Ms. Luzak's derivative suit filed over the Travis Bryant stock was a derivative matter has no bearing on Ms. Luzak's claims in this case regarding the September 11, 2012 stock transfer. (CFRC Br. pp. 5-7).

**D. Ms. Luzak's subpoena of CFRC records in Florida related to motive do not make her claims derivative.**

CFRC criticized Ms. Luzak's efforts to obtain related information from CFRC about Merrill Light's motives for wrongfully engineering the transfer of her father's voting stock pursuant to Ms. Luzak's subpoena to CFRC. Ms. Luzak stated in her briefs to the Gadsden County, Florida court during her subpoena enforcement proceedings the primary reason for asking for records related to CFRC's advancement of attorney fees and costs for Ms. Light in her suit against Ms. Luzak was to show Merrill Light's motive in obtaining the CFRC voting stock — that being to obtain exclusive and self-serving benefits from CFRC to the detriment of Ms. Luzak. (R. Vol. IX, p. 3741). The circuit court in Florida agreed with Ms. Luzak that she had the right to receive information about the advancements Merrill Light was receiving from CFRC — such as to pay her individual attorney's fees — to show her motive in obtaining the voting stock from her father. Ms. Luzak's request for this information was not an end-run derivative claim, but a request for information that is relevant in this case under Rule 404(b), SCRE, which allows admission into "evidence of other crimes, wrongs or acts . . . to show motive . . . the existence of a common scheme or plan, the absence of mistake or accident, or intent." See *Citizens Bank of Darlington v. McDonald*, 202 S.C. 244, 24 S.E.2d 369 (1943) (holding evidence of other bad acts is competent in civil cases to prove motive, intent, absence of mistake or accident, or existence of a common scheme or plan). Evidence that shows motive, propensity, and

opportunity to commit wrongful acts is discoverable and admissible in its own right regardless of its possible corporate characteristics. The request for such information does not transform Ms. Luzak's direct claims into corporate derivative claims.

The information Ms. Luzak received from the Florida proceedings was significant. The affidavit finally produced by CFRC on the matter after four hearings in Florida revealed that Ms. Light was in fact advanced sums to litigate her individual action against Ms. Luzak in the EDVA and that she only began repaying the sums in May 2016 after Ms. Luzak had begun asking for information on February 5, 2016 regarding advancements CFRC was paying to Merrill Light for her EDVA litigation costs.<sup>7</sup> This evidence highlights the self-serving purpose of Merrill Light in obtaining Paul Barringer's voting stock so that she could control the company in ways that benefit her to the detriment of her sister.

**E. Ms. Luzak correctly states the nature of a derivative claim and that her claims are direct, not derivative.**

As part of CFRC's efforts to rewrite Ms. Luzak's positions in this case, CFRC claims that Ms. Luzak engaged in "a cynical tactic" to fundamentally misrepresent what a derivative claim is by stating that Ms. Luzak supposedly asserts that a derivative claim is one that seeks damages *against* a corporation. (CFRC Br. p. 14). Ms. Luzak however has been abundantly clear about what a derivative claim is by explaining that her claims against Merrill Light and Mrs. Barringer are not claims that belong to the corporation.<sup>8</sup> Moreover any references made in her brief about there being no claims against CFRC support Ms. Luzak's position that the internal affairs of CFRC are not implicated in this action and also highlight that CFRC had no interest related to

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<sup>7</sup> See R. Vol. IX, p. 3770 ¶2 and R. Vol. IX, pp. 3942-3943; R. Vol. IV, pp. 1659-1660 and n. 98.

<sup>8</sup> See Appellant Br. at pp. 13, 17, 21, 22, 24, 25, and 28-33 where on each page, Ms. Luzak has illustrated that her claims are not ones that belong to CFRC. See *e.g.*, "Mrs. Luzak's claims in this case against her sister, late brother-in-law, and mother can only be brought by Mrs. Luzak. These claims belonged to her exclusively. . . These claims do not belong to CFRC." (Luzak Br. p. 17).

the claims in this case and thus no right to intervene under Rule 24, SCRCP.

**F. Ms. Luzak’s breach of fiduciary duty claim against Ms. Light is not related to Ms. Light’s position as a director of CFRC.**

Among Ms. Luzak’s claims in this action is one for breach of fiduciary duty against Merrill Light for her role as trustee of the Paul Barringer Revocable Trust and for her husband’s aiding and abetting her breaches of fiduciary duty as trustee of the Trust. CFRC in its brief tried to mischaracterize this cause of action as Ms. Luzak’s claim for breach of fiduciary duty against Ms. Light as a director. CFRC states that Ms. Luzak, in her argument regarding the summary judgment order on Paul Barringer’s February 28, 2012 estate planning documents, pointed out that Merrill Light served as a director of CFRC with resulting fiduciary duties. (CFRC Br. p. 18). Ms. Luzak’s purpose in highlighting Ms. Light’s role as a board member with fiduciary duties towards her father was to establish that Merrill Light was in a confidential/fiduciary relationship with her father when he amended his estate plan to make Ms. Light a co-trustee of his revocable trust. Ms. Light’s position as a board member with fiduciary duties on February 28, 2012 had nothing to do with her improper and tortious involvement in the purported September 11, 2012 stock transfer that is the gravamen of this case.<sup>9</sup>

**G. Ms. Luzak properly challenged the trial court’s one sentence declaratory judgment.**

The order of June 7, 2021 “declares that Ms. Luzak may not litigate any derivative claims on behalf of CFRC in this action.” (R. Vol. I, p. 46 ¶ 5). Ms. Luzak, though, has not sought any derivative claims in this case, and therefore a declaratory judgment barring her from litigating any derivative claims is irrelevant and improper. (Luzak Br. p. 20). CFRC in its brief takes the

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<sup>9</sup> CFRC quoted a portion of Ms. Luzak’s brief that stated that Merrill Light was Paul Barringer’s “partner in a family partnership.” Ms. Luzak was not referring to CFRC as a partnership, which it is not, but was referring to other family entities in partnership form such as Widen Group, LLC. (See R. Vol. V, pp. 2242-2243 noting that the three children individually were beneficiaries).

position that, in seeking the order from the trial court, “CFRC sought to preclude Ms. Luzak from asserting “additional derivative claims.” (CFRC Br. p. 28). The trial court’s one sentence order does not state anything about “additional derivative claims,” specify what the additional claims are, or identify the conflicts. CFRC posits that Ms. Luzak cannot now challenge the declaratory judgment because she did not raise the issue of “additional derivative claims” to the trial court. Ms. Luzak however raised to the trial court the issue of derivative claims which is the sole subject of the one-sentence declaratory order. The entirety of her Motion to Reconsider is devoted to the issue of direct or derivative claims. (R. Vol. X, pp. 4256-4267). Ms. Luzak unequivocally raised the subject of the declaratory order to the trial court.

To the extent the trial court’s ruling is limited to unspecified “additional derivative claims,” the declaration amounts to an improper advisory opinion since it does not specify what is at issue. If and when claims that one party believes may be derivative are brought in the future, the trial court should rule on such claims at that time. The trial court should not foreclose the debate by issuing a vague, indefinite, and abstract order that does not specify what is being barred. See, *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970) (declining to give a ruling of a contingent, hypothetical or abstract character under the Declaratory Judgment Act).

**H. The internal affairs doctrine and S.C. Code Ann. § 33-15-105(c) do not bar South Carolina courts from adjudicating Ms. Luzak’s claims.**

Given the flaws in CFRC’s derivative claim arguments, it is no surprise that it attempts an alternate argument, in this case the internal affairs doctrine. CFRC misstates the internal affairs doctrine in its brief as an issue of subject matter jurisdiction for South Carolina courts. However, the South Carolina Supreme Court was specific in *Pertuis* that the internal affairs doctrine is a conflict of laws principle. In support of its argument that “South Carolina courts lack subject matter jurisdiction over claims involving internal affairs of a foreign corporation”

CFRC claims that Ms. Luzak “lacked the ‘power’ to bring derivative claims.” (CFRC Br. p. 30). Subject matter jurisdiction however is the power of a court to hear a type matter, not the power of a party to bring an action. See, *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994) (defining subject matter jurisdiction as the court's power to hear and determine cases of the general class to which the proceedings in question belong).

CFRC next asserts that Ms. Luzak did not sufficiently challenge the trial court’s one sentence ruling on subject matter jurisdiction and the internal affairs doctrine to be able to raise it on appeal. (CFRC Br. pp. 30-31). The full extent of the Order on the subject is as follows: “In addition, this Court lacks subject matter jurisdiction to consider claims arising out of the internal affairs of a foreign corporation.” (R. Vol. I, p. 46 ¶ 2). The internal affairs doctrine was the sole basis for the circuit court’s order that it lacked subject matter jurisdiction. Ms. Luzak in her motion to reconsider pointed out to the court that it erred in the following particulars by “finding . . . that this Court does not have subject matter jurisdiction to adjudicate [Ms. Luzak’s claims].” (R. Vol. X, p. 4257 ¶ 5). Since the trial court mistakenly equated subject matter jurisdiction with the internal affairs doctrine, Ms. Luzak’s motion to reconsider the trial court’s subject matter jurisdiction ruling by definition applied to the internal affairs doctrine. In addition, Ms. Luzak then expanded on her objection to the trial court’s finding on subject matter jurisdiction by stating:

The Plaintiff does not concede . . . that this court lacks subject matter jurisdiction to consider foreign claims arising out of the internal affairs of a foreign corporation . . ., but those findings are irrelevant inasmuch as the claims and damages asserted by the Plaintiff against Defendants are not derivative.

(R. Vol. X, p. 4257 n.1).

Ms. Luzak stated in her motion to reconsider that her claims are made against the Respondents as individuals for the particular losses she alone suffered individually in ways that

no one else did. Thus CFRC has no role in these claims as it does not stand to gain or lose by reason of the outcome of Ms. Luzak's claims. In other words, no internal affairs or management of CFRC are at stake in Ms. Luzak's claims. The issue is therefore sufficiently raised.

In this case, no corporate action, permission, authority, or other inner-workings of CFRC were involved in effecting the transfer of Paul Barringer's voting stock to Merrill Light. Thus the internal affairs doctrine is not implicated.

**I. The exclusive forum provisions of CFRC's bylaws do not prevent Ms. Luzak from having standing to bring her conspiracy claims and damages.**

The trial court stated in its Order regarding Ms. Luzak's conspiracy claims against Merrill and Randy Light: "Mrs. Luzak lacks standing to pursue those [conspiracy] claims because...she has not complied with the exclusive forum provision in Article VIII, Section 7 of CFRC's bylaws." (R. Vol. I, p. 46 ¶ 2) (emphasis added). The trial court's order made no further reference to CFRC's bylaws other than the above-quoted clause stating the exclusive forum provision causes a lack of standing to pursue a conspiracy claim. CFRC first resorts to its fall back defense that Ms. Luzak's argument on appeal, regarding the exclusive forum provision and standing to bring her conspiracy claims, was not properly raised below. (CFRC Br. p. 31). Ms. Luzak, however, in her Motion to Reconsider objected to the trial court's Order by specifically stating in the body of her motion:

The Court erred in its Order in the following particulars:...

2. Dismissing Hampton Luzak's cause of action for civil conspiracy for lack of standing...

5. Finding that ... [Ms. Luzak] does not have standing...

(R. Vol. X, p. 4257 ¶¶ 2 and 5) (internal footnote omitted).

Ms. Luzak in her Motion to Reconsider further raised to the trial court, the following:

Plaintiff does not concede the findings ... that she has not complied with any exclusive forum provisions in CFRC's By-Laws. . . but those findings

are irrelevant inasmuch as the claims and damages asserted by the Plaintiff against Defendants are not derivative.

(R. Vol. X, p. 4257, n.1).

Ms. Luzak's statements in her Motion to Reconsider sufficiently and accurately describe the problems with the trial court's ruling. Ms. Luzak was not claiming compliance with the exclusive forum provision but that its terms were inapplicable to her claims and thus were not relevant. Ms. Luzak properly informed the trial court that the exclusive forum provisions of the CFRC bylaws are irrelevant because the terms do not apply to Ms. Luzak's claims in this case.

CFRC's citing of the case of *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, supra, is misplaced since that case applies to the issue of an appellant trying to raise new issues in a reply brief during appeal when the appellant only made a vague reference in a footnote in her initial brief. In this case, Ms. Luzak clearly and properly raised in her initial brief the irrelevance of the exclusive forum provision of the CFRC bylaws and that she therefore has standing to bring her conspiracy cause of action. (See, Luzak Br. pp. 25-26).

When addressing the merits of the exclusive forum provision of the CFRC bylaws, CFRC ignored Ms. Luzak's descriptions in her brief on how each of the four clauses in the exclusive forum provision did not apply to Ms. Luzak's direct individual claims against Merrill Light, Randy Light, and Merrill Barringer. CFRC glossed over the specific language in the exclusive forum provision with a general statement that Ms. Luzak's claims and damages fit squarely within the provision. Ms. Luzak's specific analysis in her initial brief demonstrates otherwise.

**J. The Virginia Stock Corporation Act does not prevent Ms. Luzak from having standing to bring her conspiracy claims and damages.**

The trial court's order pertaining to the Virginia Stock Corporation Act states:

2. ...Mrs. Luzak lacks standing to pursue those [conspiracy] claims because she has not fulfilled the requirements for commencing a

derivative action set forth in the Virginia Stock Corporation Act, *see* Va. Code § 13.1-672.1...

3. Mrs. Luzak's first, second, fourth, and sixth categories of damages...constitute derivative claims under Virginia Law. Mrs. Luzak lacks standing to pursue derivative claims, and the Court lacks the subject matter to adjudicate them. See Va. Code § 13.1-672.1..."

R. Vol. I, pp. 45-46 ¶¶ 2 and 3 (emphasis added).

The portions of the Order pertaining to the Virginia Stock Corporation Act are based on the purported requirements that Ms. Luzak's conspiracy claims and damages are derivative and thereby cause a lack of standing. Once again CFRC resorts to its assertion that Ms. Luzak failed to raise these issues with the trial court. Ms. Luzak, though, raised these issues in paragraphs 2-5 of her Motion to Reconsider in addition to footnote 1 of her Motion. Further Ms. Luzak discussed throughout her 11-page Motion to Reconsider her contention that the trial court erred in ruling her claim to be derivative which the trial court held was the basis for applying the Virginia Stock Corporation Act. Though she may not have used the phrase "Virginia Stock Corporation Act", the use of specific magic phrases does not determine whether an issue is properly presented. See *Patterson v. Witter*, 425 S.C. at 234, 821 S.E.2d at 688 (holding use of magic phrases not required to preserve an issue for review if the substance is presented in the appealed document). As set forth in Section I above, the case of *Glasscock, Inc.* does not bar this Court's review related to Va. Code § 13.1-672.1. Ms. Luzak amply raised the issues related to bringing derivative claims and the Virginia Stock Corporation Act to the trial court, thus preserving this issue for appeal as addressed in Ms. Luzak's initial brief.

Moreover, as stated above, South Carolina, not Virginia, law applies to this case. Since Ms. Luzak's conspiracy claim and damages are not derivative as set forth above under South Carolina law, the Virginia Corporation Stock Act does not apply to bar Ms. Luzak's claims and damages as set forth in Ms. Luzak's initial brief. (Luzak Br. pp. 12 and 25).

**K. Trial court erred in allowing CFRC to intervene under Rule 24, SCRCF.**

CFRC contends that its motion to intervene met the factors the Supreme Court requires a trial court to consider in making a ruling under Rule 24(a)(2), SCRCF, for intervention as of right. (CFRC Br. pp. 35-40). The trial court's Order addressed none of the factors the Supreme Court set forth in *Berkeley Elec. Co-op, Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990) and *Davis v. Jennings*, 304 S.C. 502, 405 S.E.2d 601 (1991) and raised by Ms. Luzak. (R. Vol. IX, pp. 4093-4106). Even under an abuse of discretion standard of review, "a court's failure to exercise discretion is itself an abuse of discretion." *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (reversing trial court's ruling under an abuse of discretion standard for failing to conduct prejudice analysis under Rule 15). Similarly the trial court's order also failed to make any analysis under Rule 24(b) for permissive intervention.

CFRC asserts that it timely filed its motion for intervention 4½ years after the case had begun. Assuming for argument purposes only that Ms. Luzak's conspiracy claims and damages belong to CFRC, then those claims would have been a right of action of CFRC in 2016 while Randy Light was chairman of the board of CFRC and Merrill Light was ostensibly the controlling shareholder and director. The same claims and position of the Respondents existed in September of 2019 when the amended complaint was directly served on CFRC as part of the Gadsden County, Florida subpoena enforcement proceedings. The same claims and conditions were present in December of 2019 when Dr. Alford's damage report was served on CFRC's chairman of the board Randy Light and its purportedly controlling shareholder Merrill Light. Ms. Luzak's serving of deposition topics that relate to Merrill Light's motives and purposes for obtaining the CFRC stock from her father, though potentially embarrassing to CFRC, does not turn Ms. Luzak's conspiracy claims and damages against the individual defendants and family

members into claims that could be asserted by CFRC. Those topics, such as advancement of litigation costs and unaccounted for capital expenditures, are not contained in the six elements of damages set forth by Dr. Alford.

If Ms. Luzak's claims were derivative claims in 2021, they would have also been so in 2016. CFRC's assertion that the 30(b)(6) deposition notice in 2021 triggered this belated intervention motion is illogical.

CFRC further claimed that it needed to intervene to protect its interest and those of its shareholders in order to "prevent multiplicity of lawsuits by shareholders" and avoid "prejudic[ing] the rights of others not a party to the suit." (CFRC Br. p. 38). CFRC, though, is not a party to this suit and is not in jeopardy of being made a defendant by Ms. Luzak. CFRC is not at risk of facing a multiplicity of suits from this unique factual scenario. Therefore, CFRC has no interest to protect in this lawsuit and had no justification for intervening.

### **CONCLUSION**

In this appeal Ms. Luzak challenges an unfounded extension of the derivative claim doctrine wherein CFRC tries to protect its majority and controlling shareholder from having to face claims from her sister over a probate and gift matter. This Court should grant Ms. Luzak's relief and reverse the trial court's order that Ms. Luzak's conspiracy claim and damages are derivative and violate the internal affairs doctrine and reinstate Ms. Luzak's conspiracy claim and all elements of damages as outlined by Dr. Alford.

Respectfully submitted,

s/ Desa Ballard

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November 2, 2022

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**Nov 02 2022**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
BENTLEY PRICE, CIRCUIT COURT JUDGE

Appellate Case No. 2021-000837

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton B. Luzak, .....Appellant

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, ..... Respondents

--and--

Hampton B. Luzak, .....Appellant,

v.

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

Coastal Forest Resources Company ("CFRC").....Intervenor/Respondent.

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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